“Inherently Bad, and Bad Only”

A History of State-Level Regulation of Cigarettes and Smoking in the United States Since the 1880s

Volume 1

An In-Depth National Study Embedding Ultra-Thick Description of a Representative State (Iowa)

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PART III

THE CONTEXT OF STATE ANTI-CIGARETTE AND ANTI-SMOKING LEGISLATIVE TRENDS IN THE 1910S AND 1920S BEFORE, DURING, AND AFTER REPEAL IN IOWA

The battle over Lady Nicotine is on in earnest.
Thirty-six states have anti-cigarette bills before their legislatures.¹

The enactment and repeal of laws forbidding the sale and smoking of cigarettes goes on steadily year by year.²

¹“36 States to Consider Bills Against Fags,” OS-E, Jan. 3, 1921 (1:2).
Repeal, Reinforcement, the Last New Laws, and the First Public Smoking Bans

The cigaret is a luxury and therefore a proper object to tax. Its use by minors especially is harmful and it is therefore proper to discourage such use by legislation. But the evil is not of sufficient consequence to warrant prohibition of sale to adults capable of deciding for themselves whether their welfare requires abstinence from the use of tobacco in any form.¹

With forty-two State legislatures in session this year the sum total of the results of the onslaught on tobacco is the passage of a cigarette-prohibiting law in the Mormon State Utah, with a population of 449,446, as against the repeal of the old anti-cigarette laws in...Arkansas, Iowa and Tennessee, with an aggregate population of 6,492,084.²

Anti-smoking organizations’ initial reaction to Iowa’s repeal of prohibition and the advent of licensing was muted and resigned. After expressing its regret, the legislative committee of the Parent Teacher’s Association of Des Moines urged an active campaign against cigarettes and made it the group’s business that the new law be enforced.³ The mini-obituary for the country’s longest-lived statewide universal ban on cigarette sales in the Iowa WCTU’s report to the anti-narcotics department of the National WCTU, which was presented at the latter’s annual convention in August, was almost jaunty: “Iowa lost its splendid anti-cigaretel law and a license law was enacted in its stead. The agitation regarding the repeal of this law was considered in almost every community and splendid interest for a greater safeguard to the young people resulted.” In the same breath and with almost equal weight the report noted that its local unit in Fort Dodge had distributed a hundred copies of “Nicotine” to teachers.⁴ Two months later at its own annual convention, the Iowa WCTU merely mentioned without commentary the defeat of the (Moen) bill that it had sponsored to apply the injunction and abatement procedures to the anti-cigarette law, which, in turn, had been repealed.

¹Cigaret Legislation,” CREG, Aug. 29, 1921 (4:2) (reprinted from Dubuque Telegraph-Herald (edit.)).
and replaced by a license measure. Not until its 1922 convention did the Iowa WCTU appear to take full cognizance of the consequences of repeal. Only then did it adopt a resolution “deploring the license policy in dealing with such an evil as the cigarette” and giving expression to the fact that “we are humiliated by the boast of our State that money in such amount is gained by the licenses to sell cigarettes.” Then reverting to form, it raised a demand for “a prohibitive law with full enforcement for this evil of young people,” thus suggesting that restoration of the universal sales ban for adults was no longer on its agenda. More far-reaching was the second part of the resolution, which urged, on account of the “injurious effects” of tobacco, “creation of sentiment to bring Iowa to the place attained by some other states which prohibit smoking in public places or where food is exposed for sale.” The Iowa WCTU was presumably alluding primarily to statutes enacted in neighboring Nebraska in 1919 and in 1921 in Utah and North Dakota.

No supposition that all advocates of the retreat to the pre-general prohibition, minors-only approach were shills for the cigarette companies and local sellers has been documented. Some may have been concerned about adolescent smoking, but many were either (knowing or manipulated) pro-capitalist stalking horses or, like the American Legion, feigning concern for minors while in reality self-interestedly seeking unimpeded access to cigarettes. Moreover, this last point underscored the self-contradictory underpinnings of the cigarette industry’s and other repealers’ whole strategy: why were they willing to devote so much political capital—after all, the American Legion was said to have suffered the defeat of its more highly prioritized boxing bill because some legislators felt that they had to throw a bone to the Legion’s nemesis, the WCTU, after having passed the Dodd bill—to eliminating the allegedly non-existent problem of a dead-letter law?

Much more empirically plausible than such internally inconsistent legislative lobbying behavior by savvy political operatives is the conclusion that prohibition had acted as a damper on sales in Iowa both directly in terms of enforcement and indirectly by depriving cigarettes of the full legitimacy of a lawful and freely available consumer commodity. With sales being catapulted to previously

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3Woman’s Christian Temperance Union of Iowa, *Forty-Eighth Annual Convention, held at Ames, Iowa, October 18-21, 1921*, at 89.

4Woman’s Christian Temperance Union of Iowa, *Forty-Ninth Annual Convention, held at Oskaloosa, Iowa, October 24-27, 1922*, at 73.

5Woman’s Christian Temperance Union of Iowa, *Forty-Ninth Annual Convention, held at Oskaloosa, Iowa, October 24-27, 1922*, at 73.

6See below this ch.

7See above ch. 15.
unimagined heights in the postwar world by the new brands (Camel, Lucky Strike, and Chesterfield), the Tobacco Trust successor-oligopolists were determined to kill off the remaining prohibitory statutes in Iowa, North Dakota, and Kansas (and the newly enacted one in Utah) not only in order to increase sales in those relatively small states, but to crush in its incipiency what appeared to have the makings of a worrisome national effort by the WCTU to “Buck Money Bags” by attacking the entire tobacco industry. As an editorial in the New York Herald—carefully archived as Article 17 by the American Tobacco Company in a file bearing the title, “Tobacco Smoking Pro & Con Apr. 1911-Dec. 1930”—noted shortly before the Iowa legislature passed the Dodd bill: “There was a time when the news that Utah had put the ban on the cigarette would have brought smiles of superiority and commiseration to the faces of New Yorkers. Those times are past. Acts against liquor such as Utah’s against My Lady Nicotine gave the country its first suggestion of nationwide prohibition.”

Indeed, in Utah (in 1921 the last state to enact a general ban on cigarette sales), when the Tobacco Merchants Association in late 1922 sounded out dealers on the prospects for repeal, most opined that the influence of the Mormon church was for the time being too great and “the citizens of Utah generally have not become disgusted enough with the existing Cigarette Prohibition...to secure its repeal.” Charles Dushkind, TMA’s managing director, therefore concluded that “while the trade in Kansas and North Dakota is almost unanimous in recommending that a movement looking to the repeal of the existing statutes be inaugurated, the Utah people hold out no encouragement in that direction.”


11Robert Hughes, “39th Assembly Was Good to Legion,” DMN, Apr. 18, 1921 (4:3-4).


141921 Laws of Utah ch. 145.

15Tobacco Merchants Association of the U.S., Excerpts from Letters Received from the Trade (n.d. [ca. Dec. 1922]), Bates No. 50187678/84-5.

16Charles Dushkind, Tobacco Merchants Association of the U.S., “Memorandum in re: Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah,” at 1 (Dec. 4, 1922), Bates No. 501870676. All the letters that Dushkind purportedly received from dealers in North Dakota did advocate repeal. “Excerpts from Letters Received from the
be sure, “contrary opinions” existed even in the Kansas trade. In unvarnished
terms the Mercantile Company in McPherson informed Dushkind: “We believe
that you should keep your hands off the proposition and allow the people of this
state to handle the matter as they see fit.” A cigar company in Atchinson wrote
that “[f]rom a personal point of view, we are entirely satisfied as it is.” And
most relevant to the question of the viability of the prohibitory enforcement, the
Iola Wholesale Grocery Company, in addition to believing that TMA would have
very little luck in getting the law repealed in a state that was so radical along
prohibitionist lines, mentioned that it would feel more like favoring repeal if there
were no price cutting in such commodities. But as things stood, “we are almost
glad that we cannot sell them in this territory.”

By 1921, the era of general sales bans was in decline. If its high point had
been reached in 1909, when 11 states had such statewide laws in force, by 1920
the universe had dwindled to only five (in Iowa, Tennessee, Arkansas, Kansas,
and North Dakota), the first three of those being repealed during the 1921
legislative sessions. Despite this unmistakable trend, the World War I era
witnessed an efflorescence of extraordinary total and partial public smoking bans,
and even as late as 1921 repeal did not appear to be irreversible: not only did
Utah and Idaho enact new ban laws in 1921, but anti-cigarette forces defeated
American Legion-proposed repeal legislation in Kansas and North Dakota, which,
in addition, strengthened their statutes. However, unlike the situation in Iowa,
where the American Legion’s contribution to the repeal movement was
subterranean, its campaigns in Kansas and North Dakota (and Idaho) were
highly visible, public, and contentious. The Legion’s role was also anticipated
and known to have been shaped by forces outside of it. As the press disclosed
in the very first days of 1921, before state legislatures had convened and any anti-
cigarette bills had been introduced: “The pro-tobacco army is trying to enlist
members of the American Legion who ‘rolled their own’ over there.”

Reflecting on this constellation of legislative passage and repeal after the
elections in November 1922, as the convening of state legislatures was rapidly
approaching, Dushkind, in a “Special to Cigarette Manufacturers,” expressed his
belief that the three aforementioned repeals, “after repeated efforts, especially at
a time when anti-cigarette agitation was most intensive, should operate as a


17Tobacco Merchants Association of the U.S., Excerpts from Letters Received from
the Trade at 4 (n.d. [1922]), Bates No. 501870678/81.

18See above Table 2.

19See above ch. 15.

2036 States to Consider Bills Against Fags,” \textit{OS-E}, Jan. 3, 1921 (1:2).
stimulant to renewed activities looking to the repeal of the obnoxious statutes in the two old States [Kansas and North Dakota] still in the prohibition column, as well as in Utah...” He therefore suggested “freely” distributing industry propaganda “among legislators, newspapers, bank presidents, and other leading citizens in the three States,” where, he opined, it was “altogether probable that most of the papers...will warmly support any movement for the repeal of these statutes and for the enactment of laws providing for reasonable license fees and proper restrictions as to sales to minors under 18, instead.”

That the oligopolists’ legislative influence was limited emerged from the circumstance that, despite Dushkind’s admonition two weeks later that “due care must be taken that the...Iowa Cigarette Tax Law should not be followed in other States,” in fact Utah, North Dakota, and Kansas did follow Iowa’s model cigarette tax in passing their sales ban repeals in 1923, 1925, and 1927, respectively.

This chapter first presents an account of the repeals in Tennessee, Arkansas, and Nebraska. It then examines the successful resistance to American Legion-led repeal movements in North Dakota and Kansas as well as the ultimate repeals of the last surviving cigarette sales bans in those states later in the 1920s. Treatment of such prohibitions concludes with studies of the last two enacted, in Idaho and Utah in 1921, which were repealed in 1921 and 1923, respectively. The chapter ends with detailed analyses of bills and laws in seven states absolutely banning cigarette smoking or partially banning tobacco smoking in specified enclosed public places.

Repeal

While the argument was in progress over the bill to repeal the anti-cigarette law in the house Thursday, Mr. Tucker of Unicoi said that if a bill were introduced incorporating the Ten Commandments some representative would get up and declare that they couldn’t be enforced.

That Iowa, despite repeal of its universal ban on cigarette sales, retained

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21Charles Dushkind, Tobacco Merchants Association of the U.S., “Special to Cigarette Manufacturers” (Nov. 18, 1922), Bates No. 501870686. On the propaganda materials, see below ch. 17.

22Charles Dushkind, TMA, “Memorandum in Re: Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah” at 2 (Dec. 4, 1922), Bates No. 501870676/7.

23See below this ch.

reservoirs of deep-seated aversion to cigarettes, emerges from a comparison with contemporaneous repeals in Tennessee and Arkansas. An in-depth study of the process in Tennessee is particularly instructive because its statute, dating back to 1897, was almost as long-lived as Iowa’s. In contrast, repeal of the 1905 Nebraska law in 1919 revealed a more nuanced licensure scheme: although it failed either to empower local communities to retain the sales prohibition or to include a sales tax, it did set standards such as a cigarette advertising and cigarette smoking ban in public eating places that transcended the reach of the 1921 Iowa repealer.

**Tennessee (1919/1921)**

“As between cigarettes and whisky,” thundered a member of the Tennessee general assembly in an argument he was making against the repeal of the cigarette act,...I'll take whisky every time.” “Same here, old man,” shouted a chorus of brother members.26

Two years after Iowa had adopted a cigarette mulct tax, Tennessee followed suit, although its assumed a somewhat different form than Iowa’s. In 1899 the legislature enacted a revenue act that imposed, among numerous occupational privilege taxes, a $10 license fee on retail cigarette dealers subject to the proviso: “Cigarettes (Not sold in violation of the criminal law).”28 Later that year, Jake Blaufield—the same Knoxville dealer who had failed in his challenge to the constitutionality of the anti-cigarette law before Judge Clark in federal district court in 1897 on the same charges29—who had paid for and been issued a license, was indicted and convicted of having violated the general prohibition by virtue of having sold a package of cigarettes.30 These proceedings demonstrate that after the ruling by the Tennessee Supreme Court in *Austin* upholding the anti-cigarette law and even before the U.S. Supreme Court affirmed it,11 police and prosecutors in Tennessee had resumed enforcing it. In seeking to “interpose” the license as a defense to the criminal charge, Blaufield argued that since the cigarette law “absolutely prohibits the sale of cigarettes in the State in terms as broad as the

25See above ch. 5.
26“Breezy Chatter Heard in Legislative Halls,” *NB*, Jan. 26, 1919 (2:4-7 at 6).
27See above ch. 12.
29See above ch. 5.
30Blaufield v. State, 103 Tenn. 593, 594-95 (1899).
31See above ch. 12.
English language can make it,...the Revenue Act of 1899, declaring the right to sell cigarettes to be a privilege, and taxing it as such, by necessary implication repeals the criminal Act of 1897.\textsuperscript{32} The Tennessee Supreme Court rejected the argument that payment of the privilege tax ipso facto transformed the payor into a licensee of the state entitled to perform all acts proper for enjoying the license. At most, according to the court, the tax was “assessed upon an unlawful occupation”; consequently, the payor could no more lawfully sell cigarettes than a licensed liquor dealer could lawfully sell to minors.\textsuperscript{33} Although the court failed to explain why a wholly unlawful trade was licensed at all, it also rejected the plaintiff’s contention that the revenue act by implication had repealed the cigarette law: because the one was a police regulation designed to protect citizens’ health, whereas the other served solely to finance state government, they were “entirely separate and distinct, and referable to different branches of legislative power.”\textsuperscript{34} Moreover, the legislature’s insertion of “this extraordinary clause” (“not sold in violation of criminal law”) in 1899 expressly repelled any intention to repeal by evidencing a contemplation of the earlier statute.\textsuperscript{35}

On December 11, 1900, just three weeks after the U.S. Supreme Court had upheld the law’s constitutionality in \textit{Austin v. Tennessee}, Knox County Circuit Judge Sneed declared it invalid on the grounds that the legislative journal did not show that the Speaker had signed it.\textsuperscript{36} Lucy Page Gaston’s magazine \textit{Boy} detected desperation in hinging success on “a mere technicality like this,” adding that it had been “broadly hinted that the absence of this signature not having been discovered before tells of possible fraud. The only hope of the Tobacco Trust is in venable legislation and temporary success through intrigue.”\textsuperscript{37} However, almost as soon as the Legislature convened in January 1901, it reenacted the 1897 statute unchanged.\textsuperscript{38} As a result, in Chattanooga, for example, when tobacco dealers received notice of its final passage, \textit{The New York Times} reported that: “They will discontinue sale and return their stock to the manufacturers.”\textsuperscript{39} Moreover, as a more detailed account in another paper noted: “It is stated that the

\textsuperscript{32}Blaufield v. State, 103 Tenn. 593, 596 (1899).
\textsuperscript{33}Blaufield v. State, 103 Tenn. 593, 598, 599 (1899).
\textsuperscript{34}Blaufield v. State, 103 Tenn. 593, 601 (1899).
\textsuperscript{35}Blaufield v. State, 103 Tenn. 593, 602 (1899).
\textsuperscript{36}“Can Smoke Cigaretts Again,” \textit{CT}, Dec. 11, 1900 (9).
\textsuperscript{37}“Has Her Fighting Clothes On,” \textit{Boy} 2(1):8 (Jan. 15, 1901).
\textsuperscript{38}1901 Tenn. Pub. Acts ch. 86, at 129.
\textsuperscript{39}“Cigarettes Barred in Tennessee,” \textit{NYT}, Feb. 1, 1901 (3).
sale of cigarettes is practically stopped all over the state.” In 1903 the legislature added a prohibition on keeping in stock, giving away, or otherwise disposing of cigarettes.

Compliance by retailers over the years appears to have been commonplace and enforcement appears to have come in the form of sporadic drives—not unlike the contemporaneous periodic raids and closings under various prohibitory liquor laws. The state WCTU was still calling for enforcement of the anti-cigarette law in 1912. Later in the twentieth century, Louise Littleton Davis, a Tennessee journalist and historian, interviewed people who had lived through the 1897-1921 anti-cigarette sales period and recalled enforcement episodes. For example, one informant, a Nashville lawyer, remembered that around 1910 police would sometimes demand to know of people whom they had “caught puffing the ‘coffin tacks’”: “Who sold you that cigarette?” He added: “The police didn’t do that all the time, but there would be little flurries of that every once in a while—when they were trying to get the law off the books.” Another lawyer recalled that as a young man in a small town (Savannah) he had worked from 1897 to 1899 as a clerk in a grocery store, which bought (Duke’s Mixture) tobacco from ATC; included in each shipment were free cigarette papers, which the store neither bought nor sold nor “gave away” but “just laid...on the counter. Anyone who bought smoking tobacco knew where to pick up the cigarette paper if he wanted to.” Neither that store nor any other store he knew of sold cigarettes.

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40. “State Bars All Cigarettes,” FWN, Feb. 1, 1901 (8:3). This account’s closing statement that “[i]ntimations are given that the constitutionality of the law will be tested” appears to have been erroneous; since the U.S. Supreme Court had just upheld the constitutionality of the identically same statute, such a test would presumably have been frivolous.


44. Louise Littleton Davis Papers, TSLA, Box 15, Folder 6: “Davis - Frontier Tales - Cigarettes: When Stolen ‘Smokes’ Were the Sweetest” at 2-3. This typescript may have appeared in a series of feature articles that Davis wrote for the Nashville Tennessean over many years. Neither her notes nor the typescript bears a date, but from internal indicia the work appears to have been done after 1956 and probably after 1964. Although the typescript and her research notes reveal that Davis did use some original sources, including, Austin v. Tennessee, newspapers, and legislative journals, she also fundamentally misunderstood certain crucial aspects of the history of anti-cigarette legislation, which she apparently did not know was a national movement; consequently,
in 1907, after he had begun practicing law in Nashville, a case arose involving a
cigar store selling cigarettes, and he recalled other cases in police court.\textsuperscript{45}

As late as 1916, enforcement campaigns were still necessary, but they were also still taking place. In late 1915, 65 indictments were returned against nine different dealers in Chattanooga (including the United Cigar Stores Company, once the retail arm of the former Tobacco Trust). Soon after having arranged for bonds and sought a compromise,\textsuperscript{46} the dealers decided to form a statewide organization to secure repeal of the law. To enhance the effectiveness of their concerted action, the dealers planned to affiliate with the newly created tobacco oligopoly’s propaganda and lobbying organization, the Tobacco Merchants Association, and also expected to gain the support of Tennessee tobacco growers.\textsuperscript{47} In the meantime some of the dealers pleaded guilty and paid the $50 fines and costs, while others were excused in exchange for agreements to refrain from further cigarette dealing.\textsuperscript{48} Although, as the Western Tobacco Journal resignedly put it, “[f]or the present the Cigarette sales at Chattanooga will be suppressed, it seems,” the trade paper took heart: “The matter will be allowed to rest until a systematic plan of defense can be mapped out by the Tobacco Merchants Association, through its able secretary and counsel, Charles Dushkind. ... Every effort will be made to have the anti-Cigarette law repealed.”\textsuperscript{49}

\textsuperscript{45}Louise Littleton Davis Papers, TSLA, Box 15, Folder 5: Cigarette Legislation in Tennessee at 23. This folder contains Davis’s notes for the aforementioned typescript.


\textsuperscript{49}“Chattanooga Trade Aided by the Tobacco Merchants’ Association,” \textit{WTJ}, 43(7):1:4
Nor was enforcement limited to especially zealous agents in Chattanooga. As the rival trade journal *Tobacco* reported:

Heeding the final warning of the authorities in Nashville, all of the uptown cigarette dealers clamped down the lid Sunday. Smokers who failed to supply themselves Saturday found it impossible to buy cigarettes at any price in a Nashville cigar store.

Acting Sheriff Yeaman...gave final notice that the sales of cigarettes in Nashville would be tolerated no longer. ...

Sheriff Yeaman...had received assurance from some of the dealers that the cigarette law would not be violated further by them. Uptown dealers, he said, have planned to sign an agreement to sell no more cigarettes as long as the law prohibiting it remains on the statute books. In the opinion of the authorities the cigarette is a thing of the past in Nashville.

...  

“The recent imposition of the war tax and the increased cost of cigarettes have cut down the profit of the retail dealer and it is not believed that the action of the authorities will be a great blow to the merchants. The smokers themselves are making the clamor.

“The Nashville police department will also help to exterminate the cigarette, Chief Barthell having been instructed by Mayor Gupton to have his men see to the enforcement of this law. City Judge Madison Wells has announced that any case growing out of the unlawful sale of cigarettes will be bound over to the criminal court.”

The end of the World War I brought with it manifold possibilities of a different social order. Whatever those momentous transformations may have been globally, the future of cigarettes in the United States in general and in Tennessee in particular was being shaped by a struggle between control forces, led by the WCTU, which hoped to retain the few state prohibitory statutes still on the books, and the oligopolist successors to the former Tobacco Trust, which were determined to avail themselves of the returning U.S. soldiers’ collective and individual experience with enormous cigarette consumption to repeal those statutes impeding unfettered sales. In this regard the war’s impact on production, consumption, and attitudes toward consumption was diametrically opposed to its impact on alcohol. Presumably no newspaper in Tennessee would have applied to cigarettes its view that anyone selling whisky to soldiers should be executed.

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The conflicts over liquor prohibition in Tennessee during the first two decades of the twentieth century not only were especially virulent, but also generated party-political consequences perhaps unique in the South, if not nationally. Prohibition so split the Democratic party that a Republican was elected and reelected governor in 1910 (over former Governor Robert Taylor) and 1912. By 1914, prohibition had become such a “part of the accepted dogma of Tennessee politics” that its former Democratic opponents turned “ardent supporters” and the state “reverted to its normal pattern of Democratic domination.” The bi-partisan political support for stringent liquor control laws at the 1917 legislative session and the almost unanimous ratification in 1919 of the Eighteenth Amendment to the U.S. Constitution, making possible nationwide prohibition of intoxicating liquors, underscore that the apparently victorious moralism of the temperance crusade could not be fully shared with the anti-tobacco movement in the aftermath of a World War that had vastly enhanced the social acceptability of cigarette smoking.

At that same 1919 session the anti-cigarette-prohibition forces initially focused on a repeal bill. Already on January 14, Democratic Senator Thomas Coleman introduced (in a chamber controlled by his party 26 to 7) such a bill, S.B. No. 90, which provided for licensing the sale of cigarettes to everyone except minors. Three days later the “Breezy Chatter Heard in Legislative Halls”

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55 Paul Isaac, Prohibition and Politics: Turbulent Decades in Tennessee, 1885-1920, at 265 (1965). Isaac’s emphasis on the “close relationship between the anti-saloon crusade and progressivism in Tennessee” (id.) must be interpreted in the special context of progressivism in a South whose middle-class leaders, needing outside capital, “were not hostile to the factory and corporation as such”: “The anticorporation drive was further diluted by the cold, pure springs of prohibition. Given the moral disrepute of saloons, prohibitionists were somehow able to equate the ‘liquor traffic’ with rural and progressive suspicion of the trusts and ‘special interests.’ When reform pressures mounted, prohibition offered an easy outlet. [F]or many Southerners prohibition became the sum of progressivism....” George Tindall, The Emergence of the New South, 1913-1945, at 18 (1970 [1967]).

56 Senate Journal of the Sixty-First General Assembly of the State of Tennessee 75 (1919) (S.B. No. 90, Jan. 14, by Thomas Coleman). Coleman was returned the next year at the 1920 Census of Population as a 37-year-old lawyer, but he had been a school teacher
column that appeared almost daily during the session in the Nashville Banner reported—a bit behind the times\textsuperscript{57}—that:

Indications are that before very long there will be introduced a bill to legalize the sale of cigarettes in Tennessee. Supporters of the measure claim that the state is losing considerable revenue from the fact that such sale is not legalized and further that cigarettes are not regarded as they were some years ago, when some of the women folks thought that anyone who smoked a cigarette was going right straight to the demnition bow-wows, and that few cigarette smokers died from any other cause. In fact, the cigarette proved a mighty handy friend to the boys over there (and over here, too) during their fighting, and there are few who would deny the soldiers anything within reason. It’s dollars to doughnuts they are going to want cigarettes when they get back, too. Then, too, the argument is being made that as the state needs more revenue, this would be a nifty little bill to put through to help the old state out of its financial difficulties.\textsuperscript{58}

The Temperance Committee recommended it for passage and it reached its third and final reading on January 22, when further action was postponed until Democratic Senator Walter Cameron could introduce another bill on the same subject.\textsuperscript{59} Although the Senate had generally supported S.B. 90, the bill also sparked opposition from “several senators who wanted to be certain the law protecting minors was preserved. They were assured a companion bill prescribing drastic penalties would be forthcoming soon,” but in the end the chamber decided to defer a vote until members could read the complementary measure.\textsuperscript{60} In its commentary on this debate the next day, “Breezy Chatter” resumed its previous focus by explaining that when the bill came up, “it developed that the idea” was to repeal prohibitory acts and to tax dealers in order to raise revenue for the state treasury, which was estimated to be about $250,000 annually. The justification for repeal was that the law was a “dead letter,” which even when alive had been “found impracticable to enforce. The courts have practically ceased to charge the grand juries on the subject and cigarettes are

\textsuperscript{57}Two days earlier the Banner, in listing the bills introduced the day before, had given unique treatment to the bill by inserting a bolded “Anti-Cigarette Bill” above its entry. “But Few Bills Are Introduced,” NB, Jan. 15, 1919 (11:4).

\textsuperscript{58}“Breezy Chatter Heard in Legislative Halls,” NB, Jan. 17, 1919 (11:1-2).

\textsuperscript{59}Senate Journal of the Sixty-First General Assembly of the State of Tennessee 151, 160, 162 (1919) (Jan. 22). After Cameron’s bill was passed, Coleman moved to withdraw his. \textit{Id.} at 486 (Feb. 14).

\textsuperscript{60}“Many Bills Are Passed During Busy Sessions,” NT, Jan. 23, 1919 (7:1).
being boldly sold throughout the state to anybody, except minors, who want [sic] to buy them.” The Banner’s background intelligence on taxation as the chief motive behind repeal proved inaccurate, but not so the prediction from the senate floor that the governor would not block enactment.61

The WCTU, however, was having none of it. On the very same day, the Banner’s front page reported—directly under the bold-headlined article on the murders of Spartacus leaders Rosa Luxemburg and Karl Liebknecht in Berlin—that Mrs. Minnie Welch, the president of the Tennessee WCTU, had declared at the annual session of the organization’s Middle Tennessee Institute that the elimination of tobacco and whisky was necessary in order to make America a safe place for the returning soldiers.62 The reason was simply (if inaccurately) stated: “The Medical Association found that tobacco aggravated heart trouble, and many of the young soldiers of the English army were sent home on account of heart trouble.”63 Without explaining how such cleanliness was reconcilable with the unprecedented uptake of cigarette smoking promoted, financed, and distributed in large part free of charge by the U.S. Government, American Red Cross, and (the former opponents of cigarettes) Salvation Army, and YMCA,64 Welch intoned that: “For the first time in the history of the world an army has been taught to live clean, and that army is our own glorious United States Army.” To be sure, the “sacred task” of caring for veterans65 was not the only item on the WCTU’s post-war agenda: its goals also included Americanization of foreigners, protection of women wage-earners, and child

61“Breezy Chatter Heard in Legislative Halls,” NB, Jan. 23, 1919 (9:3-4). If the estimate of $250,000 was based on a tax of 1 mill per cigarette—a common tax rate among the states that began taxing in the 1920s—annual consumption must have been estimated at about 250,000,000. If the tax rate was higher, consumption must have been lower. If Tennessee’s share of total national cigarette consumption (about 50 billion in early 1919) had equaled its share of total national population (2.2 percent), it would have exceeded 1 billion.


64Cassandra Tate, Cigarette Wars: The Triumph of “the Little White Slaver” 66, 76-91 (1999). To be sure, when a minister at an anti-cigarette meeting three days after the House had defeated a repeal bill accused the WCTU of having sent cigarettes to soldiers overseas, a member “indignantly denied that the W.C.T.U. , as an organization, had ever sent the horrid cigarettes to the boys abroad, but sorrowfully admitted that some, in fact, quite ‘misguided’ members of the organization had been guilty of this indiscretion.” “Poison Tack’ ‘Panned,’ As Fifty Pay Dime to Join ‘Clean Life Army,’” NT, Feb. 17, 1919 (1:2-3).

welfare. 66

During a preliminary Senate floor discussion of his as yet unfiled bill 67 Cameron motivated his initiative on the grounds that “anybody could buy cigarettes from other states”; moreover, the situation was not “a parallel case with the whisky question” because “a man can make a cigarette out of a bit of newspaper.” Finally, Cameron declared that voting for his bill was “choosing the lesser [sic] of three evils” because “[t]he medical authorities agree that cigarettes is [sic] the least harmful of the uses to which tobacco is put”: not only were pipe and cigar smoking worse evils, but snuff dipping was possibly the worst and yet the Senate had just rejected a bill to abolish it. After a motion was offered to defer further consideration of the bill until members could examine it, Cameron announced that he was preparing a bill that would impose severe penalties on those selling tobacco to minors. 68 Two days before the Senate floor vote the honorary president and superintendent of legislation of the Tennessee WCTU, Mary Bang, placed an appeal to every member of the legislature on every desk in the chambers urging them to defeat the bill to legalize cigarette sales: “‘Another foe is threatening the welfare of our boys and youth. A sword pierced through the hearts of thousands of Tennessee mothers, when they saw through the press that an effort is being made to repeal our anti-cigarette law.’” 69 The WCTU’s warning may have been effective since the no-sales-to-minors bill (S.B. No. 162) passed by the Senate by the overwhelming vote of 30 to 1 70 did not repeal the ban on

67This debate took place on January 22, whereas Cameron did not formally introduce S.B. No. 162 until January 23. It appears that after Cameron had heard the resistance to what presumably had been a straightforward repeal bill legalizing sales to adults, he decided to stiffen the penalties for sales to minors in order to secure passage.
68“Administration Tax Bill Wins,” NB, Jan. 23, 1919 (6:1-5 at 4-5). After a motion had been offered to reject the anti-snuff bill, S.B. No. 99, the senator who had introduced it (at a constituent’s request), seeing that opponents were in a great majority, withdrew it. Senate Journal of the Sixty-First General Assembly of the State of Tennessee 151, 159 (1919) (S.B. No. 99, Jan. 22, by Monroe) “Many Bills Are Passed During Busy Session,” NT, Jan. 23, 1919 (7:1).
69“Beezey Chatter Heard in Legislative Halls,” NB, Jan. 28, 1919 (9:2-3 at 3).
70Senate Journal of the Sixty-First General Assembly of the State of Tennessee 170, 260 (1919) (S.B. No. 162, Jan. 23 and 29, by William Cameron). The Sanitation Committee considered S.B. No. 397 (To prohibit the selling of cigarettes) without recommendation. Id. at 382, 671 (Feb. 10 [by Democrat Thomas Long] and Mar. 20). According to a newspaper account, this bill would have prohibited selling, or offering to sell or giving away, or storing cigarette papers or any substitute. “Abolishing Control Board,” NB, Feb. 11, 1919 (8:2-4 at 4).
sales to adults, although it was part of anti-prohibitionists’ longer-term strategy to create the conditions for undermining prohibitionists’ resistance to repeal at the next regular session in 1921. The real import of the bill was revealed the day of the House deliberations when the Nashville Banner reported that it was “pointed out as a forerunner of the passage of the measure seeking to repeal the anti-cigarette statutes now on the books in regard to the sale of cigarettes to adults.”

Perhaps the president of the Tennessee Manufacturers Association had the anti-cigarette law in mind when he delivered his “splendid address” to the legislature warning against “the tendency toward Bolshevism” and “experiments in legislation” and complimenting legislators on their achievements, just minutes after the House had approved Cameron’s bill by a 74 to 4 margin. As enacted, the bill embodied a ban on the sale or giving away of tobacco of any kind to minors under 18, subject to a fine of between $25 and $100 and imprisonment of between 30 and 60 days—penalties the press characterized as “the most drastic.”

The Senate’s focus on minors was vividly on display during the chamber’s consideration of the bill when a “member tried to get a resolution through...to
have smoking abolished” (in the Senate), 75 prompting Senator John Houk—now a prominent Progressive 76 22 years after he had first sought, in the Tobacco Trust’s objective interest to thwart the enactment of anti-cigarette legislation 77—to intone: “‘No telling what is going to happen next to our few remaining liberties and individual privileges.’” 78 Ironically, the health-threatening, polluted physical environment in which the Senate engaged in such deliberations about cigarette sales was the subject of a special committee report on the chamber’s cleanliness and ventilation, which was issued the day after the House vote. Concluding that the sanitary conditions rendered the chamber “wholly unfit for healthy living conditions,” the committee specified that: “There were no openings for ventilation. The whole top of the chamber was filled with dust, smoke, cobwebs and dead air. The ceilings, windows, chairs and floor were covered with dust and filth. Old decaying cuds of tobacco, cigar stubs, and cigarette butts were scattered all over the floor of the gallery.” It emphasized that “the future health of the members requires” that the chamber be disinfected during the recess.” 79

In addition to concurring in the Senate no-sales-to-minors bill, the House initiated its own measures. H.B. No. 173, which would have repealed the anti-cigarette law, 80 was rejected by a vote of 60 to 18. 81 During the week or so preceding the vote the legislature had received petitions from “thousands of citizens, men and women, protesting against the licensing” of cigarette sales or

75 “Breezy Chatter Heard in Legislative Halls,” NB, Jan. 26, 1919 (2:4-7 at 6). As early as 1851 the Tennessee Senate adopted a resolution prohibiting smoking during business hours. See below ch. 18.

76 Paul Isaac, Prohibition and Politics: Turbulent Decades in Tennessee, 1885-1920, at 201 (1965). Houk turned Progressive in 1912, though Republicans charged that Tennessee Progressives were more interested in restoring the liquor traffic than in electing Theodore Roosevelt president.

77 See above ch. 5.

78 “Breezy Chatter Heard in Legislative Halls,” NB, Jan. 26, 1919 (2:4-7 at 6).


80 H.B. No. 173, Tennessee House, 1919, RG 60, TSLA (typed copy furnished by TSLA); House Journal of the Sixty-First General Assembly of the State of Tennessee 145 (1919) (Jan. 21, by Democrats Lawrence Jackson and Sidney Carr). The Judiciary Committee had recommended it for passage. Id. at 416 (Feb. 13).

81 House Journal of the Sixty-First General Assembly of the State of Tennessee 426 (1919) (Feb. 13). The Journal erroneously inverted the ayes and noes, though it correctly recorded the bill as rejected. Only three Republicans voted for the bill, two of whom represented Knox County.
repeal of the anti-cigarette law.\textsuperscript{82} The rejection by such a large majority of the effort to legalize sales to adults prompted the Nashville Tennessean’s judgment—which, though ultimately incorrect, underscored the breadth and depth of anti-cigarette sentiment in Tennessee—that the defeat “probably ends agitation to permit the sale of cigarettes in the state.”\textsuperscript{83} The debate actually interjected some pertinent facts interspersed between “burst[s] of oratory....”\textsuperscript{84} Democratic Representative Joseph Odle a long-time Methodist Sunday school teacher and former school teacher,\textsuperscript{85} who was soon to offer his own anti-cigarette bill, did not shy away from uttering the doomsday prognosis that “he believed it were better the members had never seen the light of day than to repeal the anti-cigarette law.”\textsuperscript{86} Democrat Joseph Hanover,\textsuperscript{87} a member from Shelby County (Memphis), speculating that the law was being violated and not enforced in nine-tenths of the counties, declared that “if an iron wall were erected around the state cigarettes would be brought in and...smoked.” Rejecting the practicality (if not expressly the principle) of depriving adults of cigarettes, Hanover proposed the penitentary for those who sold to boys and taxes on cigarettes sold to adults as “the way to remedy the evil....”\textsuperscript{88} One member of the House who appeared to have grasped the point of the general ban of cigarette sales, even though he expressed himself obscurely, was Democratic Representative Sterling Stovall—a member of the Methodist Episcopal Church and long-time Sunday school

\textsuperscript{82}Cigarette Bill Is Killed by Big House Majority,” \textit{NT}, Feb. 14, 1919 (1:1). Significantly, Senator Albert Hill presented a petition from citizens of his county, Davidson (Nashville), requesting that the Senate not repeal the anti-cigarette law. \textit{Senate Journal of the Sixty-First General Assembly of the State of Tennessee} 481 (1919) (Feb. 14). Senators Carter, Collins, and Caldwell, the latter two of whom represented tobacco growing counties in the northwest and northeast, respectively, also presented such petitions. \textit{Id.} at 474 (Feb. 13).

\textsuperscript{83}Cigarette Bill Is Killed by Big House Majority,” \textit{NT}, Feb. 14, 1919 (1:1).

\textsuperscript{84}An Afternoon Paper Panned,” \textit{NB}, Feb. 14, 1919 (2:3).


\textsuperscript{87}Hanover, a lawyer and practicing Jew, emigrated with his parents from Poland at the age of seven in 1895. \textit{Biographical Dictionary of the Tennessee General Assembly, III: 1901-1931}, at 293-94 (Ilene Cornwell ed. 1988).

superintendent— who explained to his colleagues that it “isn’t right to prohibit the boys from indulging in cigarettes and at the same time permit the father to indulge. He said he didn’t think it the time to take this backward step.”

Democrat Dr. O. S. Hauk—a physician who doubled as a state revenue agent—who represented a county in extreme northeastern Tennessee, supplying a reality check on Hanover’s claim, admitted that he did not know about violations in West and Middle Tennessee, but “didn’t believe a single firm in his district violated it.” A representative from Unicoi, another rural northeastern county, stated that “not one store in twenty in that section had had cigarettes or cigarette paper beneath their counters.”

Extrapolating, Republican Wesley Tucker, who had taught school for 30 years, been Unicoi County superintendent of schools, chairman of the county’s first board of education, and, as a member of the Baptist church, taught W.S. Tucker Bible Class named in his honor, claimed that: “Ninety per cent of the public sentiment in this state is against the repeal of the anti-cigarette law.”

Before the bill was defeated, the House tabled two obstructionist motions (offered by two Democrats, Hanover and another Shelby County representative) that would have appropriated all revenue derived from cigarette sales to “the rural schools where the barefooted boys live” and added to the bill’s coverage all forms of smoking and chewing tobacco as well as coffee.

H.B. No. 442 appears to have been designed to save the ban on cigarette sales from repeal by softening some of its features while preserving its

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91“Hauk Did Not Make His Salary,” NB, Mar. 10, 1919 (13:3-6).


foundation. The bill made it a misdemeanor to “sell or offer to sell or give away or offer to give away within the confines of the State any cigarettes, cigarette papers or any substitutes therefor.” The bill thus differed from the Rogers law in that it abandoned the goal of regulating, let alone prohibiting, the importation of cigarettes from other states, which had rankled many business owners and their politicians. After having offered this concession to the law’s opponents, the bill went on to close the aforementioned major loophole by also making it a misdemeanor “for any tobacconist or other dealer to keep or store or allow to be kept or stored in, about or adjacent to his place of business any cigarettes, cigarette papers or substitutes therefor for the purpose of selling or giving away, or with the intent that the same may be appropriated and used by any patron, visitors or caller.” Enforcement was also strengthened by adding mandatory 10- to 30-day imprisonment.  

The House subjected H.B. No. 442, which would have repealed Rogers’ law, to sharp debate. After surviving a motion to table by a vote of 32 to 40, it was subject to another series of unfriendly or absurdist amendments, which were all tabled. They would have: included all kinds of smoking tobacco, snuff, and chewing gum; outlawed making, giving away, or smoking corn silk or cross vine; and provided that “no member shall be put in jail under this Act for offering a member a cigarette during the session.” Although the bill gained a slim majority of 37 to 36, the vote did not constitute a majority of all elected representatives and thus failed.

The intensive participation in the anti-repeal campaign by Lucy Page Gaston, the founder in 1899 of the American Anti-Cigarette League—which she had left at the beginning of 1919 because she had always been and intended to remain “the extremist of extremists”—included her appearance before both houses of
the legislature, to which the press gave partial credit for passage of the bill strengthening the penalties for selling to minors. 103 In her speech on February 6 urging members of the House to vote against the bill to repeal the anti-cigarette law, Gaston gave what the Nashville Banner called “an interesting account of legislation with reference to the prevention of the use of cigarettes.”104 Gaston’s efforts, at a victory celebration of the legislature’s action on cigarettes, to organize thousands of boys in Nashville to pledge abstinence from “that ‘enemy to public health’” gave the state anti-repeal campaign a decidedly national profile.105 Perhaps this resistance in Tennessee was a manifestation of the national feeling that Dr. Clarence True Wilson, the general secretary of the board of temperance, prohibition, and public morals of the Methodist Church, voiced in February 1919 in denying rumors circulated by the liquor industry that prohibitionists would soon seek a similar constitutional amendment outlawing tobacco: “‘However, the tobacco men should take warning that many millions of

103 “Mrs. Gaston Is Camped on ‘Poison Tack’s’ Trail,” NT, Feb. 14, 1919 (2:4). Grover Keaton, who co-introduced H.B. No. 442 a few days later, was the author of H. Res. No. 19, which invited Gaston to address the chamber on the anti-cigarette law and which the House adopted. House Journal of the Sixty-First General Assembly of the State of Tennessee 324 (1919) (Feb. 6). Unlike S. J. Res. No. 35, inviting Edgerton to address the legislature, the House resolution was not joint and neither the House nor Senate Journal revealed any concurring action by the Senate. Id. at 1470. The Senate Journal appears to include no reference to a speech by Gaston.


105 “‘Poison Tack’ ‘Panned’, As Fifty Pay Dime to Join ‘Clean Life Army,’” NT, Feb. 17, 1919 (1:2-3). At this initial meeting only 50 boys signed. Interestingly, a Mr. Howland of the du Pont Company explained to the celebrants how many fires nationally were caused by cigarette smokers and that “the cigarette was largely responsible for the heavy fire losses in this country.” Id.
people have warmly resented the forcing of cigarettes to those of our soldiers who were not previously accustomed to them, and that they have resented with indignation the placarding of the country with giant signs saying that “cigarettes won the war” and similar advertising methods.  

In 1921, the House bill to repeal the cigarette sales prohibition statute passed that chamber by a vote of 67 to 12. The senate saw more resistance. After the House bill was substituted for a Senate repeal bill, it failed to achieve a constitutional majority (the 15 to 14 vote in favor of repeal being less than a majority of all elected senators), but one Democrat who had voted Yes changed his vote to No in order to enter a motion to reconsider. Seven of the nine Republican senators voted No, John Houk, 24 years after the scandal to which he had been connected, being the sole Republican to vote for repeal. When the motion for reconsideration later prevailed, the repeal bill finally secured a 19 to 9 majority. Thus after 24 years the cigarette sales prohibition was finally repealed. Democratic Senator W. D. Cooper, who had been a school teacher and principal, shed some light on these proceedings by explaining that he had changed his vote from No to Yes on repeal because the leaders of the repeal movement in both houses had agreed, and the leadership of both chambers had

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106 "Denies Intent to Prohibit the Use of Tobacco," *CT*, Feb. 4, 1919 (4).

107 *House Journal of the Sixty-Second General Assembly of the State of Tennessee* 51, 130 (1921) (H.B. No. 118, Jan. 10 [by E. C. Norvell] and 14). Among those voting No, eight were Republicans and four Democrats. Two Republicans represented the northeastern counties that already in the 1890s had allegedly grown tobacco for cigarettes: a physician, Dr. Nicholas Robinson of Carter and Johnson counties, and John Depew of Washington, Unicoi, and Greene counties, who was a Methodist Episcopal Sunday school superintendent. *Biographical Dictionary of the Tennessee General Assembly*, III: 1901-1931, at 575-76, 183 (Ilene Cornwell ed. 1988).


109 *Senate Journal of the Sixty-Second General Assembly of the State of Tennessee* 187-88 (1921) (Jan. 20). The 14 senators who voted No were evenly divided between Democrats and Republicans. One of these Democrats, John Kemper, was a farmer from the big tobacco-growing counties of Robertson and Montgomery.

110 *Senate Journal of the Sixty-Second General Assembly of the State of Tennessee* 244-45 (1921) (Jan. 26). Voting against repeal were five Republicans and four Democrats. Two additional Republicans joined Houk in voting Yes. See also “Senate Repeals Cigarette Law,” *NB*, Jan. 26, 1921 (1:3).


given Cooper “absolute assurance,” to pass bills prohibiting the sale or giving away of cigarettes to minors “under very strict penalty” and to impose a “high privilege license on all dealers in cigarettes.” Consequently, Cooper was convinced that “the protection afforded under these laws, when properly enforced, is much better when considering the interests of the boys and girls of Tennessee, than the old laws upon the statute books not enforced.”\textsuperscript{113} At the same session, both houses unanimously passed a bill declaring cigarette selling a privilege subject to a tax ranging between $20 and $2.50, according to the population size of the retailer’s locality.\textsuperscript{114} In spite of the promise to penalize very strictly selling or giving away cigarettes to minors, the bill that opponents of repeal had introduced “to put teeth into the laws” by imposing a mandatory jail sentence for violation was defeated on a voice vote.\textsuperscript{115}

As in Iowa, Arkansas, and other states, the repeal forces’ chief argument was the ongoing unlawful sales and the tax revenue that the state could collect under a licensure system (combined with stringent legislation to suppress sales to minors).\textsuperscript{116} The Republican governor, Alfred Taylor—the older brother of the Democratic governor who had signed the original bill into law almost a quarter-century earlier—announced that he would not veto the repealer because the new law would be more effective in preventing sales to minors. He also contended that the “antiforces” had not tried to influence him to use his veto power\textsuperscript{117}—an assertion contradicted by the fact that Gaston, the country’s most famous individual anti-cigarette campaigner, had telegraphed him a veto request (apparently one day after he had already signed the bill). To be sure, Gaston’s sense of social-political trends was encapsulated in her hope to expand the list of

\textsuperscript{113}Senate Journal of the Sixty-Second General Assembly of the State of Tennessee 245 (1921).

\textsuperscript{114}Senate Journal of the Sixty-Second General Assembly of the State of Tennessee 229, 679 (1921) (S.B. No. 335, Jan. 25 [C. L. Cummings, Democrat], Mar. 17, 29 to 0); House Journal of the Sixty-Second General Assembly of the State of Tennessee 999 (1921) (Mar. 29, 72 to 0); 1921 Tenn. Pub. Acts. ch. 81, at 135. Wholesalers paid a flat $100 annual tax.


prohibitory-law states from the then five (Iowa, Tennessee, Arkansas, North Dakota, and Kansas) to 20, when in fact the first three were just days or weeks shy or repeal.\textsuperscript{118}

A month after Tennessee’s law legalizing cigarette sales had gone into effect, \textit{Tobacco} triumphantly reported that dealers unanimously believed that sales would not be affected because throughout the previous two decades cigarettes had been “sold openly in every city and many towns in the State.” Specifying, the trade journal conceded that: “In a few small towns local authorities occasionally arrested a dealer and he was jacked up by the grand jury, but for the most part cigarettes were available to the consumer, whether the dealer carried them in or under the showcase.” Since smokers had never been denied cigarettes, dealers anticipated no increase in sales. Although the trade had already witnessed an increase in the number of dealers, “indicating that some dealers, who have not heretofore handled cigarettes because of conscientious scruples,” had started selling them,\textsuperscript{119} apparently retailers did not believe that such scruples had ever deterred buyers.

Thus, a comparison with Iowa’s Dodd-Clark repealer\textsuperscript{120} reveals that in doing away with Tennessee’s anti-cigarette sales statute, the legislature: (1) faced less resistance; (2) did not impose a sales tax; (3) imposed a maximum retail license fee only one-fifth of Iowa’s; (4) failed to authorize local communities to continue to prohibit the sale of cigarettes; (5) failed to enact a bill putting teeth into the ban on selling to minors; (6) set the legal age for cigarette sales at only 18; (7) failed to provide for a nuisance-injunction procedure; (8) failed to make the license fee a lien on the real property where the business was conducted; and (9) did not prohibit public smoking by minors under 21. However, whereas Iowa imposed no fine at all for bootlegging to adults, Tennessee did impose a fine of $25 to $100 for selling cigarettes without first having paid the privilege tax.\textsuperscript{121} (Between the enactment and effective date of the law the press in Iowa characterized this lack of a fine as making it “very defective.”)\textsuperscript{122}

\textsuperscript{118}“Women Smokers Cause ‘War to Death’ on Fags,” \textit{CT}, Jan. 30, 1921 (2).
\textsuperscript{119}“Cigarette Sales Steady,” \textit{Tobacco} 71(18):31:1 (Mar. 3, 1921) (quoting president of Central Cigar & Tobacco Comp.).
\textsuperscript{120}See above ch. 15.
\textsuperscript{121}1921 Tenn. Laws ch. 81, § 4, at 135, 136.
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

Arkansas (1919/1921)

In 1919, by a vote of 23 to 8, the Arkansas Senate passed a bill to repeal its 1907 cigarette sales ban,123 but two weeks later it ran into considerable difficulty in the House, which adopted amendments doubling the retailer’s license fee from $5 to $10, striking the commitment of the license fee to the school fund and redirecting it to the general revenue fund, and lowering the minimum and maximum fines for selling cigarettes to persons under 18 from $100 and $500 to $25 and $50, respectively.124 The next day the House effectively killed the bill by tabling it,125 thus replicating the defeat of a similar bill in 1917.126

However, in 1921 the Arkansas legislature did succeed in repealing the 1907 prohibitory law, which was, until the end, routinely enforced.127 At the outset of the process, the Senate Public Health Committee recommended that Senate Bill No. 22, which had been introduced by Ben H. Johnston, the same senator who had authored the failed bill of 1919,128 not pass,129 but support for continued
prohibition was, as the constellation of forces endorsing repeal revealed, less than robust. The Arkansas Public Health Bureau backed the bill, as did others who had opposed repeal, because of its "strong educational features": the funds generated by the $3 to $10 retailer and $25 wholesaler licenses were to be committed to the Public Health Department to finance an educational campaign in schools "to point out the evils in the use of tobacco by minors." Many prosecuting attorneys also supported the bill because they regarded it as more enforceable than the existing law, while the State Board of Health gave its approval on the (even in 1921 untenable) grounds that "the cigarette is the least harmful manner in which tobacco may be used, despite the popular prejudice to the contrary." Yet even after the senate had struck this provision dedicating the minimal funds generated by very low license fees to anti-tobacco education, the state health bureaucracy and a majority of the Arkansas "medical fraternity" continued to support the measure. None of these forces endorsed repeal in Iowa; the only common organizational feature between the two states was the American Legion’s support for cigarette sales to adults. One especially self-righteous Legion post in Arkansas memorialized the House with a statement that conveniently celebrated its members’ addiction as a custom by "deprecating the disregard of law which must always be fathered by the presence of laws upon the statute books which are not and cannot be enforced because of their conflict with well established and approved customs of the people." The quality of arguments advanced by repealers can be gauged by Senator Grover Owens’ bizarre declaration that "the present law prohibiting the sale of cigarettes was placed on the statute books as a result of the activities of a tobacco company, which wished to eliminate competition." Somewhat less handily than in 1919, the Senate passed repeal by a vote of 20 to 11, but this time the House was more accommodating: after defeating a motion to table by a two-thirds vote.

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131 The senate adopted an amendment to an amendment (mandating that the funds from the sale of licenses be deposited in the general revenue fund to be appropriated to the State Board of Health to conduct an education campaign and to enforce this law and the food and drug laws) to delete the reference to the Board of Health and the enforcement campaigns. *Journal of the Senate of Arkansas: Forty-Third Regular Session* 228 (Jan. 28, 1921).


133 “Senate Legalizes Cigarettes,” *Harrison Times*, Feb. 5, 1921 (3:2).

134 *Journal of the Senate of Arkansas: Forty-Third Regular Session...1921*, at 274-75 (Jan. 31).
thirds majority, it pass S.B. No. 22 by a vote of 47 to 37.\textsuperscript{135}

The tobacco industry may have rejoiced that “Anti-Cigarette Bill Repealed,”\textsuperscript{136} but a new stumbling block turned out to be Governor Thomas McRae,\textsuperscript{137} who vetoed the repeal bill\textsuperscript{138} and in so doing issued a strong condemnation of cigarettes as an “evil” that was “unmitigated” and stressed that many supporters of repeal either wanted to profit from selling cigarettes or were “addicted to the habit, lulled by the effect of the strong drug of nicotine.” However, his chief objective was merely to increase the license fee somewhat in order to “protect the financial rights of the state.” Because state revenues were “at a very low ebb,” McRae regarded taxation of cigarettes as a “luxury” as “expedient and proper,” especially in light of the fact that “we are paying more than $20.00 per capita for tobacco in this country, while in Arkansas we are now paying $2.25 per capita for education.” Initially, he had intended to sign the bill and request the legislature to pass a second bill increasing the license fees, but then he decided to veto it while assuring the lawmakers that he would not object to signing a similar bill if the license fees were “at least doubled.”\textsuperscript{139}

A cautious Senator Johnston both introduced the same day that the governor transmitted his veto message a bill that McRae would sign\textsuperscript{140} and moved the next day to pass his earlier bill over the governor’s veto. The 19 to 12 vote sufficed to override,\textsuperscript{141} but the 50 to 42 House vote a fortnight later fell one short of the requisite absolute majority,\textsuperscript{142} prompting the Senate the same day to pass

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\textsuperscript{135}Journal of the House of Representatives: Forty-Third General Assembly of the State of Arkansas...1921, at 575-76 (Feb. 11).

\textsuperscript{136}“Anti-Cigarette Bill Repealed,” Tobacco 71(16):1 (Feb. 17, 1921).

\textsuperscript{137}On McRae, a lawyer-banker and former 18-year congressman with populist and progressive leanings, one of whose key gubernatorial objectives was to change the tax system in order to fund education and highways, see http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=114.

\textsuperscript{138}“Arkansas Keeps Anti-Cigarette Law,” NYT, Feb. 17, 1921 (22).

\textsuperscript{139}Journal of the Senate of Arkansas: Forty-Third Regular Session...1921, at 533-34 (Feb. 16).

\textsuperscript{140}Journal of the Senate of Arkansas: Forty-Third Regular Session...1921, at 538 (Feb. 16) (S.B. No. 381).

\textsuperscript{141}Journal of the Senate of Arkansas: Forty-Third Regular Session...1921, at 552 (Feb. 17).

\textsuperscript{142}Journal of the House of Representatives: Forty-Third General Assembly of the State of Arkansas...1921, at 1089-90 (Mar. 4); “Shy One Vote on Cigarette Bill, Another Started,” FDD, Mar. 4, 1921 (1:7).
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Johnston’s fall-back measure (with a three-fourths majority). When the House comfortably followed suit (55 to 33), Arkansas’ 14-year-old cigarette sales ban had finally been disposed of.

In the end, then, the licensure law, merely imposed modest fees of $50 and $20—to be deposited in the state treasury for the general revenue fund—on wholesalers and retailers, respectively, and fines ranging between $10 and $100 for selling cigarettes without a license as well as for selling, bartering, or giving tobacco in any form or cigarette papers to a minor under 18.

That licensure of cigarette sales had not suddenly extirpated a decades-old movement became unoverlookable one year after repeal when Governor McRae proclaimed March 22, 1922 “No-Tobacco Day,” bemoaning, to the chagrin of the pro-tobacco press, that “the general use of tobacco by men and women from youth up, generation after generation, is ‘contributing to unmistakable and certain degeneracy.’” The tobacco industry promptly alighted upon McRae’s proclamation to denounce the “light-thinking reformers” and “vicious and malignant minority,” which thought “only in terms of morality, according to their own fixed standards,” who “want to destroy this industry and the happiness and prosperity it affords to a tremendous population.” Unmindful of the “wretchedness and misery that must always follow the striking down of a great industry,” these antis would destroy “not only the one industry that [the United States] monopolizes throughout the world, but is in its financial aspect and in the number of people it employs, directly and indirectly, one of the first five industries of America.”

143 Journal of the Senate of Arkansas: Forty-Third Regular Session...1921, at 966-67 (Mar. 4) (21 to 7).
144 Journal of the House of Representatives: Forty-Third General Assembly of the State of Arkansas...1921, at 1196-97 (Mar. 7).
145 1921 Ark. Acts 490, §§ 1-6, 10, at 450-53. A peculiarity of the Arkansas statute was its licensing the sale of cigarettes “in the original package....” Id. §§ 1-4. Although such stringency seems implausible, the language implied that even with a license it remained unlawful to sell cigarettes that had been shipped into Arkansas in ways that failed to meet the rather strict requirements of the U.S. Supreme Court’s original package doctrine. At a special session in 1924 Arkansas imposed a $2.00/1,000 cigarette tax (and a 10 percent tax on retail price of cigars), which was judicially invalidated (on the grounds that the governor had not included the tax in the call for a special session); the law was then re-enacted in 1925. 1924 Ark. Acts 4, at 4; Sims v Weldon, 165 Ark 13 (1924); 1925 Ark. Acts 256, at 750.
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

Nebraska (1919)

Efforts to regulate morality [from 1905 to 1915] focused on restricting the liquor traffic. Other so-called moral issues—the prohibition of cigarettes, the tightening of divorce laws, or the forbidding of Sunday baseball games—were agitated in some circles, but the liquor issue came increasingly to the fore.\(^\text{147}\)

Nebraska has so long been identified with one great citizen moralist that the outside world has been in danger of thinking that the whole moral impulse of that State was to be found under one capacious hat. But Nebraska has produced other reformers than William Jennings Bryan—as is evidenced by the fact that the State Normal Board has refused leave of absence to the teachers under its control to study at universities where women students smoke cigarettes. Moreover, the Board has the courage of its convictions and has no hesitation in mentioning Columbia, Chicago and Northwestern Universities as dangerous zones wherein indulgence in tobacco is rife among women students.\(^\text{148}\)

In 1905, against the Tobacco Trust’s “hardest possible” resistance—“the lobby fairly swarmed with representatives of the trust”—made affordable by the “very large” profit from cigarette smokers,\(^\text{149}\) and with the support of tobacco dealers antagonized by the monopoly’s siphoning off of all profit,\(^\text{150}\) the Nebraska legislature joined Indiana and Wisconsin in enacting a general sales ban on cigarettes.\(^\text{151}\) The law, which the House passed unanimously (89-0),\(^\text{152}\) but which secured from the Senate only the bare constitutional majority of 17 Yes votes,\(^\text{153}\) made it unlawful to “manufacture sell give away or willingly allow to be taken any cigarettes or the material for their composition known as cigarette paper,” fined violators from $50 to $100 for this misdemeanor, and also held co-liable “[a]ny officer, director or manager having in charge or control either separately


\(^{148}\) "The Lure of Tobacco," *Tobacco* 73(19):6 (Mar. 9, 1922) (edit.).

\(^{149}\) "Independent Dealers Oppose Cigarettes," *LEN*, Mar. 1, 1905 (2:3-4).

\(^{150}\) "It is claimed that the trade in cigarettes is not remunerative, the profit going to the trust." “Independent Dealers Oppose Cigarettes,” *LEN*, Mar. 1, 1905 (2:3-4). See also "Neglected Topic," *LEN*, Feb. 27, 1905 (4:1) (edit.).

\(^{151}\) For comprehensive treatment of all three states, see vol. 2.

\(^{152}\) *House Journal of the Legislature of the State of Nebraska: Twenty-Ninth Regular Session...1905*, at 304 (Feb. 3) (House Roll No. 72).

\(^{153}\) *Senate Journal of the Legislature of the State of Nebraska: Twenty-Ninth Regular Session...1905*, at 1250 (Mar. 30) (17-10) (1905).

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or jointly with others the business of any corporation” that committed any such
violation “if he have knowledge of the same....”¹⁵⁴ Nebraska tobacco retailers and
jobbers “rather welcomed the anti-cigarette law,”¹⁵⁵ while the United States
Tobacco Journal certified it as not as “ridiculously sweeping” as the Indiana and
Wisconsin laws¹⁵⁶ because it lacked their identically phrased ban on keeping,
owning, or being “in any way concerned, engaged or employed in owning or
keeping any...cigarettes....”¹⁵⁷

Dealers generally prepared to comply with the law, whose advent, according
to the Lincoln Evening News, they still welcomed, as its July 1 effective date
approached. Propelled by their unprofitableness, retailers looked forward to
being prohibited from selling cigarettes and were “happy to see the tobacco trust
get a body blow and hoped that it would get another jolt soon.” Rumors
circulated that the Trust would fight the law,¹⁵⁸ but when the press finally caught
up with ATC’s representative, Omaha “cigar man” George Rogers, he was
evasive.¹⁵⁹ On June 30, as dealers sold off their stocks at bargain prices, the
“good effects of the law [we]re already beginning to be apparent, for a good many
smokers, especially such as entertain the fear that they might be arrested for the
simple [act of?] smoking have already quit.”¹⁶⁰

In the state’s largest city, the Omaha World-Herald described a somewhat
more differentiated situation on July 1. Under the headline, “Cigaret Fiends Aver
They Will Still Smoke,” the paper observed that the key issue was whether
cigarette smokers “can get the material by hook or crook.” Common to this
heterogeneous group—“from the factory lad, who deftly produces the ‘makins’
from his hip pocket and twists his cigaret with one hand, to the club man whose
favorite is the costly gold tipped Monopole”—was provisioning themselves,
during the last days before the sales ban became operative, “for the lean years to
come by purchases of a vast quantity.” Lincoln and Omaha shared the presence
of a “great many dealers [who] have but little regret over the law, as the amount
of cigarettes sold has been so small as make but a poor showing in the sum total
of their profits. But,” Omaha also had large dealers who “will drape the cigaret

¹⁵⁴ 1905 Neb. Laws ch. 198, §§ 1-3, at 690, 691.
¹⁵⁷ 1905 Indiana Acts ch. 52, § 1, at 82 (Feb. 28); 1905 Wisconsin Laws ch. 82, § 1,
at 143 (Apr. 13).
¹⁵⁸ “Prepared,” LEN, June 7, 1905 (5:3-4).
¹⁵⁹ “Will Quit,” LEN, June 23, 1905 (1:5).
¹⁶⁰ “Cigarettes No Longer to Be Found in Stock,” LEN, June 30, 1905 (8:3-4).
show case with mourning for a time out of memory to a dead profit-maker.”

As one of them confided to the newspaper:

It’s a mistake to believe that we are glad to see the anti-cigaret law effective. We sell so many of them that the item of profit from that class of goods cuts a big figure in our business. The cigarettes we sell are of the costlier brands, to the better class of smokers, and there is a profit on them as good as on cigars which sell for an equal amount.

The chief method by which cigarette smokers proposed to “foil the lawmakers” was having cigarettes shipped into Nebraska in original packages; this plan encompassed direct purchases from factories (“ordering through local dealers and having the goods consigned to them direct”), which would achieve cost savings vis-à-vis buying a box at a time. For Omahans another possibility was a ride across the Missouri River to Council Bluffs, since (allegedly) “Iowa law provides for a license on the sale of cigarettes....” In fact, since 1896 Iowa had banned the sale of cigarettes and would not adopt licensure until 1921, but it was the case that in some localities the authorities (and press) ‘mistakenly’ took the position that payment of the $300 annual mulct tax immunized dealers from prosecution under the prohibitory law. And if some Iowans ‘misunderstood’ their own law, little wonder that some of their neighbors did too. In the event, when the Nebraska law went into effect, for example, “Central Cigar Store, Council Bluffs, Ia., licensed,” began advertising in the Omaha press that it would “send any brand of cigarettes or cigarette papers by mail or express.” To be sure, the 1896 Iowa law did “not apply to the sales of jobbers doing an interstate business with customers outside of the state.” However, since jobbers’ customers by definition were retailers and not individual consumers, their sales to the latter in Nebraska would presumptively have violated the Iowa law; conversely, while their sales to Nebraska retailers would not have violated the Iowa law, those retailers could not have lawfully sold the cigarettes in Nebraska.

161 “Cigaret Fiends Aver They Will Still Smoke,” MW-H, July 1, 1905 (5:1).
162 “Cigaret Fiends Aver They Will Still Smoke,” MW-H, July 1, 1905 (5:1). So much for the claim that in Nebraska: “By 1905 it was widely held that only riff-raff, ruffians, and vagrants smoked cigarettes, and the anti-cigarette legislation was aimed at them.” Michael Kuzma, “Kicking the Habit: Nebraska’s 1905 Anti-Cigarette Law,” Nebraska History 86(2&3):92-96 at 94 (Summer-Fall 2005).
164 See above chs. 12 and 15.
166 1896 Iowa Laws ch. 96, § 2, at 96, 97.
to consumers under that state’s new law.

Although the new law did not ban smoking, at this late date still unresolved for enforcement purposes was the question as to whether the ban on manufacturing “permit[ted] one with impunity to roll his own cigarette....” As soon as the law went into effect, the deputy attorney general stated that the statutory prohibition of cigarette manufacture “is so broad that it may be construed to prevent the individual making his own cigarettes, since the making in any quantity would be manufacture.” In this connection one Tobacco Trust ruse for subverting the new law quickly surfaced. During recent years, purportedly, most cigarette smokers had been making their own cigarettes from standard smoking tobacco brands, along with which ATC had been sending cigarette paper. Under the new law, wholesalers were “worried over the question” as to whether they were obligated to open sealed cartons (containing a number of small sacks of tobacco and a handful of little books of cigarette paper), which they claimed were “original packages” for interstate commerce purposes, and remove the papers, or whether that duty fell on retailers. The Tobacco Trust, in order to protect and warn its “patrons,” enclosed in each such package the following notice: “‘Dealers located at points where it is not lawful to sell or give away cigarette paper should remove it from this box, and if it is also forbidden to be kept in stock, should destroy the cigarette paper.’” Despite disseminating this precautionary statement, ATC—at a time when the five states Iowa, Tennessee, Indiana, Nebraska, and Wisconsin, and the Territory of Oklahoma had sales bans in effect—was, the press knew, not going to submit tamely to the loss of its cigarette business. So it has sent to its clientele in this state, enclosed in tobacco cartons, envelopes to hand out to their patrons in which are notices to cigarette smokers to the effect that if they will mail two cents to the American tobacco trust it will send them seven packages of the kind of cigarette paper heretofore given away free with trust tobacco or for ten cents sent to it by mail it will mail the smokers three packages of a superior quality of cigarette paper.

The cigarette monopoly did not even bother to wait for free market forces, personified by its addicted customers, to be set into motion. In a breathtakingly massive logistical overkill operation impressively demonstrating ATC’s marketing sophistication, it mailed about 2,000 separate packages (each bearing

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167 “Cigarettes No Longer to Be Found in Stock,” *LEN*, June 30, 1905 (8:3-4).
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

...a two-cent stamp and containing seven rolls of 25 papers) “to every man and boy in Fremont whose name appears in the city directory.” The reason for shipping enough papers to make 350,000 cigarettes to a town with a population of about 7,000 was, according to local tobacco dealers, that the new law’s ban on “selling or giving away ‘coffin-nail’ papers has had the effect of reducing the sale of certain brands of tobacco manufactured especially for cigarette use. It is presumed that the manufacturers have become aware of the situation and have taken the course of general free distribution of the papers in order to restore their sales in the state.”

Regardless of whether such individualized interstate shipments to thousands of buyers could actually have sustained ATC’s Nebraska roll-your-own cigarette market—by September it was reported that in Omaha “the cigarette fiend has had little difficulty in getting” the paper from out of state—they could not have contributed to the preservation of the Trust’s core business of mass-manufactured cigarettes, even if state authorities took the position that their shipment (to individual consumers) could not be prohibited.

An initiative undertaken by the U.S. district attorney in Oklahoma to pursue ATC officials from New York for conspiring to violate the Territory’s anti-cigarette law resonated among state enforcement agents in Nebraska, who considered whether they could be brought to that state to be tried for violating and conspiring to violate the latter’s laws. Nebraska’s own residents might also be prosecuted for conspiracy for sending their addresses to the company in New York to receive cigarette paper. In any event, ATC officials in New York were “undoubtedly guilty of misdemeanors every time they send packages of cigarette paper to persons living in Nebraska, and are chargeable with a double misdemeanor when they send the material to minors....” That the governor of New York would agree to extradite them was implausible, but before that weak point would even be explored, this entire legal strategy—at least regarding adult customers—hinged on a finding that interstate commerce was not implicated.

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174 See below this ch.
because ATC was not sending “original packages.”

In the latter half of July the Lincoln police chief, having secured “a legal opinion from high authority,” decided to test the new law’s scope by arresting “any man caught in the act of rolling a cigarette.” In the event, however, it was this enforcement regime that was arrested: police chiefs “were bent on strict enforcement of the law as they find it, regardless of the possibility of it being finally overturned,” but, as Lincoln’s observed, it would “not do any good to arrest violators of the law if the county attorney doesn’t want to prosecute them.” The reason for county attorneys’ perceived procrastination was that they were casting about for the best set of facts to insure the act’s judicial validation. Contributing to the delay in instituting a test case was the mirror-image litigational strategizing by the Tobacco Trust. In the meantime, “those addicted to the use of the forbidden smokers may roll and smoke them with impunity.”

The uncertainty swirling about the Tobacco Trust’s strategy for challenging the law soon dissipated when an Omaha tobacco retailer, John Alperson, a 42-year-old Russian Jew who had immigrated to the United States in 1887, was arrested and taken into custody on September 6 for having “given[en] away and willingly allow[ed] to be taken cigarettes and the material for their composition known as cigarette paper.” That same day Alperson’s Tobacco Trust lawyers in Nebraska, Woolworth & McHugh, petitioned the district court for a writ of habeas corpus to discharge him on the grounds that the statute pursuant to which he had been arrested was null and void inasmuch as the provisions relating to giving away cigarettes and cigarette materials were “unconstitutional and void, as being in excess of the scope of the act as indicated by the title thereof.”

175“Mailing Cigarette Papers May Be Crime,” LEN, Sept. 21, 1905 (4:1-2). In fact, if the packages were sent to individual adult consumers they might very well have passed muster.

176“Cigarette Rollers Will Be Arrested by Police,” LEN, July 21, 1905 (5:3-4).


1781900 and 1910 Census of Population (HeritageQuest). By 1910 he was living alone as a lodger. He was listed as operating a cigar store in 1914. Omaha City Directory 1914, at 77, on http://distantcousin.com/Directories/NE/Omaha/1914/Page.asp?Page=077.

179In the Matter of the Application of John Alperson, for a Writ of Habeas Corpus, Petition, Exhibit B: Complaint (Sept. 6, 1905), Douglas County, Nebraska District Court, Criminal, Docket No. 10-35 (copy furnished by Court File Dept., Clerk of the Douglas County Dist. Ct.).

180In the Matter of the Application of John Alperson, for a Writ of Habeas Corpus, Petition at 1-2 (Sept. 6, 1905), Douglas County, Nebraska District Court, Criminal, Docket No. 10-35 (copy furnished by Court File Dept., Clerk of the Douglas County Dist. Ct.).
State District Court Judge George Day in Omaha ordered that the writ of habeas corpus be allowed to issue in Alperson’s favor returnable on September 8.  Then on September 18, Day found that Alperson was being “unlawfully deprived of his liberty” and ordered him discharged from custody. The judge “based” his “decision on the argument advanced by Judge McHugh,” ruling that that part of the statute that prohibited giving away cigarette paper violated the state constitution because it was not covered in the title. Alperson’s lawyer, “Judge McHugh, asked for a writ of habeas corpus, which Judge Day grants.” Commenting on his own opinion, Day regretted that he had been “obliged to decide the question this way” because in his juvenile court work he had found that “the habit of smoking cigarets is quite prevalent among the young boys and I have been doing what I can to stamp out the evil.”

“Judge McHugh” was William Douglas McHugh (1859-1923), whose honorific stemmed from his recess appointment by President Grover Cleveland to the U.S. District Court for Nebraska on November 20, 1896, which lasted only until February 1, 1897, when, as the result of a party-political dispute, the Senate failed to confirm him. A name partner in an Omaha corporate law firm, McHugh had been president of the Nebraska Bar Association in 1901 and in the last years of his life was general counsel of International Harvester Company. His high standing in business circles was suggested by the fact that President Taft considered nominating him to the Supreme Court and his political position was
identified by his signing (“lawyer representing Standard Oil Company”), as one of 30 prominent Omahans. the manifesto of the Nebraska Men’s Association Opposed to Woman Suffrage in 1914, on the grounds that “woman suffrage is inconsistent with the fundamental principles upon which our representative government was founded” and would merely instantiate “emotional suffrage” at a time when the United States had “already extended suffrage beyond reasonable bounds.” Unsurprisingly, McHugh became ATC’s litigator for attacking Nebraska’s anti-cigarette law. ATC and the state appeared before the Nebraska Supreme Court on October 3 on a habeas corpus petition—the Tobacco Trust’s favorite vehicle for challenging the constitutionality of state cigarette sales bans. However, rather than alleging an infringement of the congressional interstate commerce power, Alperson’s lawyers merely claimed that the act violated the state constitution inasmuch as its title failed to reflect its textual prohibition of giving cigarettes away. The lower court sustained this contention in preference to the state’s more subtle argument that the title, despite the lack of reference to gifts, was sufficiently broad because it demonstrated that the legislature’s purpose was to prevent the use of cigarettes and “an act to prohibit the manufacture and sale...could not be made effective if persons were left at liberty to give away cigarette paper and tobacco and thereby enable anyone...to procure by gifts cigarettes which the statute does not permit to be manufactured or sold.”

On October 19, the Nebraska Supreme Court rejected the Tobacco Trust/Alperson’s argument by determining what the law was designed to prevent:

The legislature undoubtedly supposed that the use of cigarettes was injurious to the public in general, through its effects upon the health and morals of the people. ... That the use of these injurious articles might be discouraged, and the injurious effects thereof upon the public removed as far as possible, it was made unlawful to manufacture, sell or give away the article itself.... The intention is to remove these articles from the avenues of commerce; to banish them from the state as guilty and illegitimate things that ought not to be offered to, or easy of access by, vicious or thoughtless people who are, or may be,
Against such a background of legislative intent, the court concluded that the subject of the law as embodied in the text was not “so disguised in the title,” which mentioned the prohibition only of the manufacture and sale of cigarettes, “that the legislators would not be sufficiently notified by the language used in the title that it was intended to discourage the use of the articles referred to, and to that end, to prevent all traffic in them....” If in an earlier case the Nebraska Supreme Court upheld a statute whose title mentioned only text-books, whereas its text used “school supplies,” the court now held that: “If the barter and gift of cigarettes...are not prohibited by the act, it is manifest that the purpose and intent of the legislature is thwarted, and we think that purpose and intent is plainly to be derived from the title of the act itself.” Consequently, it reversed the district court’s judgment and remanded Alperson to custody.

Though some dealers in Omaha had resumed sales in the interim between the district court’s and the Supreme Court’s ruling, the latter would, the press reported, put a sudden stop to them, in which larger dealers, advised of the risk by their lawyers, had not engaged anyway. Rogers, the aforementioned “representative of the tobacco trust,” observed that the decision would make no difference to him because he had stopped selling cigarettes as soon as the law went into effect (“‘our attorney said “nixie”’”). Most “‘regular cigarette smokers,’” according to him, “‘made arrangements [sic] to have their supplies sent in from outside the state without getting anybody tangled up in the operation.’”

That ATC’s representative in Omaha had simply acquiesced in the new law does not accord with the experience of any other statewide ban state, and in the wake of the resolution of Alperson, the state’s focus of enforcement and the Trust’s litigation focus shifted to the aforementioned issue of the lawfulness of consumers’ rolling their own cigarettes. The first (or perhaps the first widely publicized) arrest took place in Lincoln a month after the Supreme Court had

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194 Alperson v Whalen, 74 Neb. 680, 682 (1905).
196 “Supreme Court Stops Traffic in Cigarettes,” LEN, Oct. 21, 1905 (5:3).
197 “Will Quit,” LEN, June 23, 1905 (1:5).
198 “Supreme Court Stops Traffic in Cigarettes,” LEN, Oct. 21, 1905 (5:3).
199 At the beginning of November it was reported that Norfolk (pop. ca. 5,000) was Nebraska’s “only town of its size or bigger...in which it is impossible to buy a tailor-made cigarette.” “Bad for Cigarette Man,” Norfolk News, Nov. 3, 1895 (8:3).
issued its decision, when the accused, 18- (or perhaps 20-) year old Pat Raymond, was caught red-handed by a detective in a saloon. From the outset the press knew that the legal issue was whether making cigarettes for one’s own use constituted prohibited manufacturing: “If a liberal interpretation of the word ‘manufacture’ be accepted it means only the making by hand, but in modern parlance it means anything else than making by hand, for in its common acceptation it means the making for trade, which in these days is generally making by machinery.”200 The problem with the case was that Raymond, who had been in Lincoln only three or four days following work on a farm, had but two or three dollars to his name and therefore lacked the means to finance a Supreme Court adjudication. (He suggested to the police court judge that various family members might pay for a lawyer, but the judge, who actually telephoned one uncle, ascertained that the relatives were “also in poor circumstances.”) As a result of this “impecunious condition of the subject the authorities [were] somewhat perplexed as to what to do with the case. They feared that if they were to dismiss the complaint and let the lad go it might be taken as an [sic] evidence of an indisposition to attempt enforcement of the anti-cigarette law.”201 Two days later a very stern Police Court Judge Cosgrove sliced through the authorities’ perplexity by fining Raymond (the minimum) $50—which the press humorously characterized as “not so bad inasmuch as the fine...is one-sixth as large as that recently imposed by the federal court for the unlawful fencing of 212,000 acres of government land”—plus costs in spite of his having been “ready to promise to smoke no more cigarettes in this state....” Pairing epistemological humility with severity in executing the law, Cosgrove conceded that: “I am somewhat in doubt in regard to the meaning of the word manufacture in the law and I don’t know but what it is a broad enough term to fit the individual maker of a cigarette, but that is not for me to say. I propose to enforce this law upon every man found guilty, no matter who he may be. I regret that you are the law’s first victim, a young man without means and away from home and friends, but I see no way out of it. I am trying to enforce the laws of this state. If any man rides a bicycle upon the sidewalk, even though it be for only two feet, he is fined by me if he comes before me. I will impose the minimum penalty upon you, and when you get out I would advise you to ‘quit smoking cigarettes.’” Although the youthful offender “did not whimper,” the press perceived that Raymond “felt stunned at the prospect of so long an immersion in jail.” Feeling the “weight of the law’s displeasure with crushing force,” he pleaded in vain that “I didn’t know

200“First Case,” LEN, Nov. 20, 1905 (5:1).
201“Anti-Cigarette Case Goes over for One Day,” LEN, Nov. 11, 1905 (5:6-7).
nothing about any such law.”202 Since Judge Cosgrove “hated to fine that boy Raymond”203 and “even the police officers” felt that he was “hardly a proper subject to make an example of,” it was “understood” that an effort would be made to “get the governor to extend leniency to him....”204 Whatever trepidations might have inhibited law enforcement until this time, meting out punishment to Raymond transformed the city of Lincoln, which “suddenly got busy with violators of the anti-cigarette law.” Whereas only a few days earlier it had been possible to buy cigarettes from at least one dealer with ease, now the capital was a “model city.”205

Based on the account of Raymond’s case in the United States Tobacco Journal, a New York Times editorialist pretended that: “We cannot even pretend that we actually believe this story, but it is a pleasant one to toy with, and by doing so long enough, in exactly the right spirit, one can pump up a very agreeable feeling of indignation over the present possibilities in the way of interference with the natural rights of free-born American citizens.” Whatever the empirical accuracy of claims of cigarettes’ injuriousness, the newspaper charged advocates of rigorous anti-cigarette legislation with a failure to understand that “compulsion is the poorest of arguments....”206

Raymond had endured but a few days of languishing in jail when fortune, as mediated by McHugh and the Tobacco Trust, began to shine on him. Respecting no limits to the thickness of the persiflage it laid on, the Lincoln Evening News predicted that Raymond “seems likely to be given a place of distinction in the legal history of the state. A thousand years hence, when the rest of us are forgotten, the lawyers of that day, if the people be then so unfortunate as to have them, will be pouring [sic] over the Nebraska reports to encounter the name of Pat Raymond and to read his celebrated case.” When McHugh surfaced at the Lincoln police station to examine the record, the press understood that he was “interested on behalf of the tobacco trust...to make a test case,” in the creation of which the deputy county attorney was willing to participate—even to the extent of filing a new information charging Raymond with having “manufactured” a cigarette—in order to boil the litigated question down to whether anyone in Nebraska had the “right to roll a cigarette for his own use and smoke it.”207

204 “Cigarette Roller Fined Fifty and Trimmings,” LEN, Nov. 22, 1905 (1:6-7).
206 “Harsh War on Cigarettes,” NYT, Nov. 27, 1905 (8) (edit.).
207 “Cigarette Law to Be Subjected to Test,” LEN, Nov. 24, 1905 (5:1-2). See also “Tobacco Companies Take Up Case,” Red Cloud Chief, Dec. 1, 1905 (6:1). Later the
McHugh, who was “in the employ of the cigarette trust,” and the county attorney gave new meaning to manufacturing a test case by arranging a plan starring Raymond, who “consented to become the defendant in a second case,” according to whose choreography sometime on November 25 he “will...in the presence of several witnesses deliberately roll and smoke a cigarette. Thereupon he will be rearrested on a new complaint. Immediately an application for a writ of habeas corpus will be filed and a hearing had on the application as soon as possible. The case will be carried to the supreme court at once.”

McHugh, who called Raymond’s original conviction an “‘extreme case’” in that he was fined $50 for rolling a single cigarette under an interpretation of “manufacture” that ATC’s lawyer did not think “‘was in the minds of the legislators who framed the law.’” Alas, ATC’s sun shone but briefly on Raymond, whom McHugh discarded just as instrumentally as he had bestowed momentary fame on him. In his zeal to manufacture a case with the optimal set of facts for the Trust on the meaning of the “manufacture” of cigarettes, McHugh no longer had any use for Raymond because he wished to eliminate the distraction of his age. Whereas in other states and in Alperson as well ATC’s selection of a straw man litigant typically went on behind the scenes, here the puppeteer publicly revealed his choreography and apparently even sought the press’s assistance in scaring up the proper puppet. The Omaha Morning World-Herald obliged with this entertaining come-on headline cum subhead: “Cigarette Fiend’s Chance to Play Martyr’s Role: Attorney McHugh Looking for One to Break Law and Be Arrested for Sake of Test.” The press proceeded to reveal as well that: “Attorney W. D. McHugh is in the market for a cigarette smoker who is willing to have a portion of the state anti-cigarette law tried on him. ... It is the desire of the judge to start from the very beginning of the case and make the test step by step. For that reason he is looking for someone in Omaha on whom it can be fairly tried....” In the interim, while McHugh interviewed and auditioned actors for his judicial play, the Omaha press stated that it had been “announced that he [McHugh] was retained by the tobacco trust to test the validity of the law....” “Cigarette Smokers Need Not Fear Arrest Now,” LEN, Dec. 11, 1905 (1:6-7).


211See above Parts I-II. Those straw men were also typically sellers.

212"Cigarette Fiend’s Chance to Play Martyr’s Role,” MW-H, Nov. 28, 1905 (2:3).
police obligingly announced that they would not seek to enforce the law against those rolling their own, although the police chief, with regard to “the moral aspect of the case...would like to be able to clap anyone in jail who is caught just taking the feeblest ‘drag’ at one of the so-called coffin nails.” The chief fails to find in the dictionary words adequate to express his contempt of the habit.”

McHugh and ATC did not have long to wait for their test case: on November 29, 30-year-old Edward Stout was arrested in Omaha for rolling his own cigarette for his own use and smoking it; less than a week later, he was released by the district court on a writ of habeas corpus on the grounds that such an act did not constitute manufacture. At oral argument before the Supreme Court Nebraska Attorney General Norris Brown had contended that the law’s prohibition of manufacturing comprehended “both making for private and for public use,” but in March 1906, the court affirmed on the basis that the “[t]he only reasonable conclusion” to be drawn from Alperson v Whalen was that neither manufacture, nor sale, nor giving away cigarettes was “of itself the subject” of the law, but rather the traffic in them. At oral argument in Stout’s case McHugh had argued that “the legislature has no power to regulate the personal habits of an individual by forbidding him to use cigarettes; that it is the right of the sovereign citizen to eat, drink and smoke what he may choose to, although it may be the judgment of the legislature that he is injuring himself by so doing.” Accepting this “suggestion” (which prohibition was already in the process of refuting), the Nebraska Supreme Court concluded that “the legislature in this act has avoided any attempt to regulate the personal habits of the citizen.” Rather, its purpose was “to suppress the traffic in, and not to forbid the use of,” cigarettes. “It is true that the law assumes that the use of the articles is injurious to the health and morals of the public, and that therefore traffic in the articles themselves should be made illegitimate. The law thus discourages the use of the articles, but it intentionally avoids forbidding the individual to use them.” Instead of determining whether “manufacture” could plausibly mean the making of cigarettes by hand, the court interpretively leaped directly from ATC’s libertarianism to construing the law as using the word to mean “to engage in and carry on the business of manufacturing.” It is the business of manufacturing for

213 “Tobacco Trust Attorney Passes Pat Raymond Up,” LEN, Nov. 28, 1905 (2:1-2). Although the Omaha police undertook to enforce the rest of the law, when the first ($50) fine was issued in that city for giving away cigarettes, the judge recommended to the mayor remitting the fine because the violator had a family who would suffer. Id.

214 “No Crime to Roll a Cigarette,” MW-H, Dec. 6, 1905 (2); Dempsey v Stout, 76 Neb. 152, 153 (1906).

traffic that is prohibited. The act of ‘rolling cigarettes’ from one’s own materials and for one’s own use is so connected with the use as to be a part of such use, and this it was clearly not intended by the legislature to prohibit.” De216 The Tobacco Trust’s victory in this subsidiary market at the same time operated to “sustain the law in general, making the sale and manufacture of cigarettes...illegal....”

As the first anniversary of the law approached, Nebraska tobacco jobbers self-interestedly complained that instead of diminishing cigarette consumption, it had merely shifted a large trade volume to their western Iowa and Kansas City competitors, who shipped directly to individual consumers under the protection of the congressional commerce power. Alternatively: “For the insignificant sum of ten cents a cigarette fiend may thus obtain by mail enough paper for the manufacture of 350 smokes, and upon this quantity at the price the trust is only too glad to pay the postage.” Dealers adduced as evidence for the claim that this latter regime was “enabling the cigarette smoker to get along pretty comfortably in the gratification of his appetite, in spite of the attempted restraints of the law,...the fact...that one recently offered brand of cigarette tobacco had met with a sale that eclipses all records.” After a year’s experience with the law, retailers and jobbers would still not have felt “hostile to it if it really accomplished anything in decreasing the use of the detested smoker [i.e., cigarette], but inasmuch as they can see the use of the cigarette go on without effective restraint, while they are prohibited from meeting the demand, they feel that the restriction upon their business is...unjust.” This reconfiguration of sales and consumption patterns prompted the Republican *Lincoln Evening News* to conjecture with, roughly equal portions of irony and hyperbole, that: “Perhaps the tobacco trust saved money when it failed to buy up the legislature for the defeat of the bill.”

That the momentum had not yet shifted to the anti-prohibitionary forces in the Democratically-controlled legislature in 1917 was signaled by the treatment of a bill to repeal the sales ban and replace it with a no-sales-to-minors cum licensure regime.219 The claim by the trade magazine *Tobacco* that interest in the bill was developing among legislators may have been as accurate as its assertion that for years Nebraska had had on the books “laws prohibiting the sale and smoking of

216Dempsey v Stout, 76 Neb. 152, 154-55 (1906).
219*Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives* 203 (Jan. 30) (H.R. No. 427 introduced by William Dorsey and P.B. Neff), 778 (Mar. 15) (n.d. [1917]). On Dorsey, a Republican lawyer who was appointed a district court judge at the end of the 1917 session, see *The Nebraska Blue Book and Historical Register: 1918*, at 272 (Addison Sheldon ed. 1918).
cigarettes by any person....” The publication went on to charge that the law had “never been enforced, nor was any particular attempt ever made to enforce it, because it appeared to be the general belief that if a grown man desired to use tobacco in cigarette form, it was his own business and nobody had a right to deny him that right.”220 The bill’s progress came to a halt when the Judiciary Committee recommended its indefinite postponement and the full House followed suit.221

Also of great practical significance for the anti-cigarette movement was House Roll No. 304, whose legislative fate closely resembled that of the public smoking bill. Introduced by Democrat and stockman James A. Ollis,222 the measure made it a misdemeanor for any county attorney to “wilfully neglect, or refuse to prosecute persons violating...the Anti-Cigarette Law.”223 The bill was motivated by the “common knowledge” that the 1905 Anti-Cigarette law was “being violated openly, notoriously and continuously” and by the fact that “the county attorneys have generally failed and neglected to enforce” it.224 The House received a large number of petitions supporting the bill,225 and the WCTU petitioned the Senate in its favor.226 After the Judiciary Committee had recommended passage and the committee of the whole house had recommended that it be engrossed for a third reading,227 another huge House majority (68 to 9) passed the bill. Four of the nine Nays were cast by four of the nine

221Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 830, 881 (Mar. 19, 21) (n.d. [1917]).
222According to the 1910 Census of Population and Compendium of History, Reminiscence and Biography of Nebraska (1912), Ollis was born in 1828, retired from the farm in 1904, and owned considerable city property in addition to stock and grain land. He had also been a member of the Nebraska House in 1901 and a senator from 1909, 1911, and 1913. The Nebraska Blue Book and Historical Register: 1918, at 278 (Addison Sheldon ed. 1918).
223Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 158 (Jan. 24) (n.d. [1917]).
224Senate Journal of the Legislature of the State of Nebraska: Thirty-Fifth Session...1917, at 668 (Mar. 27).
225Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 198, 215, 279, 293, 310, 325, 357, 380, 402, 414, 458, 489, 519, 635 (n.d. [1917]).
226Senate Journal of the Legislature of the State of Nebraska: Thirty-Fifth Session...1917, at 280.
227Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 477, 820 (Feb. 20, Mar. 17) (n.d. [1917]).
representatives who had voted against H.R. No. 248, while only three Nays were cast by members who had voted for that bill.228 Again, despite this robust House majority, the bill died in the Senate, which took no action took on it after its referral to the Judiciary Committee.229

By 1919, with the end of the World War and the return of the soldiers230 and of massive Republican majorities in both houses of the state legislature, the pressure for the legalization of the sale of cigarettes to adults intensified, though both chambers were still operating under the same no-smoking rules in force since the 1870s.231 The repealer, House Roll No. 297, was introduced by Republican Donald McLeod, a 64-year-old retired blacksmith, who had immigrated to Nebraska from Prince Edward Island in 1878; in the eastern Nebraska town of Schuyler (pop. 2,636 in 1920) he sat on the city council and board of education, was mayor, represented the county in the state House of Representatives in 1897, and received, as a “firm believer” in his party’s doctrines, especially sound money and protection, federal executive nomination and Senate confirmation as postmaster in 1907.232 McLeod’s key role in repealing the 14-year-old cigarette sales ban may have been bound up with the fact that one of his sons had been the first Schuyler “boy” to have died of his wounds in France233; when McLeod received notice that his son’s body would finally be returned to the United States, he requested that the American Legion be in charge of the services and referred the notification letter to the commander of the (conveniently named) McLeod Post.234 In addition to repealing the sales ban, McLeod’s bill created a decentralized licensure system for the sale of

228 Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 930 (Mar. 26) (n.d. [1917]).

229 Senate Journal of the Legislature of the State of Nebraska: Thirty-Fifth Session...1917, at 722 (Mar. 29).

230 The Nebraska legislature, according to Roland Jones, “Corn Belt States Plan New Tax Laws,” NYT, Jan. 27, 1929 (E2), “was persuaded by the returned soldiers to repeal” the cigarette sales law.

231 See below Tab. 6.

232 Census of Population 1900, 1910, 1920 (HeritageQuest); Nebraska Legislative Year Book for 1897, at 136 (1897); CR 41:4356 (Mar. 1) (1907); The Nebraska Blue Book and Historical Register: 1920, at 341 (Addison Sheldon ed. 1920); The Nebraska Blue Book: 1922, at 220, 275 (1922). Re-elected in 1920, McLeod died in 1921.


cigarettes to persons over 18 and imposed misdemeanor liability on any underage person who represented that he was of age.\(^{235}\)

As soon as H.R. No. 297 had been introduced, the Omaha *World-Herald*, the state’s leading daily, editorially complained that the 1905 anti-cigarette statute was a “freak” law that prompted outsiders to conclude that Nebraska was a “freak state.” It charged that in enacting the “ridiculous” general sales ban in 1905 the legislature “yielded once, in a moment of weakness, to the demand of cranks and faddists” with the predictable results both that the law “fell into disrepute as soon as it went on the statute books” and that the “consumption of tobacco in cigarette form in Nebraska is many times as great today as when the law was passed!” (Unfortunately, to back this latter claim the newspaper offered no data, which it presumably also lacked, though ATC or the Tobacco Merchants Association might have been willing to provide this proprietary information in such a good propaganda cause.) The editorialist was heartened that at “every session of the legislature” since 1905 members had been “found with sanity enough to introduce bills” that proposed to restore adults’ unencumbered access to cigarettes,” but for reasons that the paper left unfathomably opaque, “every session” had also “developed a majority of members who were afraid to do that obvious and rational thing because of the clamor of a few faddists with a power for making a great noise.”\(^{236}\) (How a small minority of alleged extremists had, over consecutive sessions, been able to intimidate an unbehind legislative majority remained a mystery to a newspaper that simply did not want to contemplate the possibility that, as was the case in some other states, a large number of Nebraskans had adopted a firm anti-libertarian position that it was necessary and acceptable to deprive adult men of access to cigarettes in order to deprive their sons and daughters of the same access.) What inspired the *World-Herald* with hope that 1919 might be different was that

now we have a couple of score thousand soldiers some home, husky and vigorous young men, the great majority of them cigarette smokers. Those who did not have the habit before learned it in the army. They acquired it under the eye and with the consent of Uncle Sam. The Red Cross, the Y. M. C. A. and other similar organizations helped introduce them to it. Devoted women all over the land, by the scores of thousands, have given their time to packing the “little smokes” in the soldiers’ kits. The war has made the short, clean, dry smoke of “the paper pipe” respectable.\(^{237}\)

\(^{235}\)House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 233 (Jan. 29).

\(^{236}\)”A Lawless State,” *MW-H*, Feb. 1, 1919 (10:1) (edit.).

In this mantra, favored by cigarette manufacturers into the twenty-first century, that government intervention should be confined to children, while adults must be off limits, other Nebraska newspapers chimed in. The *Fremont Herald*, for example, agreed that the current law “doesn’t prohibit worth a cent. A man can buy cigarettes in any town in Nebraska. [A]s for prohibiting the sale of cigarettes to men, it can’t be did [sic]. The cigaret has come back to stay.” The *Lincoln Journal*, which purported to “instinctively reach for something to throw when their [cigarettes’] aroma greets our nostrils,” but quickly added that “law-making isn’t based on individual likes and dislikes,” shared the view that keeping cigarettes away from adolescents was “doing as much as is possible.... We cannot hope to prevent men of years of discretion getting them.” Even the Omaha public schools’ chief truant officer hopped on to this bandwagon, suggesting that the cut-off age for adults be lowered to 16, because then “dealers would cooperate with authorities.”

Now, Nebraska editorialists and legislative repealers were libertarians, but to a degree, they wanted everybody to be free to buy cigarettes over a certain age, but this laissez-faire sentiment did not extend to “anarchistic and destructive socialistic elements” whom the legislature was at the same time determined to “punish” by outlawing the display of red or black flags (while thoughtfully exempting railroad employees who were signaling). So intent were the legislators on “sustain[ing] the government against the forces of bolshevism and anarchy” that only one (a former socialist) voted No in the House and none in the Senate.

The House Committee on Medical Societies, to which the bill had been referred, held a hearing on February 6, at which a returned sailor along with two other witnesses spoke in favor of the bill. Interestingly, no one appeared in

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2421919 Nebraska Laws ch. 208, § 2, at 916-17. The penalty was a maximum fine of $1,000 and a maximum imprisonment of five years. *Id.* § 5.


244*Senate Journal of the Legislature of the State of Nebraska Thirty-Seventh Session...1919*, at 586-87 (Mar. 5).

245*House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919*, at 1463 (Jan. 30).
opposition to H.R. No. 297, although the Nebraska WCTU leaders had been invited. World War veteran F. B. Jeffries, who had operated big naval guns in battles in France, stated that he had received cigarettes from government canteens as well as from the YMCA, Red Cross, and Salvation Army and “[w]e found them a great solace and comfort.”246 Presumably having learned that cigarette use allowed him to “escape aversive states associated with smoking abstinence” or that smoking helped him “avoid these aversive states,”247 Jeffries—who boasted of having smoked cigarettes for six years “without ill effect” and of a six-inch

246“New Anti-Cigaret Law Reported for Passage,” MW-H, Feb. 7, 1919 (1:6). Neither Jeffries nor one of the other witnesses, Dan Whiting, appeared in the 1920 Census of Population. The third witness, Willard Washington Slabaugh, an Omaha lawyer and former state district court judge, who also taught law at the University of Omaha, was a trustee of the Omaha Child Saving Institute and professed “health” as his hobby. Albert Watkins, History of Nebraska 3:604 (1913); Nebraskana: Biographical Sketches of Nebraska Men and Women of Achievement Who Have Been Awarded Life Membership in the Nebraska Society (Sara Baldwin and Robert Baldwin eds. 1932), on http://www.usggennet.org/usa/ne/topic/resources/OLLibrary/Nebraskana/pages/nbka0248.htm. Slabaugh was the Douglas County (Omaha) Attorney in 1905 when Alperson was prosecuted in ATC’s first challenge to the general sales ban.

247U.S. Department of Health and Human Services, How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking Attributable Disease: A Report of the Surgeon General 122 (2010). Clarence True Wilson, the general secretary of the Board of Temperance, Prohibition, and Public Morals of the Methodist Church, was at this very time engaged in a campaign excoriating the Tobacco Trust for having “‘foisted’” “‘the doped cigaret...on the country in war times. The men who have been able to throw off nicotine and the poison in the activities of the field and the march and strenuous life in the trench will go to pieces utterly in the sedentary habits which they will enter when they are again in civil life. Our board must open their eyes to this poison traffic, and personally I think that the tobacco trust, by the dishonest and impudent methods of pushing its work, has gone so far beyond the pale of decency that it ought to be buried in the same grave with the pro-German brewers who trampled on the American rights in war times. Their lying advertisements, “Cigarets Won the War,” ought to bring the blush of shame to every American who is not in fighting trim.’” Wilson announced that the Board, now that liquor prohibition had been achieved, would “‘conduct an educational and moral suasion campaign against the personal use of the doped cigaret....’” “Says Methodists Plan Anti-Tobacco Crusade,” MW-H, Mar. 12, 1919 (20:1). He nevertheless denied the outlawed liquor industry’s claims that liquor prohibitionists were seeking a constitutional amendment against tobacco, although he emphasized that “‘many millions of people have warmly resented the forcing of cigarets to [sic] those of our soldiers who were not previously accustomed to them....’” “Denies Intent to Prohibit the Use of Tobacco,” CT, Feb. 4, 1919 (4:4).
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...touchingly pleaded that: "I want the present law repealed because I don’t want to feel that I am a lawbreaker and a criminal every time I buy cigarettes, which is perfectly easy, but nevertheless unlawful at present." The committee supported the repeal bill because the prohibitory law was openly violated, unenforceable, and, unlike, McLeod’s proposal, gave “no premium for refusal to sell to minors....” Ironically, the committee majority was composed of two physicians and a dentist (while the sole dissenter was a merchant). 248

Literally on the eve of the resumption of House consideration of H.R. No. 297 the World-Herald intervened to plead for such a “sound, reasonable, certain” approach among legislators who aspired to perform “public service” instead of hoping to make “political capital by demagogic clap-trap.” To this latter group the paper assigned Republican Representative George Maurer (an Iowan who had attended Cornell College and Iowa State University before becoming a farm machinery retailer in Nebraska), who “favors sending a man to the penitentiary for life if he sells a cigarette” and Omaha Republican John Larsen (a Dane and state labor department investigator) 249 who charges that the tobacco trust put cigarettes in the hands of soldiers for a sinister purpose and that the power of the tobacco trust is what keeps Nebraska courts from enforcing the present law. Who can reason with a man who charges, by implication at least, that President Wilson and Secretary of War Baker connived with the tobacco trust to debauch American boys? Who can reason with a man who charges that Nebraska judges and juries are bribed or coerced into a betrayal of public trust by venal agents of the tobacco trust? 250

The editorialist preferred legislators who revealed “the fact”—both that of seeing policemen, judges in court, and legislators in the legislature smoking cigarettes that they had gotten unlawfully and that the Tobacco Trust had no need to be backing repeal because “it sells all the cigarettes that can reasonably be sold in


249 “A Law—Or a Farce?” MW-H, Feb. 21, 1919 (8:2) (edit.). For the legislators’ background information, see The Nebraska Blue Book and Historical Register: 1920, at 341-42 (Addison Sheldon ed. 1920). Interestingly, Maurer did not vote on the indefinite postponement or final passage of the bill; Larsen voted against the latter but did not vote on the former.

250 “A Law—Or a Farce?” MW-H, Feb. 21, 1919 (8:2) (edit.).
For three hours of the session’s theretofore “most bitter dispute” and “hottest debate” the committee of the whole house considered the bill on February 21, resulting in the session’s theretofore closest vote. Opponents of repeal “charged its friends with being tools of the tobacco trust and characterized the cigaret as a greater agent of immorality than whisky.” It would have come as no surprise to his colleagues that Representative Fults, who had introduced the comprehensive public cigarette smoking ban in 1917 and did not shy away from calling the whole issue a “moral” one, “declared that within six years the prohibition of the use of tobacco in any form will be an issue in the Nebraska legislature” and “denounced the user as a degenerate and condemned all use of tobacco as on a par with the use of intoxicating liquors.” Fults’s prediction may have been off by at least a century, but his colleague Brantly Sturdevant, a Baptist real estate and insurance agent, was beating a dead old horse in asserting that cigarettes were full of opiates. While agreeing that cigarettes were a moral issue, Republican Milton Wildman, a University of Michigan law graduate and former city and county attorney and county judge, turned scientific in stating that cigarette smoking made “the lungs like powder, such that a man can take them between the thumb and finger and squeeze them into dust.” Challenged to substantiate his insistence that the prohibitory law was enforcible, he instanced his hometown of York (pop. ca. 5,000), though even he was constrained to admit: “Of course, I don’t mean that it is absolutely enforced. You can’t stop it all.” In response to the claim that the cigarette question, rather than a “moral” one, hinged solely on whether the law was efficient and workable, Fults—who declared that “conditions had grown so bad that one who sat down at a table in a restaurant with a lady ran the risk of having cigaret smoke blown across the table by some degenerate”—boasted that as prosecuting attorney (of Furnas County, pop. 11,657): “I have been instrumental in collecting more money in fines for violation of the prohibitory law than has been collected in any two counties outside of Douglas.” Using formulaic WCTU terminology, Republican


252“Hot Contest over Cigaret Measure,” *NSJ*, Feb. 22, 1919 (1:3) (surpassing the language and parochial school questions).

253“Anti-Cigaret Bill Has Tight Squeeze,” *MW-H*, Feb. 22, 1919 (1:2). The population of York, which was the state’s fourteenth most populous town, was 5,388 in 1920. Oren Bowen, *The Government of Nebraska* 92 (1922). For legislators’ backgrounds, see *The Nebraska Blue Book and Historical Register: 1920*, at 335-46 (Addison Sheldon ed. 1920).
farmer Albert Miller voiced his opposition to “the licensing of evil. ‘You cannot base good government on such a scheme.’” Nevertheless, he nodded to his adversaries’ argument long enough to speculate that if the legislature appropriated funds similar to those voted to enforce liquor prohibition, “possibly the present law would be found workable.” Typical of repealers’ focus on enforcibility was the plea by House Speaker Dwight Dalbey (who before engaging in “the business of farming” was a graduate of the University of Illinois and an agronomy instructor at the Illinois agricultural college) for ecumenism and mutual tolerance among all adult tobacco smokers: “Personally, I don’t smoke cigarettes, but I am not so intolerant that, because I smoke cigars instead of cigarettes, I am unwilling that another man should use tobacco in the form which he prefers. Public sentiment does not support prohibition of the sale of all cigarettes. It does support the non-use of cigarettes by minors....” Dalbey was presumably attempting to mobilize empirical evidence in support of his accommodationalist preaching in response to Larsen’s proposal to punish even possession of cigarettes with imprisonment by offering an amendment to prohibit the possession of all forms of tobacco: as his die and let die doctrine would have predicted, both were voted down as was another to confine sales of cigarettes to those 90 and over. In seeking to persuade his colleagues to coalesce around the bill, Republican lawyer James Rodman (incorrectly) alleged that just the previous day the Senate in neighboring Iowa had said, “‘We have seen the light,’” in voting to repeal its sharp-toothed law that had been carried as a “dead letter” since 1889.

In the end, the committee of the whole recommended a series of amendments, most of which increased the minimum sales age to 21 and increased the license fees. (The word “minor” was also changed to “person” because, since women attained their majority at 18, the bill would have made it lawful for women to buy and smoke cigarettes at 18, whereas men could not have done so until 21.) The

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254“Hot Contest over Cigaret Measure,” *NSJ*, Feb. 22, 1919 (1:3-4 at 4, 7:2). Douglas County (Omaha) was almost 18 times larger. The state’s second most populous county, Lancaster (whose county seat was Lincoln), was more than seven times larger than Furnas. Oren Bowen, *The Government of Nebraska* 91 (1922).


256“Hot Contest over Cigaret Measure,” *NSJ*, Feb. 22, 1919 (1:3-4 at 4). The Iowa law dated back to 1896 and was not a dead letter. See above ch. 14. The Senate had in fact acted two days earlier.

257“Hot Contest over Cigaret Measure,” *NSJ*, Feb. 22, 1919 (1:3-4 at 4).
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non-party-line roll-call vote on the motion to postpone the bill indefinitely revealed that at this point the anti- and pro-cigarette forces were almost evenly balanced: although the motion lost and the committee of the whole recommended the bill as amended for a third reading, 32 members voted effectively to kill the bill while 35 kept it alive (only two-thirds of all representatives voted). Of the eight (of 15) Democrats who voted, three or 37.5 percent supported the motion compared to 49 percent of Republicans. Largely rural, Nebraska boasted of only two population centers in 1920: Omaha (ca. 192,000) and Lincoln (ca. 55,000). Characteristically, of the 12-member Omaha delegation only one voted to kill H.R. No. 297, while seven opposed indefinite postponement; in contrast, the four-member state capital Lincoln delegation voted two to one for postponement. Of those voting to kill the bill slightly more than half were farmers in contrast to only slightly more than one-third of opponents.258

A month before the Nebraska legislature passed the provision banning smoking in public eating places The New York Times had taken editorial notice of the similar (Grinstead) bill in Kansas, which it regarded as “the natural home of all reforms, in contrast to Nebraska, which was “much less advanced and full of lyric enthusiasms than its neighbors.” Ever since enactment of Nebraska’s general sales ban all the bills introduced “to put a little sense into it and restrict the prohibition to minors ha[d] failed invariably” because the “sensible majority was bulldozed by the few violent fanatics who possess the apparently easy art of cudgeling majorities into submission.” How an alleged minority consistently pulled off this feat the paper did not reveal, but it remained certain both that “only students of pragmatic crankiness can guess at” the “new eccentric interference with personal habit” that triumphant liquor prohibition would generate and that the “fate of the Nebraska anti-cigarette law ought to be, and won’t be, a warning to the diligent remakers of the world according to their own prejudices.”259

After the House had adopted McLeod’s amendment to increase the penalty

258House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 530-31 (Feb. 21). Democrats occupied only 15 of the 100 House seats. Occupations were taken from id. at 6-9. Although the Journal total for Yes votes was 32, only 31 representatives were listed, of whom 16 were farmers; in addition to 12 farmers two ranchmen also voted against postponement. Bill supporters engaged in much speculation about the need on third reading to secure the votes of half of the absentees despite the improbability that they would all be present. “Hot Contest over Cigaret Measure,” NSJ, Feb. 22, 1919 (1:3).

for selling without a license, it passed the bill by a vote of 52 to 32. The number of Nays was arithmetically identical to that of supporters of indefinitely postponing the bill, but the overlap was not perfect: 19 votes were predictable, but six of the those who had voted to kill the bill wound up voting for its passage on third reading (while six were excused). The vote, though, again, not party-line, did reveal a modest difference between the parties: 31 percent of voting Democrats opposed H.R. No. 297 compared to 39 percent of Republicans. Of the 11 voting Omaha representatives nine supported the bill (the two Nays being cast by Danish- and Swedish-born members). Farmers split evenly, 17 voting Yes and 17 No, though they accounted for 33 percent of all supporters but 53 percent of all opponents. Two of the three representatives to explain their No vote in the House Journal took the traditional WCTU position of opposing the licensing evil.

In the interim before the Senate took up H.R. No. 297, a fascinating source of opposition to the repeal of Nebraska’s prohibition of cigarette sales emerged from “an unexpected quarter,” the competing cigar industry, but not from factory owners or merchants; instead, it was cigar makers themselves who asked legislators not to pass a licensure law. To be sure, as far back as 1889 the Cigar Workers International Union had advocated bans on manufacture and sales to minors purportedly to protect the latter’s health. Thirty years later, however, the workers’ self-interest was nakedly on display in the following letter to the members of the Nebraska legislature:

“We members of the cigarmakers’ union of Omaha, wish to make a vigorous protest against the repeal of the present cigaret laws of the state of Nebraska. We are against the passage of the McLeod H.R. 297, and also Barton Green’s H.R. 63, and any other cigaret laws which would make it lawful to sell and display cigarets openly in this state. We, as cigarmakers, earn our livelihood making cigars and we know if the present cigaret law is repealed that cigarets will show an enormous increase in consumption and

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260 House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 533 (Feb. 24).

261 House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 547 (Feb. 25). On the biographies of the Scandinavian Omahans, see The Nebraska Blue Book and Historical Register: 1920, at 341 (Addison Sheldon ed. 1920).

262 House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 548 (Feb. 25) (Wildman and Gifford).

263 “Consolidation Bill Sleeping in Quiet,” ESJ, Mar. 3, 1919 (1:3-4).

264 See above ch. 11.
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cigars, the products of our toils and livelihood, will show a marked decrease.

“We have just reasons to believe that the so-called ‘tobacco trust’ are the promoters of repealing the present cigaret laws, who alone will profit by increasing the sale of cigarettes, which are manufactured in the east and the cigarmakers and cigar manufacturers of the state of Nebraska will suffer.

“We hope...that you will do all in your power to kill the above bills.

“Please bear in mind that cigar making is a growing Nebraska industry, whereas cigaret making is a monopoly of the eastern ‘tobacco trusts.’”\textsuperscript{265}

The very practical, material purpose of the workers’ lobbying constitutes strong evidence that they knew that the existing prohibition had, at the very least, been effectively limiting cigarettes sales below the level that a free market would make possible. As long-term, experienced, organized participants in the tobacco industry, who must be presumed to have been familiar with the demand for tobacco products and the sales patterns in stores that sold them, it seems extremely implausible that they would have risked squandering their political capital on an issue of no real-world importance—that is, that they would have opposed repeal of a sham law that had never suppressed cigarette sales anyway.

On March 11 the Senate committee of the whole took up H.R. No. 297 after having recommended indefinitely postponing a House bill providing for an annual temperance day named for the WCTU’s nineteenth-century president Frances Willard.\textsuperscript{266} The lengthy floor debate, in which virtually all senators participated, focused “largely on the matter of the injurious nature of the ‘demon cigaret’” rather than on writing an enforceable statute. Republican banker and Methodist Berton Bushee, a strong bill backer, provided a highlight by straightforwardly denying accusations that the Tobacco Trust had influenced him. Another high point was the appearance on the Senate floor, together with church and welfare workers, by Lucy Page Gaston, the indefatigable leader of the National Anti-Cigarette League,\textsuperscript{267} “who came from a distant state to help put a few coffin nails in the bill legalizing the sale of ‘coffin nails’ to grown people.” In contrast, “rather inconsolate looking”—at least for the moment—was Myron L. Learned, “an Omaha attorney who has been looking after the progress of the bill for

\textsuperscript{265}“Consolidation Bill Sleeping in Quiet,” \textit{ESJ}, Mar. 3, 1919 (1:3-4).

\textsuperscript{266}Senate \textit{Journal of the Legislature of the State of Nebraska Thirty-Seventh Session...1919}, at 676 (Mar. 11). The Senate Medical Societies Committee had recommended that the bill be placed on general file. Senate \textit{Journal of the Legislature of the State of Nebraska Thirty-Seventh Session...1919}, at 629 (Mar. 7).

cigaret manufacturers.” Asked whether he would fight or quit, Learned replied that he did not usually quit.” Initially, the committee of the whole passed two amendments that “mutilated” the bill—one limiting licensed sales to cigarettes containing only “pure” paper and tobacco and the other incorporating all forms of tobacco under the licensure system—but then adopted a report recommending to the full Senate that it be indefinitely postponed. However, when the 39-year-old Lincoln city attorney, Republican C. Petrus Peterson, a second-generation Swede and University of Nebraska law school graduate, moved that the recommendation instead be to advance the amended bill to third reading, Republican Fred Johnson, a 43-year-old Methodist with “extensive farm interests” who was graduated from the same law school, moved as a substitute that H.R. No. 297 be indefinitely postponed. The 17 to 12 roll-call vote to kill the repealer suggested to the Omaha World-Herald that Gaston’s statement several days earlier at a committee hearing that if the legislature kept the existing law in force, she would come to Nebraska and enforce the law had “convinced several of the older members of that body that this could be done.”

The next day rumors began circulating in the Senate about an effort to resuscitate the bill, but no one believed that there was any hope of success unless quickly at least two of the 17 “could be induced to change their minds” and at least three of the four absentees voted to revive it. In the immediate wake of the bill’s apparent death Republican Governor Samuel McKelvie weighed in, indicating that he had no faith in the claim of lobbyists against repeal that if the prohibitory bill remained in effect it would be enforced. While remarking that he had not participated in the battle over H.R. No. 297 and that his administration would enforce the existing law “as far as it can be enforced,” he left no doubt that that agenda would be pure Sisyphus labor: “Of course, no law can be enforced unless it is supported by public sentiment. Public opinion does not support the view that grown men should not be allowed to smoke cigarettes and it follows that prosecutions under the present law will not result in convictions.”

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268“Cigarette Bill Dies in Senate Chamber,” NSJ, Mar. 12, 1919 (1:3).
270Senate Journal of the Legislature of the State of Nebraska Thirty-Seventh Session 676-77 (Mar. 11). The biographical information and quotation are taken from The Nebraska Blue Book and Historical Register: 1920, at 331 (Addison Sheldon ed. 1920).
272“Governor Says Law Hard to Enforce,” ESJ, Mar. 12, 1919. At least one of the four absentees, it was reported, would have voted against the bill; at least 17 votes were required to pass a bill in the Senate.
So much for Lucy Page Gaston’s reputation as an effective enforcement agent, though, to be sure, the governor and various legislators may also have worried that she would be an all too vigorous enforcer of the old statute.

In the event, on March 13, Republican Thomas Bradstreet, a wholesale mule and horse merchant, moved to reconsider the vote, explaining that although “he hated cigarettes,” he confessed that he had not fully understood how the two aforementioned amendments helped a “bad matter.” Leading the battle for reconsideration was Bushee, who valued an enforable law in preference to the existing act, under which a man could smoke a cigar but not a cigarette. The chief opponent of reconsideration was Democratic lawyer Charles Chappell, who compared tobacco and liquor business and legislation. Another proponent of reconsideration who focused on enforability, Republican lawyer and Methodist Ralph Weaverling, insisted that under the current law prosecutions before juries had failed to produce convictions.²⁷⁴ He lent more authoritative heft to his position by announcing that it was shared by such officials as Lincoln’s mayor and police officials, who were “coming to us and asking us to give them legislation which will not make their institutions a mockery.” Nebraska’s attorney general had also personally told Weaverling that because the prohibitory law was unworkable he too favored H.R. No. 297’s passage.²⁷⁵ In contrast, advocates of the status quo such as Republican newspaper editor J. W. Hammond and Johnson charged that the Tobacco Trust was behind the proposed measure, an allegation that was again denied by Bushee,²⁷⁶ who two days earlier had gone on record that he “did not want to go on record as forbidding his neighbor to smoke a cigarette when he was smoking a cigar.”²⁷⁷

Whether the impression left by the press that anti-cigarette advocates had failed to engage arguments about enforability was accurate is unclear, but their constant insistence that the (newly oligopolized) Tobacco Trust was pushing repeal offered an implicit rebuttal in the sense that it suggested that if the sales ban were wholly unenforced (let alone unenforable) the cigarette manufacturers would not be devoting its economic and political capital to repealing a dead-letter statute. Nevertheless, as was almost universally the case in all states, prohibitionists failed to avail themselves of this debate about enforability to confront the central political and moral-philosophical question of the justification

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²⁷⁷“Cigaret Bill Dies in Senate Chamber,” NSJ, Mar. 12, 1919 (1:3).
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for instrumentally “depriving men of the opportunity of buying cigarettes” in Nebraska “in order that” boys and girls “not get an opportunity” to smoke them. If, as the Independent Republican Lincoln State Journal put it editorially, the McLeod law was able to overcome the (alleged) ineffectiveness of the prohibitory law—which resulted from the fact that “small dealers have not scrupled to sell to boys because they risked no right to sell”—by “penalizing with the loss of his license to sell the dealer who sold to minors,” then it was just “another way of reaching the evil in the smoking of cigarettes...by minors.” It recognizes the principle that they should be kept away from growing youth, when their use is most harmful, and also recognizes the right of a full-grown man to decide for himself whether he wants to poison himself with them. If the anti-cigarette movement conceded that teenagers were the law’s real target, then the difference between prohibition and licensure would be stripped of its qualitative dimension and be reduced to empirical analysis of the comparative impact on smoking prevalence; in particular, the issue of minors’ emulation of adults and the latter’s health would disappear.

In the event, the vote to reconsider fulfilled all the hopes of the proponents of adults’ unimpeded access to cigarettes. Their 19 to 12 majority resulted from five defections from the former majority opponents and three accessions from absentees. Of the dozen senators who formed the core of the anti-cigarette faction, 10 were Republicans, half were farmers, and none represented the largest cities of Omaha or Lincoln.

On the morning of Friday, March 14, the day after this resurrection, Republican repealers, constituting in person or by proxy the majority of the Senate, “quietly” caucused in the lieutenant governor’s office, where “it was argued that the bill shall be amended in committee of the whole and pushed thru to final passage as speedily as possible.” This plan was about to be implemented at the Senate’s morning session when the opposition protested so energetically

278“Took the Right Course,” ESJ, Mar. 13, 1919 (1:5) (edit.). The Nebraska law was less stringent than the 1921 Iowa law in that the former conferred discretion on courts to add the penalty of license revocation for selling to minors, whereas the latter required the issuing city council to revoke the permit of any person who violated any provision of the law, who then became ineligible for two years. 1919 Neb. Laws § 6 at 401, 402-3; 1921 Iowa Laws § 3 at 213, 214.

279Senate Journal of the Legislature of the State of Nebraska Thirty-Seventh Session 697 (Mar. 13). In addition, one senator who had voted against indefinite postponement was absent from the reconsideration vote.

280The biographical information is taken from The Nebraska Blue Book and Historical Register: 1920, at 329-33 (Addison Sheldon ed. 1920).
and demanded so vociferously a procedure for offering amendments that the caucus cabal majority had to relent and provide for the bill’s special consideration in the afternoon despite the former’s request for a postponement until after the weekend. After charges and denials of the Tobacco Trust’s involvement had been hurled back and forth, the anti-repealers admitted under questioning that they would not promise to vote for the bill even if their proposed amendments were adopted, prompting President pro tem Senator Bushee—who was apparently unaware of the venerable parliamentary advice to talk if you are in the minority and vote if you are in the majority—to declare triumphantly: “‘That is what I thought...you merely want delay.’”

When one of the anti-cigarette leaders, Republican Senator John F. Cordeal, a 45-year-old railroad attorney who had attended City College of New York and was a graduate of Northwestern Law School,“peeved” by the “cruel thrust,” charged that the morning strategy gathering to which he had not been invited was a Republican caucus, Bushee asserted that the party had never caucused on the cigarette bill, and when asked whether any Democrats had attended, smartaleckly replied: “‘Fortunately there are few democrats in this senate.’” Drawing his own conclusions as to why he had not been invited, Cordeal revealed that Learned, the aforementioned cigarette oligopoly lobbyist, vice chairman of the Republican state committee, and “‘evidently a paid agent...who has been busy here in favor of this bill,’” had approached him. This intelligence prompted reports that Cordeal intended to call for Learned’s resignation, but if the accusation by Republican Senator (and small-town newspaper publisher) J. W. Hammond that “‘the majority of the republicans in this senate has surrendered to the tobacco trust’” was accurate, such a sanction was improbable.

Later that day the committee of the whole recommended the bill’s passage with a number of amendments, the most important of which extended licensure to cigars and tobacco. At this point Cordeal moved that the following new

282Fourteenth Census of Population (HeritageQuest); The Nebraska Blue Book and Historical Register: 1920, at 329 (Addison Sheldon ed. 1920).
285Senate Journal of the Legislature of the State of Nebraska Thirty-Seventh Session...1919, at 718-19 (Mar. 14). The amendments also included a (meaningless) ban on the sale of cigarettes containing perfumes or drugs and restriction of licensure to cigarettes and cigarette material “containing pure white paper and pure tobacco only....” These provisions were included in the enactment. 1919 Neb. Laws ch. 180, § 2, at 401.
section—similar to legislation the same year in Kansas and Iowa—be added to H.R. No. 297: “Cigarettes shall not be advertised in any public place, or within view of the public, or on any sign, billboard or building, or in any newspaper or periodical published in the State of Nebraska, or in any other way in the State of Nebraska.” Cordeal’s proposed penalty for conviction of this misdemeanor ranged from $100 to $1,000 or a maximum county jail sentence of one year. Cordeal pointed out in support of his amendment that, since each daily newspaper would garner about $150 a day for cigarette ads, “there was no reason why the newspapers should not be in favor of the original bill.” On a roll-call vote his motion to amend prevailed 19 to 11.

After a motion to strike the advertising ban in newspapers and periodicals had been defeated by a vote of 9 to 20, Cordeal, the chairman of the Judiciary Committee and opponent of repealing the cigarette sales ban, offered a second radical amendment, this one prohibiting cigarette smoking in public eating places subject to a fine ranging between 10 and 25 dollars. Opponents sought to subvert supporters’ complaints that men blew cigarette smoke in customers’ faces by arguing that the amendment was not offered in good faith because it failed to cover cigars; the taunting bill-killing amendment to this effect was voted down, in part because some senators objected to “depriving men of the privilege of after dinner coffee and cigars at banquets.” Cordeal’s amendment passed by a vote of 17 to 14, four of the five Omaha senators voting No and seven of nine farmers voting Yes. Then the amendment to legalize newspaper and magazine ads on reconsideration was adopted by a vote of 16 to 15. (After this threat had been averted, the Lincoln Evening Standard Journal possessed the sangfroid to ridicule some senators for having nourished “the idea that newspapers were champions of the bill because they saw visions of large additional revenues,” whereas...
allegedly “[e]ven the most greedy of publishers long ago learned that the real source of his advertising revenue lay in the number and character of his subscribers.”  

Cordeal also (correctly) explained to the Senate that the bill was defective in that it neither required the licensee to give bond nor conferred on municipalities the option to refuse to issue a sales license; the failure to empower local governments to deny licenses meant that the sale of tobacco would be forced, for example, on University Place—an incorporated community until it was annexed by Lincoln a few years later—whose local officials had “always refused to permit its sale.”

The motion that the committee of the whole arise and report the bill back to the Senate with the recommendation that as amended it be advanced to third reading prevailed on a vote of 18 to 13, but, interestingly, Cordeal voted No as did 12 of the other 16 senators who had voted for the no-smoking in restaurants amendment (and 13 of the 15 senators who had voted against reconsidering the vote on eliminating the ban on newspaper ads). In other words, the parliamentary strategy pursued by Cordeal and his allies had been to weigh the bill down with anti-cigarette provisions but in the end to oppose repeal of the sales ban. This constellation was strikingly confirmed in the converse on final passage when not a single senator who had voted against the no-smoking in restaurants amendment voted against the bill’s passage. Thus, years later The New York Times correctly reported that repeal had been secured by the inclusion of the restaurant smoking ban (though it was untrue that the margin had been a single vote).

On March 18, the full Senate, without prior discussion, passed H.R. No. 297 by a vote of 17 to 11. Of these 11 opponents, nine (including Cordeal) had also voted: for indefinite postponement; against reconsidering the vote on indefinite postponement; for the ad ban; for the restaurant smoking ban; against the amendment to exclude newspapers and magazines from the ad ban; and against advancing the bill to third reading. Of these nine hard-core anti-cigarette legislators seven were Republicans, five were farmers (and three were lawyers),

294 “Making Real Progress,” ESJ, Mar. 17, 1919 (6:1) (edit.).

295 “Cigarets in Cafes Barred by Senate,” NSJ, Mar. 15, 1919 (12:1). Bushee’s retort that the fact that dealers could not sell without a license had to mean that local officials could deny a license simply rested on his inability to comprehend the bill text.

296 Senate Journal of the Legislature of the State of Nebraska Thirty-Seventh Session...1919, at 720-22 (Mar. 14).


and none was from Omaha or Lincoln.\textsuperscript{299}

The same day McLeod successfully moved that the House concur in the Senate amendments.\textsuperscript{300} Some House opponents “held out to the last,”\textsuperscript{301} but the controversy had been sufficiently defused that here, too, no discussion took place and, in addition, the vote was merely viva voce,\textsuperscript{302} though not unanimous, it was “smothering” enough to persuade the chair that “the bill had been safely boosted over.”\textsuperscript{303}

Taps was played for the prohibitory law by the \textit{World-Herald}, which drew an editorial sigh of relief for repeal, but nevertheless despairing that “sanity” had prevailed only “by a hair.” Training its invective on the “narrow-minded intolerants who insisted” that H.R. No. 297 would license evil and compromise with the devil, the newspaper was constrained to pay its respects (anonymously) to Gaston as “an astute and active imported female lobbyist....”\textsuperscript{304} The editorialist did not, however, assert that impediments to adults’ free access to cigarettes had been forever banished, and in fact struggle was far from over in Nebraska.

Nebraska’s repeal of its general cigarette sales ban went further than Iowa’s would in 1921\textsuperscript{305} by virtue of extending licensure to all forms of tobacco,\textsuperscript{306} prohibiting the advertising of cigarettes in any public place,\textsuperscript{307} and prohibiting

\textsuperscript{299}\textit{Senate Journal of the Legislature of the State of Nebraska Thirty-Seventh Session} 764 (Mar. 18). The nine were Barr, Chappell, Cordeal, Erickson, Good, Hall, Johnson, Taylor, and Weston. Party affiliation and occupation are taken from \textit{id.} at IV-V. R. C. Harriss, a Republican farmer, aligned himself with Cordeal on all the votes except final passage; he explained his Yes vote on the grounds that the bill as amended gave Nebraska “wholesale and retail dealers a better opportunity to compete with jobbers and mail order houses outside of the state. It also proposes to protect the boys of Nebraska in whom I am interested.” \textit{id.} at 764. Republican editor Hammond and Republican farmer Swanson, who did not vote on final passage, had aligned themselves with Cordeal on all other votes, while Republican farmer Warner had deviated only on the reconsideration vote.

\textsuperscript{300}\textit{House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919}, at 784 (Mar. 18).


\textsuperscript{304}“Sanity Wins by a Hair,” \textit{MW-H}, Mar. 20, 1919 (8:2) (edit.).

\textsuperscript{305}See above ch. 15.

\textsuperscript{306}1919 Neb. Laws ch. 180, § 1, at 401.

\textsuperscript{307}1919 Neb. Laws ch. 180, § 11, at 401, 403-404. For examples of the overwhelming volume of large cigarette ads even in small-town newspapers, see \textit{Beatrice Daily Sun} and
cigarette smoking in “public eating places....” 308 The ad ban was repealed in 1925309 in the face of strong opposition, especially in the House, led by Representative Sara Muir, a Lincoln high school English teacher and the first woman elected to the Nebraska legislature, who argued that: “Boys and girls learn only too easily where they can buy cigarettes.” 310 After a number of unsuccessful repeal efforts311—and passage by the Nebraska WCTU at its 1929 convention of a resolution urging enforcement312—the partial public cigarette smoking ban was finally repealed in 1937.313 Finally, unlike Iowa (but like Tennessee), Nebraska did punish those selling cigarettes (or any tobacco) to...

Red Cloud Chief for 1919, 1920, and 1921.
308 1919 Neb. Laws ch. 180, § 12, at 401, 404.
309 1925 Neb. Laws ch. 157, at 400.
310 “Blue Laws Not Yet Extinct, But Scan the List,” Waukeesha Daily Freeman (WI), Mar. 25, 1925 (1:6, at 6:4). The votes were 55 to 38 in the House and 18 to 9 in the Senate. House Journal of the Legislature of the State of Nebraska: Forty-Third Session...1925, at 1057-58 (Mar. 20); Senate Journal of the Legislature of the State of Nebraska Forty-Third Session 1221 (Mar. 28).
311 In 1927 a Senate repeal bill was amended in committee so as to prohibit cigarette smoking only in establishments that prominently displayed “no smoking” placards and was then defeated 13 to 20. “Ban on ‘Pills,’” BDS, Mar. 31, 1927 (3:5). In 1933, repeal bill S.F. No. 22 advanced to third reading without a dissenting vote in a Senate dominated by Democrats 31 to 2, though Senator Harry Kunkel, a farmer, argued that “the law wasn’t doing any harm. ‘Nobody is paying any attention to it, true...but there may come a time when they will want to pay attention to it.’” “May Eliminate Statute Book Dead Timber,” BDS, Jan. 25, 1933 (2:2). Later that session, Republican Representative Jackson Chase, a former Nebraska assistant attorney general and future state district court judge and Congressman, pointed, during floor debate on a 3.2 percent beer bill, to the ban on cigarette smoking in restaurants “as an example of legislating against public demand.” “Attack Wets in Debate in House Chamber,” BDS, Apr. 14, 1933 (1:8, at 2:2-3). The New York Times had reported in 1929 that the law was “as well enforced as the prohibition law.” “Corn Belt States Plan New Tax Laws,” NYT, Jan. 27, 1929 (E2).
313 1937 Neb. Laws ch. 63, at 244. The unanimous (40 to 0) vote (by the first session of the unicameral legislature) suggests that the era of laissez-faire smoking had arrived. Legislative Journal of the State of Nebraska: Fifty-Second Session...1937, at 799 (Mar. 16). Press mention of the ban’s repeal was also perfunctory. “Compromise on Gas Levy; Passage Seen,” Omaha World-Herald, Mar. 17, 1937 (1:6, at 6:3-4 at 4). An editorial in 1931 insisted that although the law had been in effect for many years, “no one pays any attention to it. Cigaretes are smoked daily in restaurants in all parts of the state. Many people are not aware that such a law exists....” NSJ, Mar. 19, 1931 (6:1) (untitled edit.).
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1919 Neb. Laws ch. 180, § 1, at 401 (fine of $100 to $200 or 10 to 60 days’ imprisonment). The lack of such a penalty was “discovered by the friends of the bill” as a “defect” in the midst of House debate and McLeod himself moved to amend. “Defect Discovered in Anti-Cigaret Bill,” MW-H, Feb. 25, 1919 (3:2) (quotes); House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 533 (Feb. 24).


House Journal of the Legislature of the State of Nebraska: Fortieth Session...1921, at 789 (Mar. 2).


House Journal of the Legislature of the State of Nebraska: Fortieth Session...1921, at 318 (Jan. 31) (H.R. No. 555 by Frank Anderson). Anderson had been a representative at the 1919 session but was absent from votes on indefinite postponement and final passage.

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adults. On the other hand, the Nebraska repeal law was more lax—that is, less continuous with prohibition—in the sense that it did not confer power on local governments/communities to perpetuate the sales ban; whereas in Iowa they would have discretion to deny (all) licenses, the Nebraska law provided that “licenses...shall be issued...by the Clerk of any city, town or village, and by the County Clerk of any county” to anyone who filed an application and deposited the license fee (which was also, depending on the size of the locality, only one-fourth or one-fifth of the amount that would be imposed in Iowa, which also required the payment of a $1,000 bond). Unlike the Iowa licensure law, Nebraska’s lacked a sales tax.

Repeal of the 14-year-old cigarette sales ban did not instill a mood of resignation among opponents. On the contrary: almost as soon as the governor had approved the law, the national drug store press reported that the Nebraska “Legislature having repealed the anti-cigarette law,...the anti-tobacconists are planning a campaign to secure even more drastic legislation at the next session.” In fact, a bill was introduced at the 1921 session to repeal the new law and re-enact the old prohibitory law. The bill prompted a rare blip of self-irony in the tobacco trade press, which opined that: “Needless to say, the lobby is on the scene and the lawmakers will shortly know all about why the use of cigarettes is injurious to the health, the morals and mentality of the people, and just why cigarettes are so necessary to maintain the mental poise, the placidity and the robustness of the nation.” The day after the Judiciary Committee had recommended the indefinite postponement of House Roll No. 555 the full House “raised the anti-cigarette bill from the dead” by rejecting the committee

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314 1919 Neb. Laws ch. 180, § 1, at 401 (fine of $100 to $200 or 10 to 60 days’ imprisonment). The lack of such a penalty was “discovered by the friends of the bill” as a “defect” in the midst of House debate and McLeod himself moved to amend. “Defect Discovered in Anti-Cigaret Bill,” MW-H, Feb. 25, 1919 (3:2) (quotes); House Journal of the Legislature of the State of Nebraska: Thirty-Seventh Session...1919, at 533 (Feb. 24).


317 House Journal of the Legislature of the State of Nebraska: Fortieth Session...1921, at 789 (Mar. 2).


319 House Journal of the Legislature of the State of Nebraska: Fortieth Session...1921, at 318 (Jan. 31) (H.R. No. 555 by Frank Anderson). Anderson had been a representative at the 1919 session but was absent from votes on indefinite postponement and final passage.
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report and voting 57 to 37 to put the bill on general file.\textsuperscript{320} In the end, however, the anti-cigarette forces were unable to mobilize more legislators than in 1919, and the bill was indefinitely postponed in the committee of the whole by a vote of 28 to 59. Even among anti-cigarette representatives some attrition took place: of the 14 House members who had voted for indefinite postponement of H.R. No. 297 and/or against its final passage in 1919 and were reelected and voted on H.R. No. 555 in 1921 10 opposed indefinite postponement.\textsuperscript{321}

\textbf{Kansas and North Dakota Strengthen the Last Surviving Anti-Cigarette Laws While Staying Off the Inevitable for a Few Years: Defeat of American Legion-Inspired Repeal}

An exhaustive, Nation-wide campaign, backed by the most prominent and influential anti-tobaccoists in the country, is now being put under way by the Non-Smokers’ Protective League to crystallize all the anti-tobacco sentiment in the country and with it batter down the legislative defenses that have up to the present successfully fought down all the measures that have sought to do away with smoking. ... Already the Women’s [sic] Christian Temperance Unions of various States have joined the movement and have avowedly announced that hereafter one of the principal objects of the Union will be to abolish cigarette smoking. Seventy-five per cent of the men of the country are users of tobacco. The number of women smokers is steadily increasing. ... But forewarned is forearmed. With the inner workings of the tobacco offensive announced and the precedent of [liquor] prohibition standing, the interesting question becomes, What definite steps will men and women who see their smoker’s paradise about to be destroyed take to repel the invaders and turn back their crusade?\textsuperscript{322}

Just as the anti-cigarette forces in Iowa had been able to ward off pro-tobacco efforts to get rid of the 1896 cigarette sales ban law during the 1917 and 1919 legislative sessions before succumbing to repeal in 1921, their counterparts in the two remaining ban states, Kansas and North Dakota, also staved off American Legion-led onslaughts until 1927 and 1925, respectively. Indeed, the anti-tobacco movements’ vitality and staying power in those states were underscored by their

\textsuperscript{320} “Prepare for Finish,” \textit{Red Cloud Chief}, Mar. 10, 1921 (3:4). See also “Nebraska Bans Cigarette Sale,” \textit{Deseret News} (Salt Lake City), Mar. 3, 1921 (1:3).

\textsuperscript{321} \textit{House Journal of the Legislature of the State of Nebraska: Fortieth Session...1921}, at 1403 (Apr. 7). See also “Pass Language Bill,” \textit{Red Cloud Chief}, Apr. 14, 1921 (2:6).

\textsuperscript{322} “Must Milady Stop Smoking in Public?” \textit{Salt Lake Telegram}, Nov. 11, 1923 (22: 1-6 at 1, 4).
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ability during those interims to strengthen their laws to a greater degree than had been the case in Iowa.

Progressive-Politically Based in North Dakota (1919-1925)

North Dakota is probably the most radical state in the Union. ... There are more idiosyncrasies per square inch in North Dakota than in any other state I know. ... North Dakota is the reform state par excellence.323

In 1913, almost two decades after the North Dakota legislature had passed the country’s second statute prohibiting cigarette sales (which then mysteriously was “disappeared” from the state code),324 the Legislative Assembly finally made it unlawful to “manufacture, sell, exchange, barter, dispose of, or give away, or keep for sale any cigarettes, cigarette paper or cigarette wrappers,” subject to a $10 to $50 fine and up to 30 days’ imprisonment in county jail.326 The state

324 1895 N.D. Laws ch. 32 at 31.
326 1913 North Dakota Laws ch. 69, at 83-84. A Senate amendment to kill the House bill by banning cigars and tobacco as well lost on a 24-24 tie vote. State of North Dakota: Journal of the Senate of the Thirteenth Session of the Legislative Assembly 484-85 (Feb. 15) (1913). The amendment’s supporters charged that the legislature should not either “limit the prohibition to one class or nationality” inasmuch as “cigarettes were the national smoke of a large part of the population of the state” or “legislate against the poor man who could not afford cigars but was forced to accept the comforts to be gained from the cheaper smoke in the shape of a cigarette.” Opponents pointed out that “the idea of the bill was not so much to prevent the sale of cigarettes to adults as it was to prohibit the free distribution of cigarette papers to the minors of the state and called...attention to the fact that those who desired to smoke the little white smokes...could send out of the state” for them by parcel post. “Roll Calls Came Fast in Senate,” BDT, Feb. 16, 1913 (1:1, 3:1). Protagonists had been using the same arguments for years. Thus, for example, when the legislature was considering a similar initiative, the press observed that: “The anti-cigarette people are bumping up against what threatens to involve an element of the republican party in revolt. There are in the state a large number of Russians who have settled in the state in the past few years and with whom cigarette smoking is a national custom. For the legislative assembly to pass a law prohibiting the importation of cigarette paper would stir up a
WCTU hailed passage as “the first victory we have ever won over the American Tobacco Company.”

Whereas the American Legion does not appear to have been involved in the legislative repeal efforts in Iowa during the 1917 and 1919 sessions, in North Dakota it sponsored such a measure in 1919, which was defeated by the WCTU, which “maintained a lobby in opposition” to this and similar restrictive bills. Following this legislative setback, the Legion and other groups sponsored submission to the electorate at the presidential preference primary on March 16, 1920, of an initiated statutory measure to achieve the same objective of repeal.

In place of the total sales ban, Initiated Measure No. 2 would have prohibited selling or giving away cigarettes to minors and made it unlawful to sell, exchange, barter, give away, or keep for sale any cigarettes, cigarette tobacco, cigarette wrappers, or cigarette papers without first having obtained a $100 license, which “may be granted” by the clerk of the district court of the county in question.

In the Publicity Pamphlet, which the secretary of state mailed to the electors, The Home Defenders—a “temporary organization formed for the purpose of carrying on this campaign” and led by churches and the WCTU—was the only...
organization to present a position on the repeal of the anti-cigarette and blue laws. Its approach was nicely captured by its paternalistic-communitarian campaign slogan: “You Are Your Brother’s Keeper and This Extends to Taking Care of his Children.” Unlike the WCTU in Iowa, which pursued a long-term health-focused strategy, this group was driven largely by religio-moralistic aspirations (its medical-tinged propaganda being of the most primitive kind, recycling tales of how smokers’ blood killed leeches, the poison inhaled in smoking 20 cigarettes would kill 40 frogs, and the principal injurious agent in cigarettes came from the burning paper wrapper). Indeed, the title of its statement even designated the legislation it sought to uphold in such terms: “Will Try to Repeal Moral and Sunday Laws.” The Home Defenders’ propagandistic starting point was the belief that “the tobacco corporations and film companies are back of the move with SUNDAY PICTURE SHOWS AND THE LEGALIZED SALE OF CIGARETS AS THEIR OBJECTIVE. The cause for haste being wartime sentiment for the cigaret now rapidly changing to antagonism and the expectation of women voting in the near future.” Repeal of the then existing law, which “[p]rohibits sales to anybody,” would, the group guesstimated, “put from one to thirty places where cigarettes will be sold in towns with cigarettes exhibited in show cases and flaunted before the boys with no way to keep them away from the youth.” Looking back at high license liquor laws, under which, despite bans on sales to under-21-year-olds, “95 percent of old topers learned to drink before they were 21,” the Home Defenders asked electors: “CAN YOU SEE THE BIG BRAINS OF THE TOBACCO CORPORATIONS IN THIS MOVE?” The closest that the Publicity Pamphlet statement approached the issue of health was

(M.A. thesis U. North Dakota, 1967), the group was “formed to protect the family from disruptive influences such as liquor and tobacco.” The group’s statement was submitted by F. L. Watkins, who was presumably the same F. L. Watkins who was a Methodist pastor and superintendent of the alcohol-prohibitionist North Dakota Enforcement League. Interstate Traffic in Intoxicating Liquors: Serial No. 2: Hearings Before the Committee on the Judiciary (Subcommittee III): House of Representatives 146 (62d Cong., 2d Sess. 1912); The Anti-Saloon League Year Book: 1913, at 272 (Ernest Cherrington ed. 1913). Watkins was the final speaker pleading for a “clean, moral environment for the state” before a “very large audience” in Fargo two days before the election. “Pleas Are Made Against Repeal,” FF, Mar. 15, 1920 (2:3). 333Home Defense Committee, “Read This and Vote ‘No’ Four Times,” Courier-News (Fargo), Mar. 14, 1920 (13) (advertisement). 334See above ch. 2 and Pt. II. 335Home Defence [sic] Committee, “James Samuel Knox on Cigarettes,” Courier-News (Fargo), Mar. 13, 1920 (2:3) (advertisement); Home Defense Committee, “Read This and Vote ‘No’ Four Times,” Courier-News (Fargo), Mar. 14, 1920 (13) (advertisement).
the stereotypical reference to children’s stunted growth. The character of the group’s core orientation was most visibly on display in its rejection of the proposed repeal of the 1917 state law prohibiting commercial baseball on Sunday with gate receipts: “The world is seething with unrest, hate, selfishness, crime, a mad rush for money and pleasure. Some nations are paying a terrible price for past sins. Would it not be better to strengthen the moral and Christian foundations than to undermine and weaken them?”

The American Legion purported to have brought the measure before the people of the state “with the proviso, that as an organization they would take no stand either way, after having accomplished their object.” According to William T. Kroll, a Legion member and ex-trench soldier in France, who claimed that he had “personally with two or three others initiated this movement after having discussed the matter with thousands of returned service men,” repeal opponents’ statements that “tobacco corporations were financing and backing this movement” were untrue: “Practically all the money to support the movement has been given freely in 50-cent pieces by the boys who went and were willing and ready to make the supreme sacrifice for GOD, COUNTRY and HOME.” Indeed, so poorly financed were the pro-tobacco forces that they lacked funds to hire speakers, “put on a large advertising campaign,” or even to “buy space in the publicity pamphlet issued by the secretary of state,” which cost $200 per page. (Nevertheless, the Fargo-based Young Men’s Independent League, which spearheaded the repeal drive, did have the funds to place a large advertisement in the Nonpartisan League’s Courier-News two days before the vote declaring simply: “If You Believe In Real Americanism Vote 4 Times ‘Yes’ On North Dakota Blue Laws.”) Seeking to justify repeal, Kroll, who signed his letter to the editor of the Fargo Forum a week before the election, “Yours for law and order,” rehearsed the origins of the addiction afflicting his “comrades who fought with...

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338 For the $200 per page price, see North Dakota Publicity Pamphlet: Constitutional Amendments Proposed by the Legislative Assembly and Measures Initiated by Petition to Be Submitted to the Electors at the Presidential Primary Election on, March 16, 1920, n.p. [3] (n.d.). On the Home Defenders as the only buyer of space, see “Pamphlet Space Not in Demand,” FF, Feb. 16, 1920 (3:1).

339 Courier-News (Fargo), Mar. 14, 1920 (2:3-5).
me at the front”.^{340}

When we left, and a number did not return, we were given a great send-off and we were told that nothing was too good for us. We were given CIGARETS and the medical department of the army and navy indorsed them. Everyone did not, only a few saw the hardships of battle, still we were all given cigarettes and encouraged to smoke them. Now most of the boys have learned to like them. Even our small boys smoke them, regardless of our present laws. How many do you know under 18 that haven’t done so?^{341}

In his closing plea for getting rid of laws that a majority of North Dakotans did not observe, Kroll—who appeared unaware that his cavalier reference to “small boys” corroborated the American Legion’s worst enemies’ suspicions that addicted ex-soldiers’ sole objective was unimpeded access to cigarettes regardless of that laissez-faire regime’s impact on the next generation—not only wondered rhetorically whether it was too much to ask the state not to make criminals out of ex-soldiers, but argued that “the boys will not stay at home on the farm or in our small towns, but try to get something to do in” bordering states, whose citizens were as moral and enlightened as North Dakota’s because they lacked Blue Laws.^{342}

In a letter to the editor in the *Courier-News* YMIL President M. J. Loberg played variations on the same theme, asking why soldiers were “allowed these personal rights during our service period in the army” and why they were “not as good today as the day we entered the service, willing to shed our blood on the battlefields four your sake.....” Approaching cigarettes obliquely, Loberg first wondered whether North Dakotans preferred Sunday commercial baseball to rape (“Would you rather have your boys playing baseball where you could see them at all times than to have them take advantage of the other sake of the other sex, going to the woods or somewhere else?”). He finished by pushing his adversaries all the way down the slippery sumptuary slope: “Cigarets classed as a narcotic brings [sic] in this class all tobaccos in any form and also tea and coffee.”^{343}

The anti-cigarette movement sought to deconstruct the argument that sales

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had to be legalized because cigarette smoking had become the norm for soldiers in France. For example, at a civic gathering “representative farmers” from two eastern counties adopted a resolution declaring that: “‘We...protest against making permanent abnormal wartime toleration of the cigaret—inviting the coming generation to the demoralizing cigaret habit.’”344 The Home Defense Committee chimed in with: “But, say boys, you are back home now living under normal conditions. Haven’t you the will power to break such a habit?”345 One especially widely disseminated propaganda piece was an appeal to the members of the American Legion to vote No by Lydia S. Wanner,346 whose son had been killed in France, which was read in every Protestant church in North Dakota on Sunday, February 29. To claims that “the boys” had done so much for their country that nothing was too good for them, that they had become accustomed to cigarettes over there, and were entitled to have them here, Wanner counterposed the notion that: “‘While you were in France, you lived under abnormal conditions.... But now you have returned to normal living.’” Juxtaposing the return of a “‘large per cent of our heroes...with the cigaret habit’” with “‘the fast spreading habit of cigaret smoking among boys, from the first grade up,’” Wanner, astonishingly, stressed the (original package doctrine-driven) porosity of the North Dakota sales ban. With the quasi-make-believe character of the law as her subtext, she implored the Legionnaires:

“It may be inconvenient for you to send [out of state] for cigarets, but if you feel that you must have them are you not willing to do this much for the sake of the boys, with whom you have so much influence? I am sure you realize that if cigarets, or the ‘makings,’ are sold in our state the boys and girls will be constantly tempted, and many more will form the habit than would if cigarets were hard to obtain.”348

A few days later, 300 pastors of the protestant churches of North Dakota attending the Interchurch World movement conference in Grand Forks virtually

344“Farmers Opposed to Repeal of Blue Laws,” Courier-News (Fargo), Mar. 9, 1920 (3:4). The two counties, Grand Forks and Trail, both gave above-average majorities to retention of the cigarette sales ban.

345Home Defense Committee, “Read This and Vote ‘No’ Four Times,” Courier-News (Fargo), Mar. 14, 1920 (13) (advertisement).

346According to the 1920 Census of Population she was a 50-year-old retired farmer living Jamestown.


348“Churches Fight for Blue Laws,” Courier-News (Fargo), Mar. 2, 1920 (8:1).
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unanimously adopted a resolution expressing “‘unalterable opposition to the proposed repeal...of the moral laws, long on our statute books, placed there by the best moral sentiment of our progressive state.’”

The Young Men’s Independent League developed its own approach for mobilizing the Yes vote that was original enough to get it free press publicity. A circular sent out by President Loberg in early March, to the state’s 4,000 pool hall, soft drink stand, soda fountain, and cigar store owners and managers who sold tobacco, urged the 85 per cent of them who, YMIL was “willing to gamble,” were violating the no-cigarette sales law to “cut it out. You will be living up to the law—but you will be kicking up such a roar from the ONE HUNDRED THOUSAND men who smoke cigarettes that it will put every smoker into the fightfull [sic] tilt. If the ONE HUNDRED THOUSAND cigarette smokers in the state have their supply cut off from now until the primary election, March 16, you have ONE HUNDRED THOUSAND VOTES certain. ... Make him [i.e., the customer] a fighter against propaganda [sic] of the sanctimious [sic] hypocrites who, putting their noses in your private affairs, would deprive you of your personal liberty.” Unclear is whether YMIL’s claim that “‘NOT A PENNY HAS BEEN PAID INTO THE FUND [for the circular] BY ANY TOBACCO CORPORATION OR COMPANY’” was any less empirically false than its assertion that because cigarettes had been “‘blacklisted’” “[w]ay back in 1889 when the state was formed...[t]he people of North Dakota have never had a vote on them.” In any event, “[a]s a result of the circular,” according to the Courier-News, “the sale of cigarettes stopped suddenly in Fargo” during the first week in March, forcing “Fargo devotees of this form of nicotine” to cross the Red River into Minnesota “if they wish to continue the habit.”

Interestingly, neither the agrarian quasi-state socialist Nonpartisan League

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349“Ministers Are for Blue Laws,” Courier-News (Fargo), Mar. 6, 1920 (8:1). The ministers seemed most worried about the fact that “‘the churches of some other states...have had the influence of their Sunday program rendered almost nil by the inroad of the Sunday movie....’”

350“Blue Law Enemies Stop Sale of Cigarettes Until Election,” Courier-News (Fargo), Mar. 3, 1920 (3:4-5). In fact, cigarette sales were not banned in North Dakota until 1913 (the 1895 ban law having mysteriously disappeared from the state code). The claim of 100,000 male cigarette smokers in North Dakota—for which no contemporaneous data existed—was highly implausible in a male population over 14 years of age of little more than 200,000 in the most rural state, whose farmers, if they smoked cigarettes at all, rolled their own. U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Part 1, ser. A195-209, at 32 (Bicentennial ed. 1975); North Dakota Leader, Mar. 6, 1920 (6:1) (untitled editorial).
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Regarding the cigarette sales ban initiative, the NPL’s official newspaper, *The North Dakota Leader*, editorially explained that:

> The League has taken no stand on these issues. They are not economic issues. They are moral issues. The League is willing to leave the decision to the conscience of each of its members. Its members are farmers. The farmers rarely come to town Sunday to take in a show. He is not traveling miles to take in a Sunday ball game. Cigarettes hardly touch him—for if he smokes them, he rolls his own. As for boxing—the farmer has his mitts on, all the time fighting Big Biz and its representative, the I.V.A. So he will go to the polls an unbiased judge, and will decided according to his own lights.

Conversely, the NPL newspaper “[w]onder[ed] why the Fargo Forum and other I.V.A. papers, usually so solicitous of the welfare and jealous of the interests of the American Legion are so silent editorially on the moral issues which the returned soldier boys have put up to the people at this election.” Because the *Forum* was bought by city people and spoke for “the business interests,” the *Leader* asked whether the former was so certain that all of them would support the Legion that it could “afford to preserve” its “gigantic silence” on behalf of the “the soldier boys it pretends to love so dearly....” In fact, two days earlier, the other Fargo NPL organ, the *Courier-News*, had headlined a front-page, first-column, above-the-fold article: “Bosses of I.V.A. Are for Repeal.” Reports and rumors to that effect had been circulating for several days among prominent church workers “and was given fresh impetus when an official of the American Tobacco Co.” had been in Fargo a few days earlier and had been “in conference with certain of the higher-ups in the I.V.A.....” To be sure, rather than straightforwardly charging that cigarette manufacturers were simply seeking to stamp out opposition to sales of their commodities, the *Courier-News* quoted an unidentified supporter of the Vote No campaign as having offered the (bizarre,

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353 *North Dakota Leader*, Mar. 6, 1920 (6:1) (untitled edit.).

354 *North Dakota Leader*, Mar. 6, 1920 (6:1) (untitled edit.).
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convoluted, and counterintuitive) explanation that “if the opponents of the moral laws succeed in repealing them, this fact will be heralded all over the world by the big business press as evidence that North Dakota is going to the dogs morally and that this is the beginning of what the opponents of the farmers’ program have predicted was coming in this state.”

Although a blizzard on election day that prevented many farmers from getting to the polls prompted speculation that city dwellers might be in a position to secure adoption of the repeal agenda, in fact, as the front-page banner headline in the Courier-News put it, “FARMER VOTE WILL SAVE BLUE LAWS”. 27,212 or 53.0 percent of the 51,364 voters opposed repeal of the cigarette sales ban. The cigarette oligopoly, which pretended, at least for public relations purposes, that the North Dakota (and Kansas and Iowa) laws were “purely ‘fanatical,’” did not explain the sales ban’s plebiscitarian retention in North Dakota. The vote total amounted to only about one-fourth of the number of ballots cast at the November presidential election and less than 8 percent of the total state population, but it nevertheless revealed certain significant fissures. The No vote prevailed in 33 of 53 counties, but the pro-repeal forces gained a majority in the four largest cities; however, the larger the city, the smaller the majority: the Yes vote ranged from 71.8 percent in Bismarck (7,122), to 61.5 percent in Minot (10,476), to 52.5 percent in Grand Forks (14,010), to 52.1

355 “Bosses of I.V.A. Are for Repeal,” Courier-News (Fargo), Mar. 4, 1920 (1:1).
357 “Farmer Vote Will Save Blue Laws,” Courier-News (Fargo), Mar. 19, 1920 (1).
358 Calculated according to North Dakota Secretary of State, Compilation of Election Returns, National and State, 1914-1928, at 34 (1930) (copy furnished by North Dakota Secretary of State). Sunday baseball was also defeated, while the boxing and Sunday movies laws were repealed.
359 “Few Reformers Fight Tobacco,” Grand Forks American, Mar. 11 [should be 12], 1920 (1:2). A tobacco selling company in Fargo informed TMA that repeal failed in 1921 because legislators lacked the “backbone to stand on their own convictions. They were all apprehensive of the effect upon their own local church element and reform organizations.” TMA, “Excerpts from Letters Received from the Trade: North Dakota Favoring Repeal Activities” at 5 (n.d. [ca. Nov. 1922]), Bates No. 501870682 (Reineke Co.).
361 Calculated according to Bureau of the Census, Fourteenth Census of the United States Taken in the Year 1920: Population: 1920, tab. 5 at 16 (1921).
percent in Fargo (21,961). Since these four cities accounted for only 8.3 percent of the state’s population and only 12.4 percent of all votes cast on the cigarette initiated measure, their aggregate 56.8 percent pro-repeal majority was unable to trump the tide of rural votes.\textsuperscript{362} The view that Norwegian Lutherans favored “morality legislation” while German-Russian Catholics opposed it\textsuperscript{363} found some corroboration in the voting patterns. (During the run-up to the initiative election temperance workers and church leaders were confident that they could rely on the farmers in the northern half of the state, especially the overwhelming majority who were Scandinavians and “devout members of the church and rigid in their observance of the Sunday laws,” to perpetuate “the exclusion of the cigaret from North Dakota.”\textsuperscript{364} Not coincidentally, the Nonpartisan League’s strength was also concentrated in the western and north-central regions.)\textsuperscript{365} In 1920, when Norway was the country of birth of the largest number of foreign-born whites in North Dakota (38,190), of the 16 counties with more than a thousand such persons 12 voted against repeal. Conversely, six of the 13 counties with more than a thousand Russian-born residents—Russia being the country of birth of the second largest contingent of foreign-born whites (29,617)—voted for repeal, several of them by wide margins.\textsuperscript{366}


\textsuperscript{363}Mariellen MacDonald Neudeck, “Morality Legislation in Early North Dakota (1889-1914)” at 94-99 (M.A. thesis U. North Dakota 1964). See also above this ch. on Russians’ use of cigarettes.

\textsuperscript{364}“Church Men Predict Blue Laws Victory,” \textit{Courier-News} (Fargo), Feb. 29, 1920 (12:3).

\textsuperscript{365}Michael Rogin, \textit{The Intellectuals and McCarthy: The Radical Specter} 123 (1967). On the low affinity of Russian-German Catholics for populism, progressivism, and NPL, see \textit{id}. at 109-24.

\textsuperscript{366}Calculated according to North Dakota Secretary of State, \textit{Compilation of Election Returns, National and State, 1914-1928}, at 34 (1930) (copy furnished by North Dakota Secretary of State); Bureau of the Census, \textit{Fourteenth Census of the United States Taken in the Year 1920, Vol. III: Population: 1920}, tab. 12 at 764 (1922). There was no overlap between counties with more than a thousand Norwegian- and Russian-born residents. The counties with more than a thousand Russian-born residents that strongly favored repeal of the cigarette sales ban included Emmons (64.1 percent), Grant (67.2 percent), McIntosh (60.3 percent), Morton (65.4 percent), and Stark (68.4 percent). These five contiguous
Although the press predicted that the results of the initiative vote might “precipitate a fight” during the 1921 legislative session over local option and home rule inasmuch as they revealed that “with a very few exceptions every city, town and village in the state registered a majority in favor of the repeal of the these sumptuary laws, while the rural communities voted retention,” in fact the legislature moved in the opposite direction.

In March 1920, a few days before the initiated measure election, the state attorney general had issued an opinion interpreting the cigarette sales ban as seeking to prohibit neither the importation of cigarettes (for personal use) nor agents from taking orders for sales occurring outside of North Dakota. More specifically, agents were permitted to solicit orders from persons in the state to be sold by out-of-state dealers. Moreover, if the agent-solicitor’s and the orderer’s intention was that the sale was “‘to take place at the time the foreign cigaret dealer accepts the order and delivers the consignment to the carrier, then of course the sale takes place outside of the state of North Dakota and beyond the jurisdiction of our cigaret law.’” Much more generously, the attorney general opined that even in the absence of any intention, “‘the natural presumption would be that the parties to the agreement did not intend to violate the law, and contemplated that the sale should take place outside the state.’” This opinion that it was as lawful under the sales ban for an in-state agent to process orders for cigarettes to be sent by out-of-state dealers as it was for the latter to mail them directly to consumers in North Dakota was directly repudiated by the legislature a year later.

In 1921, just as Iowa was abandoning its total ban on sales, North Dakota strengthened its commitment to prohibition in three significant respects by: (1) passing a partial anti-public smoking law; (2) prohibiting in-state agents from facilitating orders filled by out-of-state dealers; and (3) killing a bill to license cigarette sales. House Bill No. 154 diminished the leakage permitted by the

367 “May Fight over ‘Blue Laws,’” Wells County Farmer, Mar. 25, 1920 (1:5).


370 See below this ch.

371 The anti-cigarette forces’ ability to secure enactment of strengthening legislation in
U.S. Supreme Court’s interstate commerce-based original package doctrine that enabled individual buyers to order cigarettes from sellers in other states for their own personal consumption by compelling those consumers to undergo the inconvenience of arranging their out-of-state purchases on their own. Specifically the amendments to the 1913 act made it unlawful for anyone to “solicit, receive, or procure from, or aid in soliciting or procuring from any person within this state any order, directions, or instructions providing for, or in any manner relating to the delivery, purchase or sale, either within or from without the state of North Dakota for any cigarettes.” The new law also made the owner’s (or his employee’s) keeping of cigarettes in his public place of business prima facie evidence of keeping them for sale; this presumption did not apply to cigarettes, “in reasonable quantities, that are carried upon the person” of the owner or his employees “for their own personal use.” And finally, the 1921 amendments also increased the fine for first offenders from $10-$50 to $25-$100 and the maximum fine for repeat offenders to $300. The measure passed both houses by large majorities; the vote was not strictly along factional lines, but the capitalist-conservative Independent Voters Association wing of the Republican Party—which had wrested control of the House (59-54) in the November 1920 election from the Nonpartisan League—while hardly opposing the bill as a bloc, supported it much less intensely than NPL. In the House, where the vote was 79 to 12, IVA accounted for 9 of the 12 Nays. In the Senate, still
controlled by NPL 25 to 24, of the 16 senators who voted to postpone the bill indefinitely 15 were IVA members and only one belonged to NPL.\textsuperscript{378} On final passage, NPL members voted by an overwhelming 22 to 3 for the bill, while more IVA members (14) voted Nay than Aye (10).\textsuperscript{379} The Nonpartisan League’s position on cigarettes and smoking may be understood in the context of NPL’s advocacy of constitutionally anchored statewide liquor prohibition and declaration of a state temperance day to be observed in public schools.\textsuperscript{380}

Even more consequential was the “overwhelming”\textsuperscript{381} (31-76) defeat inflicted in the House a few days earlier on House Bill No. 117 to license cigarette sales for a $50 fee.\textsuperscript{382} Although the vote, once again, was not strictly along factional lines, IVA—one of whose members, A. B. Carlson, introduced the bill—voted much more heavily for licensure than did NPL.\textsuperscript{383} Advocates of licensure argued
that it ‘‘would be more effective in keeping the cigarette away from the use of minors. ... We have made the license high, so that probably not over one or two in a small community would handle cigarettes, and they could be easily watched. ... Under present conditions cigarettes are easily obtainable and there is no control.’’ Opponents, to judge by the excerpts from the ‘‘liberal debate’’ published by the press, were presumably pursuing heterogeneous agendas. One of them, for example, ‘‘agreed there was ‘a lot of solace in a pipe or cigar,’ but he couldn’t believe there was in a cigarette.’’

At the National WCTU’s annual convention later that year its anti-narcotics department, contrasting legislative progress in North Dakota with Iowa’s failure, highlighted the state organization’s key role:

North Dakota defended its law and instead of weakening it, a stronger law was enacted. It is [a] misdemeanor to have even the makings of cigarettes in your possession. No advertisements or solicitations of orders for cigarettes can be made in the state. Smoking is absolutely forbidden in any restaurant, cafe or eating place except in a room specially provided and designated as a smoking room. The state president, the corresponding secretary and state treasurer were most active in securing this law.

In spite of these achievements of the anti-smoking and anti-cigarette movement, nicotine’s tightening grip on its millions of addicted consumers that was sweeping the country inexorably overcame the opposition in the two hold-out states. As cigarette manufacture reached 51 billion (or more than 500 per capita) in 1921, the *Bismarck Tribune* correctly judged that the “anti-cigaret people have a whale of a job on their hands.” (Production had doubled since 1916 and would double again by 1928.)

During the 1923 session, when “[t]he biennial question of licensing the sale of cigarettes in North Dakota cropped up again,” both the House and Senate were still able, despite the local tobacco firms’ assurances to TMA that prospects

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4]:5).
386“Smokes,” *BT*, Sept. 16, 1921 (4:2) (edit.).
388“Antimask Bill to Be Passed in the House,” *BT*, Jan. 29, 1923 (2:5-6 at 6).
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for repeal were much brighter in 1923,\textsuperscript{389} to fend off cigarette sales legalization, licensure and tax bills at the 1923 session handily.\textsuperscript{390} One reason for their failure was that, as the \textit{U.S. Tobacco Journal} was constrained to concede, North Dakota cigar and tobacco dealers were “not interested because they say there is no money to be made in selling cigarettes if such prices prevail, as in other open states.”\textsuperscript{391}

In 1925, however, the new governor, Arthur Sorlie, imparted a forceful impetus to the repeal movement in his inaugural message when he “startled the North Dakota Legislature”\textsuperscript{392} by declaring:

\begin{quote}
The taking of snuff, and the smoking of cigarettes are habits, while to some of us these habits may appear undesirable, unhealthful and filthy, yet there is nothing inherently vicious in either; which should be inhibited by law; and these statutes are not supported by an enlightened public opinion. ... While it is legally possible to purchase the same beyond the state, and have them delivered by the United States Mail at his door, yet it is a crime for anyone to sell or give away snuff or cigarettes and a person who passes to a friend a package of cigarettes, or even one cigarette is made a criminal. This condition is unhealthy and leads to disrespect for the law.\textsuperscript{393}

Instead of seizing the opportunity of a teachable moment to discourse on the
\end{quote}

\textsuperscript{389}TMA, “Excerpts from Letters Received from the Trade: North Dakota Favoring Repeal Activities” at 5-6 (n.d. [ca. Nov. 1922]), Bates No. 501870682-3.


\textsuperscript{392}“Sorlie Assails Blue Laws,” \textit{NYT}, Jan. 8, 1925 (44).

\textsuperscript{393}“Text of Address of Gov. Sorlie to Legislature,” \textit{BT}, Jan. 7, 1925 (2 [sic; should be 4]:1-6 at 4).
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glories of federalism, the interstate commerce clause, the U.S. Supreme Court’s original package jurisprudence, and the states as laboratories for social experiments, Sorlie—a conservative Grand Forks businessman who, though not a member, was nevertheless backed by NPL despite opposition by its more radical elements—a five-cent per package tax that might generate $500,000 in tax revenue. (That the existing sales ban law had some bite was suggested by the estimate that one-third of smokers bought their cigarettes outside of North Dakota.) Sales prohibitionists mounted an energetic attack on the repealer—one representative shouted during House floor debate: “‘Some money is too damn dirty for me” but the Senate passed it by an overwhelming majority of 40 to 9, while the House vote was a somewhat closer 78 to 33, and legalization of the emergency measure took effect on April 1. Thus, as the United States entered the second quarter of the twentieth century, Kansas became the only state still prohibiting the sale of cigarettes.


395 “Text of Address of Gov. Sorlie to Legislature,” BT, Jan. 7, 1925 (2 [sic; should be 4]:1-6 at 4).

396 “Hearing Held, Opposition to Bill Is Shown,” BT, Jan. 21, 1925 (1:8).


400 1925 North Dakota laws ch. 106 at 112. For a detailed account, see vol. 2. Implying that the law had been a dead letter, the United States Tobacco Journal reported that: “The retailers in the state are not in favor of having the bill repealed. They are better satisfied with a closed state.” “New Des Moines Firm to Wholesale the Consolidated Lines,” USTJ 103(7):34 (Feb. 14, 1925).
Religio-Moralistically Based in Kansas (1917-1927)

Kansas...is going to bully, cozen, intimidate, placard and educate the cigarette out of existence.\(^{401}\)

Kansas. There the moral forces have joined in a holy war against the cigarette, and all the machinery of the Woman’s Christian Temperance Union has been turned over to the enemies of tobacco. ...

However...there is a grave defect in the Kansas Anti-Cigarette law. The statute provides that the confiscated matter shall be burned. As a glorious auto da fé the spectacle of 20,000 cartons going up in smoke in the Court House square or the fair grounds would be satisfactory to all friends of the right, but it would not exactly have a sweet savor in their nostrils. The Anti-Cigarette law is based on the belief that cigarettes are poisonous. So long as they are permitted, only the individual smoker is harmed. But if they are burned in public the pure air of the entire State of Kansas is poisoned by the noxious exhalations and a whole people may be expected to sicken and pine away. Better take the vile things out and drown them in the nearest river.\(^{402}\)

In 1909, by very large majorities in both legislative chambers, Kansas joined the ranks of the states that prohibited the sale of cigarettes or cigarette papers to anyone,\(^{403}\) thus imparting, in the words of the *Topeka State Journal*, “a rude jolt in the solar plexus” to “Old ‘Personal Liberty’....”\(^{404}\) Though 1909 turned out to be the peak year for the number of state statutes in force nationwide (11),\(^{405}\) by 1917, when only seven were still on the books, the production of cigarettes was soaring, and the United States was about to enter the World War, the Kansas legislature, which was also in the midst of considering at least a dozen liquor prohibition bills to enhance the state’s “bone dry” status\(^{406}\) and in fact passed a

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\(^{401}\)“Kansas Off on Another Crusade,” *Survey*, 37:494 (Jan. 27, 1917).


\(^{403}\)House Journal: Proceedings of the House of Representatives of the State of Kansas: Sixteenth Biennial Session...1909, at 292-93 (Feb. 1) (1909) (H.B. No. 196 passed 73 to 6); Senate Journal: Proceedings of the Senate of the State of Kansas: Sixteenth Biennial Session...1909, at 441-42 (Feb. 26) (1909) (H.B. No. 196 passed 29 to 7); 1909 Kansas Session Laws ch. 257, at 623. The act also prohibited minors from smoking in public. For a comprehensive account of developments in Kansas, see vol. 2.


\(^{405}\)See above Table 2.

\(^{406}\)“Twelve Ways to Make Kansas Dry,” *TDC*, Jan. 25, 1917 (5:3).
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bill outlawing keeping intoxicating liquors for personal use, strengthened its cigarette ban in two significant ways. First, the 1917 amendments powerfully enhanced the state’s capacity for enforcement by providing that:

If, upon what seems to be reasonable evidence any person, company or corporation is suspected of having in his or its possession any cigarettes or cigarette papers intended to be offered for barter, sale or free distribution; then, upon the sworn complaint of any citizen of the state of Kansas, specifying fully as to the alleged facts in the case, any officer authorized to make arrests may search the premises of such person, company or corporation and may confiscate any cigarettes or cigarette papers so found. The possession of such cigarette materials shall be considered prima facie evidence of a direct violation of this act.

And second, the new law, as companion legislation to the bone-dry liquor law, sought to suppress demand and distribution by making it unlawful to advertise cigarettes or cigarette papers, or any disguise or subterfuge of either of these, in any circular, newspaper or other periodical published, offered for sale or for free distribution in the state of Kansas. It shall also be unlawful for any person, company or corporation to advertise cigarettes or cigarette papers on any street sign, placard or bill board; or in any package of merchandise, store window, show case, or any other public place within the state of Kansas.

Support for such governmental interdiction of cigarette advertising had arisen in various organizations primarily concerned about young people, including college students. Preemptive action was taken by the State Association of School Board Members (encompassing 150 such boards) in adopting a resolution “declaring its intention to have all cigarette advertising clipped from newspapers and magazines coming into their school libraries. These clippings are to be sent back to the publisher with a protest.” The State Federation of Women’s Clubs,
which, in connection with organizing a department to combat cigarettes, specifically requested a statute banning their advertisement. These initiatives reflected the activities of a larger movement led by the recently established Department of Child Welfare at the University of Kansas. The first of its kind at an educational institution when inaugurated in 1913, the Department was soon undertaking, inter alia, to “bring the home, the school, the church and the community into closer cooperation in their service of the young” as well as to “foster the church and Sunday-school activities of the young and connect these with other forms of juvenile training.” Of special relevance in the present context was its program to “make a plan whereby the State W.C.T.U., the State Federation of Clubs, the State Sunday School Association, the State Teachers’ Association, and the State Executive Department, and many other such agencies may all act together in an effort to drive the cigarette out of Kansas.”

This anti-cigarette mission was inspired by the Department’s head, William Arch McKeever, who until then had been a philosophy professor at Kansas State Agricultural College, where he published a series of Home Training Bulletins, the very first of which was devoted to The Cigarette-Smoking Boy. McKeever declared at the outset that it was not his purpose to attack smoking generally, since a “majority of the best and ablest men of the country are smokers,” who “unquestionably get a great deal of satisfaction out of their cigars and pipes,” but he nevertheless stressed that smoking’s tendency among habituated smokers to “drive away depression and to make him [the smoker] better satisfied with his lot” did not represent an “advantage[ ] over the non-smoker....” Moreover, smoking was “somewhat filthy at its best, and disgustingly filthy at its worst, as the ordinary smoking-car will bear witness. Often, in public places, even refined women are forced to breathe the sickening fumes coming direct from the nostrils of some coarse, brutal cigarette smoker.” As early as 1909 McKeever was convinced that smoking was “entirely unnecessary to the development and refinement of the race, and it will in time doubtless go the way of the liquor-drinking habit.”

By 1915 the Journal of Education, hailing McKeever as “the fiercest anti-
cigarette leader that the colleges and universities have produced,"416 published one of his diatribes demonstrating his possession of considerable (secular) polemical verve:

The greatest moral conflict of its kind that the country has ever seen is going to be staged soon with the American boy in the center of it, a conflict to determine whether his destiny is to be controlled by the powerful nicotine trust or by his parents, teachers, and the others rightfully appointed to do so. ... 

Men Teachers of America! Which side of this struggle for the independence of the ordinary boy are you on—the side of the duke of nicotine, or the side of the boy and his devoted mother? All of you teachers of boys who are known by these boys to be users of tobacco—all of you have gone over to the enemy. ... If you...go over to the enemy via the nicotine route, then we shall lose this fight for at least a generation to come. ...

The cigarette is by far the greatest menace to our American boyhood and youth... 417

Although McKeever was well aware of the heightened deleterious health impact of inhalation, especially with regard to the heart,418 his propaganda was weighted toward alleged moral failings such as “sex perversion” and lapse of religious sensibilities.419

In an action challenging the validity of the cigarette advertising ban by the publisher of a Kansas City, Missouri newspaper, a federal court upheld the law as applied to Kansas but not out-of-state newspapers:

while the business of bartering, selling, or in any other manner disposing of cigarettes in this state, or the business of advertising in any manner by any one within this state of the business of selling or disposing of cigarettes, is by the act in question properly prohibited, yet by reason of the exclusive control of Congress over interstate commerce it must, I think, be held, as the conduct of interstate commerce in cigarettes may not by a state be prohibited or unreasonably burdened, it follows, of necessity, the business of advertising such interstate commerce business, which advertising itself not only is a form of interstate commerce, but further adheres in the very conduct of the interstate cigarette business itself, is also beyond the power of the state to prohibit or make criminal and punish, and this for the reason it cannot be thought possible to make the advertisement of a lawful business unlawful and punishable as a crime.420

To be sure, Judge John Pollock felt no inhibition about revealing his own personal contempt for the entire regime of governmental control of cigarettes sales:

it appears to have been the obvious legislative intent to prohibit absolutely and forever the barter, sale, gift, or other disposition of cigarettes in any form or manner whatsoever within this state. To accomplish this so-called beneficial result the law-making power thought it proper and necessary to prohibit and punish any one who within the state should by any writing, sign, or other means advertise the sale, gift, or other disposition of the nefarious article, lest the citizen, learning the source from which the same might be procured from without the state, should be tempted to so procure it, bring it into the state, and use it to his hurt.

It is quite probable this well-meant, even if misguided, legislation is within the constitutional power of the state in the exercise of its reserve police powers....

Kansas City (Kansas) lawyer and Republican Senator James Getty expressed his contempt sarcastically in a different direction when he twitted one of his colleagues on the Senate floor by asking whether he did not know that “this bill is going to hamper the great uplift? Does he not know that the newspaper that lies awake at night planning for the uplift of Kansas gleans perhaps $500 a day from the advertising of cigarettes and tobacco? Surely the senator cannot mean to aid in striking at the instrument of the uplift?”

The radical sentiment underlying the bill is documented not only by the overwhelming vote of 101 to 4 for passage in the House (both Socialist Party members voting Yea), but especially by the 38 to 1 vote in the Senate, to amend the bill to ban the use of cigarettes as well. Whether this almost unanimous vote to abolish cigarette smoking was meant in earnest is difficult to discern inasmuch as “[f]riends of the measure declare[d] that the Senate action w[ould] make the bill unconstitutional and [w]e[re] making an attempt to have the

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422 “Senate Decides Cigaretts Can’t Be Smoked Here,” TSJ, Mar. 7, 1917 (1:7 at 2:3).
424 Senate Journal: Proceedings of the Senate of the State of Kansas: Twentieth Biennial Session...1917, at 576 (Mar. 7) (1917). The amendment to ban cigarette use was offered by Republican lawyer Baxter McClain, whose lengthy entry in the contemporaneous multi-volume hagiographic biography of Kansans shed no light on why he might have been such an anti-cigarette militant. William Connelly, A Standard History of Kansas and Kansans 5:2313-14 (1918).
amendment removed when the measure is taken up again in the House." The *Topeka State Journal*’s report that insertion of the “obnoxious word...was made possible by the intense desire of several senators to go as far or farther than the constitution will permit” failed to explicate that desire’s underlying substance, though its account of the mechanics of the vote suggested that the near unanimity was illusory: “The extremists, joined with the opponents of the bill, formed a coalition on the spur of the moment and voted the amendment in.” The extremism decried by the press may have been exemplified by newspaper publisher and Senator J. M. Satterthwaite, who “branded the whole tobacco habit as a horrible thing. He drew no lines. He declared every tobacco user in the senate was a slave and would be glad to be free of the habit.”

Although the House rejected this amendment and it was dropped in conference, the House itself, a month before the Senate had adopted the aforementioned amendment, had passed an even more far-reaching prohibition of cigarette use. Defeat of both measures to ban the use of cigarettes did not, however, stop the *United States Tobacco Journal* from purporting to explain a Kansas cigar company’s decision to move to Missouri by disinforming its readers that the newly enacted Kansas anti-cigarette law, “the most drastic one yet passed in any state,” prohibited use and possession.

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426“Senate Decides Cigarets Can’t Be Smoked Here,” *TSJ*, Mar. 7, 1917 (1:7). Based solely on this one article, R. Alton Lee, “The ‘Little White Slaver’ in Kansas: A Century-Long Struggle Against Cigarettes,” *Kansas History* 22(4):258-67 at 262 (Winter 1999-2000), claimed that a “powerful lobby of women’s clubs...persuaded some senators to amend [the bill] by adding the word ‘use,’” but the article not only nowhere stated or supported such a claim, but actually undermined it by pointing out that: “Senator Bergen..., champion of all measures urged by the club women, was tipped off by the lobby that the senate had ‘gone and done it,’ and having voted for the wicked amendment moved a reconsideration.” “Senate Decides Cigarets Can’t Be Smoked Here,” *TSJ*, Mar. 7, 1917 (1:7).

427*House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917*, at 770 (Mar. 7) (1917) (motion to nonconcur in Senate amendment and to appoint a conference committee prevailed).

428*House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917*, at 807 (Mar. 8) (1917) (vote was 86-5); *Senate Journal: Proceedings of the Senate of the State of Kansas: Twentieth Biennial Session...1917*, at 606 (Mar. 8) (1917) (vote was 24 to 11); “Anti-Cigaret Bill,” *TSJ*, Mar. 8, 1917 (2:2).

429See below this ch.

430“ Quits Kansas Due to ‘Anti’  Freak,” *USTJ*, vol. 87, at 12 (Apr. 7, 1917).
By 1919 the Kansas attorney general decided to crack down on flouting of the state’s anti-cigarette legislation. In a letter he directed all county attorneys to enforce it strictly:

“War conditions caused an extensive use of cigarettes among the soldiers.... It seemed for a time that the Legislature would repeal the anti-cigarette law. However, that did not happen and it remains our duty to see that it is enforced.... I trust, therefore, that the State will have the earnest cooperation and that you will take such steps as will be necessary to stop the violations of the law.”

Thus, especially in the wake of the Kansas Supreme Court decision in 1920 upholding the statute on the grounds that the state was competent “to determine for itself the extent to which it will go in the restriction or prohibition of the sale or use of that which is deleterious to the public health or morals” and to determine that “the sale of cigarettes was a greater menace to the health and welfare of the people than would be the sale or use of tobacco in other forms,” the forces advocating strict enforcement of the Kansas “statute against the enormity” extended—contrary to the sarcastic editorial comment in The New York Times that “[t]here can be little doubt that in the course of a million years or so the physique of truckmen, stevedores and other slaves of the cigarette will degenerate”—far beyond the Anti-Cigarette League and Lucy Page Gaston. Indeed, “[l]ocal officers...conducted raids, confiscating cigarettes and prosecuting vendors in various parts of the State.” In particular, two days before Christmas 1920, the state attorney general formally requested that two county attorneys investigate reported violations of the anti-cigarette statute and prosecute the violators if the evidence so warranted. Two high-profile cases were virtually designed to incite pro-tobacco elements by pushing enforcement of the Kansas ban on the sale or gift of cigarettes to provocative extremes. One involved 19 men in Atchison who, several days after Gaston had written President-elect Harding asking him not to smoke cigarettes, each chipped in 10 cents for a carton of cigarettes which they mailed as a gift to Harding accompanied by a

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433“A Great Kansas Movement,” NYT, Nov. 16, 1920 (11) (edit.).
letter, in which they purported “‘not necessarily [to] defend cigarettes,’” but expressed their resentment of the “pernicious audacity on the part of a female who writes you such an insulting letter under a Kansas dateline.” In the other, Topeka women and the local American Legion post had sent gifts of cigarettes to disabled soldiers at an army camp and in a state hospital.\textsuperscript{437}

The mind-set of entitlement that characterized addicted World War veterans was stereotypically captured in a letter to Kansas Governor Henry Allen from “A SOLDIER WHO HAS BEEN OVER THERE.” In it Michael W. Birmingham\textsuperscript{438} urged the governor to add repeal of the cigarette sales ban to the agenda of the special legislative session he had called for June 1919 to ratify national women’s suffrage:

[Y]ou and several others of the big men of the state spent your time and money willingly during the recent war in order to aid and comfort our soldier and sailor boys in their work. Nothing was too good for them. You, yourself, were connected with the RED CROSS and YMCA work and one of your principal duties was to see that the boys were well supplied with cigarettes. Are these boys not as good now as they were then? Why is it that when they take off their uniforms they are no longer allowed to smoke a cigarette? ... Do you expect your brave sons of Kansas, of whom you have repeatedly said you are so proud, and who have spent the last two years in hard training and fighting, and with whom the cigarette was their boon companion, to take off their uniforms and throw away their cigarettes, which were their best friends? Is it not a fact that when one of us was injured “over there” and sent to an evacuation hospital for first aid treatment that [sic] the first thing with which the RED CROSS NURSE greeted us was a cigarette?

You erect triumphal arches for us to march under on our victorious home coming march, but do you stop and consider that one of us may want a “Camel”?\textsuperscript{439}

The next day, after the American Legion post had adopted a resolution denouncing Attorney General Richard Hopkins for having ordered the organization’s rooms to be raided and the gift cigarettes to be seized, he charged that interests opposed to him were behind the resolution—the Wholesale Grocers Trust and Associated Industrials (previously known as the Employers

\textsuperscript{436}“Cigarettes for Harding,” \textit{NYT}, Dec. 23, 1920 (2).

\textsuperscript{437}“Hopkins Is to Fight the Sale of Cigaretts,” \textit{HN}, Dec. 23, 1920 (1:3).

\textsuperscript{438}At the 1920 Population Census (HeritageQuest) the only Michael W. Birmingham in Kansas was a 22-year-old railway office clerk.

\textsuperscript{439}Michael W. Birmingham to Hon. Henry J. Allen, Governor, State of Kansas (June 13, 1919), Governors Office, Governor Henry Allen, Box 14, Folder: Legislative Special Session 1919, KHS, on http://www.kansasmemory.org/item/213692.
The seizure in February 1921 of 25,000 cigarettes at a wholesale grocery warehouse was one of the largest “since the attorney general recently began to bestir himself in the cause of the anti-cigarette law and insist on its rigid enforcement.” (By the time he issued his 1921-22 Biennial Report, the attorney general was sufficiently attuned to the needs of enforcement that he observed that the anti-cigarette law “could be made more effective by extending the power of injunction similar to the provisions now in effect for the enforcement of the [liquor] prohibitory law, the gambling law and the bawdy-house law.”)

Escalating the conflict, the same American Legion branch in the state capital began “demanding repeal” of the ban on sales to adults. The ex-soldiers’ chief protagonist—Professor McKeever, author of the very anti-cigarette law that the Legionnaires wanted wiped off the books—charged that the Legion’s resolution requesting the governor to urge repeal had been “inspired by certain big interests.” After the Legion had suggested that the governor remove McKeever from the university payroll, the latter challenged the Legionnaires at the beginning of 1921 to debate the question: “Resolved, That the cigaret is a menace to the progress of society and should be done away with.” More interesting in terms of his ideological orientation was his appeal to the American Legion to “turn from the selfish cigaret” and ‘come out on the side of Christ and Kansas.’

The New York Times, closely monitoring this episode from afar and waxing sarcastically libertarian, editorially suggested that the Legionnaires could achieve a “noble revenge” than evicting McKeever from his professorial chair by identifying some of his “human weaknesses,” finding out something that he liked and that they did not (such as tea, coffee, or banana sundaes), and “get[ting] the Legislature to prohibit these selfish things.” McKeever, the department director of the Presbyterian National Board of Temperance and Moral Welfare, soon achieved an even higher national profile when, at the beginning of February, he announced that Kansas was “going to try to wipe out ‘the weed’ as it did ‘booze,’ and lead an anti-cigarette campaign” of which he had been made

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441 “Seized 25,000 Cigarettes,” HN, Feb. 11, 1921 (9:2).
443 “Kansas Row on Cigarettes,” NYT, Jan. 4, 1921 (18). The Topeka post was not the only one to favor repeal. E.g., “Against Non Partisan,” HN, Jan. 14, 1921 (13).
445 “Kansas Row on Cigarettes,” NYT, Jan. 4, 1921 (18).
446 “Kansas ‘Prof’ Dares Legion to Cigaret Debate,” CT, Jan. 4, 1921 (1).
447 “Professor and Legion,” NYT, Jan. 5, 1921 (11) (edit.).
field secretary.\footnote{448} Even before the legislature had convened, Senator Paul Kimball, a Republican farmer, announced that he would introduce the repealer leaving intact only the regulation of minors and adding a licensure regime.\footnote{449} Kimball did in fact file such a bill soon after the session opened,\footnote{450} and the issue sparked “[o]ne of the most spectacular fights of the 1921 legislature” pitting the American Legion and its Women’s Auxiliary against McKeever, Gaston (who registered as a lobbyist), the Anti-Cigarette League, and State Superintendent of Public Instruction Lorraine Wooster\footnote{451} (a monumentally militantly moralistic “bitter foe of all things nicotine”)\footnote{452} and resulting in consideration before a joint session of

\footnote{448}“Kansas to Fight Tobacco,” NYT, Feb. 4, 1920 (11).

\footnote{449}“Kimball Would Repeal Anti-Cigarette Law,” HN, Jan. 4, 1921 (1:1).

\footnote{450}Senate Journal: Proceedings of the Senate of the State of Kansas: Twenty-Second Biennial Session...1921, at 40 (Jan. 18) (1921) (S.B. 65, by Kimball). The bill text was published in “Tobacco Battle On,” IDR, Jan. 21, 1921 (1:7). Almost four weeks later the national newspaper of record was still reporting that the Topeka American Legion post was “planning to introduce through a legislative committee” a repeal bill. “Anti-Tobacco Talk,” NYT, Feb. 13, 1921 (XX1).

\footnote{451}“Tobacco Battle On,” IDR, Jan. 21, 1921 (1:7). The Kansas WCTU was also engaged in opposing repeal of the cigarette ban. Its moralistic bent was on display in its efforts on behalf of a bill “prohibiting minors from attending trials in which vulgar and obscene language is used in the testimony.” “W.C.T.U. Is Scoring in the Legislature,” HN, Feb. 14, 1921 (16:3). On a WCTU anti-repeal petition, see “Against the Cigarettes,” HN, Jan. 27, 1921 (2:5).

\footnote{452}“Miss Wooster Talks to Walled City,” HN, May 18, 1922 (11:5). Wooster, a nationally known lawyer who was the first woman elected to statewide office in Kansas was defeated for a third term in 1923 in part because of her “strict moral stands against teachers who smoked, drank, danced, or wore makeup.” http://www.kshs.org/kansapedia/lorraine-elizabeth-wooster/12246 (visited Feb. 22, 2011). See also “‘Lizzie’ Now a Full Fledged Lawyer,” Belleville Telescope, Nov. 29, 1923 (7:2). In 1922 she issued a circular declaring that “no recommendations for school positions will be made for teachers, instructors, or superintendents who use tobacco in any form. No state certificates or institute certificates will be issued to tobacco users. Schools and colleges that permit the use of tobacco in any form, by administrative heads, instructors or pupils, cannot remain on the accredited list. Credits sent to the State Department from normal schools, colleges, and universities, where the heads of these institutions, faculty members, or students use tobacco in any form, will not be accepted for certification.” She closed by authoritatively stating that the notification was “in compliance with the laws of Kansas.” “Anti-Cigarette Week,” IDR, Mar. 31, 1922 (1:8). In May, she notified a school superintendent in a small town that his certificate would be revoked because he smoked cigars despite his statement that he had never smoked on school grounds or on the streets
and his promise that he would never again smoke outside of his own house. “Smoking Kansas,” NYT, May 13, 1922 (8) (edit.). The state attorney general issued an opinion that she was without authority to implement the policies embodied in the circular’s last two sentences. “Upsets Ban on Tobacco,” NYT, June 19, 1922 (22). Unfortunately, the Twenty-Fourth Biennial Report of the Attorney-General: 1921-1922 (1922) failed to publish any opinions, and neither the Kansas Attorney General’s Office, nor the State Library, nor the State Archives, nor the law libraries of the University of Kansas or Washburn University have the opinion. For a clever ruse deployed a quarter-century earlier by a female county school superintendent in Colorado who in a letter to the female state superintendent fabricated the case of a female teacher who smoked cigars in order to determine whether there was a double standard, see “Should a Woman Smoke,” RMN, Jan. 26, 1897 (5:2); “Teacher Smoked Cigars,” RMN, Feb. 21, 1897 (5:1-2). Ironically, the county superintendent’s husband ran a drug store with a cigar department one of whose best customers was the male teacher who smoked cigars.

However, in spite of its ability to inflict this signal defeat on the American Legion and the other pro-cigarette forces, the anti-cigarette movement was unable to pass its own measures, including even a blanket smoking ban in street cars and railroads or the state library. Nevertheless, in addition to mobilizing the
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

submission of a huge number of supporting petitions,\footnote{House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Second Biennial Session...1921, at 27-33 (index of petitions) (1921).} it came close to passing what was perhaps the most radical, comprehensive, and stringent anti-cigarette bill ever voted on by a state legislative chamber in the United States—the losing vote was 48 to 59. (Six of the eight voting Democrats of the 12 sitting in the 125-member House opposed the bill.)\footnote{House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Second Biennial Session...1921, at iii-v, 509-10 (Mar. 8) (1921); “Kill Cigarette Bill,” IDR, Mar. 8, 1921 (1:2).} House Bill No. 653, “the ‘bone dry’ cigarette bill,”\footnote{“Kansans Can Smoke ‘Em,” Kansas City Star, Mar. 8, 1921 (27:2).} which “reversed” the original (repeal-fueled) momentum of the legislative controversy,\footnote{“No Bonds for the State Now,” HN, Feb. 28, 1921 (6:4-6 at 5) (also reporting that it was “freely predicted” that White’s bill was “due to lose some of its mainstay through the amendment route”).} was introduced by Republican farmer Cyrus White,\footnote{House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Second Biennial Session...1921, at 313 (Feb. 19) (1921). The Public Welfare Committee recommended passage and the committee of the whole reported that it be passed. House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Second Biennial Session...1921, at 391, 487 (Feb. 25, Mar. 5) (1921); “Welfare Bill Is in Conference,” HN, Feb. 25, 1921 (1:1).} whose explanation of his vote sheds light on his child-centered, religio-moral orientation:

It is just as easy to form a good habit as it is to form a bad one. Good habits make good characters. Cigarettes are injurious to our boys and girls. The boys and girls of today comprise the nation of to-morrow. “Righteousness exalteth a nation.” In choosing between righteousness and the cigarette, I select the former and vote Aye....\footnote{House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Second Biennial Session...1921, at 510 (Mar. 8) (1921). On Hasty’s}

Opponents’ animus to the bill’s anti-libertarian spirit was captured by the sarcastic explanation of vote offered by Republican lawyer and World War I veteran Lewis Hasty: “On reconsideration I find that the bill is not broad enough in its provisions. Tea, coffee, cigars and chewing gum may still be used. I must therefore vote No.”\footnote{“No Bonds for the State Now,” HN, Feb. 28, 1921 (6:4-6 at 5) (also reporting that it was “freely predicted” that White’s bill was “due to lose some of its mainstay through the amendment route”).}
White’s “drastic”\textsuperscript{465} measure with all imaginable capaciousness provided that

it shall be unlawful for any person to keep or have in his possession for personal use or
otherwise, any cigarettes, cigarette papers, or cigarette makings, or permit another to have
or keep or use cigarettes, cigarette papers, or cigarette makings on any premises owned or
controlled by him, or to give away or furnish cigarettes, cigarette papers or cigarette
makings to another. \textsuperscript{466}

The penalty for commission of this misdemeanor was a fine of $10 to $100 and/or
30 to 60 days’ imprisonment in county jail. \textsuperscript{467} The bill went on to make it also

unlawful for any common carrier, firm or corporation, or any other person for hire or
without hire, to bring or carry into this state or carry from one place to another within this
state any cigarettes, cigarette papers, or cigarette makings, for another or for itself or
himself, even when intended for personal use; and it shall be unlawful for any common
carrier, its agent, or employee, to deliver any cigarettes, cigarette papers, or cigarette
makings that may be in its possession to any person for any purpose whatsoever. \textsuperscript{468}

And finally under H.B. No. 653 it was

unlawful for any person in this state to receive directly or indirectly cigarettes, cigarette
papers, or cigarette makings from a common carrier or other carrier or person, and it shall
also be unlawful for any person in this state to possess cigarettes, cigarette papers, or
cigarette makings received directly or indirectly from a common carrier, other carrier or
person. This section shall apply to such cigarettes, cigarette papers, or cigarette makings
intended for personal use as well as otherwise, and to interstate as well as to intrastate
carriage. \textsuperscript{469}

The bill’s defeat prompted the \textit{Kansas City Star}’s accurate headline,
“Kansans Can Smoke ’Em,” but they still could not buy cigarettes legally and that very week the police in Manhattan, Kansas reported that their recent raids had netted more than 10,000 cigarettes and $100 fines for every dealer caught with them on his premises.

Though ex-soldiers were “the most potent influence in the change of legislative attitude,” the American Legion was far from alone in pushing for repeal of the cigarette sales ban. In late November 1922, some weeks before the 1923 session of the Kansas legislature convened, Dushkind, the TMA’s managing director, was busy canvassing (especially wholesale) mercantile tobacco firms in Kansas on their views as to securing repeal. From the excerpts that Dushkind shared with his oligopolist bosses it emerged that several sellers were highly critical of the efforts that had been undertaken in 1921. For example, one wholesale grocery opined that they had been “very badly managed” because they were undertaken by “a bunch of Tobacco salesmen, who were so indiscreet in their method of trying to put this over.” Another suggested that next time TMA send a “man who is a polished speaker” and “have the facts from medical authorities to show the cigarette is not injurious.”

In spite of numerous local firms’ view that the 1923 session would be propitious for repeal, anti-cigarette sentiment turned out be much more tenacious and well-organized than they imagined. Almost as soon as the legislature convened, so many protests began “pouring in against the repeal of the anti-cigarette law” that the press quickly concluded that it was unlikely that such a measure would “receive much consideration....” Indeed, lawmakers were more inclined to adopt even stricter regulation than to deregulate. Thus, while the House Public Welfare Committee demonstrated its “antipathy to tobacco” by

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470 “Kansans Can Smoke ’Em,” Kansas City Star, Mar. 8, 1921 (27:2).
471 “Pill Raids at Manhattan,” IDR, Mar. 10, 1921 (1:7).
473 TMA, “Excerpts from Letters Received from the Trade: Kansas: Favoring Repeal Activities” at 1 (n.d. [ca. Nov.-Dec. 1922]), Bates No. 501870678. Unfortunately, Dushkind’s (presumably form) letter to the firms is not extant in the Legacy documents.
475 “Committees to Work Promptly,” HN, Jan. 13, 1923 (1:3). See, e.g., Kansas Branch of National Congress of Mothers and Parent-Teacher Association, Resolution To Retain the Present Anti-Cigarette Law and to Work for Its Enforcement (Jan. 13, 1923), in Governor’s Records, Allen, Correspondence, Box 14, Folder: Legislative Special Session 1919, KHS, on http://wwwkansasmemory.org/item/214069.
killing a repeal bill, the full House passed a bill “defining as nuisances places where cigarettes or cigarette papers are sold or given away and enabling the attorney general or any citizen of the county to bring action to permanently enjoin the same.” The legislature’s regular biennial consideration of cigarettes was enriched by a variant that would gain traction only later—namely, the “cigarettes for revenue only” repeal cum tax that would net the state half a million dollars annually in revenue while lowering consumer prices.

The 1925 session—at which the cigarette industry finally achieved repeal in North Dakota—proved to be the turning point in Kansas, although even that year witnessed impressive mobilization by the anti-cigarette movement resulting in the submission of more than 200 petitions, signed by more than 23,000 people, to the House, protesting against repeal of the anti-cigarette law. The Senate, too, received numerous petitions, at least 87 of which, signed by more than 9,000 people, protested against repeal of the law or legalization or advertising of cigarettes. Significantly, several petitions justified this position on the distinctly late-twentieth-century anti-tobacco grounds that “the use of cigarettes

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476 “Move to Aid the Spanish Soldier,” HN, Feb. 9, 1923 (1:2).
477 “Booze Deaths Called Murder,” IDR, Feb. 9, 1923 (1:8).
479 Of the total of 264 petitions submitted to the House in 1925 on all matters 220 dealt with the cigarette law, of which at least 204 opposed and only 8 (signed by only 1,315 people) urged repeal (the orientation of the remainder being unidentified). The total number of anti-repeal petitioners far exceeded 23,000 because the Journal’s brief description of numerous petitions mentioned merely that they had been signed by “others” or “many others” in addition to the principal (or perhaps first listed) petitioner. Calculated according to House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fourth Biennial Session...1925, at 175, 184-85, 191-92, 200-201, 207, 211-12, 220-21, 231, 254, 259, 268, 285, 300, 306, 325, 330, 352, 363, 376, 393, 416, 454, 765-72 (Feb. 12, 13, 14, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, Mar. 2, 3, 4, 5, 6, 7, 9) (1925). Interestingly, one of the petition submitters was the aforementioned former legislator Minnie Grinstead. Id. at 200.
480 Of the total of 212 petitions submitted to the Senate in 1925 on all matters 176 dealt with the cigarette law only four of which (signed by at least 121 people) urged repeal. Although only 87 were identified by the Journal as opposing repeal, most of the others appear to have done so as well; as was the case in the House, the Journal did not state the number of signers for every petition. Calculated according to Senate Journal: Proceedings of the Senate of the State of Kansas: Twenty-Fourth Biennial Session...1925, at 23, 158-59, 163-65, 176-77, 190, 200-202, 211, 219, 228, 235-36, 242, 260, 266, 314, 655-60 (Jan. 19, Feb. 11, 13, 14, 17, 19, 20, 21, 24, 25, 26, Mar. 4) (1925).
by adults is one of the predominating causes for its use by minors..."  

And amid this avalanche of petitions the anti-cigarette forces also counter-organized to introduce bills in the House and Senate under which restaurants, stores, and other businesses selling cigarettes would be declared common nuisances and padlocked.

The announcement, right after New Year, that “a determined effort” would be made to repeal the anti-cigarette law prompted “considerable interest” in William Allen White’s Emporia, where the proposal was “unpopular.” The no-nonsense president of the WCTU, which was to “lead the fight” against repeal, had nothing to say because it “is the work that counts, and not the talk,” while the city attorney insisted on enforcement of the existing law and the county attorney favored a “‘bone-dry’ cigaret law...that will absolutely prohibit the sale, possession and distribution....” The city clerk chimed in that “I’m in favor of any law that will knock the tobacco trust.” Interestingly, the secretary of the Ministerial association, which supported the current law, nevertheless (pragmatically) opined that: “We don’t hope to keep men from smoking. But what we hope to do primarily is to protect the boys. The boys start smoking too soon now, and with the repeal of the cigaret law, there would be more smoking than there is among the boys.”  

This defeatist approach made prohibitionists vulnerable to criticism not only that they were depriving adult men of their consumer freedom, but that the difference between universal prohibition and the proposed ban only for minors was in reality merely an empirical dispute over efficacy rather than a categorical public policy, health, or moral divide.

Ominous, too, for prohibitionists was that both the House and Senate that...
year dropped their decades-old rules prohibiting smoking in their chambers.\textsuperscript{484} But even as business owners were being tried for selling cigarettes,\textsuperscript{485} Senator Martin Van De Mark, the Republican lawyer who sponsored a repeal bill modeled on Iowa’s, predicted that the tax revenue and licensee fees would yield a million dollars for the state treasury.\textsuperscript{486} Advocates of licensure and taxation stressed that prohibition encouraged bootlegging with the result that the “mail order business done by Kansas men in Kansas City [Missouri] is almost as great as the business that would be done if cigarettes were sold in the state.”\textsuperscript{487} (The pro-cigarette forces did not seem to focus on the contradiction between this account of the sales ban’s compelling wannabe buyers to cross a state border and complaints that the law was not being enforced.)\textsuperscript{488} During floor debate on Van De Mark’s S.B. No. 336,\textsuperscript{489} senators who argued that the existing law was in fact enforced in smaller towns were challenged to identify a single one where cigarettes could not be bought, and afterwards the chamber voted by a comfortable margin of 26 to 9 for repeal.\textsuperscript{490} To the galleries filled with public school pupils several senators explained their votes, one assigning as the reason for his Aye that “the ability to build character is not given by legislative enactment.”\textsuperscript{491} The front-page
headline that “Cigarette on the Way Back”492 proved to be a tad premature since the House both euthanized its own repeal bill493 and killed Van De Mark’s by a committee of the whole non-party-line vote of 80 to 31,494 thus ending the repeal movement for the session.

That the 1927 session’s “biennial revolt against the Kansas anti-cigarette law” might turn especially energetic was signaled by the emergence of several repeal proposals a month before the legislature even convened. Repealers were largely agreed on the two central features of such measures: a two- to four-cent per package tax and a $150 to $300 annual license fee revocable for violation of any provision of the law. Republican Representative Harold McGugin, one of the first legislators to commit to work for repeal, argued that the law had no excuse for existing because it did not prohibit cigarette smoking, adding the speculation that: “‘When we notice the way they are universally smoked, it is doubtful if anyone wants cigarette smoking prohibited very badly.”’ (Presumably, if the legislature’s objective had been to prohibit smoking, it would have done so expressly and directly instead of devising an in-state sales prohibition that could be lawfully perforated by importation for persona consumption.) That the ban, despite denunciations for being infused with the spirit of utopian fanaticism, was in fact partial and pragmatic, would have been clear to McGugin, who asserted that the only manifestation of its existence was a price in larger cities 50 to 75 percent above that in states with legal sales, if the presumptive reduction in demand had been perceived as tantamount to a significant depression of consumption. The anti-cigarette organizations, including the WCTU, women’s clubs, and church societies, whose “flood of petitions” had swept away the repeal bill in the House in 1925, were also mobilizing in December 1926. Timing and


494 Procedurally, the vote was on a motion to strike the bill’s enacting clause. House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fourth Biennial Session...1925, at 194, 208, 286 (Feb. 14, 16, 25) (1925).
intensity of these preparations were influenced by the announcement by authorities in Kansas City, Kansas, that they would “launch a vigorous enforcement campaign to stop the open selling of ‘fags’ there” such as several other cities had also recently initiated.⁴⁹⁵ One important structuring element of legislative pressure politics that reportedly would not change in 1927 was the state American Legion’s purported absence (which characterized the end-debate in Iowa in 1921):

While ex-servicemen have been active at the last two sessions in attempts to repeal the cigarette law, the state department of the American Legion has shied away from all attempts to embroil it in the controversy.

The department will continue this “hands off” policy again this year..., although individual posts and individual members are privileged to take any action they may desire.⁴⁹⁶

The legislative prioritization accorded overturning Kansas’s 18-year-old cigarette sales ban was signaled by the House and Senate bills’ both being the first to be introduced—by Republican lawyers. (The press viewed the numbering as the outcome of a default: “For the first time in the history of the state the house met on the opening day...and didn’t introduce a bill. ... Not a general state wide new law was proposed in either house. It is a record new in Kansas and probably has been equalled few times in the states of the nation.”)⁴⁹⁷ Senate Bill No. 1 was introduced by Van De Mark on January 12;⁴⁹⁸ House Bill No. 1, which was filed the next day by McGugin,⁴⁹⁹ was passed first and became law. S.B. No. 1 was “practically a duplicate”⁵⁰⁰ of the licensure/tax bill that Van De Mark had introduced in 1925 and that the Senate had passed by a large margin. Following S.B. No. 1’s introduction another senator presented a resolution at the request of the American Legion to repeal the sales ban on the grounds that: “‘Whereas the only form of tobacco barred in Kansas is the cigarette and the only result of the

⁴⁹⁵“Cry Once More Raised Against Fag Prohibition,” HN, Dec. 14, 1926 (1:3).
⁴⁹⁶“Cry Once More Raised Against Fag Prohibition,” HN, Dec. 14, 1926 (1:3).
⁴⁹⁷“House Sets New Record by Failing to Introduce Bills on Opening Day,” TSJ, Jan. 12, 1927 (1:4-5).
⁵⁰⁰“Cigaret Bill Up,” TSJ, Jan. 12, 1927 (1:5).
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statute is to raise prices we regard it as class legislation....”[501] Neither the Legion nor banker/merchant Senator Charles Snyder explained the nature of the injustice suffered by ex-soldiers in paying higher prices for the purchase of an illegal commodity.

The press stressed that McGugin’s H.B. No. 1 differed from S.B. No. 1—to which it was said to bear no relation[502]—with respect to the basis of taxation (number of cigarettes versus weight),[503] though in fact for run-of-the-mill cigarettes the tax under both was two cents per package of 20.[504] Unremarked by newspapers was the fact that the Senate bill was more rigorous than its House counterpart in a number of respects. With regard to minors under 21, S.B. No. 1, like the 1917 law but unlike H.B. No. 1, made it illegal to sell or give non-cigarette tobacco to them; unlike the 1917 law or H.B. No. 1, the Senate bill also both made it unlawful for minors to have any kind of tobacco in their possession and empowered peace, juvenile court, and truant officers as well as teachers to require such minors to give information as to the source of that tobacco.[505] In terms of the licensure and taxing provisions, S.B. No. 1 resembled the 1921 Iowa law[506] in conferring discretion on local governments to grant and issue licenses and in strengthening enforcement by means of liens on real property, abating nuisances, and seizing and destroying unlawfully kept or stored cigarettes, whereas McGugin’s bill lacked all such features.[507] Consequently, unlike the

[501]“Cigarette Sales Bill Introduced,” IDR, Jan. 12, 1927 (1:6).


[503]“House Has Cigarette Bill Today,” IDR, Jan. 13, 1927 (1:3); “Cigarette Bill Is First in the House,” HN, Jan. 13, 1927 (1:3). McGugin also intentionally omitted from his bill the provision in S.B. No. 1, § 4—which many states had enacted—that empowered police, juvenile court, and truant officers as well as teachers to require any minor under 21 in possession of any form of tobacco to reveal where he or she had obtained it. McGugin opposed this approach because he did not believe in passing a law that “‘increases the temptation to lie’: if subjected to an “inquisition,” most boys and girls “‘would fake some explanation....’” “Fag Bill in House,” TSJ, Jan. 13, 1927 (9:5). For editorial support of McGugin’s position (and opposition to a cigarette tax unless all tobacco were taxed), see TSJ, Jan. 14, 1927 (4:1) (untitled edit.).

[504]Senate Bill No. 1, §§ 15 (Session of 1927) (copy furnished by State Library of Kansas); House Bill No. 1, § 9 (Session of 1927) (copy furnished by State Library of Kansas).

[505]Senate Bill No. 1, §§ 1, 3, 4 (Session of 1927) (copy furnished by State Library of Kansas); House Bill No. 1, § 2 (Session of 1927) (copy furnished by State Library of Kansas); 1927 Kansas Session Laws ch. 166, § 3, at 212, 213.

[506]See above ch. 15.

[507]Senate Bill No. 1, §§ 13, 16, 19-22 (Session of 1927) (“may”) (copy furnished by
1921 law in Iowa, where the residual opposition to cigarettes was strong enough to secure adoption of local option for continued prohibition of cigarette sales, McGugin’s bill failed even to consider that approach. Absent from both bills was any remnant of the ban on cigarette advertising.

The introduction of S.B. No. 1 coincided with the closing session of the annual meeting of the Kansas Farm Bureau, at which an explosive discussion of repeal of the cigarette sales ban ignited. The range and intensity of views expressed were highly pertinent to the legislative debate since farmers were assumed to be a group largely disinterested in or indifferent, if not outright hostile, to cigarettes. Obliquely the discussion arose out of the presentation of a resolution in support of a state income tax, taxes on tobacco and commercial entertainment, and taxation of monopolizable natural products. Though at first most members appeared inclined to approve it, the “fireworks” began when a delegate offered an amendment opposing repeal of the anti-cigarette law and passage of a license bill on the grounds that “the Kansas youth is our greatest asset and that his best interest is our chief concern....” This intervention prompted another delegate who had lived in Iowa for several years to praise its licensure/tax law and oppose the amendment because under the existing Kansas ban law cigarettes could be bought everywhere, including at cigar stands, drug stores, and restaurants. The proposer countered that, as was the case with liquor, taxation would not stop cigarette consumption, and then accused his fellow members of gullibility: “[‘]Propaganda has been put out through thru newspapers and you farmers, being producers and not talkers, may believe it,’” but in fact cigarettes impaired youths’ health. The Farm Bureau’s newly elected vice president jumped in to take the hybrid position of defending cigarettes but “‘violently’” opposing a “‘nuisance tax’” on them. His admonition that “we’re getting...a little too puritanical” prompted a female delegate to ask whether they wanted to “‘repeal a law which would add to the disgrace of womanhood....’” Finally, the newly elected president, Ralph Snyder, declared the current law an “‘absolute farce’” because cigarettes could be bought anywhere; moreover, he adjudged cigarettes incomparably less harmful than liquor because, if the former was harmful at all it was only to its user, whereas the former hurts everyone who came in any kind of contact with it. On one issue, however, Snyder, who purported not to use any tobacco, exceeded in insight almost all of the antis: “‘If we must have a prohibitory law, we should pass a drastic measure which would prohibit tobacco of any kind. So long as you men keep on smoking, you may be

State Library of Kansas); House Bill No. 1, § 4 (Session of 1927) (“shall”) (copy furnished by State Library of Kansas).

508See above ch. 15.
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sure that your sons will follow you and smoke.” In the end, by a two to one majority, the farmers passed the tobacco tax resolution with its amendment opposing repeal of the cigarette sales ban. 509

From the outset the press was impressed by the vigor with which both sides were engaged in a “positive, out in the open fight....” The party-political independent, but hardly unbiased, Topeka State Journal remarked that the repeal effort in 1925 had been “blocked, perhaps, when various members weakened under the bombardment of petitions.” In the meantime, however, McGugin and his allies had (allegedly) “dug up information tending to establish the fact that many of the lengthy petitions were sponsored by drug stores and pool halls where cigarettes are generally handled on the bootlegger basis.” They, several big firms in Chicago and Kansas City that sold cigarettes by mail at premium prices, and traveling salesmen selling cigarettes to Kansas dealers were satisfied with the existing (unlicensed, untaxed, and unenforced) regime, according to McGugin, and “‘masquerade as reformers interested in the salvation and welfare of the youth of Kansas. But the stuff they peddle tends to bother the weak-kneed ones and we go ahead each year keeping a law that is a fine thing for the cigaret bootlegger and doesn’t deprive anyone of a smoke.” 510 In contrast, the businessmen circulating petitions to legislators in 1927 sought repeal. 511 Kansas tobacco dealers, however, opposed the proposed two-cent tax on the grounds that it would disadvantage them against the mail order firms in Kansas City, Missouri, which had built up a large-volume business to Kansas and would not be subject to the tax, 512 thus replicating rather than dismantling the advantage that had accrued to the latter during the period of the in-state sales ban.

The legislator chiefly responsible for pushing through repeal was Republican lawyer McGugin (1893-1946), at whose death almost two decades later his noble service on behalf of the state’s nicotine addicts remained unforgotten. 513 (Indeed, a state bureaucracy grateful for the additional tax revenue that his law made possible had actually considered placing his picture on the tax stamp. 514 The ultimate choice of the official state bird, the meadow lark, prompted a “storm of

511 “Petitions Out in Ottawa,” TSJ, Jan. 13, 1927 (9:5).
512 “Kansas Tobacco Dealers Say Advantage Given to K.C. Firms,” TSJ, Jan. 17, 1927 (1:2).
513 “Harold McGugin Dies After Year’s Illness,” Iola Register, Mar. 8, 1946 (1:5).
514 “Clerk Clark Wants Aid in His New Job,” IDR, Apr. 2, 1927 (6:1).
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A World War veteran who had “learned to countenance smoking,” McGugin was presumably fighting for his fellow Legionnaires’ freedom since he “came to the legislature determined to do two things—legalize the sale of cigarettes and get a district court for his city.”

McGugin would later serve two terms in Congress, where during floor debate in 1932 he revealed himself to be a persistent critic of the socialist programs of the pre-New Deal Marxist Congress:

The thing which causes me to look upon the present situation with despair is that we are following the precepts of socialism in trying to solve our problems. We are constantly hearing the cry for Congress to help this one or that one. ... If we can get out of this difficulty following the precepts of socialism, then be not surprised if socialism overwhelms our country, ... We cannot escape the proposition that every time we appropriate money out of the Public Treasury to solve our troubles, whether they be troubles of the plug hats or of the humble people, we are following socialism. Marxism is sweeping this country, and nowhere is it finding greater hold than in this particular Congress by the very emergency programs we have been carrying out so far during this session.

By the time of the first New Deal Congress in 1933-34 McGugin was widely recognized as the Republican leader of the attack on Roosevelt’s (socialist) brain trust. For this public service his Kansas constituents rewarded him by voting him out of office in November 1934, prompting McGugin to blame his defeat on the very “brain-trust socialists” who were “pushing communism upon the country” who had put four meat canning factories in his district, which were “operated on a political basis” and virtually none of whose employees voted for him.

Once McGugin had gained notoriety as an up-and-coming right-winger during his first term in Congress (1931) for proposing, inter alia, that all federal, state, and county employees’ salaries be slashed by 25 percent, the national press constructed a (partial) myth about his legislative prowess in Kansas. The New York Times noted that:

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515 “Many Protest Use of Bird on Fag Stamps,” HN, Apr. 6, 1927 (2:2).
516 “Mince Pie’ Congressman of Kansas May Run for Senate,” WSJ, Dec. 3, 1931 (9).
517 “Coffeyville to Get Court Part of Time,” HN, Mar. 5, 1927 (2:4).
518 CR 75:4177 (Feb. 17, 1932).
519 “Strait-Jacket for Farm, Seen as New Deal Aim,” CT, Aug. 5, 1934 (15).
Ever since 1927 Mr. McGugin has ridden tiptoe on the uppermost froth of the incoming wave of public opinion. In that year, as a member of the State Legislature, he introduced the law which legalized the sale of cigarette in Kansas, to the surprise and consternation of the W.C.T.U., which thereby received its first serious rebuff in twenty years. Mr. McGugin had appraised Kansas public opinion more shrewdly than they; the time was ripe for a change.\(^{522}\)

Embellishing the tale, the Wall Street Journal added that when fellow legislators disagreed with his evaluation of the old law as a nuisance, “he introduced a bill in the Kansas Legislature forbidding the eating of mince pie. When the session was over, the laws of Kansas had been so changed that people could both eat mince pie and smoke cigarettes. It made McGugin a well known character in Kansas and he was elected to Congress....”\(^{523}\) Later Time embroidered further, claiming that McGugin had “promptly proposed a law forbidding Kansans to eat mince pie. It was foolish but it made Kansans see the folly of their law against cigarettes.”\(^{524}\)

A grand story with which to burnish McGugin’s reactionary credentials—except that the press got the wrong legislator and the wrong house and no such bill was ever introduced by anyone.\(^{525}\) In fact what happened was that on January 17, 1927, four days after McGugin had introduced his bill in the House, Senator James W. Finley, another Republican lawyer, but also a former state judge, threatened that if the cigarette sales ban remained on the books, he would introduce a measure prohibiting the “‘making, serving, selling or owning of mince pies.’” With his tongue almost extruding from his cheek, Finley refrained from imposing all too heavily on his fellow legislators’ or Kansans’ powers of analogic reasoning: “‘It has always seemed to me that there ought to be a good deal of free rein about parental rule of children.... But I may be wrong. The idea of letting the legislature prescribe rules for everyone is a fine method of delegating responsibility and I don’t want to sidestep any responsibility the people of Kansas has placed in me. For years it has seemed to me that the eating of mince pie is one of our great national evils. While I am personally rather fond

\(^{522}\)W. White, “Kansas Is Watching Young Mr. McGugin,” NYT, Sept. 13, 1931 (E8).

\(^{523}\)”Mince Pie’ Congressman of Kansas May Run for Senate,” WSJ, Dec. 3, 1931 (9).

\(^{524}\)Time, June 11, 1934, on www.time.com/time/magazine/article/0,9171,762176-1,00.html (untitled).

\(^{525}\)A week after McGugin’s repeal bill had passed the House by a large margin, at least one Kansas paper reported that Senator James Finley had introduced a bill to prohibit the manufacture and sale of mince pies, especially to children, but no such bill appeared in the Senate Journal. “In the Day’s News,” IDR, Jan. 28, 1927 (4:2) (edit.).
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of mince pie, it really doesn’t agree with me.” In the same vein he went on to impute to mince pie the tendency to give children nightmares, from which resulted loss of sleep, which in turn stunted growth and caused nervousness. According to a long wire service article that ran in numerous out-of-state newspapers, Finley also spoke non-Aesopianly, remarking that “if such asinine laws as the anti-cigarette law must remain on the statute books, there should be a great abundance of such laws as govern the personal liberties of taxpayers of the state.”**27 However, since the legislature did in fact repeal the cigarette sales ban, Finley never introduced his just-dare-me bill.

As early as January 13, 1927, the day on which McGugin introduced his bill, the House speaker decided, after House members had shared with him their view that they would have more time for the extended debate that H.B. No. 1 would require early in the session than later, not to refer it to a committee for lengthy hearings and petitions, but to assign it to the committee of the whole for immediate debate on January 17, at which time the press predicted “a few sensations” for gallery spectators. At this point anti-repeal “lobbyists” merely requested that the speaker not refer the bill to the Judiciary Committee, of which McGugin was a member and some of whose members smoked cigarettes, thus prompting concern lest they prepare a “bed of roses” for the bill. The WCTU and its president, Lillian Mitchner, did not object to the expedited procedure. The WCTU and Mitchner’s counterparts and protagonists as leaders of the repeal movements were American Legion posts throughout Kansas. Rather conveniently for the latter, 14 Legion members occupied seats in the House.

Proponents and opponents of repeal began bombarding the legislature with petitions in a battle that was generally framed as being conducted by the

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526 “Eating of Mince Pie One of National Evils Senator Finley Asserts,” *TSJ*, Jan. 17, 1927 (1:4-5). For somewhat different phrasing, see “Mince Pie Fight May Be Started,” *IDR*, Jan. 17, 1927 (1:5). See also “Favor Mince Pie Bill,” *TSJ*, Jan. 20, 1927 (2:2). At least one out-of-state newspaper observed that Finley was taking up a recent humorous suggestion by (anti-smoking) Kansas editor William Allen White that “if the state really wanted to legislate against harmful things it should tackle white bread, particularly warm white bread, which he declares is more detrimental to human health than cigarettes.” “Anti-Mince Pie Law,” *Evening Independent* (Massillon, OH), Jan. 22, 1927 (4:1) (edit.).

527 J. C. Johnsen, “‘No Mince Pie’ Threat Made by Kansas Solon to Legalize Cigarettes,” *Lock Haven Express* (PA), Jan. 27, 1927 (2:3-4). The same article also ran in *Kingsport Times* (TN), Jan. 31, 1927 (3:6-7).

528 “Cigaret Bill to Go on to House Floor at Once,” *TDC*, Jan. 14, 1927 (3:1).


American Legion on the one side and the WCTU and church groups on the other, with the repealers claiming (to be sure, with little plausibility since the cigarette oligopoly’s acquiescence in the survival of even one potentially contagious sales ban was highly unlikely) that “it is now or never. If they lose this time...they will abide in forever in silence and the supporters can proceed with more rigid enforcement.”

On January 17, when the House speaker called for petitions to be presented, more than half of the representatives rose “waiving fists full of petitions from constituents.” That day alone 113 petitions on the cigarette law, one with as many as 1,282 names, were read. Petitions, the majority of which opposed repeal, stemmed from every part of Kansas. Telegrams were the communications medium of choice of prospective lawful cigarette sellers, who objected to the two cent per package tax on the grounds that it would encourage mail order competitors in Missouri, which collected no tax from its cigarette dealers. During that day’s debate in the committee of the whole, “watched by a large gallery,” the anti-repeal forces “flourished a mean axe” so that repealers “found themselves fighting to save the enacting clause...after a test vote on the adoption of the first section...had shown opponents of repeal leading 58 to 49.”

During the run-up to that vote, McGugin, who claimed that his bill would be “an encouragement to government” (presumably in the sense that the taxes would encourage government to encourage cigarette smoking), limned a preposterously refined future contrasting “the high class establishment handling cigarettes in legal manner with the ‘den’ forced out of business by the high license.” Small-town Republican banker and millionaire Orlando Jolliffe, speaking first for the anti-cigarette movement, reported that the women and under-21-year-old children he represented did not want the existing law repealed, but strengthened. Apart from the practical issue as to how a seller would know whether a boy was 21 (“are you going to...look at his teeth?”), he objectively aligned himself with the WCTU approach by declaring: “The state of Kansas don’t need this dirty cigarette money.” Asserting that the current law could be just as well enforced as liquor prohibition, Jolliffe made it clear that he would “never disgrace a mother of this

533 “Cigaret Repeal Opponents Lead on Initial Test,” TDC, Jan. 18, 1927 (1:6 at 2:3).
state by voting for a measure of this kind.”535 (Yet Jolliffe—who two days later “denounced the tendency” of some House members to criticize the WCTU’s activities in “zealous support” of the existing law536 and in 1925 had led the forces opposed to dropping the House smoking ban537—did on final passage.) Having prevailed on the test vote, the anti-repealers, “sure of their strength”538 and led by the body’s only woman member, Stella Haines, the legislative committee chair of the Kansas Women’s Federation of Clubs and a former school teacher and school board president,539 whose mother had organized a WCTU chapter in 1886,540 moved to kill the bill outright by striking out the enacting clause. Her supporting rhetoric was redolent of liquor prohibition-like moralizing as she appealed “‘to you men to stand for decency and morality in the home.’ ... Waving a white ribbon [a WCTU symbol] before the house, she said it stands for temperance and abstinence from tobacco. ‘Perhaps your mother wore one of these badges and for the sake of your sainted mother, vote “No.”’” The absolute tail end of the parade of horribles she conjured up for her male colleagues if they passed H.B. No. 1 was “‘a picture of a girl smoking a cigaret in front of every high school of the state.’”541 (Whether Haines was militantly committed to the cause is unclear: her declaration at the outset of the session that “‘I haven’t a single bill to introduce’...astounded veteran politicians. It is the first time since women have become members of the legislature that they haven’t come armed to the hilt with new bills.”)542 For repeal spoke Republican John L. Parkhurst, who purported to have been “elected on a platform of repeal of the cigaret law”543—defeating, ironically, Lovonia Donica, who as the sole female member in 1925 had facilitated the chamber’s dropping its venerable no-smoking rule544—and “intended to stay with it. ‘I’m a dentist,’ he admitted, ‘but I’ll go jump in the lake if I ever saw a disease of the mouth caused by cigarets.’” After Frank Haucke, a former Kansas State American Legion commander who occupied

535“Cigaret Repeal Opponents Lead on Initial Test,” TDC, Jan. 18, 1927 (1:6). On Jolliffe as millionaire, see below ch. 18.
536“Final Test Near,” TSJ, Jan. 19, 1927 (1:3).
537See below ch. 18.
544See below ch. 18. On Donica’s defeat, see “Debate on Cigarettes Is Started,” IDR, Jan. 18, 1927 (1:1).
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a House seat, had insisted that the bill would protect Kansas youth, the pro-cigarette forces, seeking to “stave off decapitation of the bill,” moved to adjourn to the following day for further debate, which carried 56 to 49.\textsuperscript{545}

For good measure another 70 petitions were presented in the House the next day, January 18, while the Senate closed the “flood gates” in the sense that the petitions, the longest of which bore 2,300 signatures and urged repeal, were merely filed rather than read. McGugin took umbrage at House members who had already stated that they would vote against his bill as a result of constituents’ petitions: “If you let petitions dictate to you...then representative government gives way to the mob. What do all these petitions mean? They are the work of one woman who wants to run this state.”\textsuperscript{546} Constituents’ petitions may have earned his ire, but he apparently did not rebuke Parkhurst for having interpreted his constituents’ votes as dictating his vote.\textsuperscript{547} Having dismissed female-led mobocracy, McGugin sought to convict his adversaries out of their own mouths by arguing that the current law was

“an insult to ex-servicemen. If cigarettes are harmful...why were you Christian people sending cigarettes to us while we were in the trenches? Was it because you were friends of Germany and wanted to undermine the man-power of the American army? Of course not. In the seriousness of war you did these things on a common sense basis, and therefore you would not listen to professional reformers. Cigarettes were not harmful. The United States army instructed its soldiers to smoke cigarettes in preference to pipes and cigars, which were known to be more injurious.”\textsuperscript{548}

\textsuperscript{545}“Cigaret Repeal Opponents Lead on Initial Test,” TDC, Jan. 18, 1927 (1:6 at 2:1-3).

As early as 1921, a well-known cancer researcher at Johns Hopkins University published an article on tongue cancer concluding from the fact that only two of 160 afflicted men had not used tobacco that: “The evidence...is overwhelming that the continuous and prolonged irritation from tobacco in some form is the chief factor in producing a lesion which may later develop into cancer.” He found corroborating evidence in the rarity of tongue cancer in women”; the few women with the disease had “used tobacco, usually in the form of snuff by the mouth.” Overall, “[t]he striking feature” was “the constant presence of tobacco juice in the mouth...” John Bloodgood, “Cancer of the Tongue: A Preventable Disease,” JAMA 77(18):1381-87 at 1382, 1383 (Oct. 29, 1921).

\textsuperscript{546}“Dodge City in a New Bid for State College,” HN, Jan. 18, 1927 (2:5-6 at 6).

According to House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fifth Biennial Session...1927, at 33-35 (Jan. 18) (1927), the longest petition bore 1,746 signatures.

\textsuperscript{547}“Debate on Cigarettes Is Started,” IDR, Jan. 18, 1927 (1:1).

\textsuperscript{548}“Dodge City in a New Bid for State College,” HV, Jan. 18, 1927 (2:5-6 at 6).
When Haines renewed her motion to kill the bill on January 18, it was only “with mighty oratorical efforts” that repealers succeeded in getting H.B. No. 1 “out of the ditch and on the road to somewhere” because the vote initially stood at 60-60 and “turmoil reigned, with cries of ‘call the house’ piercing the din.” This deadlock mirrored also almost perfect intra-party deadlock: Democrats split evenly, with 15 voting on each side, while 42 Republicans voted to kill the bill and 44 to pass it. Impressively, on the tie vote, 35 (or 65 percent of) farmers voted against repeal and 19 (or 35 percent) for repeal; conversely, only 23 (or 36.5 percent of) non-farmers supported retaining the prohibitory law. Only mutation of one Yea-sayer into a Nay-sayer “kept the whole proposition from going over the cliff into oblivion” on the basis of a 61 to 59 vote. Once the significance of this by “the narrowest of margins” transcendent omen had sunk in, the bill’s opponents “started to cash in on the promise of the opposition [including McGugin himself] that they would support any amendment protecting the youth of the land.” In particular, an anti-repealer’s amendment to make a jail sentence mandatory (rather than discretionary with judges) for those convicted of selling or giving cigarettes to minors was adopted—despite McGugin’s opposition on the grounds that courts should be authorized to “discriminate between the persistent violator and the honest merchant.”

That some in the anti-cigarette movement also viewed Legionnaires as the driving force behind repeal (and the law as designed chiefly to block children’s access to cigarettes) was clear from a letter to the governor written by the secretary-treasurer of a hail insurance company a few days after McGugin had taken up the cudgels for their sale:

It is firmly believed by a great majority of the best people in Kansas that legalizing
the cigarette is a step backward, and just because a few and generally ex-service men, wish to smoke this dangerous stick, shall the rest of us have to submit to this attack of poison being legalized to tempt our boys and girls.550

In the meantime, the protagonists hurled recriminations at one another. One young Democrat, for example, chastised cigar-smoking legislators for denying him and other World War veterans the right to choose their form of tobacco (“‘I am not any more of a criminal than you just because I prefer my tobacco wrapped up in paper while you want your[s] wrapped in a tobacco leaf’”), while a Republican farmer informed the veterans that they had “‘not as yet faced the responsibility of rearing boys’ and therefore fail[ed] to realize the evil of cigarette smoking.” The Republican floor leader, attorney Benjamin Endres, drew on a pro-tobacco libertarian trope of long standing when he rejected any government role in the issue: “‘I know that the proper place to teach children not to smoke is the home, instead of the legislature.’”551 (In 1925 Endres as Rules Committee chair had led the forces that successfully pushed for terminating the decades-old House rule prohibiting smoking.)552

After 40 more petitions were read in the House on January 19, the chamber decided that it had had enough: future petitions would simply be received and filed—Haines casting the only vote against the procedural change. Moreover, when the issue of how the revenue from the proposed cigarette dealer licenses was raised, she sarcastically suggested that it be used to maintain an “asylum where nicotine and narcotic addicts could receive free medical attention,” but ultimately the state cigarette fund plan was rejected. Interestingly, during the committee of the whole proceeding repealers were forced to amend McGugin’s bill to retain the existing ban on advertising of cigarettes even after their sale was legalized553 “as a sop to those who look upon cigarets as the essence of all evil.

550C. E. Booz to Governor Ben S. Paulen (Jan. 22, 1927), in Governor’s Office, Ben Paulen, 1925-28 Legislative Matters, Box 22.11, Folder 4, 1927 Cigarette Bill, KHS, on http://www.kansasmemory.org/item/217858.
551“Dodge City in a New Bid for State College,” HN, Jan. 18, 1927 (2:5-6).
552See below ch. 18.
553“Fag Petitions Won’t Be Read in the House,” HN, Jan. 19, 1927 (1:1); House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fifth Biennial Session...1927, at 38-43 (Jan. 19) (1927). Republican Farmer G. Raymond Price offered the amendment to retain the ban on cigarette advertising. Id. The committee of the whole also recommended that the stricter and more comprehensive ban of tobacco sales to minors contained in the 1917 statute (and S.B. No. 1) be substituted for § 2. House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fifth Biennial Session...1927, at 42-43 (Jan. 19) (1927). It was retained in the session law.
Without such concessions, the bill could not have mustered enough votes.” Though the pro-cigarette faction thus “‘had to listen to the anticigaret faction,’” the compromise may have been easier to accept because Floor Leader Endres argued that the Kansas court would follow a recent Utah Supreme Court decision that once the sale of cigarettes was lawful, advertising to inform legal buyers where they could be bought was also lawful. To be sure, to a press that stood (to continue) to lose significant cigarette ad revenue, it seemed that unadvertised selling (to adults) “‘creates a queer situation.’” Nevertheless, one of the two publishers sitting in the House advocated for the newspaper ad ban because “he did not want his newspaper to be bothered with petitions against cigarette advertisements, and wished the legislature would settle the matter for him.”

1927 Kansas Session laws ch. 171, § 2, at 219, 220.


555“Cigaret Bill to Reach Vote in House Today,” HN, Jan. 20, 1927 (1:1). In State v. Salt Lake Tribune Pub. Co., 249 P. 474, 476 (Utah 1926), a not very self-confident-sounding Utah Supreme Court reversed defendant’s conviction for having published a Lucky Strike ad on these grounds: “While the state of Utah could perhaps entirely prohibit the sale of cigarettes, in so far as the sales are not protected by the interstate commerce clause of the federal Constitution, yet...Utah merely regulates the sale of cigarettes as it regulates the sale of many other articles of merchandise. All sales of cigarettes which are made in compliance with the provisions of our statute are lawful. If it is lawful, therefore, to deal in and to sell cigarettes, why is it not lawful to inform those who may legally purchase an article where they may do so? It may be true that the state within its police power may, as a matter of regulation, seek to minimize the sale of an article the use of which it may deem injurious to the public health; and if it may do that, it may perhaps, regulate or prohibit the advertisement of such an article. Where, however, as is the case here, the article in question is an article of commerce which is protected by the interstate commerce clause of the federal Constitution, it may well be doubted whether the state can interfere with the sale of an article which is so protected. The conclusion therefore seems irresistible that, in view that the advertisement published by the Salt Lake Tribune in and of itself constitutes interstate commerce with which the state of Utah could not interfere, and further that the article likewise was protected both by the laws of Utah permitting its sale and to the extent that the article was shipped into the state in original packages was also protected from interference by the state, the defendant was clearly within its legal rights in publishing the advertisement, and that statute in question constitutes an undue interference with interstate commerce and therefore cannot be upheld.”


557“Cigaret Bill Is Given Approval Almost 2 to 1,” TDC, Jan. 20, 1927 (1:3) (John Mack).
addition to failed “efforts to kill the bill thru crippling amendments,” Republican farmer Milton Buffington offered an amendment to penalize possession by anyone in Kansas of a cigarette, but even Haines was counted among the 94 Nays against the 26 Ayes, which “included the radical anti-cigaret element of the house.” Addition to failed “efforts to kill the bill thru crippling amendments,” Republican farmer Milton Buffington offered an amendment to penalize possession by anyone in Kansas of a cigarette, but even Haines was counted among the 94 Nays against the 26 Ayes, which “included the radical anti-cigaret element of the house.”

After all the amendments had been dealt with, Haines and the anti-cigarette faction once again sought to kill the bill by moving to strike out the enacting clause, but this final roll-call test vote was not close: with Nay-saying repealers securing 81 votes to only 42 for Yea-saying prohibitionists, about 20 members had shifted their allegiance from prohibition to licensure/taxation. This time Republicans split 68.5 to 31.5 percent, while Democrats displayed somewhat less support for deregulation, dividing 61 to 39 percent.

The large vote shift presumably resulted both from the realization that repealers had the votes to prevail and the strengthening amendments that the erstwhile prohibitionists had been able to secure. To be sure, the pro-cigarette forces did not accommodate the antis in all matters; for example, a proposal to make it unlawful for a minor to have cigarettes or any other tobacco in his possession failed because, repealers argued, it would have made it “possible to send a boy who picked up a package of cigarettes to jail.”

One Topeka editorialist (hyperbolically) extolled the House discussion as “probably furnish[ing] the first instance in history in which legislative debate changed a vote.”

The fact that in the committee of the whole, following the test vote, the “final vote was so overwhelming that not even a rising vote was requested to settle the issue” should have rendered the floor debate in plenary session seemingly anti-climactic, but with Haines commanding the defenders of a sales prohibition “for the sake of the youth” and McGugin leading “the men who have rallied around his bill for giving adults ‘the privilege of smoking what they please,’” the “two rival armies in the legislative war over the Kansas cigarette law” met for what everyone understood was the decisive battle on January 20 in the House, since it

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558 “Vote Two to One,” *TSJ*, Jan. 20, 1927 (1:6). The vote was by roll call, but the newspaper did not list the names.

559 According to another press account, Buffington also moved to strike all after the enacting clause and substitute an outright sales ban (that is, in effect, to retain the existing law), but it was defeated by a roll-call vote of 26 to 90. “Cigaret Bill Is Given Approval Almost 2 to 1,” *TDC*, Jan. 20, 1927 (1:3, 8:1-2).


562 “Cigaret Bill Is Given Approval Almost 2 to 1,” *TDC*, Jan. 20, 1927 (1:3, 8:1).

563 *TSJ*, Jan. 20, 1927 (4:1) (untitled edit.).

564 “Cigaret Bill Is Given Approval Almost 2 to 1,” *TDC*, Jan. 20, 1927 (1:3).
was a foregone conclusion that the Senate, whose composition had remained virtually unchanged since its passage of a similar bill in 1925, would approve repeal. The outcome on third reading in the House might also have lacked suspense since two days earlier Mitchner had “practically surrendered and left Miss Stella B. Haines, lone legislady, to carry on before a ladies’ gallery divided in support and opposition to the McGugin measure. She fought gamely, knowing it was a losing battle and that the members who sought to ride with winners were ducking over to the other side.” And shortly before the vote Haines acidly “declared that while she didn’t really wish the state printing plant any exceptionally bad luck, she could control her sorrow if the building blew up or the presses broke down before the cigaret bill was printed.” That the ban was in trouble was clearly signaled when Representative Sam Edwards, brother of John A. Edwards, who had introduced the original law back in 1909, broke ranks despite wanting to retain it “to the glory of the state and the author” because the old law “hadn’t been just all a fond parent might desire....” Another symbolic blow was struck when Jolliffe, who had fought against H.B. No. 1 from the very beginning, switched sides in order to give it a chance.

In the event, as one evening paper’s eight-column banner headline put it: “CIGARETTE BILL IS BY HOUSE.” In reporting that Senate approval seemed “assured,” another newspaper captured one dimension of the prospective law’s transformative impact that signaled the state’s self-conversion from suppressor to financial beneficiary of cigarette sales: “The cigarette smoker in Kansas will be a contributor to the state treasury instead of a law violator....” The House passed the bill by the “huge majority” of 83 to 35, which was “counted as nearly a parliamentary marvel,” since the initial vote in the committee of the whole had been 58 to 49 against the bill, and “its backers could muster only a majority of two to save it for further consideration after a day and a half of debate.” Unsurprisingly, but nevertheless notably, a significant difference again emerged between farmers and non-farmers: whereas 22 (or 39 percent of) farmers cast Nays, only 13 (or 21 percent of) non-farmers did. (That opposition

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565 “Cigarette Bill to Reach Vote in House Today,” *HN*, Jan. 20, 1927 (1:1).
570 Occupational designations were given in *House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fifth Biennial Session...1927*, at iii-viii.
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to repeal of the cigarette sales ban may not have constituted a component of a larger progressive agenda in Kansas in 1927 can be gauged by the fact that of the 22 anti-repealers who had voted in 1925 on ratification of the federal Child Labor Amendment to the Constitution 16 voted to reject and only six against rejection.\footnote{To be sure, in the full House opponents of the amendment even more disproportionately outnumbered supporters. For the roll call, see “House, 101 to 21, Votes to Reject Child Labor Act,” \textit{TDC}, Jan. 22, 1925 (1:6, at 2:3). Wet Democrats had argued for some time that: “Manufacturers who exploit child labor thrive in ‘dry’ states and contribute generously to the cause of prohibition. Most of the members of Congress who voted against the child labor bill voted in favor of national prohibition.” “Unmasked,” \textit{National Democrat} (Des Moines), Mar. 1, 1917 (1:3-5).}\footnote{\textit{House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fifth Biennial Session...1927}, at 57 (Jan. 20) (1927).} Though not party-line, the vote nevertheless revealed significantly different levels of support: whereas 66 (or 76 percent of) voting Republicans cast Yeas, only 17 or 57 percent of 30 Democrats did.\footnote{House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fifth Biennial Session...1927, at 57-58 (Jan. 20) (1927).} In light of Democrats’ generally anti-prohibitionist and anti-sumptuary attitudes, this differential is counterintuitive. Some Democratic Nays may have been either based on quasi-idiosyncratic grounds or related to reasons tangential to cigarettes. These possibilities emerge from the “Explanation of Votes” that a number of members had printed in the \textit{House Journal}. For example, Democrat Noah Bowman voted Nay because the House had rejected an amendment that would have prohibited the sale of cigarettes containing opium or other habit-forming drugs. That 650 petitions from his district protested repeal while only 18 urged him to support repeal sufficed to justify Democrat E. A. Wallen’s Nay. And Democrat W. V. Young opposed the bill because a $50 license fee was too high for a small town.\footnote{“Repeals Cigarette Ban,” \textit{NYT}, Jan. 21, 1927 (3).} Republican Governor Ben Paulen’s announcement that “he would sign the bill if it came to him without imperfections”\footnote{Ultimately, the Judiciary Committee recommended that S.B. No. 1 not be passed. \textit{Senate Journal: Proceedings of the Senate of the State of Kansas: Twenty-Fifth Biennial Session...1927}, at iv-vi (1927).} revealed that even the 70-percent pro-repeal House majority had not been able to root out anti-cigarette attitudes entirely.

When the Senate committee of the whole took up H.B. No. 1 on February 1,\footnote{\textit{Senate Journal: Proceedings of the Senate of the State of Kansas: Twenty-Fifth Biennial Session...1927}, at iv-vi (1927).} McGugin himself was present on the floor as several amendments were
offered. The overall course of debate was significantly shaped by some senators’ inclination to accept the House provisions lest changes endanger House approval: “So pronounced was this fear that one or two provisions which it was conceded probably will be unconstitutional were retained.” The first proposal, which was overwhelmingly rejected, would have subjected all tobacco dealers to licensing. The next, which was adopted, struck the penitentiary sentence on a second conviction for selling cigarettes to minors. The constitutional issue was raised with regard to the unlawfulness of the possession of cigarettes on which the new tax had not been paid; although several senators expressed agreement with the Senate Judiciary Committee’s recommendation to apply the sanction only to those bought in Kansas (on the grounds that applying it to cigarettes bought legally in other states would run afoul of the federal constitutional commerce clause), an amendment to that effect was killed because the House, it was learned, would not accede to any amendments. House retention of the advertising ban ignited extended constitutional criticism resulting in a proposed substitute amendment to permit cigarette ads in newspapers and merely to outlaw billboard ads within a quarter-mile of schools. Senator James Getty, a Republican lawyer from Kansas City, offered the amendment also as a first attack on all billboard advertising, which he regarded as having become an “‘intolerable nuisance’” that “‘clutters up the landscape.’” Remarkably, Senator Van De Mark, whose original S.B. No. 1 had not banned any advertising at all, advocated leaving the House ban intact on the grounds that newspaper ads would tempt youths to use cigarettes. The next day, however, on his motion, all the amendments were eliminated, and the Senate passed the bill just as it been adopted by House by a vote of 32 to 5 (that is, with four fewer Nays than in 1925).

Almost as soon as the Senate had acted Governor Paulen announced that although he would sign the bill, he would also probably send the legislature a message objecting to several provisions: (1) the advertising ban was “‘silly’”

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See also “Cigarette Bill Consideration Before Senate,” _HN_, Feb. 1, 1927 (1:1).

See also “Cigarette Bill Consideration Before Senate,” _HN_, Feb. 1, 1927 (1:1); “Senate in Debate on Cigarettes,” _IDR_, Feb. 1, 1927 (1:5); “Passes Cigaret Bill But Hints at Amendments,” _TDC_, Feb. 3, 1927 (1:6).

because “consumers of a lawful article should have the privilege of learning through advertisements where they can buy it”; (2) one year’s imprisonment for selling to minors was too severe; and (3) the license fee for second class cities should be lower than for first-class cities. The next day he signed the bill accompanied by the message, which expressed his trust that the legislature would “see the necessity of making the needed corrections.” The within-session amendatory process was immediately triggered when a House Democrat introduced a bill to deal with the advertising ban’s potential unconstitutionality by banning instead all cigarette billboard ads within a mile of any school. In mid-February Van De Mark introduced five bills embodying, as a front-page headline put it, “Five Changes in ‘Fag’ Bill.” Ultimately, the House and Senate were unable to agree on all of the changes urged by the governor; most interestingly and importantly, the Senate bill (passed by the overwhelming vote of 25 to 2) striking the House bill’s retention of the advertising ban was defeated in the House.

Even after having achieved repeal of the last surviving statewide cigarette sales ban in the United States and facing only the marginal issues raised by the
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governor’s amendments, McGugin’s irascibility knew few bounds. The
“‘Fighting Irishman of the House’ had on his scrapping togs for sure, and debate
came so close to the personal at one stage as to be only a few degrees removed
from the ink-well throwing stage.” The chief target of his ire was Republican
farmer Ira Yingling, who had persistently voted against repeal and “took violent
exception” to McGugin’s assertion that “while the American Legion boys were
expected to see to the enforcement of the new cigaret law, it had been opposed
by the ‘slackers and traitors.’” Yingling, 14 years his elder and already 38 when
the United States entered the war, warned McGugin: “‘Don’t you call me a
slacker.’” The latter, “his face flaming red” and “shaking the words from between
clenched teeth in the manner of a dog shaking a rat,” thundered: “‘Where were
you when four million boys went over the sea.’” Yingling’s straightforward but
shouted reply that he had been on the farm served merely to set McGugin off
again, this time charging that he had been “‘[g]rowing $3 wheat.’” After friends
had intervened to tamp down the storm and McGugin had expressed his intention
to get back to the bill, Jolliffe the apostate who had switched to McGugin’s side,
could not resist muttering that “‘You’d better’” because “‘[w]e’re tired of this
fooling around.’” Now “thoroly aroused, and...disposed to take on all comers,”
McGugin, playing populist, “shouted back, ‘and I’m getting tired of some people
strutting around this house because they happen to have some oil money that was
found on their wife’s land.’” The epitaph for McGugin’s pre-McCarthyite rants
was delivered by Democratic farmer George Harding in explaining his No votes
on amendments on the grounds that “a bill that has not got merit enough in it to
pass without some bully trying to insult every farmer in Kansas, ought never to
become a law to clutter up the statute books....”

In the face of repeal of the country’s last statewide cigarette sales ban, the
state executive committee of the Kansas WCTU vainly resolved to keep fighting
against cigarettes. The chief means were to be “arousing public sentiment,”
insisting on enforcement of the new law’s provisions regarding minors, and
continuation of scientific temperance instruction in public schools. That the
old law’s demise may not have been synonymous with cigarettes’ ubiquitous
availability was suggested by the fact that the organization’s secretary, Mary
Dobbs, a Wichitan, was said to be leading a movement to prevent repeal of a city

586“Cigarettes Give House Another Exciting Time,” *TDC*, Mar. 16, 1927 (1:3). On
Jolliffe’s oil wells, see http://siterepository.s3.amazonaws.com/00214200912220802092
911.pdf.
587*House Journal: Proceedings of the House of Representatives of the State of
Kansas: Twenty-Fifth Biennial Session...1927*, at 644 (Mar. 16) (1927).
ordinance that the state’s second most populous city had earlier adopted making it unlawful to sell cigarettes there in order to be able to try violators of the state law in local police court. However, a majority of Kansas cities had adopted ordinances based on the old law, and in the state capital, Topeka, all the members of the city commission—all of whom smoked cigars or cigarettes—supported repealing it as soon as McGugin’s bill went into effect.

As the law was going into effect on June 1, the Kansas Press Association challenged its advertising ban on various grounds, including that the state lacked the power to interfere with a lawful business as well as violations of interstate commerce, press freedom, personal property rights, and liberty of contract. On June 8, State District Court Judge George Whitcomb dismissed all the claims (with the exception of that pertaining to interstate commerce) on the grounds that the law was a lawful exercise of the state’s police power: “‘If there was power to enact a prohibitory statute, it must be true that the legislature could also enact one partly prohibitory and partly regulatory.’” Consequently, with regard to the ban on sales to minors, “‘the legislature may have had in mind...the protection of minors against publicity from advertisements about the sale of cigarettes.’”

On appeal before the Kansas Supreme Court the publishers asserted that the law could not protect Kansas youth from cigarette ads “because magazines and newspapers published in other states are permitted to insert such advertisements into their papers and circulate freely in Kansas.” Another of their lawyers inadvertently offered a deep insight by making the presumably ad absurdum argument that anyone who smoked in the presence of others violated the law by “call[ing] their attention to the cigarette.” In contrast, one of the state’s lawyers sought to defend the provision with this late-twentieth-century-sounding reasoning: “‘The legislature sought to stop the insidious propaganda of the tobacco trust.... The advertisements do not tell the youth where to buy cigarettes, but they suggest to his sub-conscious mind that he should smoke them. The pictures, showing a handsome young man with a beautiful girl watching a cloud of smoke, tell the youth who looks at the ad: “You, too, must use the cigarette if

589“City Has Ban on Cigarettes,” TSJ, Jan. 31, 1927 (10:2-3).
591“Kansas Session Laws Will Be Dated June 1,” IDR, May, 12, 1927 (1:2).
592“Anti-Advertising Section Is Legal,” IDR, June 8, 1927 (1:6-7, 6:5). Regarding interstate commerce, which the lawyers had not stressed, the judge merely remarked that: “‘It is not perceived how the omission of cigarette advertising from Kansas newspapers could have any effect at all upon interstate commerce or prevent the free circulation of such papers in other states.’”
you want to be one of the elite.""""593

Reversing the trial judge in the declaratory judgment action,594 the Kansas Supreme Court held that the advertising ban violated Article 4, section 2 of the U.S. Constitution under which “the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states” as well as the due process and equal protection clauses because out-of-state newspapers were not prohibited from publishing cigarette advertising.595 The Kansas Press Association’s victory, as one paper appreciatively noted, “means that the Kansas newspapers will reap many thousands of dollars every year.”596 The virtually instantaneous price reduction from 20 to 15 cents for a package of cigarettes was allegedly the result of advertising.597

The coda for four decades of anti-cigarette legislation that repeal of the last state cigarette sales ban symbolized may have occasioned a celebratory piece in The New York Times a month after the Kansas Supreme Court issued its decision. Ostensibly noting domestic U.S. consumption’s having reached 85 billion in 1926, the article seemed to be reviewing a closed chapter of history of which readers could have no independent memory when it recounted that: “Opposition to the cigarette was based on its alleged evil effects on the user—mentally, morally and physically.”598 Reflecting, instead, the historical amnesia of its own staff, the Times asserted that:

Opposition to the cigarette showed itself early and has always been strong, but has had little effect. Between 1870 and 1912 the anti-cigarette war was at its height. A large group made every effort to have the article banned. The result was legislation in every state—and increased cigarette smoking.599

593“State Cannot Bar Cigarette Ads in Papers,” HN, July 9, 1927 (1:1, 6:4).
594By the parties’ agreement the relief sought in the case was a declaratory judgment rather than a preliminary injunction. “Kansas Cigarette Court Fight Will Come Off Tuesday,” IDR, June 4, 1927 (1:2).
595Little v Smith, 124 Kan. 237, 241 (1927). Not until 1933 did the Kansas legislature repeal the provision. 1933 (Spec. Sess.) Kansas Session Laws ch. 122, § 28, at 154, 159-60.
The Last Two Cigarette Sales Bans Enacted: Mormons Finally Pass Short-Lived Laws in 1921 in Utah and Idaho

[Representative] S. W. Morrison, Jr., of Salt Lake...said...that there had not been a single instance in America or any other country where an anti-tobacco or anti-cigarette law had been successfully enforced, or had been even a partial success. 600

The cigarette bill...is a joke in the minds of those seriously attempting to curb the use of tobacco, for while it prohibits the sale of cigarettes it does not prohibit their use or importation. 601

The cigarette oligopoly drew solace from the fact that the only two statewide cigarette sales bans enacted in 1921 arose in the nationally deviant circumstances of Utah, where “the influence of the Mormon Church was against tobacco,” and Idaho, where the “Mormon Church is also strong.” 602 In turn, the pro-tobacco press in Utah was encouraged to resist passage of such legislation by repeal’s success in Tennessee and Arkansas. 603 And though it was true that Mormons were the driving force behind the bills in both states, the struggle in Idaho represented an especially virulent strain of the nationally widespread conflict between the WCTU and the American Legion, which will form one focus of analysis here. 604

Developments in Utah and Idaho are also usefully viewed conjointly because both of these interior Pacific slope states “never developed comparable

601 “Inter-Mountain Editorial Hilites,” Lehi Sun (Utah), Mar. 17, 1921 (2:4) (reprinted from unidentified issue of Filer, ID Record, an independent weekly).
602 Garret Smith, “Is Tobacco Doomed?” Leslie’s 132(3420):485 at 493 (May 14, 1921) (also falsely asserting that Idaho had prohibited the use of tobacco, when in fact it merely prohibited the sale of cigarettes). On Smith’s status as a hireling of the Tobacco Merchants Association of the U.S., see below ch. 17. A survey of newspaper editors paid for by TMA revealed that 42 percent of those in Utah expressed the judgment that the “general sentiment of your community favor[s]...legislation” “prohibiting the personal use of tobacco by adults compared to a nationwide average of 3 percent; the second-highest proportion (9 percent) was recorded in Delaware. Charles Dushkind, Tobacco Manual 38-41 (n.d. [1923]). For an analysis of this anything but robust survey, see below ch. 17.
604 This section of ch. 16 focuses on cigarette sales ban legislation; the following section deals with the public smoking prohibition section of the same law.
progressive movements and programs” to those of the coastal states, “although they did not lack social and political tension.” Not only was Utah “the most conservative of the Far Western states,” but both it and Idaho, “which at best had lagged in their progressivism, turned away from even the forms of direct legislation: the legislature of Idaho repealed the direct primary law of 1909 in 1919, and Utah ignored the initiative and referendum of 1917 until...1933.”

Finally, study of Utah’s law-making process in 1921 and 1923 is especially fruitful because it impressively underscores the intense resistance to state interference with adult men’s unfettered access to and consumption of cigarettes even in a state majoritized by Mormons. That even after the Mormon hierarchy had placed its theological-ideological imprimatur on and organizationally mobilized on behalf of a general sales ban, legislators who were church office-holding Mormons and purported to be personally in compliance with their religion’s anathematization of tobacco voted against that measure on the grounds of libertarianism, empathy with human frailty in the face of addiction, and/or denial that, as in the case of alcohol, smoking had involuntary secondhand effects testified to the enormous difficulties of securing legislative and extra-legislative support for even partial prohibitions at the dawn of cigarette laissez-faire’s half-century. Such Mormon legislators thus still clung to the position staked out by (non-progressive) Progressive-era Mormon President Joseph F. Smith, who “made it clear that he would not repudiate the work of faithful Saints who considered it best to leave compliance with the Word of Wisdom up to the individual.”

**Father Joseph Comes Speaking the Word of Wisdom: Let It Be, Let It Be**

Whether he was deluded or whether he was a shameless fraud is the major question that any biographer must try to answer.

The Mormon religion’s official programmatic position on tobacco dates back to February 27, 1833, when its founder, Joseph Smith, claimed to have:

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received the following revelation.

**Word of Wisdom**

A Word of Wisdom, for the benefit of the Council of High Priests, assembled in Kirtland [Ohio], and the Church, and also the Saints in Zion. To be sent greeting—not by commandment or constraint, but by revelation and the word of wisdom, showing forth the order and will of God in the temporal salvation of all Saints in the last days; given for a principle with promise, adapted to the capacity of the weak and weakest of all Saints, who are or can be called Saints.

1. Behold, verily, thus saith the Lord unto you, in consequences of evils and designs which do and will exist in the hearts of conspiring men in the last days, I have warned you, and forewarned you, by giving unto you this word of wisdom by revelation.

2. That inasmuch as any man drinketh wine or strong drink among you, behold it is not good, neither meet in the sight of your Father, only in assembling yourselves together to offer up your sacraments before Him.

...  
5. And again, tobacco is not for the body, neither for the belly, and is not good for man, but is an herb for bruises and all sick cattle, to be used with judgment and skill.

6. And again, hot drinks are not for the body or belly.

...  
15. And all Saints who remember to keep and do these sayings, walking in obedience to the commandments, shall receive health in their navel, and marrow to their bone.

16. And shall find wisdom and great treasures of knowledge, even hidden treasures;  
17. And shall run and not be weary, and shall walk and not faint;  
18. And I, the Lord, shall give unto them a promise, that the destroying angel shall pass by them, as the children of Israel, and not slay them. Amen.  

The origins of Smith’s Word of Wisdom, which today is the best known of all that he ever wrote, and in particular of this doctrine concerning tobacco

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608 History of the Church of Jesus of Latter-Day Saints. [Vol. 1] Period 1: History of Joseph Smith, the Prophet, by Himself 327-28 (B. H. Roberts ed. 1902). This “revelation” appears, with different paragraph numbering, as section 89 of The Doctrine and Covenants on http://lds.org/scriptures/dc-testament/dc/89?lang=eng (sect. 80 of the original 1835 Kirtland ed.).


610 Fawn Brodie, No Man Knows My History: Joseph Smith, Mormon Prophet 166 (2d ed. rev. and enl. 1971 [1945]). Moreover, according to Brodie; “The average Mormon no longer reads the holy books of Joseph Smith, and the only revelation with which he is familiar is the injunction against the use of tobacco and alcohol.” Id. at 402.
were, according to Brigham Young, to be found in a prosaic marital dispute over the
consequences for his (then only) wife Emma of his pupils’ tobacco
expectorations, the resolution of which Smith finessed by means of the alleged
revelation:

When the school of the prophets was inaugurated one of the first revelations given by
the Lord to His servant Joseph was the Word of Wisdom. ... I think I am as well
acquainted with the circumstances which led to the giving of the Word of Wisdom as any
man in the Church, although I was not present at the time to witness them. The first school
of the prophets was held in a small room situated over the Prophet Joseph’s kitchen, in a
house which belonged to Bishop Whitney.... In the rear of this building was a kitchen,
probably ten by fourteen feet, containing rooms and pantries. Over this kitchen was
situated the room in which the Prophet received revelations and in which he instructed his
brethren. The brethren came to that place for hundreds of miles to attend school in a little
room probably no larger than eleven by fourteen. When they assembled together in this
room after breakfast, the first [sic] they did was to light their pipes and, while smoking,
talk about the great things of the kingdom, and spit all over the room, and as soon as the
pipe was out of their mouths a large chew of tobacco would then be taken. Often when the
Prophet entered the room to give the school instructions he would find himself in a cloud
of tobacco smoke. This, and the complaints of his wife at having to clean so filthy a floor,
made the Prophet think upon the matter, and he inquired of the Lord relating to the conduct
of the Elders in using tobacco, and the revelation known as the Word of Wisdom was the
result of his inquiry.611

To be sure, a distinctly less supernatural account was later provided by David
Whitmer (1805-88), one of Smith’s original six acolytes, who, before his ex-
communication, not only enthusiastically attested to his participation in the even
more risibly supernatural angelic display of the golden plates of the Book of
Mormon that Smith allegedly had translated,612 but for half a century thereafter

611Journal of Discourses by President Brigham Young, His Two Counselors, and the
Twelve Apostles 12:157-58 (1869) (remarks by President Brigham Young, delivered at
Provo, Feb. 8, 1868). Although not present at the time of the particular triggering
incident—if indeed there was a camel’s back-breaking straw—Young had first met Smith
several months earlier in the latter’s home in Kirtland. http://unicomm.byu.edu/about/
brigham.aspx?content=brigham2. Of the 22 (or alternatively 21) men in the room 20 used
tobacco. Paul Peterson, “An Historical Analysis of the Word of Wisdom” 20 at n.50 (M.A.
thesis, Brigham Young U. 1972); Paul Peteterson and Ronald Walker, “Brigham Young’s

612For Smith’s own version of this alleged event, see “History of Joseph Smith,”
Latter-Day Saints’ Millennial Star 4(7):97-104 at 98 (Nov. 1843); History of the Church
of Jesus Christ of Latter-Day Saints: Period I: History of Joseph Smith, the Prophet, by
until his death continued to reaffirm the accuracy of his “testimony,” which remains embedded in the introduction to the untold millions of copies of that book.\footnote{613} In 1886 he gave a long interview, which appeared in numerous newspapers, in which he discussed the Word of Wisdom as an example of Smith’s “alarming disposition to get revelations to cover every exigency that would arise, and in this he was eagerly urged on by some of his associates, who would frequently come to him with the request that he ‘ask the Lord’ about this thing or the other. ... A revelation was procured ‘to order’ and ‘warranted to fit,’ a thing which occurred with remarkable frequency afterward, and which caused it to be a matter of foregone conclusion that whatever the desires of the favored few expressed, or the pressing emergency of the hour demanded, it would be admirably embodied in the ‘message from heaven.’”\footnote{614} According to Whitmer, the “premises” for another of the “solicited revelations,” namely, the Word of Wisdom,

were suggested on the occasion of quite a little party of the brethren and sisters being assembled in Smith’s house. Some of the men were excessive chewers of the filthy weed, and their disgusting slobbering and splitting caused Mrs. Smith (who, Mr. Whitmer insists, was a lady of predisposed refinement) to make the ironical remark “It would be a good thing if a revelation could be had declaring the use of tobacco a sin, and commanding its suppression.” The matter was taken up and joked about, one of the brethren suggesting that the revelation should also provide for a total abstinence from tea and coffee drinking, intending this as a counter “dig” at the sisters. Sure enough the subject was taken up in dead earnest, and the “Word of Wisdom” was the result.\footnote{615}

By its own terms the Word of Wisdom—which was later styled a “code of health dealing primarily with human nutrition promulgated...by Joseph


\footnote{615}“David Whitmer Talks,” \textit{Salt Lake Daily Tribune}, Oct. 17, 1886 (5:2-6 at 5). The article incorrectly stated that this incident had taken place several years after Whitmer had left the church, whereas in fact he was not ex-communicated until five years later in 1838. It went on to state that with regard to the facts he had been “supplied with unimpeachable testimony” without identifying his source(s).
Smith’s—was not a commandment, but its character seemed to have been transformed in 1851 on the third day of the church’s general conference in Salt Lake City. On September 9, the Patriarch to the Church, John Smith (founder Joseph Smith’s uncle), spoke on the Word of Wisdom,

urging on the brethren to leave off using tobacco, &c.

President [Brigham] Young rose to put the motion and called on all the sisters who will leave off the use of tea, coffee, &c., to manifest it by raising the right hand; seconded

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617Some confusion surrounds this issue because the abovequoted introductory paragraph (or verse) did not appear in the original “revelation,” but was added in italics two years later when Smith and three other editors published it in Doctrine and Covenants of the Church of the Latter Day Saints Carefully Selected from the Revelations of God sect. LXXX at 207-208 (Joseph Smith et al. comp. 1835). “As a result, during the Brigham Young era, the “question was raised whether the advisory clauses were a part of Joseph Smith’s original revelation or whether they had been added as an editorial afterthought intended to ‘soften’ the original wording. Unfortunately, the issue cannot be resolved. Although the earliest prepublication manuscripts on the Word of Wisdom treat these verses as part of the original revelation, these documents were written months after the receipt of the Word of Wisdom. No document contemporaneous with Joseph’s revelation appears to have survived.” Paul Peterson and Ronald Walker, “Brigham Young’s Word of Wisdom Legacy,” BYU Studies 42(3&4): 29-64 at 56-57 n.3 (2003). In 1913 Mormon President Joseph F. Smith asserted that: “The reason undoubtedly why the Word of Wisdom was given—as not by ‘commandment or restraint’[—]was that at that time [1833], at least, if it had been given as a commandment it would have brought every man, addicted to the use of these noxious things, under condemnation; so the Lord was merciful and gave them a chance to overcome, before He brought them under the law. Later on, it was announced from this stand, by President Brigham Young, that the Word of Wisdom was a revelation and a command of the Lord. I desired to mention that fact, because I do not want you to feel that we are under no restraint. We do not want to come under condemnation.” Eighty Fourth Semi-Annual Conference of the Church of Jesus Christ of Latter-day Saints...October ...1913, at 14. Since, as Smith himself knew, large numbers of Mormons continued to use tobacco for decades after the putative conversion of the Word of Wisdom into a commandment and into his own presidency, his purported explanation was not robust.
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and carried.

And then put the following motion; calling on all the boys who were under ninety years of age who would covenant to leave off the use of tobacco, whisky, and all things mentioned in the World of Wisdom, to manifest it in the same manner, which was carried unanimously.

... President Young...said he knew the goodness of the people, and the Lord bears with our weakness; we must serve the Lord, and those who go with me will keep the Word of Wisdom, and if the High Priest, the Seventies, the Elders, and others will not serve the Lord, we will sever them from the Church. I will draw the line and know who is for the Lord and who is not, and those who will not keep the Word of Wisdom, I will cut off from the Church; I throw out a challenge to all men and women. Have I not always counselled you right? I would rather you would cut me into inch pieces, than to flinch from my duty, the Lord being my helper. I would rather live with a few men who will serve the Lord, than live with ten thousand hypocrites.618

Although Young’s successor as president, John Taylor, declared in 1883 that the Word of Wisdom, “according to the words of Brigham Young,...had now become a law unto us,”619 in fact Young himself had made it clear how far removed from law the Word of Wisdom was both in behavioral reality and even aspirationally. In 1867 he observed that even church bishops in city and country wards were not keeping the Word of Wisdom. When asked why, they replied: “‘Well, this tobacco, I cannot give it up,’” prompting Young to remark: “And in this he sets an example to every man, and to every boy over ten years of age, in his ward, to nibble and chew tobacco.”620 Three years he shifted his focus to the role of members’ autonomy:

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619Robert Woodford, “The Historical Development of the Doctrine and Covenants” 2:1175 (Minutes of the School of Prophets, Salt Lake Stake, Oct. 11, 1883, at 24, 25, located in the LDS Church Archives) (Ph.D. diss. Brigham Young U. 1974). In response to questions as to what right Young had had to make it a law, Taylor offered this theological justification: “Just as much right as Joseph had to give us a portion of a revelation at our time and then add to it afterwards.” Id. The author of this three-volume dissertation, presumably (but not clearly) referring to the aforementioned 1851 event, asserted that Young had “negated verse 2” (“To be sent greeting”) “by declaring the Word of Wisdom a full commandment, binding on all Latter-day Saints.” Id.

620Journal of Discourses by President Brigham Young, His Two Counselors, and the Twelve Apostles 12:402 [27] (1869) (remarks by President Brigham Young, delivered in the Tabernacle, Great Salt Lake City, Apr. 7, 1867). He added that he thought that “we have some Bishops in this city [Salt Lake] who do not chew tobacco....” Id.
We have been striving for some time to get the people to observe the Word of Wisdom. But why do they not observe it? Why will they cling to those habits that are inimical to life and health? ... Some of our Elders... still drink a little liquor occasionally, I think, and use a little tobacco. They feel as though they would die without it, and I say they will die with it, and they will die transgressing the revelations and commands of our father, and the wishes of our heavenly Father....

Now let us observe the Word of Wisdom. Shall I take a vote on it? Everybody would vote, but who would observe it? A good many, but not all. Who is it that understands wisdom before God? In some respects we have to define it for ourselves—each for himself—according to our own views, judgment and faith, and the observations of the Word of Wisdom, or the interpretation of God’s requirements on this subject, must be left, partially, with the people. We cannot make laws like the Medes and Persians. We cannot say you shall never drink a cup of tea, or you shall never taste of this, or you shall never taste of that; but we can say that Wisdom is justified of her children.

Although authoritative Mormon church publications much later stated, in reference to Young’s aforementioned declaration in 1851, that the World of Wisdom “became binding as a commandment for all Church members thereafter,”622 Mormon historians have demonstrated that that claim is dubious.623 Leonard Arrington, the leading Mormon historian, observed in the 1950s that a “tolerant rather than vigilant attitude” prevailed with regard to the Word of Wisdom into the 1860s.624 Indeed, in the early 1840s even Joseph Smith permitted the establishment of a brewery in the wholly Mormon-owned town of

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621 Journal of Discourses by President Brigham Young, His Two Counselors, and the Twelve Apostles 14:16-22 at 20 (1872) (remarks by President Brigham Young, delivered in New Tabernacle, Salt Lake City, May 6, 1870).


Nauvoo, Illinois, over which he ruled, and it was not until 1860 that Mormon President Brigham Young himself, who had long “been in the habit of using tobacco...left it off” and finally, after numerous efforts, stopped chewing tobacco. And even when Mormon policy toward tobacco use began to change in the latter part of the 1860s, the Word of Wisdom, which “had not been a binding commandment in early Mormonism, nor in the 1860s when it was used in connection with the ‘grow your own or do without’ program,” appears not to have been any more stringently enforced than previously. Indeed, “[i]t was consistent with the economics of the time,” as Arrington wryly remarked, “that he [Brigham Young] should have had no great objection to tobacco chewing if the tobacco was locally grown.”

In the early 1860s Young publicly and transparently announced and sought to justify his acquiescence in, abetting of, and personal participation in mass violation of his own (alleged) commandment by imperfect and fallible humans. In remarks on the Word of Wisdom and other topics in the Salt Lake City Tabernacle on April 7 1861, he also spread the sarcasm on very thick:

> You know that we all profess to believe the “Word of Wisdom.” There has been a great deal said about it, more in former than in latter years. We, as Latter-day Saints, care but little about tobacco; but, as “Mormons,” we use a vast quantity of it. As Saints, we use but little; as “Mormons,” we use a great deal. How much do you suppose goes annually from this Territory, and has for ten or twelve years past, in gold and silver, to supply the people with tobacco? ... I say that $60,000 annually is the smallest figure I can estimate the sales at. Tobacco can be raised here as well as it can be raised in any other place. ... If we use it, let us raise it here. I recommend for some man to go to raising tobacco. ... I want to see some man...make a business of raising tobacco and stop sending money out of the Territory for that article.

Some of the brethren are very strenuous upon the “Word of Wisdom,” and would like

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625 Fawn Brodie, No Man Knows My History: Joseph Smith, Mormon Prophet 289, 366 (2d ed. rev. and enl. 1971 [1945]).
to have me preach upon it, and urge it upon the brethren, and make it a test of fellowship. I do not think that I shall do so. I have never done so. We annually expend only $60,000 to break the “Word of Wisdom,” and we can save the money and still break it, if we will break it. Some would ask brother Brigham whether he keeps the “Word of Wisdom.” No: and I can still say further...I come as near doing so as any man in this generation. It is not using tobacco that particularly breaks the “Word of Wisdom,” nor is that the only bad practice it corrects; but it is profitable in every path of life. If our young persons were manly enough to govern their appetites a little, they would not contract these bad habits; but they must have some weakness; they must not be perfect and exactly right in everything. It is a loathsome practice to use tobacco in any way. A doctor told an old lady in New York, when she insisted upon his telling her whether snuff would injure her brain, “It will not hurt the brain: there is no fear of snuff’s hurting the brain of anyone, for no person that has brains will take snuff.” I will say that the most filthy way of using tobacco is to smoke it. “[sic]What is the neat way? If you are going to direct any course for the people to use tobacco, let us know what it is. Cannot you who have used it for years point out a neat, modest, judicious way of using it?”[sic] The “Word of Wisdom” says that tobacco is good for sick cattle; and when you want another chew, down with it as you would a pill. It may make you vomit a little, but that is soon over, and it is good for sick cattle. That is the neatest way you can use tobacco.631

Two years later, in instructions he directed to the Mormon settlements south of Salt Lake, Brigham Young articulated the same quasi-mercantilist policy condoning the use of domestically grown tobacco: “This community has not yet concluded to entirely dispense with the use of tobacco, and great quantities have been imported into our Territory. ... I know of no better climate and soil than are here for the successful culture of tobacco. Instead of buying it in a foreign market and importing it over a thousand miles, why not raise it in our own country or do without it?”632

Even in 1867, when “a campaign for complete abstinence was launched with the object in view of stopping the cash drain from the territory and using the money saved to bring ‘the poor’ home to Zion [i.e., Utah],”633 church leaders’ discouragement, approximately three decades after the so-called revelation and 16 years after the general conference covenant, of the “use of such imported

631 Journal of Discourses by President Brigham Young, His Two Counselors, and the Twelve Apostles 9:31-40 at 35-36 (1862) (remarks by President Brigham Young, made in the Tabernacle, Great Salt Lake City, Apr. 7, 1861).

632 “Instructions: By President Brigham Young, in April and May, 1863, to the Latter Day Saints in the Settlements South of Great Salt Lake City,” DN, July 15, 1863 (1:1-4 at 4).

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‘luxuries’ or ‘vices’ as tea, coffee, tobacco, and liquor...was not so much a moral principle as a matter of sound economic policy.”

However, once the campaign was underway, Arrington asserted, “in less than two decades abstinence from tea, coffee, tobacco, and intoxicating beverages was almost as strong a test of faith as carrying out a colonization or missionary assignment.”

However, a number of Mormon presidents thought otherwise. In 1870, almost four decades after the Word of Wisdom had been issued, not only were Mormons still using tobacco, but President Brigham Young, waxing sarcastic and caustic, was forced to rebuke tobacco spitters even in the New Tabernacle in Salt Lake City during the church’s fortieth annual conference:

Referring to the filthy practice indulged in by some, while at meeting, of chewing tobacco,

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634 Leonard Arrington, *Great Basin Kingdom: Economic History of the Latter-day Saints, 1830-1900*, at 223 (1966 [1958]). Astonishingly, as late as October 1921, that is, after the anti-cigarette legislation that he had promoted had gone into effect, Mormon President Heber Grant was still echoing Brigham Young’s economic autarchy arguments to bolster his advocacy of observing the Word of Wisdom. In his opening address at the church’s October General Conference he declared: “I consider it almost a crime for men and women...when the Lord Almighty gives to them a law whereby they can have health and vigor of body and mind, [to] disregard it. Every single dollar that is expended in breaking the Word of Wisdom goes out of the country. It is so much of the vital fluid...financially drawn from the community every time a man or woman drinks a cup of tea or coffee or uses tobacco or uses liquor, because we do not produce those things at home. ... I believe firmly that if all the money which has been sent out of this country from the day the Saints first located in these valleys, for those things that the Lord has said in this revelation are not good for man, had instead been kept here, the accumulation of wealth in our country would have been so great that this intermountain section where the Latter-day Saints are located, would be one of the richest and most prosperous in all the United States.” Heber Grant, “Practical Counsel: Of Intense Importance to Members of the Church,” *IE* 25(3):193-204 at 198-99 (Jan. 1922). See also “Thrift Keynote of the Opening Day at Conference,” *SLT*, Oct. 7, 1921 (1:7).

635 Leonard Arrington, *Great Basin Kingdom: Economic History of the Latter-day Saints, 1830-1900*, at 250 (1966 [1958]). This program of abstinence was then “[c]ontinued for reasons of ‘good health’ in the twentieth century....” *Id.* In 1976, 14 percent of Mormons in Utah smoked cigarettes compared to 39 percent of members of other religions. “Many Utahns Kick Habit, Some Try, Fail,” *SLT*, Feb. 1, 1976 (A7:4-8). According to a more rigorous survey conducted in Utah between 1977 and 1979, 1 percent of active Mormon males, 10 percent of all Mormon males, and 35 percent of non-Mormon males smoked tobacco. Dee West et al., “Cancer Risk Factors: An Analysis of Utah Mormons and Non-Mormons,” *Journal of the National Cancer Institute* 65(5):1083-95, tab. 4 at 1089 (Nov. 1980).
President Young said:

On Sunday, after meeting, going through the gallery which had been occupied by those claiming, no doubt, to be gentlemen, and perhaps, brethren, you might have supposed that cattle had been standing around there and dropping their nuisances. Here and there were great quids of tobacco, and places a foot or two feet square smeared with tobacco juice. I wish the door-keepers, when, in the future, they observe any persons besmearing the seats and floor in this way to request them to leave the house; and, if they refuse and will not stop spitting and besmearing their neighbors, just take them and lead them out carefully and kindly. It is an imposition for those claiming to be gentlemen to spit tobacco juice for ladies to draw their clothes through and besmear them, or to leave their dirt in the house. We request all addicted to this practice, to omit it while in this house. Elders of Israel, if you must chew tobacco, omit it while in meeting, and when you leave, you can take a double portion, if you wish to.\footnote{Fortieth Annual Conference of the Church of Jesus Christ of Latter Day Saints,\textit{ DN}, May 11, 1870 (160:1-4 at 2). It was reprinted in \textit{Latter-Day Saints’ Millennial Star}, May 31, 1870 (344-46).}

An especially impressive depiction of the church hierarchy’s resigned view of the stagnation into which compliance with and enforcement of the Word of Wisdom had slipped by the end of the nineteenth century was furnished by George Q. Cannon (1827-1901), who as the first counselor in the first presidency of several administrations (including Brigham Young’s) was the second highest ranking official in terms of managing the church’s day-to-day affairs.\footnote{Utah History Encyclopedia (Kent Powell ed. 1994), on http://www.media.utah.edu/UHE/c/CANNON,GEORGE.html. After serving four terms as territorial delegate to Congress he also served another one in federal penitentiary for polygamy.} Asked at its Sunday school convention in 1898 whether that institution’s workers should be rigidly held to observance of the Word of Wisdom, Cannon stressed that “compulsion was contrary to the spirit of the doctrine” so that, although he favored observance, he did not support “extreme” enforcement measures. After noting that he was “inclined to some rigidness” in the Sunday school setting,\footnote{The Word of Wisdom,\textit{ Salt Lake Daily Tribune}, Nov. 30, 1898 (5:4-6 at 5).} he made these startling remarks:

The doctrine had been a tenet for sixty-four years but he had found that no great progress had been made in its observance among the Saints. He despaired of its ever being obeyed unless something more powerful than precept should assist. “Why should we wear our lungs out talking the word of God to a people who will not accept it?” he asked. “Let all adults who must use tea, coffee, tobacco or whisky go and use them. For my part I feel like never again addressing an adult member of the church on the subject, but I would like
Ironically, however, whereas 20 years later the Mormon church would organizationally mobilize to secure secular state power-rooted protection of non-smokers from secondhand smoke exposure, Cannon would have been having none of it: “With great earnestness President Cannon stated that though mingling very much with the world he had all his life adhered to the resolution of his childhood to eschew them. He enjoyed the flavor of a good cigar when smoked by another.”

Four years later, in 1902, almost two decades after President Taylor had declared the Word of Wisdom a law for Mormons, President Joseph F. Smith, the founder’s nephew, gave a talk (“The Word of Wisdom and Its Non-Observance”) in which he reaffirmed Brigham Young’s position on the Word of Wisdom by recalling that he had been present when Young, “the mouthpiece of the Lord at that time,...declared to the people that this was no longer ‘not by commandment or constraint,’ but was from that time henceforth by commandment and constraint unto the Saints.” Nevertheless, President Smith confided to an audience of his brethren and sisters in the small town of Beaver, Utah that: “You would be astonished, no doubt, to know how little the Word of Wisdom is observed by the Latter-day Saints.”

The late-nineteenth- and early-twentieth-century policies of the church leadership towards the Word of Wisdom zig-zagged inconsistently between verbal affirmation of the commandment and lax enforcement until 1921—the year in which the Mormon church successfully pushed for enactment of a general cigarette sales ban—when the administration of militant prohibitionist President Heber Grant “made adherence to the Word of Wisdom a requirement for to see the children leave them all alone.”

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641Joseph F. Smith, “The Word of Wisdom and Its Non-Observance,” DEN, Nov. 1, 1902 (23:1-7 at 1) (delivered Sept. 29, 1902). A “comparative census of tobacco users among young male members in the St. George Stake,” located in extreme southwestern Utah, in 1916 revealed that about 85 percent of 827 “polled...adhered to the revelation,” whereas in 1891 about 79 percent of 428 questioned had observed it. Paul Peterson, “An Historical Analysis of the Word of Wisdom” at 89 (M.A. thesis, Brigham Young U. 1972). Although some wards in the stake had attained 100 percent of non-users, the stake president expressed the hope that in another 25 years “we may make a gain of 50 or 75 per cent of non users.” “Stake Conference St. George Stake of Zion,” Washington County News, Mar. 9, 1916 (1:1).
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admission to the temple.”

Anti-Cigarette Sales Bills in Utah, 1896-1911

[House member Thomas F.] Roueche said that we have educated about 20,000 children to smoke cigarettes, and he thought it would work much hardship to cut them off at once. 

643 Thomas Alexander, “The Word of Wisdom: From Principle to Requirement,” Dialogue: A Journal of Mormon Thought 14:78-88 at 82 (Aut. 1981) (apparently citing as a source an oral communication from a former church archivist (id. at 88 n. 15)). Alexander’s objectivity as a historian of the Word of Wisdom is undermined by his apodictic claim, based on sheer religious dogma, that it is “clear” that the Word of Wisdom “was given as a revelation to Joseph Smith.” Id. at 85. His reliability as a historian is called into question by this article’s numerous factual errors with respect to matters outside of Mormon theological developments. For example, he asserted that “[c]hurch members and leaders threw their strong support behind a bill introduced by State Senator Edward Southwick...to prohibit the sale of tobacco in Utah.” Id. at 83. Not only is this empirical claim false—the bill prohibited only cigarette sales—it completely misunderstands the character and scope of the anti-cigarette and anti-smoking movement of the period: neither the Mormon church in Utah nor the WCTU anywhere concretely advocated state legislation banning all forms of tobacco, which, given the enormous resistance to cigarette sales bans, would have been hopeless and counterproductive. For Alexander’s even more serious historiographic errors regarding cigarette billboard advertising legislation in Utah in the 1920s, see below this ch.

644 “The Utah Legislature,” Salt Lake Daily Tribune, Feb. 21, 1888 (4:4). Born in North Carolina, Roueche (1833-1903) was a prominent Mormon church official elected to the Utah Territorial House on the People’s Party ticket (a populist sounding name that the Mormon church gave to its party formed in opposition to the anti-Mormon Liberal Party). http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=123582; “People’s Ticket,” DN, July 20, 1887 (8:1). Roueche was referring during debate to H.F. No. 56, which made it unlawful to sell, give, or furnish cigarettes or tobacco in any form to minors under 18. Scanned copy emailed by Utah State Archives. The bill passed both houses unanimously (Roueche being one of seven House members absent for the vote), but Governor Caleb West returned it without his approval because it would be “an encroachment upon parental authority and an invasion of the domain of family government, attendant with many evils.” He informed the legislature that he would not withhold his approval if it were to “supplement parental authority with public power” by conditioning liability on a prior “written notice forbidding it [i.e., furnishing tobacco] by parent, guardian or one having care and control of a minor.” The House did pass such a substitute bill unanimously (with Roueche voting Yes), but the Council rejected it. House Journal of the Twenty-Eighth Session of the Legislative Assembly of the Territory of Utah 1435
The legislative conflict in Utah in 1921 was merely the latest iteration of general cigarette sales prohibitory antecedents stretching back a quarter-century...
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to the very first legislature after statehood. In 1896 Senate Republican Edward Allison, a non-Mormon, introduced a bill prohibiting the manufacture or sale of cigarettes. Despite the fact that Mormons occupied 50 percent of the seats in the chamber, the Senate adopted the Manufacture and Commerce Committee report rejecting the bill. Additional initiatives were undertaken in succeeding sessions. Shortly after the U.S. Supreme Court had upheld the constitutionality of the Tennessee cigarette sales ban law, a general cigarette sales prohibitory bill was introduced in the Utah House in 1901, but in the wake of a majority

which Sen. Horsley introduced, voted against Horsley’s no-sales-minors bill. Finally, in 1897 the legislature included in the session’s public school law a provision mandating scientific temperance instruction in physiology and hygiene, including the effects of stimulants and narcotics on the human system, whose passage the WCTU secured in all states. See also above ch. 9.

One of several major defects of John H. S. Smith, “Cigarette Prohibition in Utah, 1921-23,” *UHQ* 41(4):358-72 (Aut. 1973), is ignorance of this long prohibitory tradition—including introduction of similar bills in 1917 and 1919 by the same legislator who introduced the bill in 1921 that was finally enacted—which resulted in the author’s misconception that the campaign was a post-world war phenomenon. See below this ch.

A lawyer, Allison had been an assistant U.S. attorney.  

At the 1896 session the 18-member Senate was evenly split between “Gentiles” and Mormons (of whom six were Republicans and three Democrats). In the House 31 of 45 members were Mormons. William Roper and Leonard Arrington, *William Spry: Man of Firmness, Governor of Utah* 62 (1971) (giving no source). As late as “the mid-1950s, roughly 95 percent of Utah legislators and state officeholders were Mormon, although the LDS percentage of the population stood at only 70 percent.” Richard Elulain and Michael Malone, *The American West: A Modern History, 1900 to the Present* 278 (2d ed. 2007 [1989]).

Senate Journal of the First Session of the Legislative Assembly of the State of Utah 352 (Mar. 9) (1896).

“Cigarette Laws,” *SLH*, Nov. 20, 1900 (4:1) (edit.). See also above ch. 12.
committee report recommending that the bill not be passed, the House killed the bill after robust debate, in the course of which one member allowed as although “men had a right to poison themselves with cigarettes they had no right to let their young sons injure themselves by smoking them.”

By 1907, campaigns to ban cigarette sales began to be mounted almost every session. This renewed push must be seen in the context of the wave of enactments at the previous session (1905) in Indiana, Nebraska, and Wisconsin of such laws and of another wave in 1907 in Washington State, Illinois, and Arkansas. That year the Utah vehicle was House Bill No. 74, which was introduced by Charles Milton Croft (1879-1960), a Mormon Republican, who

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653 “Cigarette Bill Causes Debate,” DEN, Mar. 13, 1901 (1:3).

654 Except for 1915, at least one anti-tobacco or -smoking bill was introduced during every regular session through 1923. In 1915 Croft, the author of the 1907 cigarette sales prohibitory bill, planned to submit another such bill, but by early February lacked the time to prepare it; the same was true of his (and Mabey’s) statewide liquor prohibition bill, which they did introduce, but the anti-cigarette bill was not filed. House Journal: Eleventh Session of the Legislative Assembly of the State of Utah 241 (Feb. 8) (1915) (H.B. No. 162, by Mabey and Croft); “May Ask More Time to Submit Bills in Legislature,” Evening Telegram (Salt Lake City), Feb. 9, 1915 (2:1); “Four Liquor Bills Now Pending,” Evening Telegram (Salt Lake City), Feb. 18, 1915 (1:1).

655 See Table 2, Map 2, and vol. 2. In addition, in 1906 and 1907 a single chamber in several states passed general bans on cigarettes sales. On the bill passed by the Ohio House, see above ch. 4. Also in 1906 the Maryland Senate, by a vote of 17 to 5, passed such a bill (supported by the WCTU of Baltimore), which the House killed by a vote of 47 to 46 in tabling a motion to substitute the bill for an unfavorable committee report. Journal of Proceedings, of the Senate of Maryland, January Session, 1906, at 219, 405 (Jan. 26, Feb. 5) (1906) (Senate bill, File No. 44, by Goldsborough); Journal of Proceedings, of the House of Delegates of Maryland, January Session, 1906, at 270, 468-70 (Feb. 9, 22) (1906); “Maryland Senate Passes an Anti-Cigarette Bill,” OW-H, Feb. 6, 1906 (6); “Failure to Organize,” WP, Feb. 23, 1906 (9:3). In 1907 the Missouri House also passed a cigarette sales ban bill, which died in the Senate. Journal of the House of Representatives of the 44th General Assembly of the State of Missouri 20, 225 (Jan. 4, 24) (1907) (H.B. No. 39 passed by a vote of 100 to 22); Journal of the Senate of the 44th General Assembly of the State of Missouri 385, 619 (Feb. 13, 22) (1907) (Criminal Jurisprudence Committee recommended that it not pass; motion in full Senate to table lost 5 to 17, but no further action according to Index); “Cigarettes Barred,” SLT, Jan. 25, 1907 (8:5).

had been a public school teacher, principal, and Morgan County School District superintendent. His anti-cigarette advocacy was, speculated his genealogical mini-biographer and great-granddaughter, strongly influenced by his English father, who, orphaned at 12 before becoming a Mormon, went to work in a tobacco factory in the late 1840s, where he was the sole non-user. (When, in February 1907, Croft had been late the previous day, he was, as part of House “‘horse play,’” “sentenced to smoke a cigarette, but the action was rescinded and he was allowed to purchase a box of oranges instead.”) The bill made it a misdemeanor to “sell, keep for sale, give away or furnish to any person or persons, cigarettes or cigarette paper in any form whatever.” The House, 38 of whose 45 members were Republicans, adopted the Judiciary Committee majority report (which had recommended relatively minor changes) and then passed the bill by an overwhelming 36 to 5 majority. Nevertheless, the Senate, in which Republicans occupied all 18 seats, did not adopt its Public Health Committee’s recommendation that the bill be passed, tabling it instead.
This dry skeletal outline of the bill’s demise sketched in the House and Senate journals does no justice to the contentious disputes that generated this outcome. The day after Croft had filed his bill, the Inter-Mountain Republican, the self-styled “Official Organ of the Republican Party in the State of Utah,” waxed skeptical over Croft’s intention to drive the cigarette into exile because, as a subhead put it: “TOBACCO TRUST IS BUSY.” Suggesting that the American Tobacco Company had learned at least as much from its defeat in Indiana as the anti-cigarette movement had been inspired by it, the newspaper revealed that:

Having procured advance information that an anti-cigarette bill would be introduced at the present session of the legislature, the tobacco trust has formed a lobby that will make an effort to interfere with the passage of the bill. Some of the same tactics used in Indiana when a like bill was under consideration by the legislature of that state will be introduced. Several bulky packages of literature upon the subject of cigarettes have been shipped to this city for distribution. In these eminent medical authorities are quoted as giving their opinions that...the “paper pill” is no more injurious to health than other forms of tobacco. One doctor goes to the length of saying that less nicotine is introduced into the system via the cigarette than by the use of cigars or of pipes.

Cash arguments failed to convince the legislature of Indiana that the cigarette bill introduced into that body should not pass. It is believed by those who watched the lobby’s work that the offer of cash premiums for votes helped the passage of the law in that state.\footnote{\textit{Proceedings Before the Committee on Privileges and Elections of the United States Senate in the Matter of the Protests Against the Right of Hon. Reed Smoot, a Senator for the State of Utah, to Hold His Seat} 4:306-307 (S. Doc. No. 486, 59th Cong., 1st Sess. 1906); \textit{History of the Bench and Bar of Utah} 198 (1913).


\footnote{“Would Place Ban on Paper Pipes,” \textit{I-MR} (Salt Lake City), Feb. 1, 1907 (2:5). Unfortunately, a tear in the [digitized version of the] paper makes it impossible to read key words in the last sentence of this paragraph, which states that “the rumor [  ] this city to}
Whether in fact the Nicotine Trust had drawn the conclusion from Indiana for guiding its bill-killing campaign in Utah that bribery was not the most efficacious lobbying method is unclear, but the controversy over H.B. No. 74 became intense. The (at this time Democratic) Salt Lake Herald, which jauntily informed “Cigarette fiends” the day after Croft had introduced his bill that “the great power of the Utah legislature” was about to take their “coffin nails” away from them, two days later editorialized in an ironic vein that any man who smoked cigarettes “ought to be compelled to go into retirement when he does it, and get sterilized before he returns to the associations of mankind.” And while the newspaper agreed with Croft’s “notion that the cigarette ought to be tabooed,” it opined: “When it comes to legislating for the reform of mature men, it is altogether likely no such law would prevail against the folly of humanity.” In this view it was reinforced by what it perceived as the lesson to be learned from the 1905 Indiana law, which allegedly succeeded merely in promoting the interstate mail-order trade. Although this focus on the fecklessness (together with the unfairness) of prohibiting adult men from buying cigarettes would run straight through the course of the debate in Utah, advocates of the universal ban failed to engage the argument or to justify the linked claim that grown-ups should sacrifice for youth. The tenor of the lengthy House discussion of the aforementioned majority and minority reports on H.B. No. 74 on February 8, “the most animated debate of the session,” and the rising vote in favor of the former and rejecting the latter’s recommended rejection indicated to the Herald that the chamber would pass a stringent anti-cigarette law based on existing statutes in Iowa, Tennessee, Indiana, Wisconsin, and Nebraska. The press found it significant that the cigarette found not a single champion among House members: those opposing the sales ban did so based either on its unconstitutionality or on its interference with adults’ liberties. Indeed, even the bill’s most vocal House opponent, Democrat John Franklin Tolton (1861-1950), a relatively high-ranking Mormon church

lobby against Representative Croft’s bill is without foundation.”

667 “Chorus of Tenors Sends Up Despairing Wail as Legislature Prepares to Banish Cigarettes,” SLH, Feb. 1, 1907 (10:3).

668 “Cigarettes and the Law,” SLH, Feb. 3, 1907 (4:3) (edit.).

669 “Legislative Work of Friday,” Ogden Standard, Feb. 9, 1907 (7:2).

670 “Speaker Joseph Rushes Things,” SLH, Feb. 9, 1907 (10:2).

671 “Anti-Cigarette Measure Wins Out in House After a Spirited Debate,” SLH, Feb. 9, 1907 (8:6-7).

672 “Battle of Words over Cigarettes,” I-MR (Salt Lake City), Feb. 9, 1907 (10:3).

673 John F. Tolton, “From the Halls of Memory” (1931), on http://catalog.lib.byu.edu (biographical sketch).
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official and owner of a large and profitable mercantile business in the small Mormon pioneer-settled town of Beaver who boasted of not having sold cigarettes during the previous five years, "believed no member on the floor was opposed to the spirit of the measure, in that it would protect those of tender years from an insidious habit." Although he believed that cigarettes were "harmful," he contended that "we have no right to forbid their use." To the full House Tolton, who had signed the committee minority report, set forth his libertarian manifesto:

"We have no more right to say that a man should not smoke cigarettes than we have to say he shall not smoke cigars, or a pipe, or use tobacco in some other form. We have no more right to legislate against the selling or using of cigarettes than we have to forbid a man drinking tea or coffee. It is as absurd for us to legislate against the using of cigarettes as it would be for us to forbid a man appearing in full dress or with a certain kind of shoes to his liking."

A Republican who advocated legislating “the cigarette habit out of existence”

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674 Tolton was president of the Young Men’s Mutual Improvement Association (1883-84), high stake counselor (1887-91), counselor in stake presidency, and stake president of the Beaver Stake (1908-16). List of Stake Officers and Bishops of the Church of Jesus Christ of Latter Day Saints: October 1, 1907 (n.p.); John Franklin Tolton, “From the Halls of Memory” at 46 (1931), in L. Tom Perry Special Collections Library, Harold B. Lee Library, Brigham Young University, Provo, Utah. In 1912 he was the unsuccessful Democratic gubernatorial candidate. In 1917, when Tolton returned to the House and was elected speaker, he voted against Southwick’s anti-cigarette bill. House Journal of the Twelfth Session of the Legislature of the State of Utah 500-501 (Mar. 1) (1917). Unfortunately, Tolton’s memoir merely mentioned his being floor leader of the small Democratic contingent in 1907 without referring to any legislation. John Tolton, “From the Halls of Memory” at 36 (1931). Nowhere did he even allude to tobacco.

675 “Solid South in Utah Legislature,” SLH, Jan. 28, 1907 (3:2). He was also a bank president and engaged in farming Utah and Idaho.

676 Since Tolton had been in business since 1898, he apparently had sold cigarettes before 1903. John Franklin Tolton, “From the Halls of Memory” at 32 (1931); Utah State Historical Society, Historic Preservation Research Office, Structure/Site Information Form, Site No. BV-04-156 http://pdfhost.focus.nps.gov/docs/NRHP/Text/83003905.pdf (visited Sept. 2, 2011).

677 “Battle of Words over Cigarettes,” I-MR (Salt Lake City), Feb. 9, 1907 (10:3).

678 “Anti-Cigarette Measure Wins Out in House After a Spirited Debate,” SLH, Feb. 9, 1907 (8:6-7).

679 “Battle of Words over Cigarettes,” I-MR (Salt Lake City), Feb. 9, 1907 (10:3).

680 “Battle of Words over Cigarettes,” I-MR (Salt Lake City), Feb. 9, 1907 (10:3).
pointed out that Tolton’s anti-sumptuarianism lacked consistency since at the very same time he authored a bill to “prevent quiet, orderly shows on Sunday.”

Claims that his bill was unconstitutional and inoperative inasmuch as it did not prohibit interstate shipments of cigarettes for personal consumption Croft rebutted both by pointing out that such laws in the five aforementioned states had been judicially upheld and by reading printed testimonials showing that they were not dead letters. To the relatively restrained objection by John Q. Critchlow, a Mormon Republican representative, that the legislature should not instruct adults as to how to smoke their tobacco Joseph Jackson, a Mormon Republican Sunday school superintendent, replied, in a blast of expansive paternalism, that “the legislature had the right to say to men they should not use what is not good for them”—an apparent generalization of his view that “the legislature had just as much right to say that a man should not sell or give away poisonous tobacco as it had to say that adulterated food should not be sold.”

This wide variability of attitudes among Mormon legislators, who might have been imagined to constitute a solid phalanx of anti-cigarette laws’ strongest supporters, pointed up the difficulties facing passage of a general sales ban even in the state the majority of whose population was indoctrinated by its religion to eschew tobacco. During a period in which the Mormon church hierarchy still

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681 “Battle of Words over Cigarettes,” I-MR (Salt Lake City), Feb. 9, 1907 (10:3) (Harry Robinson). After Mormon Republican Governor John Cutler in his message to the legislature had denounced Sunday theater performances as “decidedly contrary to the moral and religious sense of a Christian community” and urged passage of a prohibitory law, Tolton introduced H.B. No. 54, which was broader in scope and was superseded by an even more comprehensive substitute, which passed the House (34 to 8), but, after initial Senate passage, was killed there. House Journal of the Seventh Session of the Legislative Assembly of the State of Utah 53-54, 107, 711, 931 (1907); Senate Journal: Seventh Session of the Legislative Assembly of the State of Utah 1907, at 643 (10 to 8); http://images.archives.utah.gov (bill texts). Interestingly, Tolton did not include liquor in his anti-prohibitory catalog.

682 “Battle of Words over Cigarettes,” I-MR (Salt Lake City), Feb. 9, 1907 (10:3); Anti-Cigarette Measure Wins Out in House After a Spirited Debate,” SLH, Feb. 9, 1907 (8:6-7); “Clear Table for ‘Galveston’ Bill,” DEN, Feb. 9, 1907 (5:1-3 at 2).


684 “Anti-Cigarette Measure Wins Out in House After a Spirited Debate,” SLH, Feb. 9, 1907 (8:6-7).

685 “Clear Table for ‘Galveston’ Bill,” DEN, Feb. 9, 1907 (5:1-3 at 2). On Jackson, see Seventy-Third Annual Conference of the Church of Jesus Christ of Latter-day Saints 63 (1903).
rejected statewide liquor prohibition as creating an unnecessary risk of rift with the non-Mormon population, numerous Mormon legislators zealously advocated libertarianism as a congenial basis for taking exception to any law depriving both the Nicotine Trust of the right to sell to adult men and the latter of the freedom to buy the addictive toxins of their choice even if such laissez-faire stimulated the next generation’s attraction to cigarette smoking.\textsuperscript{686}

As soon as the House had passed the bill, the pro-cigarette smoking forces began “in devious ways” to identify means by which to “defeat the intent of Croft’s pet measure, which he thinks will stamp out cigarette smoking in Utah,” though the traditional method of shipping cigarettes from other states directly to consumers to “‘beat’” the bill if it became law was already well known.\textsuperscript{687} In contrast, the Mormon-owned \textit{Deseret Evening News} seemed eager to take advantage of the legislative momentum by editorially hinting at the need for a partial public smoking ban as well in order to protect non-smokers from secondhand smoke exposure:

\begin{quote}
Were it possible for a smoker to confine the fumes of the burning weed to the atmosphere he himself breathes, he would not be as much of a nuisance as he is. But that is impossible. He poisons the air that others have a right to have as pure as they can get it. On the sidewalks, in elevators, in public buildings, the smoker puffs the smoke into the faces of other persons, compelling them to inhale it after he has had it in his mouth. Is it not strange that any man with the instinct of a gentleman will do that? No one would, except for thoughtlessness.

Especially is this in evidence at banquets where smokers hardly finish the dessert before they commence blowing smoke in all directions. In that case guests who have not yet finished eating are compelled not only to inhale the fumes, but actually to eat the soot that necessarily settles upon the food on their plates.\textsuperscript{688}

In the event, premature were both cigarette smokers’ concern about the disappearance of the supply of their self-administered drug of choice and anti-smokers’ hopes of taking their struggle to the next level. Although the Senate killed Croft’s bill, the debate between non-members that some of its members

\begin{footnotesize}\begin{itemize}
\item\textsuperscript{686}To be sure, the Word of Wisdom did not expressly prohibit production of tobacco, let alone require Mormons to work for secular prohibitions.
\item\textsuperscript{687}“Legislative Sidelights,” \textit{DEN}, Feb. 12, 1907 (5:4).
\end{itemize}\end{footnotesize}
literally stage-managed as a kind of practical joke produced some illuminating insights. The play spotlighted Fisher Sanford Harris, a transplanted Virginian turned Utah and Salt Lake booster nonpareil, who also happened to be “a violent cigarette smoker”; “much alarmed since the bill passed the house,” Harris “requested permission to appear before the senate committee in opposition to the measure.” The seat of his influence was the Commercial Club, which he had organized and whose secretary he was. Despite the fact that—or, perhaps, precisely because—he had “won his way to the hearts of all Salt Lakers,” several senators decided to use H.B. No. 74 as a way of “bait[ing]” him and laughing up their “[s]leeve” at him. Allegedly born of an idle hour weighing heavily on Public Health Committee Chairman Wesley K. Walton, the “plot” was hatched when it dawned on him that he could telephone Harris to see whether he could get a rise out of him by informing him that he was going to recommend Croft’s bill for passage. Harris, as Walton confided to the Senate president, immediately fell for it, excitedly replying to Walton: “For heaven [sic] sake, don’t do it. I’m coming down in a hack—hold the bill till I can get there.” To his surprise, on arrival he learned that he was to address not the Public Health Committee, but the committee of the whole. Another senator in on the “joke” spoke carefully “so that Mr. Harris could not,” in the words of the Deseret Evening News, “possibly be deceived into thinking this was anything but the most dignified assembly of men seeking after knowledge of the deadly cigarette, despite the fact that half of them have the brand of nicotine on their right thumb nail.”

The substance of Harris’s remarks may have been designed to suggest to legislators the kind of civil resistance that Salt Lake’s smoking businessmen were willing to put up if the bill went into effect. Eschewing any defense of “the habit of cigarette smoking,” he confined himself to urging a “statesmanlike view of the situation” that would preclude enactment of “any foolish legislation.” Bluffing an intimacy with all branches of world history and legislation and enforcement, Harris charged that no sumptuary law, which interfered with a man’s personal rights,“ever placed on the statute books of any country in the world has been successfully enforced and if you pass this bill it will meet with the same fate. You have no right to

690 “Fisher Sanford Harris Passes to Great Beyond,” Salt Lake Herald-Republican, Nov. 8, 1909 (1:1, 2:1-3).
691 “Sedate Senate Baits Harris,” DEN, Feb. 19, 1907 (5:1).
interfere with the tastes of an ordinary man, and even if you do, I and others will smoke as persistently as before and with as much joy. It is time for Utah to be known as a safe state and not inclined to pass socialistic, anarchistic and populistic legislation.”

After Harris’s half-hour at center stage, the directors of this comedy then expanded its cast by dispatching the sergeant-at-arms to fetch Croft—whom they also intended to “Make A ‘Monkey of’”—from the House to defend his bill. He sought to refute Harris’s historical argument by pointing to the states in which similar laws were in effect and assuring senators that they “worked well.” Then reaching for the soundest medical-scientific argument at the anti-cigarette movement’s disposal, Croft declared that cigarettes were harmful “because the smoke is inhaled into the lungs.” Availing himself of the opportunity for rebuttal, Harris, even if he failed to live up to his “title as the greatest orator and public speaker of the west,” at least came across as a clever obfuscatory high school debater by offering this unique response in the annals of the late-nineteenth- and early-twentieth-cigarette controversy: “if the inhaling part is what the law drives at, inhaling should be made a crime, and officers should be authorized to accost a man on the street and find out if he was inhaling or not, and if doing so, to arrest him.” Whatever rhetorical skills this latter-day Demosthenes possessed stood him in ill stead when he pressed his luck too far in concluding his rebuttal with the prediction that “he would go down to his grave at the age of 102 smoking his favorite cigarette, while Mr. Croft long before by reason of a law to be passed in the near future would be deprived of his glass of milk.” In fact, 18 months later the 44-year-old Harris was dead of “throat cancer brought on by lifelong smoking.”

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694 “Sedate Senate Baits Harris,” DEN, Feb. 19, 1907 (5:1).
696 “Fisher Sanford Harris Passes to Great Beyond,” Salt Lake Herald-Republican, Nov. 8, 1909 (1:1).
In the short run Harris may have been dead, but in the even shorter run he did live to celebrate H.B. No. 74’s even earlier demise at the hands of the Senate: “As soon as the job had been completed, Sergeant at Arms Day was instructed to call up Fisher Harris at the Commercial club and announce the glad tidings. This was immediately done, but Mr. Day could not communicate the response to the anxious members as he said all he could hear was a loud noise as if some one [sic] were in a paroxysm of joy.” Whether this communication was really meant solely for Fisher or whether he was a conduit to the Tobacco Trust and its local symbionts is unknown.

The measure introduced at the 1909 session by Hugh A. McMillin of the (anti-Mormon) American Party was virtually identical to the 1907 bill, but the House Judiciary Committee recommended that it not be passed and the full House adopted the report, thus swiftly killing the bill. But the 1911 session, at which Republican majorities in both houses remained crushing, witnessed another major anti-cigarette sales initiative, this time advanced by the WCTU, whose extensive negative legislative agenda also included constitutional liquor prohibition, outlawing gambling, prohibiting white slave traffic, a Sunday law prohibiting theaters and movies, and shorter hours for women employees and prohibiting child labor. Two identical bills were introduced by Republicans in the House and Senate, the former (H.B. No. 215)
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taking precedence.\footnote{House Journal: Ninth Session of the Legislature of the State of Utah 311 (Feb. 17) (1911) (H.B. No. 215, by William Allison); Senate Journal: Ninth Session of the Legislature of the State of Utah 1911 , at 255, 640 (S.B. No. 206, by William Horsley) (Feb. 17, Mar. 9).}{704} The measure was more stringent than those of 1907 and 1909 not only in banning manufacturing as well, but also in making it a misdemeanor both to bring cigarettes (or paper) into Utah for the purpose of selling or giving away and to “own, keep or be in any way concerned, engaged or employed in owning or keeping any such cigarettes....”\footnote{H.B. No. 215, http://images.archives.utah.gov/cdm4/document.php?CISOROOT=/432&CISOPTR=13949&REC=11.}{705} The bill, which was thus a composite of the 1896 Iowa\footnote{See above ch. 10.}{706} and 1897 Tennessee laws,\footnote{See above ch. 5.}{707} passed both chambers almost unanimously—36 to 1 in the House\footnote{House Journal: Ninth Session of the Legislature of the State of Utah 390-91 (Feb. 24) (1911). The bill passed with a minor amendment recommended by the Judiciary Committee striking out a rider apportioning one-half of the fine to the complaining witness. Id. at 326 (Feb. 20).}{708} and 15 to 2 in the Senate.\footnote{Senate Journal: Ninth Session of the Legislature of the State of Utah 1911 , at 764 (Mar. 9).}{709}

In spite of these massive majorities, Mormon Republican Governor William Spry disapproved the bill on the grounds that cigarette sales to minors were already prohibited and that adults would buy them in original packages (shipped in directly from other states), “thus taking much business out of the state.”\footnote{“Governor Vetoes Cigarette Bill,” Evening Standard (Ogden), Oct. 22, 1911 (2:1). The Utah State Archives was unable to locate the veto message. Email from Heidi Stringham to Marc Linder (Sept. 12, 2011).}{710} Spry’s veto was consistent with his vetoes of liquor prohibition as well as with the stance adopted at that time by part of the Mormon church hierarchy—in particular by President Joseph F. Smith, who warned against overzealous, “‘drastic...illiberal, or oppressive’” action\footnote{William Roper and Leonard Arrington, William Spry: Man of Firmness, Governor of Utah 82 (1971) (giving no source for direct quotations).}{711}—and the Reed Smoot leadership of the Republican Party not to antagonize the non-Mormon population, and especially businessmen, by foisting liquor prohibition on the state.\footnote{See below this ch.}{712}
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Utah’s 1921 Anti-Cigarette Law Bans Sales, Advertising, and (Much) Public Smoking

“I know...that it is very offensive to one who doesn’t smoke to have a smoker blow smoke in his face. There are meetings such as this at which it is not appropriate to smoke. But that is a matter that should be governed by one’s conduct as a gentleman. It is a personal subject and not within the jurisdiction of any lawmaking body.”  

The dispute over a cigarette sales ban in Utah became especially contentious in 1921—legislative anti-cigarette proposals from 1913 to 1923, which focused on public smoking prohibitions, are separately discussed below—as a result of non-Mormon antagonism sparked by “admissions that the bill was sponsored by the Mormon church.” This organizational support was reflected, for example, in the fact that the vast majority of the large number of legislative petitions favoring the bill’s passage stemmed from various Mormon entities. (The

713“Minister Grills Southwick Bill,” SLT, Jan. 29, 1921 (22:1) (Rev. Elmer Goshen, First Congregational Church, speaking to meeting of state legislators and Salt Lake businessmen at Commercial Club).

714See also below this ch. for discussion of the repeal of the general cigarette sales ban in 1923, which at the time was subordinated to controversy over repeal of the law’s anti-public smoking provision.


716Because House members complained that the cost of printing the long petitions (including the list of attached names) was excessive and that reading them took up too much time, the House decided to have them read only by title and to include only the title in the House Journal. “Action Deferred by House on County Relief Measure; Dern Land Bill Is Passed,” SLT, Jan. 29, 1921 (16:6-7). On the petitions, see also “Urge Passage of Anti-Cigarette Measure,” DN, Feb. 1, 1921 (sect. 2, 10:1).

multifaceted struggle was so intense that at the end of January the press opined that during the first month the Utah legislature’s chief development had been discussion of the anti-cigarette sales and public smoking bill.)\textsuperscript{718} Indeed, reacting to the failure of his amendment to derail the cigarette sales prohibitory law by means of licensure, Representative O. F. McShane predicted on the House floor that the anti-Mormon “American party would be revived in Utah if prominent members of the dominant church continued to take such an active part in prohibitive legislation.”\textsuperscript{718} He (erroneously) discounted reports that the church “as an organization” was “more or less responsible” for the 1921 law, but did believe “that the members of this church are doing it. They want to put this state back twenty years. They would see the old party lines drawn again. It is only one step from telling you what you may not do to telling you what you may do.”\textsuperscript{719} And his Mormon pro-licensure ally, Salt Lake Republican Representative M. Shirley Winder, confided to the House that “[I regard as the most regrettable feature of this affair the lobbying done by a certain group of men who are members of my church, whose methods I consider despicable in the extreme.]”\textsuperscript{719} Waiting until after adjournment to disclose at least one source of his wounded pride, Winder added that one member of the church Young Men’s Mutual Improvement Association advisory committee “had asked him insultingly if he had not been approached by representatives of the tobacco trust.”\textsuperscript{720}

Ironically, despite the taboo that it placed on tobacco, to statewide cigarette sales prohibition legislation the Mormon hierarchy did not lend its advocacy until

\textsuperscript{718}“Reformers and Disrespect for the Law,” \textit{OS-E}, Jan. 31, 1921 (4:1) (edit.). The assertion that the “anti-cigarette law in Utah attracted little notice, either inside the state or out, when it was enacted” is preposterous and false. Cassandra Tate, \textit{Cigarette Wars: The Triumph of “The Little White Slaver”} 129 (1999). In fact, Utah press coverage of the debate was extraordinarily extensive and deep—more so than that for any other state at any time between the 1880s and 1920s.

the run-up to the 1921 session. For such seeming inconsistency there was immediate precedent: though adamantly opposed to alcohol, the Mormon church had also refrained from officially advocating prohibition in Utah until 1916-17 lest its interference in state politics reinvigorate political antagonisms between it and non-Mormons and undermine the domination of the Republican Party, which was controlled by U.S. Senator and Mormon apostle Reed Smoot. The delay in openly supporting anti-cigarette/smoking legislation was presumably linked to the ideological space that opened up once prohibition had outlawed the legal use of liquor in 1917.

Edward Southwick: The Utah Legislature's Principal Anti-Cigarette Advocate

Senator Southwick...said he was a user of tobacco in no form whatever.... From his own town, said...Southwick, came the superintendent of the Salt Lake City schools, the superintendent of the Ogden schools, the boy scout executive of Salt Lake and Ogden, country boys all of them, not addicted to tobacco in any form, and now a Lehi boy offers the greatest piece of legislation to the people of Utah they have ever known since statehood was obtained in 1896.

Senator Southwick...summed up the debate, saying that the eight-hour law had been

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721 On the internal, non-public preparations by the Mormon church in 1920 and into January 1921, see below this ch. and John H. S. Smith, “Cigarette Prohibition in Utah, 1921-23,” UHQ 41(4):358-72 at 360-64 (Aut. 1973), which, however, overlooked that the bill's introducer had announced his intentions early in January, at a time when Smith mistakenly believed that the project was still veiled. See below this ch.


term freak legislation as this was.\textsuperscript{725}

The last statewide general cigarette sales ban enacted in the United States was introduced by Edward Southwick (1871-1936),\textsuperscript{726} a Mormon Democrat, who had also authored even more radical (but unsuccessful) measures in 1917 and 1919.\textsuperscript{727} After having served as recorder, school trustee, and mayor of his birthplace, the small town of Lehi, in 1913 he represented in the House Utah County, an overwhelmingly Mormon county, in which Brigham Young University, which he attended for two years after the eighth grade (when it was still called Academy), is located. Born in Utah of English-born parents—his father was a boot- and shoemaker—Southwick, following several years as a Mormon missionary in Britain and elsewhere, was employed in the commissary department of the Los Angeles & Salt Lake Railroad before working for 15 years for the Mormon church-owned Utah-Idaho Sugar Company as a farmer and overseer as well as in charge of a lake resort. Southwick, who owned 700 acres of valuable land, then went into the farming, cattle raising, and real estate businesses in addition to becoming president of a mining and a canning company as well as a bank president. He was also a very active Mormon, occupying a relatively influential position as a “high priest, a member of the high council in the Alpine stake and secretary to the deacons, elders and Quorum of Seventy” as well as “senior president of the Sixty-eights Quorum of Seventy....” By 1919 he had been a Sunday school teacher, superintendent, and stake officer for 28 years.\textsuperscript{728} On November 17, 1920, less than two months before he announced that

\textsuperscript{725}“Measure Prohibiting Sale of Cigaretts in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1-2, at 14:4-6 at 5).

\textsuperscript{726}1880 Census of Population (HeritageQuest); “Former Mayor of Lehi Dead at 65,” OS-E, Nov. 16, 1936 (2:5); “Funeral Service Set for Ex-Lehi Mayor,” SLT, Nov. 18, 1936 (5:4). At the 1880 census he was returned as “Jr.,” but not in later censuses; nor did the legislative journals use it.

\textsuperscript{727}See below this ch.

\textsuperscript{728}1880 Census of Population (HeritageQuest); Hamilton Gardner, History of Lehi 310-11, 431 (1913); Utah Since Statehood: Historical and Biographical 2:342, 345 (1919)(quotes); “Anti-Cigaret Legislation Candidate for Congress,” Daily Herald (Provo), Aug. 1, 1922 (1:8); “Community Pays Tribute to Edward Southwick,” LS, Nov. 26, 1936 (n.p. [5]:4-7); “Death Calls Civic and Church Leader,” Lehi Free Press, Nov. 19, 1936 (1:1). None of his obituaries mentioned his cigarette sales and smoking ban law. Lehi’s population was about 3,000 in the 1910s. Richard Van Wagoner, Lehi: Portraits of a Utah Town 400 (1990). On the complex relationship between the Mormon-owned sugar company and Henry Havemeyer’s sugar trust beginning about the turn of the century, see Leonard Arrington, Great Basin Kingdom: An Economic History of the Latter-day Saints,
he would be introducing yet another anti-cigarette bill, he became president of the newly organized Alpine Stake Mission.\footnote{Southwick's advocacy of radical anti-cigarette and -smoking legislation did not mark him as a Mormon dogmatist, although he did later aver during Senate floor debate: “My Church stands against the use of tobacco and I am proud as a citizen of the state and a member of that Church to stand here and defend this principle.”\footnote{Rather, as was also the case with some anti-cigarette legislators in other states, it was part and parcel of a progressive and pro-labor agenda that he had initiated already at the very beginning of his House career in 1913, when, on the eleventh day of the session, he introduced a bill\footnote{Southwick's bill would have added...}}\footnote{1896 Utah Laws ch. 72. Its fame derived from the U.S. Supreme Court decision upholding its constitutionality. Holden v Hardy 169 US 366 (1898). For a discussion of the law, see Marc Linder, “Moments Are the Elements of Profit”: Overtime and the Deregulation of Working Hours Under the Fair Labor Standards Act 28-29 (2000).}}

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Rather, as was also the case with some anti-cigarette legislators in other states, it was part and parcel of a progressive and pro-labor agenda that he had initiated already at the very beginning of his House career in 1913, when, on the eleventh day of the session, he introduced a bill\footnote{Southwick's bill would have added...} to amend Utah’s nationally famous two-decade-old law that made it a misdemeanor for any corporation, employer, or manager to employ any working man more than eight hours a day (“except in cases of emergency, where life or property is in imminent danger”) in any underground mine or smelter.\footnote{1896 Utah Laws ch. 72. Its fame derived from the U.S. Supreme Court decision upholding its constitutionality. Holden v Hardy 169 US 366 (1898). For a discussion of the law, see Marc Linder, “Moments Are the Elements of Profit”: Overtime and the Deregulation of Working Hours Under the Fair Labor Standards Act 28-29 (2000).} Southwick’s bill would have added...

His measure coincided with a larger movement in the Pacific Coast states, galvanized by the Socialist Party, to adopt strict universal eight-hours laws by means of the Progressive-era electoral initiative.\footnote{Marc Linder, “Time and a Half’s the American Way”: A History of the Exclusion of White-Collar Workers from Overtime Regulation, 1868-2004, at 91-115 (2004).} In rigidly imposing a maximum eight-hour working day for adult men in a variety of non-mining employments, rather than creating a regime of premium pay for overtime hours, Southwick’s bill was so far ahead of its time that almost a century later the United States still lacks such regulation.\footnote{Marc Linder, The Autocratically Flexible Workplace: A History of Overtime Regulation in the United States (2002).} The independent Ogden Examiner immediately hailed it on the grounds that: “No man ought to be required to work over eight hours. He can earn a day’s wage in that time if he can do it all. And if he can’t, then he ought to be gently but firmly removed and the place given to a man who can.”\footnote{“In the Legislature,” OE, Jan. 24, 1913 (4:1-2) (edit.).}

At three open hearings, the House Labor Committee, of which Southwick was a member, heard numerous prominent and powerful industrial managers, whose factories were struggling to compete with the long hours and cheap labor of well-established manufacturing centers, protest against the alleged dire consequences of an eight-hour regime, which included the claim that it was difficult to obtain the necessary labor during the busy season and sometimes impossible to staff one shift, let alone two or three. In short: “It would be suicidal to palsy the hand that feeds.”\footnote{“Open Session Held by Labor Committee,” SLT, Feb. 1, 1913 (9:3).} That hand was manufacturing, which, in the words of President George McAllister of the Manufacturers Association of Utah, as a result of an eight-hour law “must cease” because Utah manufacturers were competing against “the 12-hour labor of the east.”\footnote{“Interest in Labor Bill Grows Apace,” OE, Feb. 2, 1913 (5:1-2).} In contrast, the Utah Federation of Labor supported the bill,\footnote{“Open Session Held by Labor Committee,” SLT, Feb. 1, 1913 (9:3).} and in line with the aforementioned broader Pacific Coast initiative, H. S. Joseph, representing miners, offered a substitute bill that would have achieved universality by setting the “period of employment of working men and working women in all classes of labor in Utah” at eight hours.\footnote{“Lively Doings Are Expected in House,” SLT, Jan. 31, 1913 (4:1-2 at 2). Joseph was presumably the former Utah House speaker discussed below: an opponent of anti-
Of particular interest were the views of George Austin, the agricultural superintendent of the Utah-Idaho Sugar Company, Southwick’s former employer. After sharing with the committee his autobiographically rooted belief that as a lifelong laboring man he should have the opportunity, if he wished, to work nine or ten hours, he reported that the sugar company operated only 80 to 110 days a year, and that just when the sugar beets were being harvested, it was hard to secure men for factories when they were needed; consequently, to cut the factories down to eight hours during such critical times would do irreversible damage to the sugar industry.\footnote{741}{“Interest in Labor Bill Grows Apace,” \textit{OE}, Feb. 2, 1913 (5:1-2). Intriguingly, by 1915, Austin, now operating his own business, made Southwick, who was not a legislator that session, the exclusive agent for a resort project he was developing at Saratoga.


\textit{Strenuous Week in House Is Indicated},” \textit{SLT}, Feb. 24, 1913 (14:4).}

In the wake of these hearings, the House Labor Committee substituted for Southwick’s bill its own “compromise”\footnote{742}{House Bill No. 184, on http://images.archives.utah.gov/cdm4/document.php?CISOROOT=/432&CISOPTR=1339&REC=16; \textit{House Journal: Tenth Session of the Legislature of the State of Utah...1913}, at 312 (Feb. 13) (H.B. No. 184).} diluted measure (H.B. No. 184), which capped the workweek of factory working men at 57 hours.\footnote{743}{On February 17, the House adopted the committee report and proceeded to floor debate of the new bill on final passage, in the course of which Southwick, according to the \textit{Salt Lake Tribune}, “drew a touching picture of the workmen in sugar factories who are now compelled to work twelve and twelve and a half hours a day in rooms whose temperature is from 98 to 120 degrees. Mr. Southwick said he had assisted in carrying out of the Lehi sugar factory many men overcome by the excessive heat and noxious gases, whose vitality had been so lowered by the conditions under which they labored that they became easy prey for an unusual volume of gas.”}

Following Southwick’s reply to a questioner that the bill—which was designed especially to cover the sugar industry and to create an approximately eight-hour day in seven-day-a-week continuous operations and nine-and-a-half-hour days in six-day-a-week factories—in fact would affect outside of the sugar industry only
one factory in Utah, which was already operating on three shifts,\(^744\) the House passed the bill by the huge majority of 41 to 3.\(^745\) In the event, Southwick’s passionate humanistic intervention on behalf of the downtrodden employees of his church-owned former employer in his own hometown went for naught: despite the Senate Sifting Committee’s recommendation three weeks later that the bill be passed, it never went beyond its second reading.\(^746\) (His end-of-session joint resolution to create a commission to study employer-employee conditions in order to obtain data for a workers compensation bill was even more unsuccessful: the House rejected it.)\(^747\)

During the 1917 session, his second term, Southwick introduced a somewhat less sweeping version of his eight-hour bill that would have extended coverage to a large array of industrial employments, including shops operated in connection with mines, smelters, or reduction works, ore sampling works, all sugar factories, cement works, gas works, powder works, brick yards, brick and tile works, steel mills, and flour plants.\(^748\) Southwick introduced House Bill No. 57—of which, after its defeat, an apparently relieved Deseret News reported that it would have “forced a marked change in the labor system of many Utah industries”\(^749\)—on January 26,\(^750\) just nine days after this petition had been directed to the House Labor Committee, of which he was a member:\(^751\) “We, the undersigned laboring men, hereby petition you to draft a law and use your endeavors to have same passed, giving eight hours to employees of cigar factories, and to all other industries where the eight-hour law does not apply.”\(^752\) In introducing his bill,
Southwick positioned it to pass Supreme Court scrutiny with respect to adult men by stating that it would “prolong life by eliminating certain dangers of accident and providing more time for recreation.” And closing the “extended and acrimonious” floor debate on final passage, Southwick justified the inclusion of flour mills on the grounds that they “work their men from ten to fifteen hours a day, and that many of the flour employees contracted consumption from their occupation. “Sugar workers too...are subjected to unreasonably long hours under working conditions that are particularly distressing. I do not see how anyone in this house can vote against this measure, as it protects the very life of the working man from the exploitation to which he is now subjected by the great interests.”

At one representative who admitted sugar workers’ long hours, but claimed that they “had nothing to do but sit and watch the machinery work,” Southwick impatiently snapped that “he did not know anything about the sugar factories.” His bill—which one of its advocates characterized as considering “the rights of men from a humanitarian standpoint”—strengthened by additional coverage of railroad shops, passed the House by an overwhelming majority of 35 to 8. Sugar factory management (including Southwick’s former employer) attacked the bill at a Senate Public Health and Labor Committee hearing on the grounds that an eight-hour law would both make it impossible to obtain sufficient labor to staff three shifts and impose “hardship” on workers by depriving them of the “privilege” of working longer hours. After considerable wrangling in committee and in the full Senate that in large part focused on treatment of the sugar industry the bill was “hurried away to the operating table...under the
influence of an anesthetic and recovery is doubtful”758—in other words, senators killed the bill.759

Not until 1921 did workers—a large proportion of whom were farmers who grew beets during the summer760—at the Utah-Idaho Sugar Company’s Lehi sugarbeet factory761 strike against the 12-hour day, seven-day week regime762 and for their demand for the three-shift eight-hour day.763 In response to the demand management insisted that, since the eight-hour day was unworkable at some of the company’s other plants and it could not operate one plant differently than the others, the men had best return to work. The managers “appealed to them from the standpoint of the company’s present condition, the stockholders, [Mormon] church and general working conditions.” Following talks, the workers were given a few minutes alone to decide: “their decision came quickly and they walked out, almost to a man.” At a meeting of local Lehi businessmen called by an ex-mayor and attended by a committee of workers and one of the company officials, the

758“Bills Die Before Senate Broadside,” SLT, Mar. 6, 1917 (9:1).


761The claim in “Beet Sugar Employes Strike,” WSJ, Oct. 29, 1921 (7), that the factory was the first and oldest in the United States was incorrect, but it was the first successful beet sugar factory in the Mountain West. Leonard Arrington, Beet Sugar in the West: A History of the Utah-Idaho Sugar Company, 1891-1966, at 16 (1966); Richard Van Wagoner, Lehi: Portraits of Utah Town 238 (1990).

762This severe pattern was exacerbated by the fact that when the day and night shifts switched every two weeks the workers had to work an 18-hour shift. Leonard Arrington, Beet Sugar in the West: A History of the Utah-Idaho Sugar Company, 1891-1966, at 37 (1966).

763Richard Van Wagoner, Lehi: Portraits of a Utah Town 246 (1990), and Richard Van Wagoner, “The Lehi Sugar Factory—100 Years in Retrospect,” UHQ 59(2):189-204 at 202 (Spr. 1991), incorrectly stated that the two-shift regime had been in effect for 31 years until 1921; in fact, the factory operated on three shifts in 1918, 1919, and 1920, and it was apparently the return to the two-shift system that precipitated the strike in 1921. “Lehi Sugar Plant Starts Run Today,” OE, Oct. 13, 1919 (4:6); “Sugar Factory to Start Monday,” LS, Sept. 30, 1920 (1:1); “Strike Declared at Lehi Factory,” SLT, Oct. 19, 1921 (14:2). Leonard Arrington, Beet Sugar in the West: A History of the Utah-Idaho Sugar Company, 1891-1966, at 159 (1966), incorrectly stated that not until 1944 was the workweek reduced to seven eight-hour days.
businesspeople unanimously passed a motion recommending that the company grant the Lehi workers an eight-hour day. At a further meeting the company emphatically insisted that the mill conditions could not be changed and threatened that unless the workers returned to work by the next morning, it would close the plant for the season and ship the beets elsewhere for processing, but some 200 workers passed a motion to remain out for the eight-hour shift at their previous 30-40-cent hourly wage. At this point now-Senator Southwick re-emerged to reveal the limits of his pro-worker position: despite his quondam fierce advocacy of the eight-hour day for sugar factory workers and his status as a local Lehi businessman himself, he appealed to the workers to return to work, but they ignored his advice.764

For its part, the Utah-Idaho Sugar Company—whose president was Mormon church President Heber Grant765—was not bluffing: it did carry out its threat to shut down, but a divided board of directors soon agreed to the very term that the company had claimed was impossible and instituted the three-shift eight-hour regime under which the same 30-cent an hour minimum wage continued to be paid to a work force expanded by one-third (75 workers).766

Finally, in 1921, as was the case during previous sessions, Southwick paired his anti-smoking initiative with other high-profile progressive legislation. In 1921 he authored the bill to impose a personal and corporate income tax ranging from 1 percent on incomes below $1,000 to 6 percent on those above $5,000.767 From the outset, the press eagerly predicted that it was “to meet as formidable opposition among the citizens of Utah as did his non-smoking legislation.”768 On the Senate floor Southwick defended the bill both as easing (especially agricultural) property owners’ tax burden and as targeting tax dodgers and slackers, who did not pay a dollar in tax while “enjoying all the privileges of state government” and whom he hoped to hold up to “scorn and ridicule.” In particular he intended to “catch” the 49.3 percent of 18,517 Utah federal income tax payers

who “paid absolutely no property tax....”769 Ultimately, however, his arguments failed to mobilize a constitutional majority of his senatorial colleagues, who instead “defend[ed] capital,” resented as “slander” “the accusation that corporations are tax slackers,” and/or denied that the proposed tax was “just, a “leveler,” or an “equalizer of burden.”770

Despite the fact that Southwick was a member of a hopelessly minority party, his anti-cigarette and income tax bills, boasted his hometown newspaper, “caused more discussion than any other two bills introduced, and have made him a state wide character. The anti-tobacco law was fought by some of the most powerful interests in the state and nation and was also championed by more people and received more petitions for its enactment than any other measure ever introduced in a Utah legislature.”771 Some of those opponents would not soon forget or forgive Southwick. When he sought the Democratic nomination in Utah’s second congressional district in 1922, at least one newspaper opined: “Southwick’s record in working for freak and foolish legislation ought to entitle him to something but not a seat in congress. Most people who have cussed and discussed his case figure that he should be sent some place—but not to Washington.”772 Recognition did not, however, totally elude Southwick: on Arbor Day 1921 trees were planted in his honor in Lehi and other towns in Utah County.773

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770“Motion Defeated to Reconsider Act to Create Income Tax Law for Utah,” DN, Mar. 4, 1921 (1:1-2). Senators Dern and Jenkins expressed the same resentment at Senator Smart’s injection of (Mormon) religion to support this bill (“God is the author”) that had been voiced a month earlier regarding Southwick’s anti-cigarette bill, though this time Dern voted for the bill. Id. By a vote of 8 to 9 the tax bill survived a motion to strike the enactment clause on second reading, which it passed by a vote of 10 to 8, but failed by a vote of 8 to 8—which had been 9 to 7 before Southwick changed his vote in order to be entitled to move for reconsideration—to obtain a constitutional majority on third reading, and lost the motion to reconsider by the same vote. Senate Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 606-607, 627-28, 670 (Mar. 2, 3, 5); “Southwick Income Tax Law Is Killed on Reconsideration by State Senate,” DN, Mar. 5, 1921 (1:7).
773“Trees Planted as Tribute to Cigarette Foe,” Salt Lake Telegram, Apr. 16, 1921 (8:5).
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

Southwick’s Anti-Cigarette Measure: Senate Bill No. 12

“Shall those who do not make use of ‘the weed’ in any form be allowed to prevent their friends and neighbors from the free exercise of their own will in the matter?”

Southwick’s Senate Bill No. 12, introduced on January 19, 1921, was radical, prohibiting as it did not only the sale, but also the advertising of cigarettes and the smoking (in specified enclosed public places) of tobacco. In addition to making it a misdemeanor to sell or give away cigarettes or cigarette papers, Southwick’s bill empowered the police to secure a search warrant, based on any citizen’s sworn complaint based on reasonable evidence, search the suspected premises, and seize any cigarettes found; the judge in whose court the alleged possessor was convicted was then required to order the cigarettes destroyed. S.B. No. 12 also made it unlawful both to advertise cigarettes in any circular, newspaper, or other periodical, billboard, or store window and to smoke cigars, cigarettes, or tobacco in any “enclosed public place...except in extra rooms specially provided for smoking purposes”; the key term “enclosed public place” was defined to include hotel dining rooms, restaurants, cafes, cafeterias, theaters, passenger elevators, street cars, interurban and railway passenger coaches, railway station waiting rooms, barber shops, and state, county, and city buildings. Though extensive, the universe of smoking-prohibited enclosed

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777Senate Bill No. 12 §§ 1, 2, 4 (n.d. [Jan. 19, 1921], by Southwick), http://images.archives.utah.gov/cdm4/document.php?CISOROOT=/428&CISOPTR=16524&REC=6. The full text was also printed in “Bill Prohibits Cigaret Smoking,” SLT, Jan. 20, 1921 (22:7). Ironically, the list of smoking-prohibited public places did not include churches: during the presidential campaign in 1920, the Democratic nominee James Cox spoke in the Mormon Tabernacle in Salt Lake City to a very large audience among whom “a surprising number...brazenly puffed on cigars and cigarettes and as to the ground the rules were openly ignored, despite signs all over the square asking that no smoking be indulged in on the premises.” Because such smoking had taken place at similar gatherings, “Bishop David A. Smith declared it...the best possible argument against holding such sessions in a house used for religious worship, the ban against smoking in church being a recognized code of practically all creeds.” “Bishop Deplores Brazen Disregard of Propriety on the Part of Smokers,” DN, Sept. 16, 1920, clipping in Selected Collections
public places, omitting as it did, for example, stores, banks, bars, hotels (outside of their restaurants), and private hospitals, fell far short of the Salt Lake Tribune’s scare subhead, “Any Indoor Public Place.”

Nevertheless, it went far beyond the similarly worded North Dakota measure, introduced a week earlier, by covering many non-eating-related public places. The trade journal Tobacco’s bathetic dirge lamented that the “interval between acts in theaters will not be soothed by a cigarette in the foyer,” while in “restaurants the end of the meal will be marked merely by paying the check and hurrying away to some private place where a quiet smoke can be enjoyed without the State’s interference.”

All of these provisions were retained in the bill that the legislature passed by large majorities and the governor approved, and which went into effect on June 7, 1921. Nevertheless, debate over Southwick’s measure was highly contentious: throughout the legislative process it was, as accounted for below, the target of intense condemnation by some of those whose unfettered access to and use of tobacco S.B. No. 12 would restrict. At a House Manufactures Committee public hearing, for example, it was attacked as “unjust in its deprivation of inalienable personal liberty and as perverting the basic principles of the constitution in attempting to force the masses to act in accord with the whims and peculiar views of certain groups.”

The day after he had filed S.B. No. 12, Southwick took pains to stress its moderation, pointing out that it was “not so drastic as that introduced two years ago, which was first passed and later killed by amendment. That bill prohibited the possession of cigarettes. Senator Southwick said there was nothing in his bill to prevent the sheep herder on the desert, or anyone else in the state, except in certain designated places, from smoking cigarettes, always excepting minors.” But he then subverted this message by divulging just how potentially fraught with
legal risks and complications for cigarette smokers his new bill was. Specifically, he interpreted the final sentence in section one (“The possession of such cigarette materials shall be considered prima facie evidence of a direct violation of this act”) as meaning that, if arrested for possession, “a citizen would have to prove that he had the cigarettes for his own use, and not to sell or barter or give away.” In contrast, he did possibly appease some smoking opponents by observing that S.B. No. 12 would not prevent the purchase of cigarettes through the mails from other states.786

Not that appeasement was Southwick’s tactic of choice: scarcely a week had passed since introducing the bill when he found it opportune to pick a fight with some Salt Lake women teachers, whom he charged in the Senate with smoking cigarettes. The president of the Salt Lake board of education and principals not only denied the accusation, but intimated that his charge might have been occasioned by the fact that a week earlier the Utah Educational Association had tabled a resolution to endorse his bill.787

About a week after the bill’s introduction the Senate Judiciary Committee held a public hearing on it at which member Harrison Jenkins proposed that either Southwick’s prohibitory measure be amended or that a new bill be filed to create a cigarette sales licensure system. Since this trial balloon would have subverted the heart of the sales prohibition, the fact that it initially proved to be leaden suggested the strength of support for Southwick’s bill, though later in the session it would attract significant support (but not a majority until 1923).788 At a second Senate Judiciary Committee hearing five days later a significant component of the local tobacco trade demonstrated how wildly it had misread public sentiment on

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785 This provision remained intact in the act. 1921 Utah Laws ch. 145, § 1, at 390.
786 “Southwick Says Cigaret Bill Shorn of Severity,” SLT, Jan. 21, 1921 (11:4).
787 “Teachers Resent Charge of Smoking,” SLT, Jan. 28, 1921 (20:2-3). By a vote of 34 to 24 the organization’s house of delegates had taken the step not because teachers did not regard smoking as undesirable, but because such support was not within the convention’s province. “Teachers Favor Changes in Law,” SLT, Jan. 23, 1921 (24:7). Southwick later stated that at the Senate Judiciary Committee hearing he had merely said that he knew a “lady teacher” in the city schools who smoked cigarettes. He had also pointed out what to me is the most deplorable tendency in modern times, viz., the smoking of cigarettes by young women.” He defended this claim by referring to a similar statement made by U.S. Surgeon General Hugh Cumming. Edward Southwick, “Senator Replies to Criticism of Alleged Statement on Smoking,” DN, Feb. 1, 1921 (8:1-2) (letter to editor). On Cumming’s statement, see below ch. 17.
788 “Judiciary Committee Has Public Hearing on Cigarette Measure,” DN, Jan. 27, 1921 (sect. 2, 8:6); “Anticigaret Measure Is Warmly Debated Before Senate Committee,” SLT, Jan. 28, 1921 (10:7).
the need to regulate cigarettes when the Utah-Idaho Wholesale Grocers Association presented the unrealistically maximalist position rejecting even Jenkins’ licensure scheme. The organization’s real reason for adopting this viewpoint was apparently, as its secretary, James Astle, stated, that: “In most towns... tobacco is sold in the general stores, possibly three in the town, none of whose traffic in tobacco is sufficiently large to warrant a license. None would probably take out a license.” Instead of simply disclosing that it was seeking to (seem publicly to) represent its members’ smaller customers’ interests, Astle gussied up his testimony with the heart-warming claim that “[i]n the majority of Utah towns, the tobacco is sold by reputable dealers who are leaders in the community. These men are not the lawbreakers of the community. They know the boys who ask for tobacco.” Consequently, if none of them could continue to make a profit on tobacco above the license fee and therefore did not take one out, “[t]his would lead possibly a more unscrupulous man to come into the town, take up such a license and deal in tobacco, to the detriment of the merchants already established there.”

That same day the Judiciary Committee, by a vote of 3 to 2 (with Southwick himself in the majority), recommended passage with several “slight” amendments.  

During the hour-and-a-half second reading consideration the next day the full Senate adopted the report without dissent and overwhelmingly rejected Jenkins’ licensure amendment after Southwick had asserted (without explanation) that it would kill the bill because it was not possible to prevent advertising of an article whose sale was permitted.  

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788Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

790Senate Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 199 (Feb. 1); “Fistic Encounter over Cigaret Measure Marks Bitter Capitol Dispute,” SLT, Feb. 2, 1921 (10:1) (quote). Senators Dern and Jenkins, who would cast two thirds of the Nays on final passage, constituted the minority. The committee report proposed amending the section on public smoking by adding “compartments and coaches” to the “extra rooms” in which smoking would be permitted and “motor and other passenger vehicles employed as common carriers” to the list of enclosed public places. It also modified the first sentence of the advertising ban section to expand coverage somewhat. These changes were enacted. 1921 Utah Laws ch. 145, §§ 4, 2, at 390-91.


792Senate Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 269 (Feb. 2); “Senator Southwick Tells Why He Desires Passage of Anticigaret Bill,” SLT, Feb. 3, 1921 (10:1). Though there was no standing vote, it seemed to the Tribune reporter that Dern, Jenkins, and possibly Standish had cast the only Ayes.
causes the boy to think he will never be a man until he smokes cigarettes” was eminently plausible, he failed to unpack his belief that S.B. No. 12 “would do away with 75 per cent of the cigarette smoking in the state.”\textsuperscript{793} After rejecting both a motion by Democrat Uriah T. Jones, a Mormon stake president from Cedar City,\textsuperscript{794} to amend by striking the sales ban and Jenkins’ killer amendment to extend Southwick’s sales and ad bans to include cigars, tobacco, and tobacco products, the Senate voted by an identical 14 to 3 both to pass the bill to its third reading and on final passage.\textsuperscript{795}

The lengthy and incisive debates on S.B. No. 12 on second and third readings on February 2 and 3\textsuperscript{796} featured the most concentrated recriminations by non-Mormon legislators over the Mormon church’s influence on the bill.\textsuperscript{797} This controversy was triggered by the interjection of Mormon doctrine by Republican Senator (and Mormon stake president) William H. Smart,\textsuperscript{798} whose chief antagonist was Democratic/Progressive Senator George Dern, a mine manager who became governor (1925-33) and Franklin Roosevelt’s secretary of war (1933-36).

So overwhelming and interdisciplinary was the basis of anti-cigaretteism that
Smart was initially able to keep his discourse within secular bounds: “[I]t was almost useless to refer to the scientific proof of the evil side of the cigarette habit: science, morals, economy, all cry out against this evil. [T]he time will come when laws will be enacted to prescribe pure air in places where people congregate. Laws have been enacted to protect the body against impure food and will it be said that a law should not be enacted to protect the air man breathes from impurities, such as lurk in tobacco smoke.” Preparing his transition from contemporary socioeconomic critique to bible thumping, Smart declared: “‘Conspiring men...in order that they might get gain, have concocted the cigaret. In so doing they have commercialized the soul of men....’” At last, the Mormon damn burst and Smart, who enlightened his (non-Mormon) colleagues that “[w]e are living in the last dispensation, and the fullness of time,” quoted from “the Word of Wisdom, which he said a majority of the people of this state believe is the law of God and demand that such principles be enacted into statute.” In particular, he cited the admonition that “tobacco is not good for man....”

Though Dern, a senator since 1915 who would cast one of only three Nays on final passage, also advanced substantive objections to the bill, he opened his Senate floor speech by expressing “his surprise and resentment that the senate should be asked to support a measure because it happens to be in accord with a principle of the dominant church of the state.... He...had heard it intimated that the anti-cigarette bill is a Church measure but he had not expected to hear it as good as admitted on the floor of the senate.” The nonplussed Dern reproached Smart for his propagandistic reliance on Mormon religious dogma:

“I scarcely know how to introduce what I have to say on this bill.... I may say that one of the most remarkable things has just happened that has happened in Utah since statehood. This legislature has been asked to support a measure because it happens to be a part of the doctrine of the dominant church.

“While, of course, it has been very much in the air that the bill has been a church...”

799 “Nine Senators on Record as Being for Anti-Cigarette Bill Senate Talks Show,” DN, Feb. 3, 1921 (1:1 at 4:6).
800 “Measure Prohibiting Sale of Cigarets in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1 at 2). On the use of “conspiring men” in the Word of Wisdom see above this ch.
801 “Nine Senators on Record as Being for Anti-Cigarette Bill Senate Talks Show,” DN, Feb. 3, 1921 (1:1 at 4:6).
802 “Measure Prohibiting Sale of Cigarets in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1 at 2).
803 “Nine Senators on Record as Being for Anti-Cigarette Bill Senate Talks Show,” DN, Feb. 3, 1921 (1:1 at 4:6).
measure, I had not intended to say anything on that phase of the case.

“But when the matter has been brought up in the form in which it has by the senator from Duchesne, I feel that I should be derelict in my duty as a legislator if I did not raise my voice in protest against bringing the subject of denominational religion in such form into this legislature.

“The arguments advanced for the bill by the senator from Duchesne are very illtimed. Why should they seek to open up the old controversy? For a number of years we have had peace and harmony and cooperation and forgetfulness of religious differences in Utah.

“Why should the old questions be reopened in a matter of this kind? [T]his senate is not a proper place for the discussion of religion.”

Having completed his attack on the Mormon church’s recrudescent theocratic excrescences, Dern made a triple confession to a: “personal aversion to the cigaret, of which he [found] the odor repulsive”; “prejudice against the cigaret, which had probably swayed him in employing men”; and “deep-rooted prejudice against women smoking,” which apparently had originated in a “time when only ‘tough’ women smoked,” though in the wake of the proliferation of smoking among women, he had realized, “in spite of his prejudice...that many women who smoke do not belong on the street.” This introspection led him to share with his colleagues his insight that legislators were apt to resolve public policy questions on the basis of “our prejudices, rather than on their merits,” even though a legislature, “[o]f all places...is the place where tolerance should prevail.”

Animated, presumably at least according to his own lights, by that spirit, Dern allowed as cigarettes were “probably harmless” to adult men since he had personally never known any who had been ruined by their use. Counterintuitively downplaying the importance of cigarettes for evaluating the anti-cigarette bill, he insisted that the crucial issue was whether public opinion would support S.B. No. 12, and that consequently, since legislation should follow rather than try to lead public opinion, the best method for divining the latter was the initiative process. In the meantime, Dern was willing to preempt public opinion by claiming that the (interstate commerce-driven) loophole for out-of-state mail orders was “as big as a barn door,” which, together with minors’ access to other forms of tobacco, would prompt the legislature in 1923 to amend or repeal it. And, finally, underscoring that in 1921 anti-Southwickians’ animus was the ban on cigarette sales to adults, Dern made it clear that he had “no quarrel with Senator Southwick’s argument as to the personal liberty of the nonsmokers, and personally he would be glad to see the billboard advertising abolished....” Indeed, he even suggested that limiting the billboard ban to cigarettes was

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804Measure Prohibiting Sale of Cigarets in Utah Is Passed by Senate,” *SLT*, Feb. 4, 1921 (8:1).

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inadequate—a wish for extended coverage, if it was a wish, that would be fulfilled, along with his prediction of repeal of the sales ban, in 1923.

Dern doubtless derived no solace from the assurances offered by Senate President Thomas Evans McKay that “this was not a Utah movement, but an international one. It was not backed alone by the churches of Utah, not by churches alone, but by smokers, too, and he knew hundreds of fathers who smoked and yet were supporting the bill.” Skepticism towards McKay’s denial of Mormon-centered advocacy of Mormon Southwick’s bill could easily have been generated by McKay’s position as an important member of the Mormon church hierarchy (and brother of a later president). Initially, McKay had intended not to speak on S.B. No. 12 “in order to avoid the appearance of any partiality,” but the offer of an amendment to strike the cigarette sales ban prompted him to ask an opponent of the bill to take the chair so that he could refute those who resented Southwick’s interference with their personal liberty by “assert[ing] the superiority of public safety and civic rights” and charging that smokers were as responsible for anti-tobacco legislation as drinkers were for prohibition.

Smart sought to defend himself against Dern’s attack by assuring the Senate

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805 “Measure Prohibiting Sale of Cigarettes in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1, at 14:5-6). Without explanation, Dern claimed that if the sales ban were enacted, more cigarettes would be shipped in for personal use “than the user now purchases over the counter.” “Nine Senators on Record as Being for Anti-Cigarette Bill Senate Talks Show,” DN, Feb. 3, 1921 (sect. 2, 1:1 at 4:7). Senator Quinney characterized cigarette billboard ads as immoral “because they glorify the cigarette habit.” Id. at 1:1. Complaining especially about billboard ads’ psychological effect, he added: “I feel deep down in my soul that this is an immoral thing.” “Measure Prohibiting Sale of Cigarettes in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1, at 14:5).

806 See below this ch.


808 McKay (1875-1958) was, inter alia, Ogden stake president and head of missionary work in Germany and Switzerland; later he rose in the hierarchy. http://www.gapages.com/mckayte1.html. Ironically, McKay was also the father of the author of a notorious scholarly debunking of Joseph Smith, who was ex-communicated from the church. Fawn Brodie, No Man Knows My History: The Life of Joseph Smith, the Mormon Prophet 421 (2d ed. rev. and enl. 1971 [1945]) (“the Mormon Church...has survived the growth of the science of anthropology, with scholars in every university save that named after Brigham Young holding the Book of Mormon to be a fantasy”).

that he was “‘squarely in harmony with the separation of church and state’”—a proposition he apparently saw no irony in shoring up by declaring that he stood on the platform of rendering unto Caesar what was Caesar’s. He nevertheless insisted that just as the Hebrew, Mohammedan, and even the infidel or agnostic, “‘have a perfect right’” to cite the Talmud, Koran, and Paine, respectively, to “‘support his standpoints,’” so, too, “‘the Christian has a perfect right to refer to ancient and modern records,’” especially since in “‘the mists surrounding this [cigarette] question we are in the midst of spiritual circumstances as well as secular circumstances.’” But just in case Dern or anyone else jumped to the conclusion that he might be a Mormon automaton, Smart asseverated that he had “‘received no counsel...as to my attitude on this or any question before this legislature.’”

Smart was not the only Mormon senator who resented the accusation that he was being dictated to by his church. Since John Peters supported the amendment to strike out the cigarette sales ban—which Mormon stake president Jones, who agreed with Dern “in every particular,” had authored—such a charge would have seemed out of place, but Peters nevertheless declared that he had ceased to respect, as he had been taught, people in authority (merely) because they were in authority. The sharp differences among Smart’s, Jones’s, and Peters’ positions impressively demonstrated that Mormon faith and even office holding failed to mold a monolithic position on tobacco smoking, though Jones was careful to note on the Senate floor that his proposal would leave intact Southwick’s ban on ads and public smoking.

Two days after Senate passage of Southwick bill, the Mormon Deseret News

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810 "Measure Prohibiting Sale of Cigarets in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1 at 2).

811 "Measure Prohibiting Sale of Cigarets in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1 at 2).

812 "Measure Prohibiting Sale of Cigarets in Utah Is Passed by Senate,” SLT, Feb. 4, 1921 (8:1 at 14:5). Similarly, Representative Wilford Day, a stake president who had not touched tobacco, liquor, tea, or coffee for 20 years, consistently voted against Southwick’s bill and supported licensure; although he criticized the former because it singled out cigarettes and did not even propose to ban tobacco use, he alluded to the feeling of resentment caused by Southwick’s bill “‘because it would restrain’”; he nevertheless refused to “‘vote to make men thieves and cheats for a package of cigarets, and criminals because they have a package in their possession.’” “House Battles over Committee’s Amendments to Anticigaret Bill,” SLT, Feb. 15, 1921 (10:1-3, at 11:1-2 at 2). In addition to being Parowan stake president from 1916 to 1920, Day was engaged in large-scale agriculture, founded a bank, and managed a mercantile enterprise. “Funeral Services Held for Wilford Day,” Parowan Times, Oct. 24, 1910 (1:1-2).
published a large advertisement for the Young Men’s and Young Ladies’ Mutual Improvement Associations of Salt Lake County, whose membership totaled 16,000 and which were vitally involved in laying the groundwork for the 1921 measure.\footnote{See below this ch.} The hard-hitting, pathos-laden ad, replete with an illustration of a hyper-muscular arm and hand (“The Cigarette”) crushing nine—seven male and two female—nicely-clad and terrified youngsters, appealed to (presumably predominantly Mormon reader) parents’ (bad) conscience. Casting the cigarette as the successor to unmasked “Prussianism,” which “hellish thing” “the powers of right” had “crushed” the life out of, the young Mormons urged parents to focus on the at last unveiled “vile, insidious poison which impairs health, impedes progress and dwarfs manhood.”

Parents—will you stand idly by, wishing the cigarette were out of the reach of your boy or girl—but lacking the moral courage to remove it? Which will you heed, the frantic tirade of selfish tobacco interests or the mute appeal of innocent youth, yet untouched by the blighting poison of the cigarette!

The fight is on—NOW. \footnote{“—And \textit{We} Stand Idly By,” DN, Feb. 5, 1921 (sect. 4, VIII:3-7).} Voice your sovereign will; tell your lawmaker what disposal you wish them to make of Senate Bill No. 12.\footnote{Two weeks earlier a group of 80 apparently unorganized women in the southeastern part of Salt Lake City presented a petition to the legislature in support of Southwick’s bill opining that a statutory sale and use ban was the only way to stop youth from (being exposed to) “the dangers of the cigarette habit” and adding: “Such a law would be no hardship on adults who want to use tobacco as they would be able to continue the habit by using it in other forms that the boy, or girl, would not attempt.” Utah Senate 1921 Petition No. 17 (Jan. 27, 1921) on \url{http://images.archives.utah.gov/cdm4/document.php?CISO_ROOT=/428&CISOPTR=19235&REC=7}}

One highly unusual and therefore significant feature of the debate surrounding Southwick’s bill was that Mormon advocacy, unlike the propaganda that anti-smoking groups issued in virtually all other states, publicly confronted, at least in one high-profile print forum, the crucial political-moral issue of justifying the restrictions imposed on adult consumer freedom for the sake of children.\footnote{\textit{Salt Lake Tribune} on Valentine’s Day to counteract misunderstandings of S.B. No. 12 propagated by both its opponents and its friends. Offering a very different message and tone, “A \textit{Sane} Piece of}
Legislation” was especially intended to dispel the impression that the measure was “‘sumptuous,’ ‘freak’ and ‘insane’ legislation.” Most pertinently in the present context, the young Mormons correctly noted that the bill did “not forbid any adult person from smoking cigarettes in Utah. It merely requires that the cigarette smoker shall get his ‘smokes’ from some point out of the State, and then use them for his own consumption.” The notice then shifted the perspective, pointing out that the bill “will preserve the personal liberty of the non-smoker in many public places.” Curiously, the Mormon mutual improvers failed to mention preservation of non-smokers’ health, though the last line of the message, in tiny print, read: “Let us set up the barrier of law to the menace of the cigarette.”

The Mormon youth may have neglected to flesh out the meaning of “personal liberty” in the secondhand smoke context, but Southwick himself—just a few days after Salt Lake Typographical Union No. 115 had adopted a resolution attacking his “freak and fanatical” bill for restricting its members’ “personal liberties”—had already familiarized the public with the concept a dozen days earlier during Senate floor debate:

Senator Southwick said he was in a railroad waiting room recently in his home town, Lehi. A man was smoking in the closed room when a woman with a baby in her arms entered. The tobacco smoke choked the infant and Senator Southwick said he asked the man to refrain from smoking for the sake of the little one. The man was indignant as he left the room and said it is a “da__ shame a man can’t smoke wherever he wants to.” “We cannot bring our wives and daughters to the city, and cannot come alone without encountering tobacco smoke everywhere that saturates our clothing and nauseates us. Personal liberty! Ours is as inviolate, or should be, [as] theirs. ... I am compelled to go in places filled with tobacco smoke in the transaction of business and when it comes to personal liberty the personal liberty of the non-user of tobacco is as sacred as the personal liberty of the user of the weed.”

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816“A Sane Piece of Legislation,” SLT, Feb. 14, 1921 (7:4-7). During floor debate Senator Knight insisted that it was “time the encroachment on the personal liberty of those who object to the use of tobacco be stopped.” “Cigarette Measure Is Discussed in Senate,” DN, Feb. 3, 1921 (sect. 2, 6:1-4 at 3). A printed form protest against Southwick’s “futile” and “vicious” bill to the governor and legislature circulated in Ogden cigar stores and similar places urged that no more laws be enacted “restricting the personal liberty of our citizens.” Not a single dealer would admit to knowing who stood behind the movement. “Anti-Cigaret Bill Protested,” OS-E, Jan. 30, 1921 (10:1). At a House Manufactures Committee hearing on Southwick’s bill Judge E. F. Colburn’s attack was based almost wholly on personal liberty. “Anticigaret Bill Put Under Fire,” SLT, Feb. 10, 1921 (14:5).


Without disclosing the basis on which he proposed to resolve this antinomy of equal sacrednesses, Southwick—who considerably exaggerated the spatial stringency of his bill in declaring that it did not prevent anyone over 21 who had already “acquired the habit...from smoking in a hotel lobby, on the street, or in his own home”—was nevertheless quick and careful to make his obeisances to a public-private divide, though he seemed bizarrely unaware of the obvious self-contradiction in which his public policy choice had trapped him:

A man has the right to smoke in his own home, that’s his privilege,...but he should not be allowed the right to thwart the growth and progress of the children born to him by his good wife, children to whom the state looks for its future citizens. That man violates a moral law...for which sooner or later he will be held accountable.

(Two weeks later House Republican N. Enoch Iverson, an anti-tobacco militant who was convinced that, “‘[f]anatic as this statement may seem,’” the “‘day will come when tobacco will be eliminated from this planet,’” playfully supplied the mathematical precision that Southwick himself had refrained from articulating: “‘Personal liberty has been argued on a 50-50 scale.... I contend that inasmuch as I have been smoked for 42 years, I now have a right to live 42 years without being smoked....’”) Southwick also invoked science on behalf of non-smokers’ personal liberty by seeking to show that “tobacco smoke itself is a poison. He referred at considerable length to carbon monoxide, reading aloud from a recent edition of a textbook on legal medicine and toxicology about the compound’s 200-fold greater affinity for hemoglobin than oxygen’s. “He spent but little time on the acrolin [sic], which, he said, caused smokers to cough....” In conclusion he delivered himself of a secondhand smoke exposee’s oath: “‘I don’t propose to put up with this poison.’”

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state’s leading daily newspaper had Southwick actually uttering the word “damn.”
“Senator Southwick Tells Why He Desires Passage of Anticigaret Measure,” SLT, Feb. 3, 1921 (10:1). Senator Elizabeth Hayward also stated that “her personal liberty had been imposed on by the users of cigarettes.” “Nine Senators on Record as Being for Anti-Cigarette Bill Senate Talks Show,” DN, Feb. 3, 1921 (1:1, at 4:6).

823“Senator Southwick Tells Why He Desires Passage of Anticigaret Measure,” SLT,
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Whatever Southwick had previously said on the Senate floor, instead of stating the logical corollary that the same provision would deprive all—and not just cigarette—smokers of personal liberty in many enclosed public places, the young Mormons’ political advertisement tried to put a better face on the situation: “It does not, on the other hand, prohibit the smoker from smoking in hotel lobbies.” Despite this circumlocution, the notice nevertheless raised the key issue, albeit in a non-straightforward response to the question: “Is this radical legislation? Certainly it would seem that if by any measure the youth of the nation can be protected, mature men ought to be willing to undergo some slight inconvenience in the interests of a clean, young manhood.”

Apart from failing to lay out why cigar- or pipe-smoking youth would be “clean,” the Mormons did not bother to explain why being forced to mail-order cigarettes from other


824“A Sane Piece of Legislation,” SLT, Feb. 14, 1921 (7:4-7). Whereas Southwick himself and his supporters acclaimed the freedom to smoke that the measure preserved, in 1923, Daniel Alexander, a prominent Salt Lake lawyer, resigned his membership on the executive committee of the Social Welfare League, which strongly supported the law, on the grounds that the law made “‘no effort to prevent or regulate the use of tobacco. Tobacco can be smoked...as freely as before, excepting only that its use is prohibited in a few designated places. A man can smoke freely upon the streets, but if he enters a restaurant he must immediately desist; he can smoke in the lobby of a hotel, but must stop when enters the dining room.... Surely there can be no greater farce than a law that makes such puerile distinctions. I conceive the law in its present form to be merely an instrument to trap the unwary stranger in our midst, to harass and annoy our citizens and to interfere with the business and profits of the legitimate and licensed dealers of tobacco...who assist, by the payment of taxes, the development and upbuilding of our state.’” “Many Citizens at Mass Meeting Record Protest Against Freakish Laws,” SLT, Feb. 25, 1923 (1:7 at 2:3-4). Why Alexander was unable to conceive of the partial indoor smoking ban as driven by the perceived need to protect non-smokers from the most intense exposure to secondhand smoke is unclear. Alexander, an Ogden-born active Republican Party worker, University of Utah regent, and director of numerous industrial, commercial, and insurance corporations who received his law degree from the University of Pennsylvania in 1909, was also a nationally prominent member of the American Jewish Committee and B’nai Brith. History of the Bench and Bar of Utah 107 (1913); Men of Affairs in the State of Utah: A Newspaper Reference Work (n.p.) (1914); General Alumni Catalogue of the University of Pennsylvania: 1917, at 545; General Alumni Catalogue of the University of Pennsylvania: 1922, at 463. Ironically, Alexander had been a member of the independent campaign committee supporting Benjamin Harries for Salt Lake County sheriff, whose highly publicized enforcement of the Southwick law’s public smoking ban quickly prompted partial repeal. “Alexander Quits Welfare League; Hits Cigaret Bill,” Salt Lake Telegram, Feb. 24, 1923 (2:5). See below this ch.
states—rather than enjoying the convenience of spontaneously reacting to cues transmitted by a plethora of sellers on every downtown street—and being prohibited from smoking in a restaurant constituted only “slight inconvenience,” but perhaps the mere fact that the bill did not absolutely prohibit the possession of cigarettes, as had Southwick’s anti-cigarette bills in the 1917 and 1919 sessions, sufficed, at least in their minds, to spare it the epithet “too freakish,” of which the House Manufactures Committee amendments were designed to relieve Southwick’s bill.

Whether or not the Mormons had been seeking to meet the arguments advanced by the Salt Lake Tribune editorially the previous day (“Liberty and Tobacco”), their advertisement did not completely succeed. The editorial’s burden was to demonstrate that laws prohibiting intoxicating liquor were “not in principle a precedent” for laws prohibiting tobacco use because, whereas “an intoxicated person becomes a direct menace to the rights of others,” “[o]ne may smoke without injuring his neighbor or interfering with his comfort or convenience.” To be sure, the (typographically challenged) editorialist was willing to admit that:

Those who oppose [sic; must be support] a law against smoking are right, in so far as they object to the indulgence where it interferes with the right of other persons to pure air, but when they oppose the right of a man to smoke where the act does not interfere with the rights of others they go too far and are plainly opposing individual liberty; and the only excuse that can be offered is that smoking is not good for the individual who smokes. But this offers no justification for the law, unless the principle of individual liberty is to be wholly abandoned.

Since the Tribune purported to welcome a law that restrained an individual “immediately he seeks to exercise his own freedom to the detriment of his neighbor”—a situation that presumably included forcing others to breathe impure, tobacco-smoke infested air—the newspaper would have been constrained to acquiesce in the provision banning smoking in enclosed public places, although the Mormon youth did not even bother to spell out the associated discomfort or inconvenience. Where the Mormons fell short of refuting the Tribune’s

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825 See below this ch.
826 “Revised Cigaret Bill Suggested,” SLT, Feb. 9, 1921 (20:4). On the amendments, see below this ch.
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...conclusion that “prohibition of the sale of tobacco is indefensible” or of satisfying the libertarian newspaper’s schematic prerequisite for state intervention was in showing that adults’ otherwise vested right to buy cigarettes in numerous stores in Utah interfered with or was detrimental to minors’ right to be deprived of access to harmful cigarettes or, less Kantianly expressed, to the state’s power to prevent minors from destroying their health. 

As soon as S.B. No. 12 was transmitted to the House a controversy erupted over whether its assignment to the Manufactures and Commerce Committee was proper. In response to a motion by (Southwick supporter) William Seegmiller to assign it instead to the Education Committee, House Speaker Edward R. Callister, presiding over a chamber composed of 46 Republicans and 1 Democrat, stated that he had assigned it to Manufactures because for weeks he had already been referring all the petitions for and against the bill to that committee; he asserted, without explanation, that he also considered it the proper committee. After Seegmiller’s motion lost on a rising vote of 19 to 22, he persisted procedurally by moving that the Manufactures Committee be discharged of the bill. Callister, a lawyer-businessman and an active Mormon who while studying law in Washington, D.C., had been Senator Reed Smoot’s secretary, parried that taking the bill away from the committee “could be construed in no other way than a reflection upon the competence and sincerity of this committee.” Speaker Callister was also quick to insist that: “Notwithstanding reports that have been circulated, the chair wants to let it be known...with all the force at his command, that when the committee on manufactures and commerce was appointed the chair had nothing in mind regarding this bill. None of the members of this committee was consulted with regard to his attitude on this measure.” Despite this protestation of impartiality, Callister in fact voted repeatedly against S.B. No. 12. And although Seegmiller dismissed conjecture that a reassignment would impeach the committee members’ integrity and argued...
that the bill had more to do with education (since educators were “vitaly interested in anticigaret legislation”), it seems plausible that Seegmiller may also have been able to foresee that a majority of the Manufactures Committee was opposed to the sales ban, whereas five members of the seven-member Education Committee would support it. That the House in the end voted 19 to 20 against Seegmiller’s motion (and thus to keep the bill in the Manufactures Committee) made it clear even before substantive debate began that the lower chamber was much more evenly divided than the Senate.

A four-member majority of the five-member House Manufactures and Commerce Committee objectively responded to the young Mormons the very same day by reporting Southwick’s bill to the full House partly rewritten as a watered-down sales licensure measure, but also significantly strengthened by a ban on advertising any tobacco (and not just cigarettes) and a ban on “us[ing] snuff or tobacco in any form” and thus prohibiting chewing tobacco (in addition to smoking any kind of tobacco) in enclosed public places. That opponents of the sales ban deemed it both necessary and acceptable to secure votes for licensing by expanding the scope of the advertising ban was easily explicable on

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836 Wood, Davis, Iverson, Thorn, and A. W. Morrison voted for S.B. No. 12. Seegmiller also mentioned the bill was of unusual interest as a health measure. Four of six members of the Public Health Committee (Clegg, Henderson, Killian, and Wood) also voted for the bill. The seventh member, Hammond, was sick and did not vote. On committee membership, see House Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 59-60 (Jan. 14).


838 House Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 257-59 (Feb. 14). The text was also printed in “Entire Sections of Bill Changed,” SLT, Feb. 15, 1921 (10:4), which reported that the committee “virtually rewrote the measure as it came from the senate.” The amendments largely stemmed from Republican Representative Isabrand Sander (1890-1962), a Mormon cooperative store manager and World War I veteran. “Former Ogdenite Is Visiting from Vernal,” OS-E, Nov. 21, 1920 (11:1); “Car Crashes, Pins, Kills S.L. Driver,” SLT, Aug. 5, 1962 (20:8). Sander’s draft did not retain Southwick’s public smoking ban, but did expand the advertising ban to all tobacco, and nevertheless qualified as eliminating the bill’s “freak features.” “Revised Cigaret Bill Suggested,” SLT, Feb. 9, 1921 (20:4). The Deseret News thus exaggerated in stating that “[p]ractically every effective provision of the Southwick anti-cigarette bill would be eliminated if amendments prepared by Representative Isabrand Sander are adopted.” “Proposed Amendments Would Vitiate Bill Against Cigarettes,” DN, Feb. 9, 1921 (sect. 2, 1:5). Both articles published the text of Sander’s amendments. See also “Would Change Cigaret Bill,” OS-E, Feb. 9, 1921 (3:2).
the grounds that, as cigar- (but not cigarette-) smoking Ogden Republican and lawyer Royal Douglas put it during House debate: “‘We want to eliminate the advertising that appeals to the minor.... We want to eliminate the advertising showing Santa Claus smoking cigarettes.’” In contrast, anti-Southwickians’ willingness not only to retain, but even to expand the prohibition of public use of tobacco to include non-smoking varieties, which may have been perceived as less of a health hazard and more of an aesthetic nuisance, was not portrayed as intended to diminish minors’ attraction; it therefore suggested that tobacco addicts regarded their personal liberty as considerably less threatened by use restrictions than by a sales ban. In other words, the aforementioned Tribune editorial was being quite literal when it singled out the sales prohibition as indefensible. Indeed, the very fact that the press observed that adoption of the House Manufactures Committee amendments would leave S.B. No. 12 “Minus ‘Freak’ Clauses” despite the insertion of “substitute clauses even more drastic” indicated that restrictions on smoking and chewing tobacco in restaurants, cafes, and several other public places were far from the Southwick regime’s most vulnerable features in terms of alienating users. To be sure, this

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839“House Battles over Committee’s Amendments to the Anticigaret Bill,” SLT, Feb. 15, 1921 (10:1-3, 11:1). Two weeks earlier Senator David Jenson had gotten off his chest during floor debate that “[p]articularly did his blood boil...when he saw an advertisement in Collier’s showing the patron Saint of the children, Santa Claus, with a cigarette in his mouth and a package of cigarettes in his hand. He characterized this as desecration of the child’s faith, if not blasphemy.” “Cigarette Measure Is Discussed in Senate,” DN, Feb. 3, 1921 (sect. 2, 6:1-4 at 4). Because the Southwick bill, for reasons of interstate commerce, did not cover publications printed outside of Utah, it would not have reached ads in national magazines such as Collier’s Weekly.


841“House Committee Presents Drastic Amendments to Cigarette Measure,” DN, Feb. 14, 1921 (sect. 2, 1:1).

842The aforementioned Royal Douglas appeared to be unaware of his self-contradictory attitude toward the majority committee amendments: on the one hand he took extreme umbrage at an alleged legislative trend to “circumscribe our liberties”—which, if it continued, would soon trigger an “internal uprising”—but on the other hand he characterized the amendments as enforcible, unlike Southwick’s bill, which could not be enforced because “too many policemen and sheriffs’ deputies smoke, and they would naturally sympathize with the man who smokes.” Douglas supported the amendments (with their expanded ban on public use of tobacco) despite the fact that he objected in principle to such sumptuary prohibitions: “Cigaretes are not offensive to me, but talcum powder is. Would you try to legislate to prevent the woman from taking this shine off her nose by the use of a little powder? It seems just as sensible as trying to tell men
logically compelling conclusion would be contradicted in 1923 when the leverage point for repealing Southwick’s sales ban turned out to be the sudden enforcement of the smoking prohibition in cafes and restaurants.843

The distance between the contending positions in 1921 was reflected in the lengthy and sharp debate in the full House over the merits of the majority report and the minority report, which latter recommended passage of S.B. No. 12, in which “intense interest” had been aroused,844 as transmitted by the Senate. The zealous criticism of the Southwick bill by the chairman of the Manufactures and Commerce Committee, Alexander R. McIntyre, who owned a drug store in Ogden,845 provoked Mormon Representative and Southwick-supporter Arthur William Morrison846 into asking him whether he sold tobacco in his store. Reprimanded by the House speaker for posing a question of a personal nature, Morrison denied that he had meant it as an insinuation: rather, he had merely been trying to discover whether McIntyre’s tobacco sales might not have tended to influence his attitude in the matter. McIntyre admitted that he sold tobacco, but added that “he also sold poisonous goods, but...only as they should be sold.”847

On the basis of a comparison with similar laws in Kansas, Arkansas, and Tennessee, McIntyre reported to the House that the committee had learned that they were dead letters, and therefore concluded that only licensure would achieve what a majority of Utahns wanted—namely, effectively keeping cigarettes and minors apart.848 The difficulties that contemporaries might have experienced in seeking to discern whether proponents of licensure in good faith actually believed

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843See below this ch.
8451910 and 1920 Census of Population (HeritageQuest) (druggist). McIntyre took out numerous large ads for the store in the Ogden press in 1920 and 1921.
that their approach would more effectively curtail youth access or were merely well-rehearsed tobacco industry agents were illustrated by Representative O. F. McShane, who, despite admitting the truth of Representative Morrison’s accusation that he sold tobacco in his store, counterintuitively insisted on the House floor that licensure would bring about abolition: “The fundamental difference is that the Southwick bill would prohibit the sale but permit the use of cigarettes’.... The proposed amendments would regulate the use and sale and in time prevent entirely the use of tobacco of all kinds.”

849 “House Battles over Committee’s Amendments to the Anticigaret Bill,” SLT, Feb. 15, 1921 (10:1-2).

850 “Amendments to Anticigaret Measure Rejected in Lower House,” SLT, Feb. 17, 1921 (10:1 at 2). At the same time that the Southwick bill appeared to bog down in impasse, word began circulating that once it was disposed of, a “more drastic” measure would be introduced in the House that would prohibit the sale and use of all kinds of tobacco. Prepared by one-time House Speaker Harry S. Joseph, it was to be introduced by Rep. Seegmiller. “Drastic Bill on Tobacco Use to Be Offered,” SLT, Feb. 17, 1921 (10:4). (That Joseph really wanted enactment of such a radical prohibition must have appeared wholly implausible to contemporaries since barely three weeks earlier he had spoken at the Senate Judiciary Committee public hearing in defense of “personal liberty,” in opposition to the Southwick bill, and for licensure. “Judiciary Committee Has Public Hearing on Cigarette Measure,” DN, Jan. 27, 1921 (sect. 2, 8:6); “Anti-Cigaret Bill Opposed,” OS-E, Jan. 27, 1921 (6:3). Moreover, the “personal liberty of the smoker and the non-smoker in the barber shop was a matter of a brief personal altercation between...Joseph and...Southwick, each saying that the other could shave at home....” “Anticigaret Measure Is Warmly Debated Before Senate Committee,” SLT, Jan. 28, 1921 (10:7). More remotely, as house speaker in 1907 he had cast one of only five Nays against Croft’s anti-cigarette bill. House Journal of the Seventh Session of the Legislative Assembly of the State of Utah 261 (Feb. 12) (1907). Joseph was Jewish, a civil engineer, and mining company president. Men of Affairs in the State of Utah: A Newspaper Reference Work (n.p.) (1914). Katie Blakesley, “‘Sin Creeping in Among Us:’ [sic] The Fight to Save the Youth and the 1921 Anti-Cigarette Campaign” at 35 (M.A. thesis, History Dept., U. Utah 2004), misreading the press, erroneously believed that Joseph was a senator.) Once the bill had passed the House unaltered, it was “expected that Mr. Seegmiller w[ould] keep his promise to Mr. Joseph.” “Bill Prohibiting Tobacco in Any Form Promised,” SLT, Feb. 25, 1921 (12:2). However, two days after House passage of the Southwick bill, Seegmiller charged that the new measure had been “prepared and fostered by opponents of the Southwick measure for the purpose of defeating tobacco legislation”; he had originally agreed to accept it in order to prevent others who would have introduced it immediately from obstructing progress on S.B. No. 12. “Says Anti-Tobacco Bill Is Insincere,” DN, Feb. 26, 1921 (sect. 2, 1:6). Bizarrely, then, after the Southwick bill had been sent to the governor, Seegmiller presented this Trojan horse bill and asked for unanimous consent to introduce it while stressing that he did not want to be
The pro-Southwick rebuttal was delivered by Representative William W. Seegmiller, who quoted from a letter from the aforementioned University of Kansas Professor William McKeever, who attested to the vitality of the Kansas cigarette sales ban and compared the committee’s amendments to the 1921 Kimball bill in Kansas, which had been thoroughly repudiated. Seegmiller also charged that the amendments had been promoted by tobacco interests on the basis of the same arguments that the whisky trust has deployed against prohibition—personal liberty and unenforcibility. Feeling personally targeted, Representative Isabrand Sander, who had proposed most of the substance of the committee’s amendments, insisted both that “‘I have never substituted for a representative of the American Tobacco company’” and that he hoped for the time when tobacco could no longer be found in Utah.851

During House debate the theme of personal liberty surfaced repeatedly, nowhere more passionately than from the mouth of Republican Representative Reuben T. Rhees, a Mormon bishop (and the state’s leading beekeeper).852 A libertarian non-tobacco user—who claimed the privilege of doing as he pleased so long as his actions did not “‘seriously interfere with the rights’” of his neighbors—Rhees held high the banner of diversity and die and let die: “‘A person should be willing to put up with some inconveniences from the actions of neighbors in order that his neighbors may be willing to put up with his peculiarities.’”853 Rhees, who ultimately voted for licensure and against Southwick’s bill on final passage,854 developed the personal liberty argument at length:

“While we as a legislative body may not agree as to whether real right is infringed upon by attempting to force American citizens to smoke a pipe or a cigar, when they would

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851“House Battles over Committee’s Amendments to the Anticigaret Bill,” SLT, Feb. 15, 1921 (10:1-2, 11:1-2); “Southwick Bill Is Discussed in House,” DN, Feb. 15, 1921 (sect. 2, 8:1-3 at 2) (quote). On McKeever (who was a professor and not, as the press reported, president) and the Kimball bill, see above this ch.

852Utah Since Statehood: Historical and Biographical 3:984, 987 (1919).


prefer to smoke a cigaret, we must agree that either a real or an imaginary liberty is denied them, and whether the personal liberty be real or imaginary, it makes but little difference, they feel imposed upon just the same, and without public need makes it necessary, for the public good, a minority is compelled to make an unwilling sacrifice in the interest of the public as a whole.

“I think it wrong to deprive even a small minority of their personal liberties, even if these liberties should be imaginary. I do not believe it at all necessary in this case to antagonize a large percentage of our citizens by asking them to stop using cigarettes, or go outside of the state to buy them.

“I believe that we are agreed that what we want is to keep tobacco away from those whom [sic] we believe are not old enough to be trusted with the rights and liberties of American citizenship.”

From Rhees’s perspective “[t]he only reason for” Southwick’s bill was “to enforce the one we already have” governing minors. Purportedly for pragmatic reasons, Rhees preferred the proposed licensure measure because it was “less antagonistic to the cigaret smoking citizens”; consequently, even though he conceded that “public sentiment” had not even been strongly in favor of the existing law, Southwick’s bill would have even fewer supporters because it “would array a large number of the adult cigaret smokers and their friends actively against it,” whereas under licensure “they would remain practically neutral.” Since these cigarette smokers whom Rhees sought to accommodate were presumptively largely, if not overwhelmingly, non-Mormon, his stance appears to have replicated the aforementioned policy that the church hierarchy and Senator Smoot had previously pursued lest antagonized ‘Gentiles’ revive the anti-Mormon American Party. Whatever its motivation, Rhees’s position did not even permit him to engage the young Mormons’ argument—which underlay the Southwick bill and ultimately all across-the-board statewide cigarette sales bans—that, on the contrary, it was adult cigarette smokers who should self-sacrifice by acquiescing in cigarettes’ removal from the Utah trade for the benefit of the living minors and future generations.

House disposition of the Southwick bill was stalemated by a seemingly frozen, perfectly even 23 to 23 division between advocates of the Senate measure and those of the licensure-based committee amendments, which became insuperable because the chamber’s sole Democrat, C. A. Hammond—who was

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“unofficially reported” as favoring the Southwick amendment” 857—was sick and unable to cast the tie-breaking forty-seventh vote. Significantly, eight of the ten members from Salt Lake and three of the four from Weber County (whose county seat was Ogden, Utah’s second largest city) voted for the amendments; Salt Lake’s only supporters of the Senate Southwick bill were both women. 858 As a result of this impasse, S.B. No. 12 was placed at the bottom of the third reading calendar; with 18 bills ahead of it; whether any effort would be made to accord it a higher priority was as yet unclear. 859

More than week after the chamber had previously deadlocked, the House finally took up the Southwick bill on third reading. Shortly before debate began in mid-afternoon, it seemed to the Deseret News that a majority had formed for the amendments (even though the sole Democrat remained, as he had been for several weeks, seriously ill and confined to his room). The reason for its judgment that licensure would prevail unless the sentiment changed was based on pro-licensing leaders’ claim to have from 26 to 29 votes, although no reason for these alleged defections from a sales prohibition was assigned. 860

Consideration of the bill began with a stripped-down amendment offered by Representative McShane, a tobacco seller and one of the chamber’s foremost Southwick opponents: unlike the majority committee recommendation, his motion amended only the bill’s first section by substituting for it a licensure provision similar to the committee’s, but strengthened by the requirement that licensed dealers obtain a $1,000 forfeitable bond. In other words, McShane deleted the committee’s expansion of the scope of the advertising and public smoking bans. 861
Why McShane would have expected that this version, which presumptively would have been even less acceptable to Southwickites, would attract even the one vote needed to break the impasse is unclear. His key point in urging them to vote for his amendment was that other states’ experience demonstrated “‘the folly of enacting prohibitive laws without almost unanimous support of the people....’” He argued that his state license fee sufficed because “‘local communities...may place additional licenses at such a figure as will work prohibition to the dealer. Each municipality would be placed on its own initiative to determine the prohibitive clause for itself, and by so doing would be swayed by public sentiment and the law could be enforced.’” Considerable plausibility inhered in this proposed local option regime once McShane’s underlying premise was accepted that Southwickian prohibition would de facto not prohibit, but Seegmiller, the only opposing orator, apparently did not, at least according to press accounts, bother to engage the argument during his few minutes of rebuttal, confining himself instead to reassuring the choir that only prohibition would prohibit the “recognized evil” at issue. Just in case his central point did not carry the day, McShane escorted his listeners to the very edge of the horrific slippery slope that loomed on the legislative horizon: “‘I expect the time to come if this bill goes through unamended when the cup of coffee will be legislated off the family table...or the time whenever we eat grapefruit, we will be instructed to take a dose of cod liver oil after eating.’”

The *in terrorem* effect of cod liver oil must have worn thin on adult Utahns: the 23 to 23 vote on McShane’s motion replicated exactly the Ayes and Nays on the dueling majority and minority committee reports. In order to forestall any momentum that might have built up on behalf of S.B. No. 12 in case of a quick vote, Douglas moved to adjourn to delay any such action until the next morning, but the 22-24 defeat signaled that the impasse had finally been overcome with the advantage having passed to straight Southwickism. On the then ensuing vote on final passage, S.B. No. 12, which had “precipitated two of the most bitter

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862“Anti-Cigarette Bill Is Passed by Legislature,” *DN*, Feb. 25, 1921 (1:3).

fights in the lower body of the legislature this session," passed by the seemingly large majority of 33 to 13. Ultimately, the impasse was broken only because 10 representatives defected from the licensing position upon realizing that passage of an unamended bill was the alternative to defeat of any cigarette bill. One reason that “deserters,” as the disgruntled Tribune preferred calling switchers, “could not vote to kill the measure in its entirety” may have been that, although, as the News noted, the House seemed “agreed that some form of anti-cigarette legislation should be passed,” some vocal and visceral opponents of prohibition nevertheless felt “‘compelled’” to vote for Southwick in the end because they had “‘pledged’” themselves to their constituents to “vote for antitobacco legislation.” (Ironically, the House adjourned after passing the bill because, in compliance with the body’s no-smoking rule, “so many members left the hall of the house for a smoke that a quorum was lacking.”) In contrast to the battle in Idaho, the American Legion-WCTU clash in Utah was much more of a sideshow, in part because the Mormon church rather than the women’s organization constituted the driving force behind anti-tobacco legislation, and in part because that very Mormon domination generated and revived a broader and older anti-Mormon sentiment, to which the Legion’s was but a subordinate contribution. (Moreover, for many years the WCTU had taken a very hostile position towards the Mormon church, which had been initially prompted by the degradation of women inherent in polygamy, but then developed into a full-scale attack embracing the hierarchy’s economic investments and monopolies.) Nor was the Legion immune from attack by individual Mormon

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864.“Governor Signs Anticigarette Bill,” SLT, Mar. 9, 1921 (22:7).
865. “Anti-Cigarette Bill Is Passed by Legislature,” DN, Feb. 25, 1921 (1:3). Among the 10 switchers were three Salt Lake representatives, leaving that 10-member delegation evenly split, but no Ogdenites, three-fourths of whom remained opposed to the bill.
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legislators. For example, in early February, Republican Senator Perry B. Fuller, a Mormon bishop and mine superintendent, let loose during House floor debate on Southwick’s bill with this blistering taunt: “‘We hear...a lot of stuff about 100 per cent Americans. Isn’t that false?’ They would perhaps give their lives on the battlefield for their country, but they would not curtail themselves in one selfish desire or appetite to make this country the grandest place in the universe, where, instead of being only 75 per cent efficient, our young people may be 100 per cent efficient.’” Finally, the American Legion itself did not monolithically oppose tobacco regulation: a number of posts even presented petitions to the legislature at 246-57. The WCTU also persistently opposed the seating of Reed Smoot in the U.S. Senate. Shepard, a long-time president of the Utah WCTU, was one of the Mormon church’s most vocal and extreme critics and traveled around the United States attacking its hierarchy. E.g., “Mrs. Shepard Again Heads the W.C.T.U.,” Salt Lake Telegram, Oct. 1, 1915 (4:4); “Mrs Lulu Shepard,” OS-E, Sept. 2, 1919 (4:1) (edit.); “Lulu L. Shepard Again Attacks Mormons,” OS-E, May 28, 1923 (6:4). The Utah WCTU under her leadership did advocate more restrictive anti-cigarette legislation. “Will Make Fight Upon Cigarettes,” SLT, Sept. 24, 1914 (7:1). However, given the scope and intensity of animosity between the WCTU in general and Shepard in particular, on the one hand, and the Mormon church, on the other, cooperation between the two would have been difficult, especially since Shepard had attacked the church because its Saltair bathing resort sold huge amounts of beer. “W.C.T.U. Will Act,” SLT, June 1, 1900 (8:5); Jeffrey Nichols, Prostitution, Polygamy, and Power: Salt Lake City, 1847-1918, at 179 (2002). 872


873 “Senator Southwick Tells Why He Desires Passage of Anticigaret Measure,” SLT, Feb. 3, 1921 (10:1-2 at 11:3). Missouri Republican state senator Albert Gardner made another atypical contemporaneous attack on World War I soldiers’ cigarette smoking in connection with anti-cigarette legislation. In response to another senator’s concern that a bill to make it a misdemeanor to sell or give away cigarettes to any person under 18 “would interfere with the Red Cross work, as many of the soldiers returning from France are 18, and members of the Red Cross might be violating the law in trying to do the soldiers a kindness,” Gardner “said he would penalize, if he had his way, more than anyone else the soldiers who smoke cigarettes, or the person who gave them to them” because “‘nicotine has done more injury to the physical manhood of this country than all of the alcohol that was ever manufactured.’” In addition, lawyer Gardner opined that cigarette smoking in public places “‘should be made a penitentiary offense.... We ought to legislate to isolate the cigarette smoker to a private den like the opium smoker’” because “the intolerable nuisance, the cigarette smoker,” made “the most high priced and exclusive cafes and restaurants of St. Louis and Kansas City...smell like old shoes, rubber, rags and old leaves....” “Gardner Hits Cigarette Evil, Bill Is Passed,” Chillicothe Constitution, Apr. 3, 1919 (4:5). For the law, see 1919 Missouri Laws at 262.
urging passage of Southwick’s bill.\textsuperscript{874}

At the House Manufactures Committee February 9 public hearing on Southwick’s bill the Salt Lake post of the American Legion trained its criticism on the “attempt to take the money away from the Utah merchants and let the business firms outside the state profit by the inevitable shipment of tobacco into Utah.” Like its counterpart in Idaho, the American Legion in Utah also attacked the WCTU, but since the latter was not in the vanguard of the anti-cigarette movement in Utah, the Legion focused on an ancillary issue. At that same House committee hearing, Mrs. Stewart (Elizabeth) McLeese, the president of the Central WCTU of Salt Lake, stated that the Red Cross, YMCA, and other relief agencies had “sent tobacco and cigarettes to the boys ‘over there,’ but declared that they had been hoodwinked through sinister motives of the big tobacco companies.”\textsuperscript{875} Taking umbrage, Salt Lake post No. 2 unanimously adopted a resolution condemning the WCTU for having claimed that the Red Cross “attempted to destroy the morals of the young manhood of America by urging them to use cigarettes; that the Red Cross was the tool of the tobacco trust; that for the sake of a few paltry dollars the Red Cross would destroy the manhood of America.” In fact, according to the Legion, those gifted cigarettes had been “a source of comfort to thousands of soldiers,” who smoked them only because they “desired to and not through any outside influence.”\textsuperscript{876}

\textsuperscript{874}House Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 222, 228 (at least four posts presented petitions signed by at least 43 members). In addition, “ex-servicemen” also signed. Id. at 240 (42).

\textsuperscript{875}“Anticigaret Bill Put Under Fire,” SLT, Feb. 10, 1921 (14:5). See also “House Committee Has Public Hearing on Cigarette Bill,” DN, Feb. 10, 1921 (sect. 2, 8:2). McLeese (1864-1955) was a Canadian immigrant married to a carpenter. 1900, 1910, and 1920 Census of Population (HeritageQuest); http://images.archives.utah.gov/data/81448/4093831/4093831_0020.jpg (death certificate). McLeese had long been superintendent of the WCTU of Utah’s Christian citizenship department. “Demonstration of W.C.T.U. Work,” Evening Standard (Ogden), Oct. 10, 1912 (6:2). In 1921 she was Utah’s delegate at large to the national WCTU convention. “W.C.T.U. Train Due Here Today,” SLT, Aug. 13, 1921 (18:6). Oddly, the report of the superintendent of the anti-narcotics department to the national convention mentioned repeal of the Iowa law and North Dakota’s enactment of a ban on cigarette ads and smoking in restaurants, but nothing about Utah’s new statute. Report of the Forty-Eighth Annual Convention of the National Woman’s Christian Temperance Union 106-108 (1921). At the state organization’s own annual convention the report received on cigarettes was, as could be expected, especially “encouraging to the work....” “W.C.T.U. Meets in Its Annual Session,” SLT, Oct. 9, 1921 (4:4).

\textsuperscript{876}“Legion Resents W.C.T.U. Action,” SLT, Feb. 16, 1921 (20:3). At the Senate Judiciary Committee hearing on Feb. 1, McLeese had expressed regret that “Red Cross
The American Legion’s most vigorous attack on Southwick’s bill was, unsurprisingly, framed in terms of “personal liberty.” 877 (What the Legion had in mind became manifest on Christmas Eve following enactment of the Southwick bill when veterans undergoing treatment in a ward occupied solely by them in an Ogden hospital complained about the institution’s rule prohibiting smoking, violation of which, according to the superintendent, would lead to their discharge despite the fact that they did not find smoking offensive to themselves.) 878 In a bathetic memorial to the legislature from the Herman Baker post No. 9 of Ogden published as a news article in the Tribune the same day that the young Mormons’ advertisement appeared, the Legionnaires, bemoaning that the anti-cigarette bill was “‘repressive of freedom and antagonistic to the principles of freedom’” for which the post stood, urged that “this tyranny, however un-self-conscious tyranny, masquerading as progress or benevolence, be not permitted to gain a grasp upon the state of Utah.” 879 The ex-World War soldiers petitioned the legislature to reject the bill because

the choice as to whether or not the citizen shall smoke cigarettes is purely an individual and moral choice and is of no legislative or social concern, and is a choice...which is one of the prerogatives of personal liberty and therefore of particular sanctity to your memorialist, which is composed of men who remember and strive to perpetuate in all men the memory that Americans have ever been jealous to preserve and vigilant to defend the right of individual freedom of moral...action and the right of freedom of conscience; and...senate bill No. 12, seeking as it does by effect, if not by intention, to entail the freedom of conscience and the liberty of moral action asserted by the Declaration of Independence and guaranteed by the constitution of the United States, not only [is] opposed to ancient and holy principles of American justice, but also projects the legislative function of the state into the domain of conscience, where it is forbidden to go, and makes insecure for the

877 At least one anti-Southwick bill House petition (with 50 signatures) combined criticism of its infringement on personal liberty and “hardship on the thousands of citizens whose livelihood is obtained from the growing, curing, packing, sale, etc. of tobacco....” House Petition No. 2 (Jan. 21, 1921), on http://images.archives.utah/cdm4/document.php?CISOROOT=/432&CISOPTR=137889&REC=1.


future that confidence in republican institutions which is at once the glory and the safeguard of our country.\textsuperscript{880}

This bombastic invocation of freedom of conscience to justify the unimpeded flourishing of nicotine addiction regardless of the public health consequences for other Utahns—pretty heady stuff for Ogden vets—was apparently composed by the 24-year-old future nationally renowned Pulitzer Prize winning historian, novelist, literary critic, essayist, editor, and conservationist Bernard De Voto. Son of a Mormon mother, he formed a socialist group at the University of Utah which he quit after unorthodox professors had been fired, transferred to Harvard, was commissioned an infantry lieutenant in the war, was graduated from Harvard, and returned to Ogden, where, in 1921, in addition to being a junior high school teacher, as chairman of the Legion committee to memorialize the legislature, he presumably got to strut his rhetorical stuff in this petition.\textsuperscript{881}

The aftermath of the passage of the Southwick bill in Utah eerily resembled that of its Idaho counterpart\textsuperscript{882} in certain respects, but revealed much deeper reserves of anti-tobaccoism, which put to nought opponents’ hopes that, on the strength of the governor’s criticism of freak legislation in his message to the legislature, he might veto the bill.\textsuperscript{883} Less than a week after Idaho’s Republican governor had signed the cigarette sales ban but admonished the legislature to substitute licensure for prohibition, thus prompting repeal, Utah’s Republican Governor Charles Mabey, a Mormon who became a leader of the Young Men’s Mutual Improvement Association (which played an important part in preparing the way for acceptance of Southwick’s bill),\textsuperscript{884} seemed to be engaged in a reprise when he signed S.B. No. 12 but announced that he “believed the measure inoperative and inefficacious so far as its ability to bring the results its proponents

\textsuperscript{880}“Legion Attacks Southwick Bill,” \textit{SLT}, Feb. 14, 1921 (14:4). Virtually the same article was published as “Legion Opposes Southwick Bill,” \textit{OS-E}, Feb. 14, 1921 (3:5-6).


\textsuperscript{882}See below this ch.

\textsuperscript{883}“Utah’s Anti-Cigarette Bill Before Governor,” \textit{OS-E}, Feb. 25, 1921 (1:1).

\textsuperscript{884}See below this ch.
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desire is concerned. Mr. Mabey intimated that if the law is repealed and a new bill, perhaps less drastic, passed in its stead, the move would meet with general satisfaction.”885 However, not only did the Utah legislature not emulate Idaho’s by disavowing its own prohibitory bill in the same session, but, the national tobacco trade press reported, it was “freely predicted that the Utah act is the forerunner of a measure which will drive tobacco from the State two years hence.”886

In the event, the 1923 legislative session brought about repeal of the sales ban and dilution of the smoking ban in public eating places to the point of de facto repeal, but also a retention and even a partial expansion of the advertising ban to encompass non-cigarette tobacco (thus refuting Southwick’s and others’ claims that a sales ban was a prerequisite for an advertising ban).887

885 “Governor Signs Anticigaret Bill,” SLT, Mar. 9, 1921 (22:7). There had also been speculation that the governor might return the bill for amendments. “Anti-Cigarette Bill Signed by Governor; Becomes Law June 8,” DN, Mar. 9, 1921 (sect. 2, 10:6).
887 See below this ch. The Utah Supreme Court invalidated the ban on advertising in Utah newspapers as an interference with interstate commerce. State v Salt Lake Tribune Pub. Co., 68 Utah 187 (1926). In 1929, a bill was introduced to repeal the entire advertising ban, but the House amended it with the result that the legislature in the end made it a misdemeanor to “display on any bill board, street car sign, street car, placard, or on any other object or place of display any advertisement of cigarettes, cigarette papers, chewing tobacco, or smoking tobacco..., except that a dealer in cigarettes, cigarette papers, tobacco or cigars...may have a sign on the front of his place of business stating that he is a dealer in such articles....” 1929 Utah Laws ch. 29, § 2 at 173. See also House Journal: Eighteenth Session of the Legislature of the State of Utah: 1929, at 230, 541-42 (Feb. 13, Mar. 11) (H.B. No. 97, by Critchlow, 47 to 5); Senate Journal: Eighteenth Session of the Legislature of the State of Utah: 1929, at 842-43 (Mar. 13) (15 to 0); “Senate Ends Needed Work,” SLT, Mar. 14, 1929 (9:3-5 at 4); “Cigaret Ads Ban pending,” SLT, Mar. 30, 1929 (28:7); “Test Case Filed on Advertising of Cigaretts, Tobacco,” Salt Lake Telegram, Apr. 3, 1929 (Local page 1:2); “Tobacco Edict Action Begins,” SLT, Apr. 4, 1929 (20:3). The attorney general had previously interpreted this provision as prohibiting the display or other advertising of cigarettes or cigarette papers in any store window. Biennial Report of the Attorney General to the Governor of the State of Utah for the Period Ending November 30, 1924, at 97 (May 18, 1923). In a unanimous opinion written by Justice Brandeis the U.S. Supreme Court affirmed the very forceful and socially-psychologically realistic ruling of the Utah Supreme Court upholding the validity of the ban on bill board ads. State v Packer Corp., 77 Utah 500 (1931), aff’d sub nom. Packer Corp. v Utah, 285 US 105 (1932). The Utah Supreme Court decision was in part driven by the state’s police power to protect minors, among whom “the tobacco habit ha[d] made great inroads” in part because manufacturers and dealers had been “left free to appeal to
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

Idaho Repeals Its Ban Even Before the 1921 Session Ends

The Sixteenth Session of the Idaho Legislature has produced in this bill...a measure that is entitled to admission to the legislative chamber of horrors by unanimous vote.888

We taught two millions boys to smoke cigarettes. The military authorities encouraged it, the preachers in the service sanctioned it, the Y. M. C. A. was a party to it. Now let's throw the boys in jail for having learned it? Is it wise? Is it the best way to cure the evil?889

Though not so extensive, intensive, or nearly successful as their counterparts in Utah, failed efforts to secure passage of a blanket cigarette sales ban in Idaho went back to the beginning of the century.890 This failure even to reach a floor

888“Smoke Wreaths,” TFDN, Feb. 26, 1921 (6:1) (edit.).
890For the bills in 1901, 1907, and 1917, see Journal of the House of Representatives of the State of Idaho: Sixth Session...1901, at 145, 156-57 (Feb. 25, 27) (1901) (H.B. No.
vote in Idaho was finally overcome in 1921, after Senate Bill No. 134 was introduced on February 2.891 Compared to the Utah bill, the Idaho measure—which amended the existing 1889-90 law outlawing sales to persons under 21892—was modest, merely making it unlawful for “any merchant, trader, peddler, pharmacist, apothecary, or any other person or persons, male or female, in this state, with or without a license, to import for sale or to have in his possession for sale, or to sell by wholesale or retail, or give away, directly or indirectly, to any person or persons, male or female,***within the state of Idaho, cigarettes for smoking, or any cigarette papers or wrappers, or any paper made or prepared for the purpose of making cigarettes, or the compounds of tobacco used in the filling or makeup of cigarettes***.” Those convicted of violating this provision were subject to a fine of $50 to $100 for the first offense and $100 to $300 or by imprisonment in county jail for a maximum of six months for the second offense.893 The bill also amended the existing 1913 law prohibiting minors, subject to a $10 fine, from smoking or using cigars, cigarettes, or tobacco in any form in any public road, alley, street, park or other land used for a public purpose or in any public place of business894 to fine any minor up to $100 “who shall buy, accept or have in his possession any cigarette, cigar, or tobacco in any form...or any cigarette paper or other paper or wrapper intended for the wrapping of tobacco in the form of a cigarette, or compounds of tobacco used in the filling

891 Journal of the State Senate of the Legislature of Idaho: Sixteenth Session...1921, at 140 (Feb. 2).
892 1889-90 Idaho Sess. Laws at 49 (codified at Compiled Statutes of Idaho v. 2, § 8362 (1919)).
893 “Would Prohibit Cigarette Sale,” IDS, Feb. 3, 1921 (5:3, 3:1). S.B. No. 134 added the language “to import for sale, or to have in his possession for sale.”
894 1913 Idaho Sess. Laws ch. 150, at 519 (codified at Compiled Statutes of Idaho v. 2, § 8363 (1919)).
or makeup of cigarettes....

Idaho newspaper readers would have known that the Utah proposal went far beyond Idaho’s because in early January, two weeks before the former’s introduction, the Idaho press had run an Associated Press article about it the same day that it appeared in Salt Lake City. Highlighting the provision in Senator Edward Southwick’s anti-tobacco-bill-to-be that would prohibit “the smoking of pipe or cigars in any public place, with the exception of the street,” the piece added that he had included cigars and pipes in the public smoking ban “because he felt that smokers should be compelled to show consideration for non-smokers.” Despite its radicality and his publicly known intent to “legislate [cigarettes] out of existence,” he already “knew it would have the support of a majority of the senate and...felt the house also would support” it.

The Idaho bill’s introducer, Ralph Joseph Harding (1871-1933), was one of only five Democrats in the 44-seat Senate. A 49-year-old Mormon bishop from Malad (pop. 2,535) in Oneida County, he was a farmer and manager of the Malad branch of the Consolidated Wagon and Machine Company. Having grown up in a Mormon family in Utah and attended Brigham Young College, Harding “fulfilled an L.D.S. mission in the Eastern States” and then settled in Malad, where he opened a meat market and grocery store. There he served on the school board, city council, and county commission and as mayor in addition to being state senator from 1915 to 1918 and 1921-22. As well as being a Mormon high priest, Harding “served as a counselor in the bishopric, was a member of the Oneida Stake High Council for many years and held numerous offices in church auxiliaries.

Oneida County, bordering on Utah, is located in southeastern Idaho, which
Mormons colonized in the 1870s at Brigham Young’s direction; even at the beginning of the twenty-first century, the area’s population was still 61 percent Mormon, with individual counties’ values ranging between 35 and 92 percent.\footnote{904} (Oneida County was one of the three southeasternmost counties whose total Mormon proportion in 1990 fell in the highest recorded group—73-100 percent.)\footnote{905} Overall, the state’s population in 1911 had been estimated to be 30 percent Mormon so that the “parties are so evenly balanced that this is enough to permit the Mormons, by going in between, to have their way.”\footnote{906}

During the bill’s third reading on February 21, Harding presented petitions that Mormons all over Idaho had signed urging passage of S.B. No. 134.\footnote{907} He was also the only senator to speak on its behalf, pointing out that nationally $2 billion was spent on tobacco and that 46 billion cigarettes were manufactured annually. To bolster his claim that “[m]any great educators, business and professional men...opposed...the use of cigarettes” he showed three bundles of letters representing the opinions of more than 6,000 Idahoans and added that “the women’s clubs were all against the use of the cigarette.” The state’s leading paper, the Republican Idaho Daily Statesman, reported that Harding’s “strong point of argument was based on the destruction, which he claims the cigarette causes,” but the illustration he used merely cited his personal experience of having seen five girls under 17 years of age smoking cigarettes in a Boise cafe without explaining how “the use of the cigarette affected the mental powers of young people,” though he asserted that that reason explained why “‘many business houses will not employ young men who smoke cigarettes.’”\footnote{908} Despite Harding’s (apparently) unenlightening cliches and “without a single word being


\footnote{905}Historical Atlas of Mormonism, map 64 at 129 (S. Brown et al. eds. 1994).


\footnote{907}“Cigaret Banned in Idaho Senate,” SLT, Feb. 22, 1921 (9:5).

\footnote{908}“Anti-Cigarette Measure Passes,” IDS, Feb. 22, 1921 (5:7).
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uttered in opposition,”909 S.B. No. 134 passed by the large majority of 29 to 12.910

The day after the Utah legislature had passed Southwick’s bill the overwhelmingly Republican Idaho House—Democrats occupied only three of 54 seats—first debated for more than an hour a motion to postpone S.B. No. 134 indefinitely. Almost half of the membership participated, most speaking in support of the bill. Opponents drew on disparate and irreconcilable arguments, ranging from the claim—so prevalent in Utah—that the measure was “an unwarranted invasion of personal liberty” to the quibble that it was a weak prohibitory law because it failed to prohibit shipping cigarettes into Idaho that had been bought outside the state. House Speaker Peter Johnston handed the gavel over to another member so that he could “charge from the floor that representatives of the American Tobacco company had been lobbying against the bill.”912 After the motion to kill, which was in effect a test vote, had been defeated by a vote of 21 to 30, the House passed the bill by the even larger majority of 33 to 19.913

As soon as Idaho S.B. No. 134 became eligible for the governor’s signature, the opposition, ostensibly led by the American Legion, burst forth with sharp ad utorem attacks on the WCTU. Seven world war veterans published a letter to the Statesman agreeing with Senator Harding that cigarette smoking affected minors’ and children’s intelligence, but asking rhetorically when Idaho officials were “appointed [sic] for the sole purpose of prohibiting the sale of tobacco to all” adults. Indignant over the affront to “true liberty and freedom” for which they had fought, the ex-soldiers wanted to know: “[I]s it any more than fair that we ask the privilege of smoking a cigarette now and then, if we so desire?” They found it regrettable that “no more of the state’s honorable senators were not [sic] in...France, when even the smell of a ‘Bull Durham’ was a mighty rare and

910Journal of the State Senate of the Legislature of Idaho: Sixteenth Session...1921, at 307 (Feb. 21). Three of the four voting Democrats supported the bill.
911Journal of the House of Representatives of the Legislature of Idaho: Sixteenth Session...1921, at 3-4 (Jan. 3).
913Journal of the House of Representatives of the Legislature of Idaho: Sixteenth Session...1921, at 340 (Feb. 25). Three of the four representatives from Boise, the state’s largest city, voted to postpone indefinitely and then for S.B. No. 134. Id and at 3-4.
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pleasing sensation to the boys who wore the uniform of Uncle Sam.” So attached were the veterans, who by this point were virtually drowning in bathos, to the liberty-freedom-cigarettes nexus that even though some of them were not cigarette smokers, “in memory of our cigarette smoking buddies who are still in France, and will never be forgotten by the buddies who will ‘carry on’ for liberty and Democracy to the last letter of the last word, we strive to attain those ends we believe to be national and personal liberty!” Demonstrating just how advanced their views were, the writers took a forthright stance vindicating “a woman the same privilege” to smoke that a man had because “we are not living in Hicksville or Oneida county. We are living in the state of Idaho, governed by and for its citizens, and not by the W.C.T.U. ....”

Sticking up for “some of our most successful and brainy men” men (such as the “great Goethals, who split Panama’s isthmus”) who smoked cigarettes as well as “many a tireless general and equally brave soldier in the trenches [who] got some solace from a convenient form of tobacco in turning back a recent menace to civilization which would have given members of the women’s clubs greater things to worry about than strict and unwarranted regulation of some of life’s petty failings,” a Boise resident who purported not to smoke cigarettes also gained access to the Statesman’s columns to denounce the WCTU and its senatorial puppets:

[Last Monday, without a single word being uttered in opposition, the Idaho senate passed an anti-cigarette law. There were 12 men with enough red blood and backbone to vote against this measure, dictated by a narrow-minded, bigoted, semi-religious organization, which would regulate every human activity by statute. [T]he quaking legislator has again jumped through the hoop when the beskirted mistress of the ring cracks the whip.

The Idaho legislature...should...stop this undue yielding to feminine dictation."

A sharp riposte to the veterans was administered by 66-year-old Methodist minister Wilmott Woodruff Van Dusen on behalf of the “members of the almost slandered W.C.T.U.,” one or more of whom he suspected were the mothers of the libeling signers. Having imagined that it would be “rather difficult to slander a

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914 Jack Keith et al., “Former Service Men Come to Defense of Slandered Cigarette,” IDS, Feb. 25, 1921 (5:5-7). None of the seven writers appeared in the 1920 population census as living in Idaho.

915 D. B. Leaver, “Senators Scored for Slapping Lady Nicotine,” IDS, Feb. 25, 1921 (5:7, at 10:4) (letter to editor). No one in Idaho at the 1910 or 1920 census was returned with this last name.

thing like the cigarette and the polecat,” he wondered at former soldiers who “appear to think they will be deprived of certain liberty due an American if they are not allowed to smoke cigarettes where and when they may please.” For his part, Van Dusen took umbrage at secondhand smoke exposure: “Public places which must be frequented by women, and by some men who abhor the fumes of the weed, are rendered very offensive by the users of tobacco, who insist on having the liberty to have their way, regardless of the wishes or dislikes of others who feel they are entitled to the liberty of fresh and unpoluted [sic] atmosphere.” The minister hardly minced matters in reminding his ambient air quality adversaries that they were not the only Americans who had “the right of liberty of thought and action.” The “clean air” that Van Dusen and his allies had to breathe for the “clean bodies and minds” to which they claimed a right was denied them “by people who claim the liberty to smoke in company, or where the fumes of their cigarettes peentrate [sic] the presence of others.” Instancing only one illustration among scores, he pointed out that it was a “trial to ride in a railway coach with a smoking appartment [sic] in one end, for the filth permeates the entire car, and the defenseless women and children are forced to breathe the poluted [sic] atmosphere.”

Although Van Dusen certainly did not articulate the kind of obfuscatory mutual “accommodation” program that cigarette manufacturers propagated in the last quarter of the twentieth century, his designation of the golden rule as “the correct law of life,” his appeal to smokers to “regard the rights” of non-smokers, and his plea for letting both “the law work in all directions” and “each regard the rights of others” in the absence of any call for a statewide statute—like the pending Utah bill—prohibiting tobacco smoking in various public places left unclear where “defenseless women and children” and “some men” would be free of smokers and where and how offended non-smokers would ever have to “regard the rights” of smokers. But this type of

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918 See below Part VI.

919 W. W. Van Dusen, “Tobacco Destroys Finer Senses, Says Minister,” IDS, Feb. 26, 1921 (4:3-4). That some at least believed that smokers’ rights did not in all cases extend even to their homes emerged from a letter to the editor in the same issue of the newspaper by a woman in Boise, who, arguing that “Cigarettes Affect Unborn Babes,” suggested that readers “[a]sk any honest medical man to give you the benefit of his medical knowledge as to the effects of cigarette smoking upon the embryo of an unborn child” and insisted that babies would “be marked 100 per cent in the health test...if the father has exercised the same self-denial and thought that good mothers willingly exercise.” Mrs. E. R. Hanford, “Cigarettes Affect Unborn Babes, Says Boise Forum Writer,” IDS, Feb. 26, 1921 (4:3). The author was Katharine B. Hanford, the 37-year-old wife of Edwin R. Hanford, a
accommodation was not what veterans had uppermost in mind. What they wanted to know from Van Dusen was: “Would you refuse a dying doughboy when his last words were, ‘give me a cigarette?’” [sic].

A point-by-point critique of the Legionnaires’ letter was published by a three-member committee of the WCTU union in Gooding County in southwestern Idaho. The three appointed women were 32-year-old Mrs. Eva M. Moore (corresponding secretary, whose husband was a rural mailman), 42-year-old Mrs. C. H. (Maude) Douglass (who was married to a carpenter), and 48-year-old Mrs. E. E. Brandt (whose husband was county probate judge, but also a ranch lands owner, real estate businessman, former general store merchant, and Methodist).

Picking up on the veterans’ admission that cigarettes were injurious to minors, the threesome needled them: “Do they not know that thousands of minors are using them and that they will continue to get them until the cigarette is entirely outlawed? Does not little brother want to be as nearly like daddy and big brother as possible?” Questioning the ex-soldiers’ absolutizing of personal liberties, they denied that any person had a “right to liberties which will injure another” and advanced a tenet of state paternalism over biological paternalism that 90 years later has still not been universally implemented: “Does it seem right or reasonable for a man or woman...to pursue habits which science has proven might seriously injure the health or intellect of their children?” Without giving full credence to the Legionnaires’ claim that they limited themselves to an “occasional cigarette,” the WCTU acknowledged that: “Some can and do, but most men are real slaves to the habit, unable to resist smoking almost constantly.” And as for the Red Cross’s having provided cigarettes to soldiers, the women focused on the profit-making context: “But while other people were too busy to realize what they were about the tobacco trust improved the opportunity ‘to put something over on us’ and fastened the cigarette habit on thousands who had never used it before, for the express purpose of increasing their future sales.”

magazine canvasser. 1920 Census of Population (HeritageQuest).


922 Mrs. Eva M. Moore et al., “Gooding W.C.T.U. Don’t Want Boy to Associate with My Lady Nicotine,” IDS, Feb. 28, 1921 (4:6-7) (letter to editor). A pro-cigarette, non-cigarette-smoking veteran stated that 225 of 250 soldiers in his company had smoked cigarettes as well as eight of the group of nine with whom he had been examined for the
Because “[s]ome of the American Legion boys” regarded the cigarette sales ban “as a direct slap at them and they resent it,” the day after House passage of the Senate bill “American Legion posts all over the state...sent protests to Governor Davis...urging the governor to send the bill back to the legislature without his signature...accompanied by a note telling them [sic] he will sign a bill ‘prohibiting the use of tobacco in any form.’” The purpose of this non-discriminatory approach was to “‘kill this pernicious attack on the liberties of ex-service men.’” A dozen other posts immediately followed suit. This movement began in Nampa under the leadership of Harold Jenness, editor of a Republican newspaper there, who undertook to mobilize all the state posts. Despite an announcement that such a universal bill killer was being prepared and would be introduced within a few days, legislative repeal strategy took a different course.

At the same time that the American Legion in Idaho was pressing for repeal, tobacco dealers were expressing fears that the law would also prohibit the sale of pipe tobacco on the grounds that the law prohibited the sale of “the compounds of tobacco used in the filling or makeup of cigarettes.” The attorney general initially declined to comment because he had not studied the bill, but one Boise lawyer opined: “‘No one who sells...smoking tobacco for use in a pipe could be convicted...unless he knew or had reason to know that the tobacco was to be used as a compound in the filling or makeup of a cigarette.’” Soon, however, lawyers split on the interpretation of this provision, though it was “announced in state circles that it was probable” that the attorney general “would rule that the bill ‘had teeth’ and would stop the sale of smoking tobacco to minors.” Since the second section of the bill expressly prohibited buying by or selling to minors of “tobacco in any form,” the alleged attorney general opinion-to-be not only was superfluous, but skirted the vital issue as to whether sale to adults of pipe tobacco...
came within the ban in section one on selling “the compounds of tobacco used in the filling or makeup of cigarettes.”

Ultimately of more practical consequence for the debate was (editorial) criticism that the sales ban law “can work to the benefit of one interest alone—and that is the mail order tobacco dealer. ... It puts the Idaho cigarette dealer out of business, but it does not put a stop to the cigarette business, it simply diverts it to dealers in states that have not the questionable benefits of such legislation.”\textsuperscript{928} This argument, which, since its emergence in the 1890s, had prompted advocates of anti-cigarette legislation to concede that the “original package” doctrine would unavoidably facilitate some leakage,\textsuperscript{929} doubled here as the illogical claim that the new law would make cigarettes more accessible to the youth than ever before because he would no longer have to induce a local dealer to sell them and risk being punished himself if caught—instead, “like a great many of his elders,...he may be expected to make known his wants at long distance to the mail order dealer.”\textsuperscript{930} Such speculation not only failed to raise the question as to why, under those circumstances, minors would not have preferred buying cigarettes by mail under the old law, but also overlooked the answers that they were: less able financially to afford whole packages; less socially-psychologically organized to plan the logistics of such interstate purchases; and more exposed to the risk of being seen in possession of cigarettes if they received them by mail at their parents’ home or at the post office.\textsuperscript{931} Moreover, licensure and unimpeded sales to adults made emulation possible, especially as it was exacerbated when “[y]ou see the medical profession and clergy using the weed, setting an example to the youth of our country.”\textsuperscript{932}

\textsuperscript{928}“Smoke Wreaths,” \textit{TFDN}, Feb. 26, 1921 (6:1) (edit.).
\textsuperscript{929}See above chs. 10-11.
\textsuperscript{930}“Smoke Wreaths,” \textit{TFDN}, Feb. 26, 1921 (6:1) (edit.).
\textsuperscript{931}To be sure, such public observation also had to be coupled with informing the authorities of minors’ illegal possession (if, that is, such possession, in contradistinction to to buying or smoking, was prohibited). Thus, for example, in 1923 a Utah legislator who was all for giving Utah newspapers the right to advertise cigarettes stated during floor debate on repealing Utah’s general sales ban: “I have seen young people in my home town get cigarettes at the postoffice by the carton when they could not buy them from home dealers.” “New Tobacco Bill Passes Legislature, Signed by Governor,” \textit{SLT}, Mar. 9, 1923 (1:7, at 10:2) (Rep. Constantine). From 1903 to 1911 it had been unlawful for under-18-year-olds to buy, accept, or have in their possession cigars, cigarettes, or tobacco in any form; in 1911 the age was increased to 21. The maximum fine was $100. 1903 Utah Laws ch. 135 at 186; 1911 Utah Laws ch. 51, at 68; Compiled Laws of the State of Utah § 8443 at 1625 (1917).
On March 2, Republican Governor David Davis, a Welsh-born banker,\textsuperscript{933} notified a delegation of veterans representing American Legion posts throughout Idaho who had urged him to veto S.B. No. 134 that he would sign it.\textsuperscript{934} But when he returned the bill to the Senate the following day with his signature his accompanying letter contained a proposal that in effect threw out the baby with the bathwater:

“This measure is signed because of the fact that it aims to strike at the evil of the use of tobacco by minors. In my opinion, the law, as it is drawn, does not accomplish the great purpose which its author and those who voted for it had in mind. The lack of restriction on the mail order business, which would open the avenue to a large number of cigarettes being sold to minors by mail, cannot be corrected except by federal statute.

“In sending this bill back to you, signed, I strongly recommend that the legislature amend section 1, substituting therefore a section which will license and bond tobacco dealers and provide such a penalty for the breaking of the law that a conviction on the charge of selling to minors will be strongly punished. Such an amendment to this bill will, I think, reach the evil which its authors and supporters wish to accomplish, but will at the same time be fair and equitable.”\textsuperscript{935}

The prearranged character of this overturning of the statewide sales prohibition emerged from the fact that on the morning of the same day that Davis sent his letter, the Senate State Affairs Committee introduced the bill of Republican Senator C. W. King (who had voted against Harding’s bill), which embodied the governor’s recommendations.\textsuperscript{936} In place of the principal section of Harding’s bill, which S.B. No. 327 formally repealed, the new measure established a mandatory licensure system that covered the sale not only of cigarettes and cigarette wrappers and papers, but also cigars, smoking tobacco, chewing tobacco, and “any tobacco or product or compound of tobacco in any form....”\textsuperscript{937} (This subjection of non-cigarette tobacco dealers to licensure—which

\textsuperscript{933}http://history.idaho.gov/Reference%20Series/0016.pdf
\textsuperscript{934}“Governor Will Ban Cigarettes,” DN, Mar. 2, 1921 (2:1).
\textsuperscript{935}Governor D. W. Davis to [Senate President] C. C. Moore (Mar. 3, 1921), printed in “Governor Signs Cigarette Law,” IDS, Mar. 4, 1921 (5:2).
\textsuperscript{936}“Governor Signs Cigarette Law,” IDS, Mar. 4, 1921 (5:2); “Second Tobacco Measure Born in Upper House,” IDS, Mar. 4, 1921 (5:1). The report that Senate Republicans in caucus “Saturday afternoon” [March 5] favored the amendments must have been a typo for “Thursday.” “Governor Signs Cigarette Law,” IDS, Mar. 4, 1921 (5:2).
\textsuperscript{937}S.B. No. 327, § 1, as printed in “Second Tobacco Measure Born in Upper House,” IDS, Mar. 4, 1921 (5:1).
Nebraska had implemented in 1919, but Iowa did not in 1921—was unsuccessfully objected to during Senate floor debate: one senator moved to send the bill to the committee of the whole for amendment because it was “not fair” to tobacco dealers who did not handle cigarettes, but the motion was lost. The punishment for selling without a license was a fine of $100 to $300, or imprisonment for a maximum of six months in county jail, or both. The state commissioner of law enforcement was required to issue a license to “any and all persons, firms or corporations” upon payment of a $50 annual license fee and a $500 penal bond, which would be forfeit to the state if the license holder was convicted of violating the statute. Such conviction also triggered forfeiture of the license itself and a prohibition of issuing another license to such person or corporation for five years.

The bill’s backers were engaged in considerable understatement when they conceded that it was “not so drastic as the Harding bill,” but even if they had been right in their judgment that its “restrictions upon the dealer in tobacco and cigarettes...will insure a regulated sale of these articles” and “keep dealers from selling to minors,” the unfettered availability of cigarettes to adults would insure their desirability and accessibility to minors. Within three hours of the bill’s introduction, senators began receiving “messages from distant parts of the state appealing for” its passage.

Already the next day S.B. No. 327 reached its third reading in the Senate after King had moved to suspend all the rules interfering with its immediate passage. The requirement of a two-thirds vote caused a “close squeak” for the bill, but, despite “considerable objection,” his motion carried by a vote of 30 to 11. During floor debate Harding, in his “impassioned talk against the new tobacco bill,” severely attacked Governor Davis for his duplicity in having told Harding, when the latter discussed the sales ban bill with him before introducing

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939S.B. No. 327, § 1, as printed in “Second Tobacco Measure Born in Upper House,” IDS, Mar. 4, 1921 (5:1).
940“Second Tobacco Measure Born in Upper House,” IDS, Mar. 4, 1921 (5:1).
941“Governor Signs Cigarette Law,” IDS, Mar. 4, 1921 (5:2).
942“Gossip from the Statehouse,” IDS, Mar. 4, 1921 (5:3-5 at 5).
944“Gossip from the State House,” IDS, Mar. 5, 1921 (5:3).
946Journal of the State Senate of the Legislature of Idaho: Sixteenth Session...1921, at 457 (Mar. 4). All 11 who voted Nay also voted Nay on final passage; 10 of them had voted for S.B. No. 134.
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It is unclear whether Harding chiefly resented the real-world impact of repeal of his bill’s universal sales ban or Davis’s “lack[ing] the backbone to veto his law,” which resulted in the new bill’s “making ‘me the goat.”’ Significantly, the vote on final passage was close, licensure prevailing by a vote of only 22 to 19. The 29 Ayes that had been cast for S.B. No. 134 dwindled to 19 Nays against S.B. No. 327 because of those 29 senators 12 switched by voting for S.B. No. 327 and one did not vote, while three who had voted against Harding’s bill also voted against King’s (presumably because they opposed any regulation beyond that already in place before S.B. No. 134 was enacted). All four Senate Democrats voted against licensure.

The denouement in the House took place the next day since it was “understood” that the governor would sign the bill. Although “[s]trong opposition was registered against the bill,” the fact that it was the last day of the session meant that “no improvement could be made” of a compromise measure. A consensus prevailed that the bill would be “satisfactory” for the following two years until the next legislative session in 1923, when “a much better law could be passed.” Consequently, the large 36 to 13 majority for passage may have included some representatives who would otherwise have voted against licensure.

The penultimate word on the consequence of enacting licensure rather than prohibition went to Republican Senator Wilford Woodruff Clark, like Harding a Mormon bishop representing a predominantly Mormon county (Bear Lake) in Idaho’s southeastern corner. He quipped that “soon it would be necessary to
have a new sign. It used to be ‘No Smoking Allowed.’ This must be changed...to ‘If you want fresh air, go outside.’”

The ultimate word on the subject of tobacco control was reserved for the 1923 legislature, whose “much better law” turned out to be no law at all: it simply repealed section 1 of S.B. No. 327, thus abolishing even the licensure system, which in 1921 had been trumpeted as the linchpin of prohibition for minors, “with the purpose of undoing the sixteenth session’s efforts to banish or curtail the noxious cigarette.” The motivation for repeal was the claim that under the King law “hundreds of small neighborhood stores were forced to stop selling tobacco because their annual sales were not large enough to warrant the payment of the license and the posting of the bond.”

Ironically, these types of stores were precisely the ones that in other states were notorious for selling to minors. (A Senate bill that might have alleviated this impact by establishing a sliding fee scale ranging from $50 in towns of more than 2,000 population to $10 in villages and rural districts died.) Moreover, in addition to allegedly working a “hardship” on grocery stores and smaller dealers, compulsory licensing—which in 1921 generated $80,000 in fees and in 1922 $82,245 from 1,645 dealers—allegedly did not aid enforcement of the no-sales-to-minors law. The three-fourths majorities by which repeal of even the diluted 1921 law was effected in both houses suggests that the window of opportunity for tobacco control in Idaho had been very brief and was now tightly shut.

to the Senate in 1902. Progressive Men of Bannock, Bear Lake, Bingham, Fremont and Oneida Counties 98-99 (1904); Latter-Day Saint Biographical Encyclopedia 2:35 (1913).

953“Gossip from the State House,” IDS, Mar. 5, 1921 (5:3-5 at 5). Unfortunately, neither the only issue of the WCTU’s Idaho White Ribboner that the Idaho State Archives/Idaho State Historical Society has for 1921 (namely, October) nor the group’s 1920 Annual Meeting Minutes mentioned the anti-cigarette campaign. Email from Ellen Haffner, research assistant, ISA/ISHS, to Marc Linder (May 10, 2001).

9541923 Idaho Sess. Laws ch. 5, § 1 at 6.

955“Tobacco Law May Be Taken from Statutes [sic],” TFDT, Jan. 19, 1923 (1:5).

956“Law Makers Waiting for Assignment,” TFDN, Jan. 12, 1923 (1:1).

957E.g., in Chicago; see above ch. 6.


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Going on the Offensive Against What Was Perceived as Offensive: Total Cigarette Smoking and Partial Public Smoking Ban Bills and Laws

PROHIBIT USE OF CIGARETTES. West Virginia Would Be Great State If Bill Should Pass.961

The Tobacco Merchants’ Association, at its headquarters in 5 Beekman street, New York, is very busy these days detecting and exerting all possible efforts to defeat numerous pieces of adverse legislation now pending in State legislatures throughout the country. Summarizing these “anti” measures, in an interview with the United States Tobacco Journal, Secretary Charles Dushkind strongly urged every manufacturer, jobber and dealer—as well as interested smokers—in the respective states affected to write at once to the assemblymen and senators from his district in protest against restriction of personal liberty.962

That the year 1917 has achieved iconic status in the history of cigarettes as marking U.S. entry into World War I and the definitive breakthrough of cigarette smoking may have contributed to the amnesia that has enveloped the proliferation of state legislative bills to prohibit cigarette use altogether as well as smoking in various public places during the 1917 session itself.963 Such proposed total bans on cigarette smoking were stricter than liquor prohibition, which was reaching a new high point in 1917 as well.964 This burst of legislative activity was duly reflected in the Tobacco Merchants Association’s monitoring of the progress of numerous “absolute prohibition” (of sales) bills in various states including Michigan, Utah, Minnesota, North Carolina, and Pennsylvania.965

Nor was this wave innovatory: bills to ban cigarette smoking in public had passed one legislative chamber in several states in the 1890s,966 and in 1907 the Wisconsin Assembly, which two years earlier had enacted a general sales ban, also passed an extraordinarily expansive measure: “No person shall smoke or exhibit upon or in a public place any cigarette or cigarette paper or cigarette

961“Prohibit Use of Cigarettes,” Corsicana Daily Sun, Jan. 25, 1917 (1:2).
964E.g., “U.S. Dry Within Ten Years,” NYT, Jan. 14, 1917 (Sunday Mag. at 1).
965Tobacco Merchants Association, Legislative Bulletin (various issues, 1917), Bates No. 502425226/8/44/6/8. Unfortunately, the print on many pages is too faint to be legible.
966See above chs. 3-4.
wrappers, or any substitute therefor or any paper made or prepared for the purpose of making cigarettes or any substitute therefor for the purpose of filling with tobacco for smoking”—subject to punishment by a maximum fine of $25 or 10 days in county jail.967 In debate the Assembly speaker emphasized that the people to whom cigarette smoking was offensive were entitled to rights as well as smokers.968

Also characteristic of this new wave of prohibitionism was a bill introduced in January in the House of Delegates of West Virginia—a state that in 1915 prohibited common carriers from bringing into or carrying within the state intoxicating liquors “even when intended for personal use”969 and that in 1917 was in the process of enacting yet another liquor prohibition law970—that would have made cigarette smoking a criminal offense and possession of cigarettes a misdemeanor in addition to prohibiting their sale.971 The Wheeling Register

967 State of Wisconsin: In Assembly, No. 915, A (May 1, 1907, introduced by Committee on Affairs) (copy furnished by WHS). See also In Assembly: Journal of Proceedings of the Forty-Eighth Session of the Wisconsin Legislature: 1907, at 621 (May 1) (No. 915, A. introduced by State Affairs Committee), 757 (May 15) (read 3d time and passed, but no vote given) (1907). The bill was non-concurred in by the Senate. In Senate: Journal of Proceedings of the Forty-Eighth Session of the Wisconsin Legislature: 1907, at 1056 (June 22) (1907). The Assembly vote ordering the bill to engrossment was almost unanimous. “Cigarettes Criminal in Wisconsin,” New-York Tribune, May 11, 1907 (1); “Must Smoke in Private,” USTJ, May 18, 1907 (7:2). Oddly, the chief newspaper for legislative reporting did not even mention passage in lengthy articles devoted to the day’s proceedings. “Elver Bill Sent to Engrossment,” Wisconsin State Journal, May 15, 1907 (5:5-6); “Assembly Not for a Yukon Exhibit,” Wisconsin State Journal, May 16, 1907 (7:2). On Wisconsin generally, see vol. 2.

968 “Must Smoke in Private,” USTJ, May 18, 1907 (7:2).

969 1915 West Virginia Acts ch. 7, § 7 at 33, 35. But the same law provided that it was not illegal to have intoxicating liquors in one’s home or to give them to others there.

970 In 1917, when the West Virginia legislature amended the prohibition law to make it unlawful for anyone to bring into the state during any period of 30 consecutive days more than one quart of intoxicating liquors, Arizona made it unlawful for any person to have intoxicating liquors in his possession. 1917 West Virginia Acts ch. 58, § 31, at 180, 183; 1917 Arizona Session Laws ch. 63, § 2 at 93, 94.

971 “Bill Introduced in Legislature Hits Cigarettes,” Wheeling Register, Jan. 25, 1917 (1:7). To be sure, the penalty for smoking/possession was only a $ 5 fine, which the trial justice had discretion to remit if the violator identified the seller. See also “M’Aboy Prohibition Bill Made Special Order for Today,” Bluefield Daily Telegraph (WV), Jan. 26, 1917 (1:6). The bill was H.B. No. 196, “A bill to amend and re-enact sections twenty-e (1) and twenty-e (2), of chapter one hundred and fifty, of the Barnes Code of West Virginia, one thousand nine hundred and sixteen, relating to the use of tobacco,”

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called the bill “one of the most drastic ever introduced,”\(^\text{972}\) which was widely reported throughout the country.\(^\text{973}\)

In Indiana, which had prohibited sales from 1905 to 1909, a bill was introduced in the House in 1917 to reimpose a ban on manufacture and sale and to add one on “having possession for personal use of cigarettes, cigarette papers, cigarette wrappers and other substitutes for the same.”\(^\text{974}\)

In order to shed light on the tenacity of deep-seated and widespread anti-smoking attitudes during the World War I era when, counterintuitively, cigarette sales bans were inexorably being repealed, an overview of the whole range of statewide total and partial smoking ban bills and laws is presented here.

**Oklahoma (1908/1915)**

The proposed law is but another example of the tyranny of the weak over the strong.

\(^{972}\)“Bill Introduced in Legislature Hits Cigarettes,” *Wheeling Register*, Jan. 25, 1917 (1:7). The same issue of the newspaper carried a Lucky Strike ad covering an entire page. *Id.* at 7.


\(^{974}\)Journal of the House of Representatives of the State of Indiana During the Seventieth Session of the General Assembly...1917, at 213 (Jan. 31 by Democrat George A. Bayer) (1917). To be sure, the bill was quickly killed when the House adopted the Public Morals Committee’s recommendation that it be indefinitely postponed. *Id.* at 303 (Feb. 8). In the Michigan House the vote on third reading of an absolute manufacturing and sales ban bill was 48 to 21, but it failed to pass because a majority of all members failed to vote. *Journal of the House of Representatives of the State of Michigan: 1917, 1:602* (Mar. 14 (H.B. No. 453 by Hulse), 2:1358-59 (Apr. 3) (1917).
Certain members of the community, i.e., immature children, not being able to smoke cigarettes without physical injury, the hasty legislative doctors apply the drastic remedy of depriving all the members of what is, to many of them, a comfort. It never seems to occur to them that these children have parents and secular and religious teachers....

Though not admitted to the Union until 1907, by the time of U.S. participation in World War I Oklahoma—“the only state to enter the Union with prohibition written into its constitution”—had a rich anti-cigarette legislative tradition reaching back more than two decades. As early as 1890 both the Territorial Council and House had adopted rules banning tobacco smoking in their respective chambers, and in 1895 by a vote of 22 to 2 the Territorial House passed a bill prohibiting the manufacture, sale, or giving away of cigarettes, cigarette tobacco, and cigarette paper. In 1901 the Territorial Legislative Assembly made it a misdemeanor “to sell, offer to sell, or to bring into the Territory for the purpose of selling, giving away or otherwise disposing of any cigarettes, cigarette paper or substitute for the same” subject to a fine of $10 to $500. The impetus for enacting a new ban law was a failure of enforcement resulting in large part from grand juries’ failure to present cases. Strengthened by the conviction that the “health of the boys of Oklahoma is a vastly superior consideration to any paltry gain that might accrue to dealers,” in 1905—the same year in which at least one county superintendent of public instruction required all teachers to sign contracts agreeing to abstain from the use of tobacco (and intoxicating liquor) during the term of the contract—both

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975 “To Prohibit Cigarettes,” Muskogee Cimeter, Mar. 3, 1917 (1:2) (Black Republican newspaper).
976 Jimmie Franklin, Born Sober: Prohibition in Oklahoma, 1907-1959, at XII (1971). On the sweep of liquor prohibition legislation in Oklahoma until national prohibition, see id. at 3-72.
977 See below Tab. 6.
979 1901 Oklahoma Territorial Session Laws, ch. 13, art. 4, § 1, at 111. The bill passed the House by almost the same majority as in 1895 (22 to 3). Journal of the House Proceedings of the Sixth Legislative Assembly of the Territory of Oklahoma...1901, at 214 (H.B. No. 119).
980 “Cigarette Smoking,” Guthrie Daily Leader, Feb. 9, 1905 (4:2) (edit.).
chambers unanimously passed a law very similar to that of 1901.\textsuperscript{982} (These absolutely lopsided outcomes are difficult to reconcile with the much-vaunted efficacy of the Tobacco Trust’s nationwide bribery qua lobbying\textsuperscript{983} and with the report that the Oklahoma law itself had been “‘fought tooth and nail by the tobacco companies, who were alleged to have used an enormous sum of money in an unsuccessful effort to kill the measure.’”)\textsuperscript{984} The new law made it a misdemeanor (subject to the same range of fines) “to sell, offer for sale, give away or otherwise dispose of, upon any pretext or device, or to bring into the Territory for the purpose of selling, offering for sale, giving away or otherwise disposing of, any cigarettes, cigarette paper or substitute therefor....”\textsuperscript{985} By the end of 1905 the press’s expectation that the new law “will practically shut out such a thing as a cigarette in Oklahoma”\textsuperscript{986} found some corroboration in instructions that one state court judge gave to a grand jury—which in investigating a number of cases of cigarette smokers was seeking to identify their sources—to the effect that cigarette smoking had been reduced by 90 percent.\textsuperscript{987} But despite direct familiarity with the trust’s tactics, Oklahoma did not reckon with the resistance of the American Tobacco Company. Oklahoma Territory may have been a remote and relatively sparsely populated mercantile outpost in 1905, but ATC had hardly excluded it from the panoptic monitoring and interference that the cigarette monopolist was lavishing on the sales bans that three other states (Indiana, Nebraska, and Wisconsin)\textsuperscript{988} had enacted that same year. In September 1905 U.S. District Attorney Horace Speed\textsuperscript{989} began proceedings

\textsuperscript{982}Journal of the Council Proceedings of the Eighth Legislative Assembly of the Territory of Oklahoma...1905, at 132 (C.B. No. 97, 13 to 0); Journal of the House Proceedings of the Eighth Legislative Assembly of the Territory of Oklahoma...1905, at 388 (25 to 0).

\textsuperscript{983}See above Parts I-II and vol. 2.

\textsuperscript{984}“Going After Tobacco Trust,” Logansport Daily Reporter (IN), Sept. 18, 1905 (1:2) (quoting a “special from Guthrie”).

\textsuperscript{985}1905 Oklahoma Territorial Session Laws, ch. 13, art. 3, § 1, at 193.

\textsuperscript{986}“Fellow Servant,” Guthrie Daily Leader, Feb. 18, 1905 (2:1).

\textsuperscript{987}“Cigarette Smoking Decreased,” Galveston Daily News, Dec. 18, 1905 (4:6). After the Guthrie police chief had identified 15 cigarette-smoking boys, the grand jury was to return indictments if the dealers’ names could be learned. “To Bar Guthrie Cigarettes,” Emporia Gazette, Dec. 14, 1905 (1:5).

\textsuperscript{988}See vol. 2.

\textsuperscript{989}Speed, who had once worked in future President Benjamin Harrison’s law office in Indianapolis, was appointed by him the first U.S. district attorney for Oklahoma Territory in 1890. Grant Foreman, “Horace Speed,” Chronicles of Oklahoma 25(1): 5-6 (1947).
against the company for conspiracy to violate the new law. He created a sensation when he announced that he would apply to the Oklahoma governor for requisition papers on the governor of New York for the return to Oklahoma of ATC officers in New York for violating the Oklahoma anti-cigarette statute. Specifically, he charged that ATC was selling hundreds of cigarette packages throughout Oklahoma through the U.S. mail by means of a conspiracy that corporate officials had with certain Oklahoma citizens designed to defeat the law’s object. Speed intended to report the matter to the grand jury and seek indictments.990

The United States Tobacco Journal noted that this development greatly interested the trade not on account of ATC’s involvement, but because the attempt to prevent smokers in certain states [from] obtaining cigarette papers even by ordering them from parties outside the State for their own use augurs ill for the industry as a whole. If cigarette smokers are prevented from obtaining papers the chances are they will not smoke the tobacco and thus the sale of tobacco from which cigarettes can be made will be injured. Beyond this, however, is the possibility that the anti-cigarette crusade may be extended to all forms of tobacco, one after another. The well-meaning women who are largely responsible for anti-cigarette crusades probably view chewing tobacco, smoking tobacco and cigars with almost as much disfavor as cigarettes and once successful in enforcing anti-cigarette laws so stringent as to prevent a full grown man from rolling tobacco in a piece of paper and smoking it they may well extend their efforts further.991

The WCTU never made the leap to combating tobacco as such—use of which, it recognized, as a prevalent male phenomenon was beyond its political reach992—but the U.S. Tobacco Journal nevertheless worried because it understood that while it had to be “admitted that under the police powers of a State the sale of cigarettes can be prohibited just the same as liquor, such prohibition might be extended to all forms of tobacco....” And not just to tobacco: presumably seeking strange bedfellows, it fantasized about bans on silks, diamonds, or patent breakfast foods, which underscored that it seemed “almost a denial of the rights of citizenship to prevent a man from consuming tobacco in any manner he may wish. The principle involved is dangerous to the liberties of

990“Going After Tobacco Trust,” Logansport Daily Reporter (IN), Sept. 18, 1905 (1:2).
992See above ch. 2.
American citizens." But this sumptuary nightmare never came to pass, and the Journal’s report the very next week that the Justice Department in Washington, D.C. would not do anything to assist Speed’s efforts to extradite Tobacco Trust officials from New York to Oklahoma may explain why the press apparently soon stopped reporting on the matter.  

Since the enabling act and the constitution provided that “Oklahoma laws shall immediately become operative over the entire state the moment statehood takes effect,” by 1907, the Ada Evening News observed, the “deadly cigarette will have to go and...as soon as the president signs the statehood proclamation it will be farewell to ‘coffin nails’ in Oklahoma.”

In spite of the capaciousness of Oklahoma’s universal sales prohibition regime, it did not suffice for the state’s vigorous anti-cigarette movement, which at the new state’s very first legislative session of 1907-1908 undertook a concerted effort to enact a radical universal ban on the use of cigarettes as well. To be sure, it was not the legislature’s highest priority: that honor was accorded the urgently required imposition of Jim Crow on railroad passengers embodied in the simultaneously introduced House Bill No.1/Senate Bill No. 1, which was “assured as the first act to pass the Oklahoma state legislature.” This precedence was anchored in the Constitutional Convention of 1906-1907, whose president, William Murray (the first House speaker in 1907-1908), included this racist cannonade in his opening address to the convention:

We should adopt a provision prohibiting the mixed marriages of negroes with other races in this State, and provide for separate schools and give the Legislature power to separate them in waiting rooms and on passenger coaches, and all other institutions in the State. We have no desire to do the negro an injustice. We shall protect him in his real rights. ... As a rule they are failures as lawyers, doctors and in other professions. He must be taught in the line of his own sphere, as porters, bootblacks and barbers and many lines of agriculture, horticulture and mechanics in which he is an adept, but it is an entirely false notion that the negro can rise to the equal of a white man in the professions or become an equal citizen to grapple with public questions. The more they are taught in the line of industry the less will be the number of dope fiends, crap shooters and irresponsible hordes

995“Good-Bye ‘Coffin Nails,’” Evening News (Ada, OK), Nov. 9, 1907 (8:3). Several months later the attorney general’s office confirmed that the law was in effect making it a misdemeanor to sell or give away cigarettes subject to a penalty ranging between $10 and $500. “Anti-Cigarette Law Involved,” Evening News (Ada, OK) Feb. 5, 1908 (1:3).
of worthless negroes around our cities and towns. I am a descendant of an ex-slave holder.... I know them from “A” to “Z.” ... I appreciate the old-time ex-slave, the old darky—and they are the salt of their race—who comes to me talking softly in that humble spirit which should characterize their action and dealings with the white man, and when they thus come they can get any favor from me. (Applause.) When a negro...taps me on the shoulder as would an associate or equal friend I would want to land on his shins; but when he comes to me with his hat under his arm humbly saying, ‘Cap’n” or “Boss” give me a cigar, I would give it to him if it required the last cent that I had with which to purchase it, and this class of darkies can get all the favors I can possibly give.997

Some blacks in Oklahoma, nurturing a broader conception of their rights than apartheid and unfazed by Murray’s racist rantings, submitted a petition to the convention protesting against the Jim Crow proposal.998 Though Murray did not call for constitutionalization of Jim Crow on the railroads, others at the convention did,999 but for pragmatic reasons the convention refrained from adopting it. As explained in the resolution introduced by Charles Haskell, who became the state’s first governor, and adopted by the convention: “Resolved, That it is the sense of this body that separate coaches and waiting rooms be required for the negro race; that we consider this a legislative matter rather than a Constitutional question; that Statehood is the all-important questions to relieve our people of the embarrassment of Interior Department rule; that there is apparent good reason to doubt the proclamation of Statehood if the separate coach and waiting room provision is placed in the Constitution. Resolved, we do recommend that the Legislation [sic] do by law require all railroads of the State to provide for separate but equal coaches and waiting rooms for the negro race.”1000 Three months later the state Democratic Party incorporated into its platform a declaration approving the Constitutional Convention’s resolution “pledging the enactment of laws at the earliest possible date during the first session of the first legislature providing for separate coaches or accommodations and waiting rooms for the negro race.”1001

998Proceedings of the Constitutional Convention of the Proposed State of Oklahoma...Nov. 20, 1906 to November 16, 1907, at 222 (Feb. 12, 1907).
1001Democratic Party Platform (June 8, 1907), in The Oklahoma Red Book, 2:355-57
Governor Haskell’s first message to the legislature included, under the heading, “The Races,” the recommendation of “the immediate passage, by emergency Act, of laws providing for separate railroad coaches and waiting rooms for persons of African descent.” The bills quickly passed both houses by overwhelming majorities—H.B. No. 1 passed the House 92 to 13 and S.B. No. 1 passed the Senate 37 to 2 and 91-14 in the House—and the governor’s approval followed just as quickly. Unsurprisingly, the vote exhibited very marked party differences. Against the background of a Republican Party platform that “upholds the principles of human rights and personal liberty...and of equal rights of all persons regardless of race, creed, color, or locality,” 10 of the 18 House Republicans voted Nay and 8 voted Yea on H.B. No. 1, while 12 voted Nay and only 5 voted Yea on S.B. No. 1. In contrast, only three of the 92 Democrats voted Nay on the House bill and two on the Senate bill. Similarly, the only senators to vote against S.B. No. 1 were Republicans, while only one of the other three Republicans voted Yea. Significantly, the two House Democrats most responsible for passage of the bill to ban cigarette smoking did not align themselves with the anti-Jim Crow forces.

On December 20, 1907, two days after the governor had signed the railroad
segregation bill, House Democrat Andrew J. Snelson, a 45-year-old physician, introduced House Bill No. 165, “An Act to prohibit the possession of or selling of cigarettes, cigarette papers, etc.” The House—which in formulating its Rules dropped the ban on smoking on the floor or in the galleries that had been in place since 1890—referred the bill to the Judiciary Committee, but transferred it a month later to the Prohibition Enforcement Committee (rather than, for example, Public Health). Initially the measure prohibited the possession of cigarettes or cigarette paper, subject to a fine of $100 to $200, and giving tobacco in any form to anyone under 16, subject to a fine of $25 to $50. On January 11, 1908, more than 50 Oklahomans presented a petition to the Senate “asking for the enactment of a law prohibiting the use of cigarettes.” Then during the House plenary session on January 30, 1908, 44-year Democrat and druggist George D. Hudson (who chaired the Pharmacy Committee) offered this radicalizing amendment as a new section 3: “Any person found smoking a tobacco cigarette in this State shall, upon conviction, be deemed guilty of a misdemeanor and fined in any sum not less than $5 and not more than $25.”

1009 First Administration in Oklahoma 182 (John Brooks comp. 1908); Luther Hill, A History of the State of Oklahoma 2:279-81 (1910); 1910 Census of Population (HeritageQuest).

1010 Journal of the House of Representatives of the Regular Session of the First Legislature of Oklahoma: Convened...December 2, 1907 and Adjourned...May 26, 1908, at 71 (Dec. 20, 1907) (1908). According to the Western History Collections at the University of Oklahoma Libraries (Norman), its (rare and non-circulating) copy of the Oklahoma WCTU September 1907 annual convention proceedings contains no reference to proposing an anti-cigarette bill at the 1907-1908 legislative session. Woman’s Christian Temperance Union of Oklahoma, Annual Meeting. Telephone interview with unidentified librarian at Western History Collections (Apr. 27, 2011).

1011 See below Table. 6.


1014 Journal of the Proceedings of the Senate of the First Legislature of the State of Oklahoma...1907...1908, at 102 (Jan. 11, 1908) (1909).

1015 On Hudson, see “House Committees Appointed,” New-State Tribune (Muskogee), Dec. 19, 1907 (1:1-2); First Administration in Oklahoma 141 (John Brooks comp. 1908); 1910 Census of Population (HeritageQuest) (47 years old).
consideration for one week lost, the House adopted Hudson’s amendment and passed the bill to final passage. Some “advocates of the original bill” (which had banned possession) “pleaded that the law be not made repulsively severe,” but, according to the Daily Oklahoman, “the house had the bit between its teeth and stopped at nothing short of the Hudson ‘lid.’” The amendment was opposed by Republican Dr. Abel Sands (who ultimately voted for the bill) and others, who argued that “no law is valid which pretends to say that a man can not smoke, eat or drink with pleasure, and that the provisions of the bill should be confined to the selling or giving away of such articles.” During consideration of the bill House Speaker Murray, who had delighted the Constitutional Convention with his white supremacist rallying cry, left the chair to participate in the floor discussion, but his motion to recommit the bill to committee with instructions was defeated by a vote of 40 to 51. H. B. No. 165 had been pending for almost two months on third reading until March 24, when Snelson offered a committee substitute. After another Democrat’s motion to recommit the bill with instructions to strike out the provision referring to smoking cigarettes was tabled, the House passed the

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1016 Journal of the House of Representatives of the Regular Session of the First Legislature of Oklahoma: Convened...December 2, 1907 and Adjourned...May 26, 1908, at 137 (Jan. 30, 1908) (1908) (quote); “Bill Goes to Senate,” Evening News (Ada), Jan. 31, 1908 (1:3); “Anti-Cigarette Bill Favored,” MT-D, Jan. 31, 1908 (2:4). Hudson’s original handwritten amendment on his legislative letterhead is preserved in the bill file (copy furnished by OSA/ODL).

1017 Journal of the House of Representatives of the Regular Session of the First Legislature of Oklahoma: Convened...December 2, 1907 and Adjourned...May 26, 1908, at 138 (Jan. 30, 1908) (1908).

1018 “Bars Cigarettes; Smoke, Pay a Fine,” DO, Jan. 31, 1908 (1:1-2 at 2:1).

1019 On Sands, see First Administration in Oklahoma 173 (John Brooks comp. 1908).


1021 Journal of the House of Representatives of the Regular Session of the First Legislature of Oklahoma: Convened...December 2, 1907 and Adjourned...May 26, 1908, at 137 (Jan. 30, 1908) (1908).

1022 Several copies of the substitute are preserved in the bill file including a handwritten version signed by the House speaker after passage on March 31, common to all of which was the elimination of Hudson’s amendment outlawing smoking as a separate section 3; instead, the word “smoke” was simply inserted directly before the mention of “possession” in section 1 of Snelson’s original bill. House Bill No. 165 by A. J. Snelson substitute for House Bill No. 165 by A. J. Snelson (copy furnished by OSA/ODL).
substitute and again passed the bill to third reading. Finally, a week later the House passed it by a crushing majority of 77 to 11. Eight of the Nays were cast by Democrats, including Speaker Murray, while 66 Democrats and 11 Republicans voted Yea. Thus overall, 89 percent of Democrats and 79 percent of Republicans supported one of the most extreme prohibitionist anti-cigarette bills ever passed by a state legislative chamber. Only one of the three representatives from the state’s largest city, Oklahoma City, opposed the bill.

If the bill could be interpreted as an intentional blow against the American Tobacco Company, both parties had inserted sufficient platitudes in their state platforms to warrant an inference that such a statutory objective was consistent with their economic justice planks. Thus, whereas the Republicans boasted that because their party was “the anti-trust party,” the Tobacco Trust, Standard Oil, and other trusts “have all been upon the rack and will be made to cease their extortion,” Democrats, while declaring their belief that it was “of the greatest importance to the development of our new state, to give perfect safety and assurance to invested capital,” hastened to add that they “draw a broad line of distinction between capital invested in honest enterprise and predatory capital engaged in conspiracy against the proceeds of labor of the American people. We oppose the crafty corporations which artfully contrive to destroy competition....”

A week after House passage the attempt by Democrat and lawyer A. F.
Vandeventer to reconsider it with a view to striking the ban on adult smoking\textsuperscript{1027} was defeated by a vote of 27 to 41.\textsuperscript{1028} The argument on which Vandeventer—who displayed ambivalence toward smoking\textsuperscript{1029}—relied was that “when a law attempts to invade the privacy of a man’s home it is ‘going one step too far.’ He said the bill was more stringent than the liquor law [which did not ban consumption].” In defense of his bill Dr. Snelson remarked that “the strict section was aimed to protect the minors, while it inhibits the use of cigarettes by persons indiscriminately.”\textsuperscript{1030} Presumably Snelson meant that the purpose of the universal ban on cigarette smoking was to prevent minors from smoking and adults from becoming sources of cigarettes and role models.

After the Senate Pharmacy, Drugs and Pure Foods Committee had taken a month to recommend passage of H.B. No. 165,\textsuperscript{1031} the very next day the full Senate voted 20 to 18 in favor of the total prohibition of cigarette smoking in Oklahoma. Since a constitutional majority required at least 23 Yeas in the 44-member chamber, support fell short by three votes, and the bill was thus defeated. Not a single one of the five Republican senators voted for the ban bill: two cast Nays, while three others were absent or did not vote.\textsuperscript{1032} (That same day Snelson spoke to the WCTU’s West Guthrie local union on “‘The Cigarette and His Bill,’”).\textsuperscript{1033} Although there were no big cities in Oklahoma in 1907—the most populous was Oklahoma City with 32,452—some positive correlation obtained


\textsuperscript{1028}“Capital News,” \textit{Evening Times} (Ada), Apr. 7, 1908 (1:4-5). Oddly, the \textit{House Journal} does not reflect this move to reconsider.

\textsuperscript{1029}See below this ch.

\textsuperscript{1030}“Billups Offers Prize,” \textit{Checotah Enquirer}, Apr. 10, 1908 (9:2).

\textsuperscript{1031}Journal of the Proceedings of the Senate of the First Legislature of the State of Oklahoma...1907...1908, at 587 (May 4, 1908) (1909). The typed copy of the bill attached to the committee report preserved in the bill file was the same version that had passed the House (copy furnished by OSA/ODL).

\textsuperscript{1032}Journal of the Proceedings of the Senate of the First Legislature of the State of Oklahoma...1907...1908, at 594 (May 5, 1908) (1909). The following day’s motion to reconsider also lost. \textit{Id.} at 600 (May 6).

\textsuperscript{1033}“Local Unions: West Guthrie,” \textit{Oklahoma Messenger} 4(41):8 (May 1908) (information emailed by Melissa Antonucci, Special Collections, McFarlin Library, U. Tulsa, which has a rare copy of this Oklahoma WCTU organ, Mar. 24, 2011). Unfortunately, the article did not reveal what Snelson said. Remarkably, the Oklahoma WCTU never mentioned Snelson’s bill or any anti-cigarette campaign at its mid-year executive meeting in January 1908 or during its annual convention in September 1908. \textit{Minutes and Year Book of the Indian Territory W.C.T.U. and Oklahoma Ter. W.C.T.U. and Woman’s Christian Temperance Union of the State of Oklahoma} (1908).
between senatorial Nays and city size: senators from the first, second, third, and sixth largest cities voted against the bill, while those from the fifth and eighth largest cast Yeas. To be sure, the seeming closeness of the vote was in part a function of the fact that before voting, senators struck out the ban on possession but resisted an effort to remove that on smoking as well, which “defeat killed the bill. Its opponents, while arguing that the present law was sufficient, would have been willing to accept the bill with that provision eliminated, but contended that any such law with the provision would be unconstitutional.”

Several senators who voted against the bill found an outlet for their libertarian contempt of sumptuary legislation in heavy-handed sarcastic motions. Lawyer R. E. Echols, for example, proposed that: “Any little boy who plays marbles for keeps is hereby declared to be a bad boy and excommunicated.” A motion offered by Senator Roy Stafford, the stereotypically racist-segregationist editor of the Democratic Daily Oklahoman of Oklahoma City, inserted into the penalty section for smoking/possession provided that any

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1034 The eight largest were (in descending order): Oklahoma City, Muskogee, Enid, Guthrie, Shawnee, McAlester, Grady, and Tulsa. The Oklahoma Red Book, 2:619-25 (W. Richards comp. 1912) (data for 1907). For senators’ home cities, see id. at 134-35. The senator from the fourth largest did not vote and no senator was from the seventh largest.

1035 “The First Legislature,” Checotah Enquirer, May 8, 1908 (9:5-6 at 6). The Senate Journal does not reflect this amendment, but the committee of the whole had recommended shortly before the vote that “Senate Bills Nos. 130 and 165 do pass, as amended” (without stating the amendments). Journal of the Proceedings of the Senate of the First Legislature of the State of Oklahoma...1907...1908, at 593 (May 5, 1908) (1909). (Since S.B. No. 165 had already previously passed on third reading, presumably the sentence contained a typo and in fact H.B. No. 165 was at issue.) However, the motions preserved in the archived bill file are not entirely consistent with the aforementioned press account: although a motion to strike out “smoke” was adopted, so were one offered by Senator Sorrells to strike the ban on possession and a bill-killing amendment by Senator Stafford to subject cigars and chewing tobacco to the same treatment as cigarettes. H.B. No. 165 bill file (copies furnished by OSA/ODL).


1037 Undated handwritten motion on letterhead of the Municipal Corporations Committee (which Echols chaired) in the bill file (copy furnished by OSA/ODL). Unlike most motions, this one bore no statement as to whether it had been adopted, lost, or withdrawn or served as notice.

violator “shall be spanked with a barrel stave until he cries enough.” Failing to attract enough votes of freedom-loving colleagues, it lost.\textsuperscript{1039} P. J. Goulding noticed up an amendatory motion under which “it shall be a felony [sic] punishable by imprisonment by [sic] for life at hard labor or by hanging by the neck until dead, for a person to kiss his [sic] wife or husband, swehart [sic] or lover at any time between sundown Saturday night and sunrise Monday morning.”\textsuperscript{1040} And, finally, Senator J. S. Morris got his kicks with a proposed amendatory proviso “that in case of chewing if they swallow the juice the penalty shall not apply.”\textsuperscript{1041}

The 1905 law remained in effect until 1915, when it was repealed and converted into a no-sales to minors law. During the interim, however, the WCTU of Oklahoma City not only sought to aid state enforcement officers in suppressing retail sales, but contended that it could prosecute both several cigarette manufacturers and tobacco wholesalers in Oklahoma City.\textsuperscript{1042}

That the anti-cigarette movement in Oklahoma would confront entrenched legislative opposition to any further restrictions on smoking became unoverlookable by 1911. The aforementioned Vandeventer, who in the meantime had become a state senator, on the second day of the session successfully “moved that the Sergeant-at-Arms be instructed to stop all smoking in the Senate Chamber for the session.”\textsuperscript{1043} Nevertheless, after the Rules Committee, which he chaired, had reported a set of Rules, No. 31 of which provided that “nor shall smoking be allowed in the Senate chamber or gallery, during the session of the Senate,”\textsuperscript{1044} by a vote of 14 to 27, he unsuccessfully “moved to strike out the committee

\textsuperscript{1039}H.B. No. 165 bill file (copy furnished by OSA/ODL).
\textsuperscript{1040}H.B. No. 165 bill file (copy furnished by OSA/ODL).
\textsuperscript{1041}H.B. No. 165 bill file (copy furnished by OSA/ODL) (also bearing no annotation as to its disposition).
\textsuperscript{1042}War on Cigarette Started in Oklahoma,” \textit{Evening News} (Ada), Apr. 29, 1910 (6:5). The superficial organizational/convention history of the Oklahoma WCTU compiled by Abbie Hillerman, who had been its president from 1903 to 1907 and 1911 to 1919, is almost completely devoid of any substantive information on the group’s activities. With regard to cigarettes, the book merely mentions that in 1901 its legislative committee reported that the anti-cigarette bill had been passed and that in 1917 Hillerman recommended legislative work covering an anti-cigarette bill. Abbie Hillerman (comp.), \textit{History of the Woman’s Christian Temperance Union of Indian Territory[,] Oklahoma Territory and State of Oklahoma: 1885-1925}, at 46, 77 (n.d. [1925]).
\textsuperscript{1043}Journal of the Proceedings of the Senate of the Regular Session of the Third Legislature of the State of Oklahoma 26 (Jan. 4) (1911).
\textsuperscript{1044}Journal of the Proceedings of the Senate of the Regular Session of the Third Legislature of the State of Oklahoma 227 (Jan. 19) (1911).
amendment to Rule No. 31 in regard to smoking in the Senate Chamber.∗∗1045 (Astonishingly, every single one of the 13 Republican senators voted Nay, whereas Democrats split evenly 14 to 14.)∗1046 Immediately thereafter another Democratic senator successfully moved to strike out the word “gallery,” while a Republican succeeded with his motion to recommit the rules to the committee of the whole “with instructions to strike out Rule No. 31 with regard to smoking.”∗1047 The Senate Journal’s aseptically skeletal version did no justice to the earthy substance and intensity of the real battle over workplace smoking that the press captured:

That a legislator so womanish as to sicken at the smell or smoke of a good cigar should either bravely endeavor to eradicate this weakness from his system by experience, or else resign and go home, is the final determination of the majority of the Oklahoma senate, and this majority, all smokers, abolished in perpetuity its former rule against smoking. And for three hours thereafter, the helpless minority on this question sputtered and choked in the dreamy haze of tobacco smoke emanating from the perfectos, panetellas, pipes, and cigarettes of the celebrating majority.

The question of “to smoke or not to smoke” has been agitating [the] senate for three days now, and the smokers finally win all their points. The house still keeps in the ban on smoking, owing chiefly to the fact that its best-winded speakers are not smokers, and therefore easily smother in discussion any efforts of the “smokers” to lift the rule.∗1048

Shortly before the opening of the 1915 legislative session, the press hinted at the pressure building up for repealing the strict statewide sales ban by observing that the law had been written by “people more enthusiastic than practical....”∗1049 Hyperbolic editorializing demoted it to a “useless” law under which “it was an offense to even wink at a cigarette paper. The law was so drastic and unreasonable that no attempt was made to enforce it; cigarettes were smoked at will by anyone who wished at any time they wished.”∗1050 That the end of

1046Party affiliation is taken from The Oklahoma Red Book 73 (W. Richards comp. 1912).
1047Journal of the Proceedings of the Senate of the Regular Session of the Third Legislature of the State of Oklahoma 259, 260 (Jan. 24) (1911). Why Republican Senator Brownlee offered the motion to recommit with instructions to strike out the smoking rule and why the majority was reversed on that vote, which was not a roll call, are unclear.
1048“‘What Legislature Did Tuesday,’” MT-D, Jan. 25, 1911 (1:6-7).
1049MT-D, Dec. 1, 1914 (4:1) (untitled edit.).
1050“Howdy,” Star Gazette (Sallisaw), Mar. 26, 1915 (2:1) (edit.).
prohibitionism was nevertheless not inevitable was signaled by the virtually simultaneous adoption by the city council in Norman of an ordinance that banned bringing into or sale in the seat of the University of Oklahoma of cigarettes or cigarette paper and the introduction in the House of a bill to repeal the general sales ban, for which was to be substituted a ban on selling or giving cigarettes or papers to minors, who would be prohibited from possessing either. Although the bill was suggested by the Federation of Women’s clubs, supported by church organizations, and had the state YMCA’s active backing, which was “anxious to protect minors from the evils of the cigarette habit,” securing that objective seemed dubious in light of that group’s odd coupling with “practically all of the leading dealers in tobacco,” which also backed the proposal because they preferred a “plain enforceable law.” After all, not only was the existing universal sales ban unsurpassably plain, but the chief impediment to enforceability was dealers’ own failure to comply with the law. Moreover, if it was, as the press insisted, a “dead letter” that was hardly if ever attempted to be enforced, why were sellers wasting their political capital on its repeal?

Even if House passage was not inevitable, the massive 81 to 4 majority strongly suggested that acceptance of adult men’s freedom as in-state cigarette buyers was coming back into vogue. Nevertheless, a “vigorous fight” for its defeat in the Senate mobilized 13 Nays against 23 Yeas on a non-party-line vote.

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1057 *Journal of the House of Representatives of the Regular Session of the Fifth Legislature of the State of Oklahoma...1915*, at 877-78 (Feb. 24, 1915). All four Socialists voted with the majority. Party affiliation is taken from *id*. at 7-9.
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In the end, then, the legislature repealed the absolute sales ban, replacing it with a prohibition to sell or give cigarettes or cigarette papers to minors subject to a fine of $10 to $200 and/or up to 30 days’ confinement in county jail. For minors it was a misdemeanor to be in possession of the cigarettes/papers if they refused to inform police, truant officers, or teachers from whom they obtained contraband. The press viewed the new no-sales to minors law as “an admission of that cold fact that you cannot legislate a bad habit out of a man, but a declaration of the plain truth that we can legislate the temptation away from the boy. If we protect the boys of today the men of the next generation will be better as a result of that protection.”

Although there was no gainsaying the addictive hold of nicotine on adult as well as adolescent cigarette smokers, this perspective failed even to take notice of the political role played by the national manufacturing oligopoly’s and local wholesalers’ and retailers’ profit-driven search for unimpeded access to buyers.

Despite the robust legislative majorities that had been mobilized in 1915 for repeal of an allegedly unenforceable prohibitory regime, even before the 1917 session opened, “[t]he women,” a deeply irritated and misogynist Oklahoma City Times editorialized, [we’re getting active again in the matter of anti-cigaret legislation. They want the present anti-cigaret law repealed. Spite [sic] of the fact that thousands of them, from all quarters of the state, petitioned the legislature of two years ago to give us the present law, they come trooping back to the present session, petitions in hand, asking a return to the old law.

The old law prohibited the sale of cigarettes...to any one, minor or adult. It was as pronounced a dead-letter as ever disgraced a statute. Under it cigarettes were sold everywhere, to both minor and adult. No effort was made in any quarter to enforce it because of its ridiculous restrictions.

Feeling that an adult has as much right to smoke a cigarette as a cigar or pipe, and that the only restriction upon the sale of cigarettes needed applied to the youth of the state, the last legislature supplanted the old law with the present statute, which prohibits the sale of cigarettes to minors only.... This law is being enforced wherever we have county attorneys who respect their oath of office. It is certainly being enforced in Oklahoma City.

A repeal of the present law will put us back to the conditions which existed prior to two years ago. Cigarettes will be sold indiscriminately. The youth will buy and use them the same as the adult, for the reason that it will amount to no more of a crime to sell to a minor than an adult.... The enforcement of such a law would require the entire time of the county attorney and his force of assistants to the exclusion of the enforcement of all other laws.

1060 1915 Oklahoma Session Laws, ch. 190, at 387.
1061 “Howdy,” Star Gazette (Sallisaw), Mar. 26, 1915 (2:1) (edit.).
The existing law is both sane and practicable. It can be, and is, enforced. It should be left alone. If the women who are so anxious for its repeal would devote half the time to the discharge of maternal duties toward their cigaret-smoking sons as they do to the circulation of petitions asking legislative action thereon, we would be enabled to witness infinitely less cigaret smoking and not be held up as a “nut” state throughout the union.  

A major empirical problem with this widely held view was that in fact, according to the Muskogee Times-Democrat, the prosecuting attorney of Oklahoma County (whose county seat was Oklahoma City) had just “started” prosecuting dealers for violations of the two-year-old no-sales-to-minors law, whose “theory” was that “if the restriction only applied to minors there would be no excuse for not prosecuting dealers who did sell cigarettes to boys.” In the event, however, “[t]his law has been violated not only in Oklahoma City but in Muskogee continuously.” As a result, the rival editorialist perspicaciously pointed out in November 1916, if the 1915 law remained unenforced, “there will be no good argument against going back to the old law which provided penalties for selling cigarettes to anyone.”  

At the outset of the 1917 session a strict general sales ban was introduced, which, in addition, banned smoking cigarettes altogether. This sudden reversal was embodied in the House member who introduced and was the driving force behind House Bill No. 3, J. O. McCollister, who had himself voted for repeal in the previous session. Born in Indiana in 1862 and a resident from 1873 to 1900 of Iowa, where he was, inter alia, a telegrapher and county auditor, McCollister then moved to Oklahoma, where he opened a farm loan business and later engaged in real estate, insurance, and abstracting businesses. That he was a steward and trustee of his local Methodist Episcopal Church, South, superintendent of its Sunday school for 14 years, a member of the Oklahoma executive committee of the International Sunday School Association, and “devoted to the cause of prohibition,” suggests that his participation in the anti-cigarette struggle may have been largely religiously motivated. H.B. No. 3, which McCollister, a representative from Mangum (pop. about 3,500),
introduced on January 3 together with Democrat Daniel B. Collums, a newspaper editor/publisher and former State Text Book Commission member, and Republican Amos A. Ewing, the former State oil inspector, made it unlawful for any person to smoke a cigarette, or individual or corporation, to have in possession, sell, offer for sale, give away, barter or otherwise dispose of, upon any pretext or devise [sic], or to bring into the State for the purpose of selling, offering for sale, giving away, bartering, or otherwise disposing of any cigarettes, cigarette paper, or substitute therefor; or to solicit the purchase or sale of any such cigarettes, cigarette paper or substitute therefor, either in person or by sign, circular, letter, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such cigarettes, cigarette paper or substitute therefor, may be manufactured, sold, given away, bartered or otherwise disposed of.

The punishment for violating this unusually comprehensive anti-cigarette measure, which prohibited smoking, possessing, selling, or advertising cigarettes, was a fine ranging between $10 and $500.

A week later the House Judiciary Committee, to which it had been referred, recommended its passage and on January 13 the full House passed, unamended, H.B. No. 3—“one of the most radical measures ever passed by a legislative body in the history of the state”—by the large majority of 79 to 21: 63 Democrats and 16 Republicans voting Aye, and 17 Democrats and 4 Republicans Nay. Some constitutional lawyer House members (as well as

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1066Journal of the House of Representatives of the Regular Session of the Sixth Legislature of the State of Oklahoma...1917, at 22 (Jan. 3); “Twenty Bills Introduced at Second Session,” DO, Jan. 4, 1917 (1:1, at 2:3).
10671910 Census of Population (HeritageQuest); The Oklahoma Red Book 2:145 (W. Richards comp. 1912).
10681900 Census of Population (HeritageQuest); The Oklahoma Red Book 2:149 (W. Richards comp. 1912).
1072“House Passes Anti-Cigaret Bill 79 to 21,” OCT, Jan. 13, 1917 (1:3).
1073Journal of the House of Representatives of the Regular Session of the Sixth Legislature of the State of Oklahoma...1917, at 426-27 (Jan. 13). On the proceedings in the committee of the whole, see “Anti-Cigaret Bill to Third Reading,” DO, Jan. 13, 1917 (2:1).
some senators) expressed doubt as to the constitutionality of the smoking ban, but, in a radicalized prohibitionist trend, there appeared to be “some sentiment in the legislature in favor of making laws regarding the liquor traffic and the handling of cigarettes apply with equal force to both user and the seller.”

The press all over the country took notice of House passage of a cigarette smoking ban, though the wire service(s) doubtless heightened interest in this legal development by erroneously reporting that the proposed statute was criminal and subjected violators to arrest. The non-Oklahoma press got its juxtapositional jollies by running a filler knocking the state’s atavistic legislators, headlined, “Oklahoma Against Birth Control and Cigarettes,” which pointed out that the Oklahoma House had “served notice on the world today that it opposes such new fangled things as birth control and cigarette smoking for women” by passing the ban on cigarette smoking and unanimously adopting a resolution congratulating an Oklahoma couple on giving birth to quadruplets. The Democratic Cincinnati Enquirer opined that the “fatuous” Oklahoma House members “must have known that their stuff and nonsense will not be heeded in the slightest by the adult citizens of their state.” In another sign of an attitudinal trend reversal, the Chicago Tribune, which in the 1890s had adopted a very hard line against cigarettes, seemed to anticipate the National Rifle Association’s rhetoric in blaming consumers and giving the commodity a clean bill of health. It now argued that it was the cigarette’s “relative harmlessness” that caused its “bad reputation in communities which still regard it as an instrument of deadly sin” despite the fact that the editor was fully aware of one basic reason for cigarettes’ heightened lethality: “Because of the mildness of the cigarette the smoke can be inhaled and the cigarette carries the medical reproach that

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1077“Oklahoma Against Birth Control and Cigarettes,” Naugatuck Daily News (CT), Jan. 12, 1917 (5:3). Why the piece (erroneously) singled out women smokers is unclear.

1078“To Prohibit Cigarettes,” Muskogee Cimeter, Mar. 3, 1917 (1:2) (reprinting editorial from Cincinnati Enquirer).

1079See above ch. 6.
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belongs to the manner of smoking it.” The paper therefore pooh-poohed Oklahoma’s do-gooder-legislators’ intervention as driven by their desire to “protect people from the risk of selection in their own habits....”

Once the no-smoking ban bill had gone through the House and been sent on to the Senate, the Tobacco Merchants Association, the cigarette oligopoly’s legislative and propaganda arm, busy as it was monitoring sales ban bills in various states, went into red alert mode, “address[ing] a circular to the entire tobacco trade in...Oklahoma, urging them to put up a united opposition to the bill.” Inter alia, TMA insisted that:

“..."It is needless to say that such legislation is an interference with personal liberty and an unjust attack upon one of the biggest industries in this country.

“We believe that the Oklahoma tobacco people should protest against the passage of such measure in the most vigorous fashion and we would respectfully suggest that the tobacco trade in Oklahoma start at once a united movement to defeat the bill in the Senate. A letter addressed to every one of your legislators protesting against such legislation will undoubtedly bring forth the desired results.”

Whether the cigarette oligopolists were conspiring to defeat H.B. No. 3 in the Senate is unknown, but from the outset the bill’s progress was impeded in that chamber, where, unlike the situation in the House, smoking was “indulged in”: “Feet are appearing on desks, pipe and cigaret smoke has been added to the haze from ‘ten centers’ that were burned as first offerings.” The Senate Prohibition Enforcement Committee held a hearing on the bill on January 30, at which 14 women, most of them WCTU members, appeared in support of the bill on the unsurprising grounds that it would serve their goal of “sav[ing] the boys of the state from the evils of the cigaret habit.” Oscar Halsell, president of an Oklahoma City wholesale grocery firm purportedly appeared not in that

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1080 “Cigaretts,” *CT*, Jan. 16, 1917 (6) (edit.)
1081 See below ch. 17.
1085 “Mrs. G. D. Kile for Cigaret Bill,” *OCT*, Jan. 31, 1917 (1:6). This article corrected one from the previous day that had erroneously characterized Kile as opposed to the measure. “’Hippers’ Would Sell ‘Pills’ If Bill Is Passed,” *OCT*, Jan. 30, 1917 (1:5).
capacity—because “did not sell very many cigerets”\textsuperscript{1087}—but as the father of two sons. His opposition to the 1901-1915 laws (and, by implication, H.B. No. 3) was rooted in their (allegedly) dysfunctional child-psychology underpinnings: it had tended to promote cigarette smoking by boys “because it was forbidden to them and securing of cigerets from ‘bootleggers’ was a kind of sport.” In contrast, prosecution under the 1915 law was “practicable” because it compelled boys to identify their sources. (Why practicing the manly art of not snitching could not be equally sporting Halsell failed to explain.) Whether any of this testimony had any impact on the committee members is unclear, but at some point, the press reported, “it seemed certain” that the committee would send H.B. No. 3 to the Senate floor with a do pass recommendation, but when members who had absented themselves from the hearing room returned, the majority flipped and Democrats Beauman, Johnson, Wilson, and Kerr, and Republican Ferguson outvoted Democrats Cordell (chairman) and Cline, forcing a continuation of the hearing on February 6, when representatives of jobbing houses and other interests were to appear.\textsuperscript{1088} Remarkably, the press failed to report on any testimony that focused on the aspect of McCollister’s proposal that radically distinguished it from the earlier general sales ban—namely, the universal smoking ban—although it was precisely this feature that prompted both comparing it as a “joke” to the propaganda of “some elderly lady” to abolish coffee\textsuperscript{1089} and the expectation that it would be “quickly killed” in the Senate Prohibition Enforcement Committee.\textsuperscript{1090}

On February a three-member Democratic majority of the seven-member committee\textsuperscript{1091} recommended that H.B. No. 3 not pass, instead recommending a substitute\textsuperscript{1092} that simply amended the 1915 law to make jail time mandatory.


\textsuperscript{1088}“Naturalist Pleads for Wild Animals,” \textit{DO}, Jan. 31, 1917 (2:4-5). If this second hearing took place the press appears not to have reported on it. Republican Walter Ferguson, who introduced the that session’s “bone-dry” liquor prohibition bill, was yet another newspaper editor. “‘Bone Dry’ Bill Becomes a Law,” \textit{OCT}, Feb. 24, 1917 (1:5).

\textsuperscript{1089}“Cigarette Bill a Joke,” \textit{MT-D}, Feb. 2, 1917 (4:1) (edit.).

\textsuperscript{1090}“The Sixth Oklahoma Legislature,” \textit{Sequoyah County Democrat}, Feb. 2, 1917 (6:1) (edit.) (erroneously asserting that House opponents had “deftly injected the clause ‘or the smoking of same’ with the hopes that the senate would kill it on account of its drastic restrictions”).

\textsuperscript{1091}For the committee membership, see “The Legislature,” \textit{Standard-Sentinel} (Stilwell), Jan. 18, 1917 (2:3-4).

\textsuperscript{1092}Senate Chamber, State of Oklahoma, Sixth Legislature, Committee Prohibition Enforcement (Feb. 7, 1917) (signed by Kerr, G. L. Wilson, and Beauman) (copy furnished by OSA/ODL).
(rather than discretionary) and authorize judges to impose between 10 and 90 days (rather than a maximum of 30 days). That McCollister’s most radical proposal was dead became clear when the next day a two-member minority report (signed by chairman Cordell and Cline) recommended in lieu of the majority report passage of H.B. No. 3 with the smoking ban eliminated. The *Muskogee Times-Democrat*, which was owned by Democratic State Senator Eugene Mortimer Kerr, characterized the committee majority and minority bills that the full Senate would consider as “practically the present law” and “that demanded by the W.C.T.U. and Anti-Saloon League...[as] prohibiting sale in or shipment in to the state.”

So sure must the *Oklahoma City Times* have been that (cigarette) smoking would persist that a week later it editorially urged the city’s Carnegie library to get beyond its then policy (“that the library was a library and not a place where men might smoke”) and set aside a room in which “men might sit in the big easy chairs, read instructive books and magazines and indulge in a smoke....” At a time when public places were still contested spaces as to the appropriateness of smoking, and the editorialist, fully recognizing that nonsmokers would “[o]f course...declare that a reader should be able to get along a few hours without blowing rings of smoke above his head,” tactically eschewed a “discussion of the ethics of smoking, or considering the fear effect of tobacco on the human system,” he nevertheless purported to be solicitous of the intellectual needs of “working men,” many of whom “would patronize the library at night” and “make better citizens” if only “there were a place where they might have a quiet smoke.”

A week later—at the same time that the House was passing a Senate bone-dry liquor bill—acting as the bill’s floor manager, Harry B. Cordell, a farmer, long-time senator, and future president of the State Board of Agriculture, moved that his minority report be substituted for the majority report. Although the Senate adopted his motion by a vote of 20 to 15 and he succeeded in all his

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1093 Senate Substitute for House Bill No. 3 (copy furnished by OSA/ODL). It is presumed that this sheet, which bears no date and is otherwise unidentified in the archival bill file, is the substitute mentioned in the majority report.

1094 Senate Chamber, State of Oklahoma, Sixth Legislature, Committee on Prohibition Enforcement (Feb. 8, 1917) (signed by Cordell and Cline) (copy furnished by OSA/ODL).


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motions to table various weakening amendments, he was unable to block a motion by Senator William Milton Bickel, a lawyer and chair of the Democratic caucus, to refer the bill to a special committee (to which Bickel, Cordell, and Kerr were appointed) with instructions to return a bill merely prohibiting the sale of cigarettes to minors and creating a dealer licensure system. The amendments had all been offered by Kerr (1869-1943), who later became a member and president of the Board of Regents of the Oklahoma State University. He began with a maximalist position, amending the bill back to a mere no-sales-minors law; his second amendment proposed a licensure system; and his final proposal would have clarified McCollister’s ban on cigarette advertising to include newspapers and magazines—an odd one for a publisher of precisely such ads, unless he intended it as a killer amendment.

Floor attacks on the bill were initiated by yet another newspaper editor-publisher, Austrian-born Democrat John Golobie of the Guthrie Register, who, deploying a topos that was frequently aired in Oklahoma, denounced H.B. No. 3 as a “an attempt to make grown men suffer deprivation of luxuries they enjoyed just to take away from home the matter of training children and make it police regulation.” (Proponents’s apparent failure to justify the instrumental deprivation of men’s consumer freedom for the sake of the next generation of men was hardly unique to Oklahoma.) Moreover, he asked supporters, if they wanted to protect minors, “why don’t you enforce the present law?” Democratic Senator Robert Keller delivered himself of the debate’s most explosive oratory. An ex-Texas cowboy, lawyer, and Helen Keller’s second cousin, professed to strive to make the Democratic Party “balance between the extremes of socialism and standpatism.” Declaring that “he smoked cigarettes and that no law would

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1099 Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917, at 708-9 (Feb. 15).


forbid him using newspaper to roll them if he liked,” he thanked God that the state supreme court still protected people against such laws, which gave the legislature a ““reputation for being a bunch of freaks.”” Cordell’s response that “[a]ll the good people of the state are demanding this bill become a new law. It is for the uplift of the morals of the state,” prompted Keller to demand to know: “‘Where do you get that morals stuff.... What’s that got to do with keeping grown men from smoking cigarets if they want to?’”

The question was not without justification since Cordell’s minority report had struck the smoking ban while retaining that on possession, but instead of explicating the logical links between statewide morality and enforced abstinence from cigarette smoking—indeed, instead of offering any verbal defense of outlawing sales to or possession of by adult males altogether—Cordell merely “waved a sheath of signed petitions in reply,” as if sheer numbers demonstrated anything about the petitioners’ moral goodness. Having hardly shot his bolt, Keller then (literally) turned on several women observers sitting in the back of the Senate chamber: “‘Quit your lobbying and stay home and spank your own babies instead of trying to raise mine for me. Don’t make the senate raise your boys. Look after them yourselves,’” he shouted.

The press did not explain why Cordell and his colleagues, who had “substituted a ‘bone-dry’ anti-cigaret bill for practical reenactment of the present law recommended by a majority of the prohibition reinforcement committee, were unable to hold their control of the situation” or why they were confronted with an exact reversal of the 20-15 vote on Bickel’s motion while a “bone-dry” liquor bill, on which the Cordell substitute was modelled, was passing through the legislature.


1102a. “Bone-Dry Bill Is Passed by House After Hot Debate,” DO, Feb. 16, 1917 (1:1, at 3:2-4 at 4). When he was a county judge in 1911 a complaint was made to the governor that Keller had removed confiscated liquor from the courthouse and consumed it. James Klein, Grappling with Demon Rum: The Cultural Struggle over Liquor in Early Oklahoma 64 (2008).


1103b. “Would Prohibit Cigarette Sales to All Minors,” MT-D, Feb. 16, 1917 (8:3). The liquor law as enacted made it unlawful both to receive directly or indirectly any liquors, whose sale was prohibited by Oklahoma law, from a common carrier and to possess any such liquor. The law applied to liquor intended for personal consumption and to interstate and intrastate shipments. 1917 Oklahoma Session Laws ch. 186 at 350. See also James
Two days after receiving its charge, the special committee reported its recommendations to: (1) retain the Prohibition Enforcement Committee majority report with the amendment that the minimum fine be increased from $10 to $25; (2) strike both the smoking and possession bans in McCollister’s bill; (3) exempt from the ban on advertising any seller who had received a sales license; (4) make the punishment for violations of the preceding ban a fine of not less than $100 and incarceration in county jail for up to one year; (5) pay one-fourth of fines recovered to the complaining witness, one-fourth to the prosecuting attorney, and the remainder to the county common school fund; (6) make it the county clerk’s duty to issue an annual cigarette sales license to “any responsible person” who paid the $25 license fee and executed a $1,000 bond; and (7) make it the county attorney’s duty to bring an action for forfeiture of the bond for violations of the no-sales-to-minors provision. 1107

When the Senate debated the special committee’s proposed amendments at length on February 20, numerous other amendments were offered, but most were tabled, the only potentially consequential one among them being the conferral of discretion on county judges to “grant or refuse persons of good moral character” a cigarette sales license, which would have presumably enabled individual counties to ban all cigarette sales. 1108 Also tabled was the absurdist amendment offered by lawyer Warren Snyder to add “rouge, face paint, powder or cosmetics” to the items which it was unlawful to furnish minors. 1109 The only even arguably significant amendment of the special committee recommendations adopted by the

Klein, Grappling with Demon Rum: The Cultural Struggle over Liquor in Early Oklahoma 92-93 (2008).

1107 The Special Committee report, dated Feb. 17, was printed in Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917, at 752-54 (Feb. 19). The original typescript of this report, bearing the same date and the members’ handwritten signatures, and including numerous handwritten insertions is preserved in the H.B. No. 3 bill file (copy furnished by OSA/ODL). The file also includes an undated but presumably later version of the Special Committee Report, which is cast as a bill rather than committee recommendations and also includes handwritten insertions. The chief change embodied in the handwritten insertions is substitution of the county road fund for the county school fund as the destination of fines and the designation of the former as the destination of license fees (as Kerr had proposed in the aforementioned second amendment that he had offered on Feb. 15).

1108 Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917, at 807-808 (Feb. 20). This and all other amendments are available in the bill file in OSA/ODL.

1109 Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917, at 805-806 (Feb. 20).
Senate was the designation of county road funds as the destination of fines and license fees.\footnote{The press expressed satisfaction with the Senate version of the bill, “which can no longer be classed as freak legislation.” This revamped status derived from the undocumented claim that: “Physicians tell us that there is no more injury in cigarette smoking on the part of adults than cigar or pipe smoking. That being true, no sensible reason can be given for tabooing their sale to men who have reached their majority.” Unsurprisingly, publishers did not focus on their relief that the Senate amendments did away with the McCollister bill’s ban on cigarette advertising, which would have cut off a handy source of newspaper revenue. Senator Kerr’s \\textit{Muskogee Times-Democrat}, for example, ran numerous large cigarettes while the legislature was considering the bill.\footnote{For the changes, see Engrossed Senate Amendments to House Bill No. 3 (n.d.) (copy furnished by OSA/ODL).}\footnote{\textit{Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917}, at 896-97 (Feb. 23).} \footnote{\textit{Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917}, at 806, 809 (Feb. 20).} \footnote{\textit{Harvard Alumni Bulletin} 14(1):323 (Oct. 4, 1911).} \footnote{\textit{Anti-Cigaret Measure Is Now Up to Governor,” OCT, Feb. 24, 1917 (1:1).}}

The press expressed satisfaction with the Senate version of the bill, “which can no longer be classed as freak legislation.” This revamped status derived from the undocumented claim that: “Physicians tell us that there is no more injury in cigarette smoking on the part of adults than cigar or pipe smoking. That being true, no sensible reason can be given for tabooing their sale to men who have reached their majority.” Unsurprisingly, publishers did not focus on their relief that the Senate amendments did away with the McCollister bill’s ban on cigarette advertising, which would have cut off a handy source of newspaper revenue. Senator Kerr’s \textit{Muskogee Times-Democrat}, for example, ran numerous large cigarettes while the legislature was considering the bill.\footnote{\textit{Anti-Cigaret Measure Is Now Up to Governor,” OCT, Feb. 24, 1917 (1:1).}}

Thus drastically watered down to the point of unrecognizability, H.B. No. 3 passed the Senate three days later by the overwhelming majority of 38 to 2.\footnote{\textit{Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917}, at 896-97 (Feb. 23).} On its return to the House, McCollister of all people moved that the chamber agree to the Senate’s amendments to his bill. In opposition—despite having voted against McCollister’s bill a month earlier—Representative Rollin Gish, a Harvard College (’07) and Harvard Law School (’09) graduate,\footnote{\textit{Harvard Alumni Bulletin} 14(1):323 (Oct. 4, 1911).} arguing that the bill at this point was “no improvement over the old law,”\footnote{\textit{Anti-Cigaret Measure Is Now Up to Governor,” OCT, Feb. 24, 1917 (1:1).}} moved that the House refuse to agree to the amendments and ask, instead, for a conference, but his\footnote{\textit{Journal of the Senate of the Regular Session: Sixth Legislature of the State of Oklahoma...1917}, at 806, 809 (Feb. 20).}
motion was lost and McCollister’s carried. Nevertheless, on reconsideration several days later the House reversed itself, refused to agree to the Senate amendments, and asked the Senate for a conference. However, the House conferees, of whom McCollister was one, agreed to all the Senate amendments. After the House had defeated a motion to refuse to accept the conference committee report by a vote of 25 to 57, it passed the amended H.B. No. 3 by a vote of 59 to 27.1119

No matter how diluted the new law, some cigarette sellers purported to be rebelliously disgruntled. Under the headline, “Drastic Oklahoma Law,” the trade magazine Tobacco reported that—as had been argued, for example, in the 1890s about high license fees in Denver and Chicago because the requirement of putting up a $1,000 bond would “run out of Oklahoma City all small tobacco dealers, and...turn the state over to the tobacco trust,” the Merchants Cigarette Referendum office was circulating petitions for a referendum. The result of the new law, such sellers claimed, would be a cigarette business “confined to the larger drug stores and chain stores....”1123

At the Oklahoma WCTU’s first annual convention following the legislative session longtime President Abbie Hillerman noted, in her report on legislative work—which also included establishing a permanent State Industrial School for Girls, raising the “age of protection for girls” to 16 from 12, and the bone-dry liquor prohibition bill—that she had “put forth special effort toward securing the passage of the McCollister Anti-Cigarette bill,” which was, however, “changed and amended till it was very unlike the original, when it was finally passed....” Nevertheless, the WCTU—not even tarrying to bemoan the failure of the smoking

1117Journal of the House of Representatives of the Regular Session of the Sixth Legislature of the State of Oklahoma...1917, at 1099 (Feb. 24).

1118Journal of the House of Representatives of the Regular Session of the Sixth Legislature of the State of Oklahoma...1917, at 1208 (Mar. 1).

1119Journal of the House of Representatives of the Regular Session of the Sixth Legislature of the State of Oklahoma...1917, at 1389-91 (Mar. 10). The previous day after McCollister had unsuccessfully moved that the House concur in the conference report, the motion of another House conferee (Republican S. J. Bardsley) to re-refer the report to the committee carried. Id. at 1356-57 (Mar. 9). At least some of the resistance to the bill appears to have been procedural, based on the argument that the Senate amendments constituted a virtual rewriting. “Cigaret Bill Is Sent Back,” OCT, Mar. 9, 1917 (3:2).

1120For the text, see 1917 Oklahoma Session Laws ch. 148 at 238.

1121See above ch. 6.


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ban—believed that, if properly enforced, it would be more effective than the 1915 law.1124

Oregon (1917)

The pending bill really would make the state bone-dry against cigarettes.1125

If some aspect of Oregon society needed reforming, chances were that the W.C.T.U. was doing something about it.1126

The year 1917 also witnessed the traditionally overwhelmingly Republican Oregon legislature1127 making a strong move toward adoption of a virtually all-encompassing ban on public cigarette smoking. House Bill No. 268 was introduced on January 251128 by one of only four House Democrats, Charles Thomas Sweeney (1869-1956), a physician and surgeon,1129 who later became president of the Pacific Northwest Medical Association1130 and the Oregon State

1124Proceedings of the Tenth Annual Convention of the Woman’s Christian Temperance Union of Oklahoma...1917, at 45 (1917).
1125“Smoking Bill Favored,” MO, Feb. 7, 1917 (7:3).
1126David Peterson del Mar, Oregon’s Promise: An Interpretive History 146 (2003).
1127In 1917 Republicans controlled 55 of 60 House and 24 of 30 Senate seats. The most recent session in which the Republican Party had not constituted the majority in the House and/or Senate was 1878. Michael Dubin, Party Affiliation in the State Legislatures: A year by Year Summary, 1796-2006, at 154 (2007). To be sure, “factions of the Republican Party sometimes supported the Democratic opposition” and once reformers had secured adoption of a constitutional amendment institutionalizing the initiative and referendum “the legislature’s monopoly on legislation was gone....” Earl Pomeroy, The Pacific Slope: A History of California, Oregon, Washington, Idaho, Utah, and Nevada 197, 198 (1991 [1965]). On Progressivism’s having reached its limits in Oregon by 1912 and Progressives’ return to the Republican and Democratic parties by 1916, see Gordon Dodds, Oregon: A Bicentennial History 161-84 (1977).
1128State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 337 (Jan. 25) (1917).
1130JAMA 103(9):688 (Sept. 1, 1934).
Medical Society. His progressive public health bona fides were unmistakably on display that session in his taking the lead in introducing a bill to combat the evil of questionable hospital fees that the Oregon State Federation of Labor just a few days earlier at its annual convention had articulated as one of its three legislative goals.

Of specific interest here is that H.B. 268 made it a misdemeanor “for any person to smoke or use any cigarette in any public building, upon any public highway, street, alley, park or grounds, or in any public place of business, or in any railway car, in any street railway car, or in any other public conveyance, or any public place in this State.” Anyone convicted of violating this provision was guilty of a misdemeanor and “shall be punished” by a maximum fine of $5 for a first offense and $10 for each additional offense. Sweeney’s bill, which, in contemplation of judicial challenges, foresightfully provided that in its entirety it “shall be deemed an exercise of police power of the State, for the protection of the economic welfare, health, peace and morals of the people of the State, and all of its provisions shall be liberally construed for the accomplishment of that purpose,” represented a comprehensive regime of cigarette prohibition, including the manufacture, sale, or giving away of cigarettes. In order to preclude a common scam, it also made “[h]aving cigarettes in a place of business where others may take them or help themselves...prima facie evidence of an intent to sell.” Violations of these provisions were subject to a maximum $100 fine for the first offense, $25 to $500 and/or maximum imprisonment of 30 days for the second, and a mandatory jail sentence of up to 30 days and the aforementioned fine for the third or further offenses. H.B. 268 also embodied an especially stringent ban on minors’ smoking, using, or being in possession of cigarettes: whereas some other states conferred discretion of judges to relieve minors of such

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113\textsuperscript{1} \textit{JAMA} 107(9):1572 (Nov. 7, 1936).
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113\textsuperscript{3} House Bill No. 268, § 5 (Jan. 25, 1917, by Sweeney) (copy furnished by Oregon State Archives).

113\textsuperscript{4} House Bill No. 268, § 3 (Jan. 25, 1917, by Sweeney) (copy furnished by Oregon State Archives).

113\textsuperscript{5} House Bill No. 268, § 1 (Jan. 25, 1917, by Sweeney) (copy furnished by Oregon State Archives). Another common scam was dealt with by a provision making it unlawful to “solicit, take or receive within this State, any order for any any cigarette....” \textit{Id.}, § 8.

113\textsuperscript{6} House Bill No. 268, § 4 (Jan. 25, 1917, by Sweeney) (copy furnished by Oregon State Archives).
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liability if they revealed the source of the cigarette, Sweeney’s proposal made refusal to reveal an independent misdemeanor; both misdemeanors were subject to maximum $5 fines. The bill also prohibited, subject to a $100 to $500 fine, cigarette advertisements “by signs, billboards, newspapers, periodicals or otherwise...” Finally, included in the bill was a mandate to district attorneys “to enforce and to diligently prosecute any and all persons violating any of the provisions”; the failure, neglect, or refusal to perform this duty carried with it, on conviction, both a $100 to $500 fine and mandatory immediate “forfeiture of his office...."

The cigarette oligopoly’s legislative and propaganda organization, the Tobacco Merchants Association of the U.S., was hardly asleep at the wheel in the face of this direct assault. On the contrary, it was “very busy these days detecting and exerting all possible efforts to defeat numerous pieces of adverse legislation now pending in State legislatures throughout the country.” Indeed, the United States Tobacco Journal placed the Oregon bill at the head of the list even though, curiously, it vastly understated the reach of Sweeney’s bill as merely “practically restricting the sale of cigarettes within state limits.” On February 6, a dozen days after Sweeney had introduced the bill—but Oregon’s short regular session ran only from January 8 to February 19—TMA Secretary Charles Dushkind sent this urgent appeal (“IMPORTANT NOTICE”) on TMA letterhead, which so profoundly failed to appreciate the measure’s breathtakingly radical character that it might be taken for a form letter:

ACT AT ONCE AND PROTECT YOUR BUSINESS!

TO THE TOBACCO TRADE IN THE STATE OF OREGON:

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1137 House Bill No. 268, § 6 (Jan. 25, 1917, by Sweeney) (copy furnished by Oregon State Archives). Law enforcement officials finding a minor smoking a cigarette or having one in his possession had a duty “to immediately inquire” of the minor where and from whom he received it and, if the minor failed to comply, to arrest him without warrant and take him before a judge; if the minor revealed the source, the officer was required to report the information immediately to the district attorney. Failure to perform any of these duties triggered a mandatory $50 to $100 fine. *Id.*, § 7.


1140 See below ch. 17.


1142 See the almost simultaneous TMA statement on Oklahoma above this ch.
A bill has been recently introduced in the Legislature restricting or practically prohibiting the sale of cigarettes in your State. The cigarette trade undoubtedly forms a most substantial part of the tobacco business, and we feel that the Tobacco Trade in your State ought to resent any legislation that may tend to interfere with legitimate business and work a substantial injury to the merchants engaged in it.

A strong and vigorous protest on the part of the people engaged in the tobacco industry will undoubtedly have due effect, and we earnestly appeal to the tobacco trade in the State of Oregon to exercise their prerogatives as American Citizens and protest against such legislation.

We would respectfully suggest that a united movement be started at once to defeat such legislation. A letter addressed to the Representative in the House as well as in the Senate of your district will bring the desired results.

We will appreciate it very much if you would kindly let us hear from you as to your action in the matter.1143

Despite Dushkind’s apparent ignorance of the astonishing scope of Sweeney’s bill—which the independent Evening Telegram called “drastic in the extreme” and was backed by the WCTU, and some members of the Oregon Congress of Mothers, parent-teacher associations, and other groups1144—and the possibility that some retail cigar and pipe tobacco dealers may not have mourned the demise of cigarette sales, and regardless of whether his circular actually galvanized protests, his cocksure optimism proved justified within four days.

TMA’s call to action came in the nick of time: on the evening of that same day, following the bill’s referral to the Health and Public Morals Committee,1145 the “House chamber was packed...with a crowd that came to hear the arguments pro and con on the Sweeney anti-cigarette bill....” More than 20 speakers representing various viewpoints engaged the issue, the WCTU, unsurprisingly, supporting passage of H.B. 268; more than one businessman opposed it on the grounds that experience in other states had demonstrated the unenforceability of such a law,1146 and a large Portland delegation attended to “voice its protest.”1147

1143Chas. Dushkind to The Tobacco Trade in the State of Oregon (Feb. 6, 1917), Bates No. 501994502.
1145State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 340 (Jan. 26) (1917). Two of the committee’s five members were Democrats (Elmore and Thompson); Plowden Stott, the bill’s leading opponent, was also a member. Id. at 9.
1146“Smoking Bill Favored,” MO, Feb. 7, 1917 (7:3).
The intensity of the gallery’s sentiments could be gauged by its loud applause for attacks on cigarettes, which were mounted, inter alia, by school superintendents as well as by one speaker who pleaded for passage on the grounds that “women were fast becoming addicted to the habit.” Of particular interest was the Oregon newspaper business’s position presented by Elbert Greer, the owner/editor of the Ashland Tidings, who (literally) echoed the cigarette oligopoly line in stating: “‘The newspapers of the state will favor legislation that comes from the fathers and mothers and gives them an opportunity to keep tobacco away from their children, but you are going too far and depriving the old fellows, who have smoked cigarettes for 40 years, of their pleasure. This bill will affect the average smoker of the state and he will ignore the law. Do not enact a measure that will not have the moral support of the men of the country.’” In addition to speaking through publishers protective of profits accruing from cigarette ads, the tobacco manufacturers dispatched their own direct representative, J. T. Williams of San Francisco, who, after repeating the industry’s decades-old claim that “medical science of late years had declared that cigarettes were not as injurious as other forms of tobacco usage,” shifted to the diversionary ploy that cigarette firms would be trotting out into the twenty-first century: “‘We want a bill that prohibits a merchant from selling cigarettes to minors...and we are willing to post a large sum of money for no other purpose than to secure convictions of men who violate the law in selling to children.’”

In line with this strategy, opponents of Sweeney’s bill at the hearing expressed support for a no-sales-to-under-21-year-olds bill, which Portland business lawyer Plowden Stott had introduced and had been referred to the same committee. The next morning the Health and Public Morals Committee reported H.B. 268 favorably, “coupled with the recommendation that the Stott bill go on the calendar side by side with” Sweeney’s to be considered at the same time. Committee chairman William Elmore, a Democrat and bank

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(3:4).

1148“Smoking Bill Favored,” MO, Feb. 7, 1917 (7:3).
1150“Smoking Bill Favored,” MO, Feb. 7, 1917 (7:3).
1151History of the Bench and Bar of Oregon 230 (1910); 1910 Census of Population.
1152Sub. H.B. 436 was Stott’s substitute for H.B. 436, which he had introduced with two other representatives. State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 61, 358, 389 (Feb. 2, 7) (1917).
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

1910 Census of Population (HeritageQuest).

"Cigarette Is in Line for a Slap by House," OJ, Feb. 7, 1917 (1:4). The only provision of H.B. 268 that could have been interpreted to conflict with the U.S. Supreme Court’s original package doctrine was section 8, which made it “unlawful for any person to solicit, take or receive within this State, any order for any cigarette, or to make any contract for the sale of any cigarette....”

State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 387 (Feb. 7) (1917). Stott had already signed his report on Feb. 2. Whereas H.B. 436 made it unlawful to sell cigarettes to persons under 21, Sub. H.B. 436 prohibited sale to minors. Id. at 61.


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president, explained the favorable report on both bills by reference to the committee’s having been “informed, on what appeared to it to be competent authority, that the Sweeney bill, if enacted, probably could not be enforced because of unconstitutionality.” The specific alleged defect was that “tobacco did not come within the terms of the Webb-Kenyon act giving states the power to regulate interstate commerce in the case of intoxicating liquor, while the Sweeney bill made that attempt.”

That same day the full House adopted the committee majority report, which was signed by Elmore and recommended passage of Sweeney’s bill as amended only by an effective date of January 1, 1918. Although it rejected Stott’s minority report, recommending against passage on the grounds that his own bill, Sub. H.B. 436, “covers fully and fairly all the objections to the present law pertaining to the regulation of the sale of tobacco to minors,” the House did adopt the committee report recommending that the latter be substituted for the original H.B. 436.

On February 8 the House gave lively third-reading consideration to both bills—“[n]early everybody took a hand in the running debate on both questions.” The gallery was so “packed” with women backing passage of H.B. 268 that it was jocularly referred to as the “‘committee on intimidation,’” with which members sought to “curry” favor or establish their “alibis.”

The all-morning debate turned “personally bitter” when Representative Albert Burton, a Portland high school teacher, opined that “any man who used tobacco was filthy,” prompting 33-year-old lawyer Vernon Forbes—who would drown a year later—to retort that “when you wanted to find a simon pure ‘pin head’
and ‘boob’ you wanted to go hunt up a ‘man school ma’rm.’”[^161] (In contrast, Sylvia Thompson, the chamber’s only woman and a supporter of H.B. 268, declared: “I have liberal views about smoking.... And I do not think that every man who smokes is filthy.”)[^162] More substantively, Forbes, a casual cigar smoker who was unable to recall ever having bought a package of cigarettes, “did not like to have anyone tell him he could not smoke when he wanted to.”[^163]

Discussion began with Stott’s bill, which was “mild and inoffensive alongside of the Sweeney bill,” in regard to which it was offered as a compromise; touted as “mak[ing] the law a whole lot tighter than it is now,” Sub. H.B. 436 increased the fine for selling to minors (under 21) from $50 to $250 and imposed “heavy jail sentences.” Stott urged passage of his bill on the grounds “that it would accomplish the professed objects of the anti-cigarette crusaders—that is, to prevent boys and young men from smoking them.”[^164] On final passage the House voted 35 to 21 in favor of Stott’s bill, nine of Portland’s 13-member delegation voting Aye and three of the four Democrats voting Nay (only Elmore supported it). The hard core of the anti-cigarette militants were presumably the 19 (including Sweeney himself) of the 21 Nay-voters who then voted for H.B. 268.[^165] Of these 19 militants 11 demonstrated their progressive bona fides by

[^161]: Anti-Cigarette Bills Pass in Oregon House,” OJ, Feb. 8, 1917 (1:8, 14:3).


[^164]: “House Vote Favors Ban on Cigarettes,” MO, Feb. 9, 1917 (6:4). The 1893 law prohibiting the sale of any tobacco to persons under 18 imposed a fine of $5 to $50. Lord’s Oregon Laws § 2148 (1910). The same 1893 law made it unlawful for anyone under 18 to smoke any tobacco in any public highway, street, place, square, or resort, subject to a $1-$10 fine and, at the court’s option, two days in jail. Id. § 2149.

[^165]: State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 4-5, 394-95 (Feb. 8) (1917). One of the two defectors was Norwegian-born Olaf Laurgaard, a prominent civil engineer, who on July 1, 1917, became the Portland city engineer. History of the Columbia River Valley from the Dalles to the Sea 3:292-97 (1928), on http://files.usgwarchives.org/or/multnomah/bios/laurgaard1056gbs.txt (visited Apr. 20, 2011). He explained his votes on the basis that H.B. 436 did not go far enough to deal with the “greatest evil effects of cigarettes” on boys under 18, while H.B. 268 went “a little too far and [waj]s too drastic in its regulation at this time.” Without explaining what kind of amendment he had in mind, Laurgaard, who did not use tobacco and was “heartily in favor of the regulation, control or elimination of the cigarette evil at this time,” was “sorry to say” that he could not support either bill without amendment. State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 395 (Feb. 8) (1917).
voting the next day against a high-profile anti-picketing bill.1166 Opponents of the prohibitory measure planned to table or otherwise prevent a vote on H.B. 268 by passing Sub. H.B. 436 first, but Sweeney nevertheless succeeded in securing consideration and a vote after the opposition had attacked its unenforciability.1167 One member, drawing on his experience of having lived in Washington State when its anti-cigarette bill was in effect, recounted that “they got all the cigarettes they wanted.” While ultimately voting in accord with his committee report for H.B. 268, Chairman Elmore declared that “he had asked the attorney general’s office for an opinion regarding the constitutionality and that the bill was unconstitutional.” More relevant to the public cigarette smoking prohibition, which could hardly run afoul of the interstate commerce clause, was Elmore’s charge that the “speaker [of the House] could not enforce the house rule against smoking during sessions...and it would be much more difficult to enforce the provisions of the Sweeney bill.” From there he went on a riff claiming that the police “would not enforce the existing law” and doubting whether “they would enforce any law.” Finally, twitting “those who had appealed for the passage of the Sweeney bill,” Elmore expressed further doubt that any of them “would aid in its enforcement”1168—a rebuke that, at least as directed at the WCTU, was risible. Although Dr. Sweeney’s bill, which was backed by the WCTU and other women’s organizations, and “made the state ‘bone dry’ against the whole cigarette business—manufacture, sale, use and all”—was (accurately) “said to be one of the most drastic anti-cigarette measures ever passed by any legislative body,”1169 the House handily passed it by a vote of 35 to 24, all four Democrats supporting and eight of 13 Portland representatives

1166Anderson, Belland, Brownell, Burton, Childs, Crandall, Lunger, Small, Sweeney, Thompson, and Tichenor. State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 402 (Feb. 9) (1917). The bill (H.B. 227) passed by a vote of 33 to 25 but did not become law. “Kubli Anti-Picket Bill Goes to Quick Death in the Senate,” OJ, Feb. 17, 1917 (1:7). An additional eight members who had voted for H.B. 436 and H.B. 268 also opposed the anti-picketing bill. The bill’s author—K. K. Kubli—justified it on the grounds of the at that time prevalent shibboleth that “[t]here was no such thing as peaceful picketing,” adding that the bill was “intended to strike...at the lawless element, the I.W.W. hordes, who flocked to places of industrial strife.” “Picketing’ by Unions Loses House Support,” OJ, Feb. 9, 1917 (1:8, at 14:4).


1169“House Vote Favors Ban on Cigarettes,” MO, Feb. 9, 1917 (6:4). On the threat by Democrat Sylvia Thompson that, if the legislature rejected the bill, 30,000 women would put it on the ballot at the next election and pass it, see below ch. 18.
Unsurprisingly, all seven representatives who 10 days earlier had voted against the bone-dry liquor prohibition bill—six of whom lived in Portland—also opposed the bone-dry cigarette bill. Portland’s Independent Republican *Morning Oregonian* was not impressed. On the contrary, it editorially admonished the legislature to “retrieve its prestige” and rehabilitate representative government in the state by ceasing to “fritter[ ] away hours in the heated discussion of such trivialities as cigarette prohibition for grown men.” The next day the paper reinforced the lecture by publishing a lengthy letter to the editor, sounding suspiciously like a cigarette oligopoly ad, attacking “freak laws” and praising cigarettes as the mildest and least toxic form of tobacco smoking.

That same day, as the *Oregonian* must have delighted in reporting, the House, “[a]fter two days of reflection on its conduct in passing the Sweeney bone-dry cigarette bill,” voted to recall both bills from the Senate for the purpose of effecting a compromise. It is possible that the radical Sweeney bill will be toned down so that adults will not be prohibited from buying or smoking cigarettes.” In turn, Stott’s bill would be bolstered with “[s]trict inhibitions” against youth smoking. Significantly, Dr. Sweeney was “agreeable to the change” making the bill merely “bone-dry against boys under 21....” That Sweeney and “[f]riends of anti-cigarette legislation...so readily consented to its recall from the Senate” was rooted in their fear that “the Senate would kill the bill in its original form....” The lack of a general commitment to enact even a “‘bone dry’ cigarette bill for minors” was witnessed by multiple cross-snipings over “passing the buck” and letting the Senate kill the bill or fixing it in the House. The 33-21 House vote for recall is difficult to interpret: presumably those who voted Aye with Sweeney preferred part of a loaf to none at all, but the Nays may have

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1170 State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 4-5, 394-95 (Feb. 8) (1917).
1171 State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 343 (Jan. 29) (1917).
1172 The Anti-Cigarette Furore,” *MO*, Feb. 9, 1917 (10:2) (edit.).
1173 Vic Hammer, “Cigarette Is Least Harmful,” *MO*, Feb. 10, 1917 (8:6) (ltr to editor). No person by that name was returned as living in Oregon at the 1910 or 1920 population census.
encompassed both those who, opposed to prohibition, hoped to give the Senate an opportunity to kill the bill, and those who either were more principled or radical than Sweeney and insisted on prohibition or nothing or judged the chance of success in the Senate more optimistically. Of the aforementioned 19 militants 11 voted against and 7 for recall. The composition of the Nays was strikingly heterogeneous: of the 21 opposing recall: 11 had voted against H.B. 436 and for H.B. 268; six for both bills; three for H.B. 436 and against H.B. 268; and one against both. Later that same day, after both bills had been returned from the Senate, H.B. 268’s most militant advocate, Dr. James E. Anderson, an osteopathic physician known as the father of (liquor) prohibition in Oregon, unambiguously declared that the “people who had introduced the bill would rather have it killed than to have it emasculated, which was what was going to happen to it.” Seeking to implement this purist position, he moved to take Sweeney’s bill from the table in order to postpone it indefinitely, but the compromisers foiled his motion.

In the event, the very next day’s proceedings revealed that a bloc of legislators, reflecting the position of the WCTU and its allies, did in fact “Want Absolute Curb on All or Nothing.” And those in the know divulged to the press that word had gone out “asking that an avalanche of women descend on the State House” on February 12 in order to influence House members during consideration of the dueling bills; the “plan” of the supporters of the “Sweeney absolute cigarette prohibition bill in its original form,” who met on February 11 and decided “to stand on the original bill, attempt to pass it to the Senate, or kill all anti-cigarette legislation suggested, was “to pack the rear end of the House with a showing of all of the women possible to gather here.” Conservative farmer Charles Brand—“the reverse of the demagogue, for he tries to cure class hatred instead of stimulating it”—who was the driving force behind the recall move, had voted for H.B. 268, but had second thoughts, not because he feared that it

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1178 State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 413 (Feb. 10) (1917).
1179 Census of Population 1910 and 1920 (HeritageQuest); Western Osteopath 15(12):16 (May 1921). In 1917 Anderson introduced H.B. 100, the “bone-dry prohibition bill,” which became law. State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 50 (Feb. 10) (1917).
1180 No-Cigarette Bills Slated to Worry House During Week,” OJ, Feb. 11, 1917 (8:1-2) (quote); State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 415 (Feb. 10) (1917).
1181 Women May Lobby,” MO, Feb. 12, 1917 (6:3-4).
could not pass the Senate, but because he almost immediately “discovered that such a bill is unworkable, that it is legislation that would be ineffective and not accomplish the purpose for which it is intended.”

For his “prompt action in discovering” that he had voted for an “unconstitutional and unworkable” bill and his equally “prompt action in acknowledging this” he harvested “numerous complimentary references on his attitude....” He was nevertheless purportedly motivated by his strong support for a law that would “completely cure the possibility of minors securing or smoking cigarettes,” in aid of which he had drafted amendments to Sweeney’s bill to make it “absolutely prohibitive” for and applicable only to minors, an outcome that the Oregonian certified as “unquestionably...the desire of a large majority of the...House” and opposed only by “some” or “a few” of the die-hard, all-or-nothing prohibitionists.

The amended bill that the House passed on February 12 was the work product of a five-member special committee that the House speaker had appointed that day and included Brand and Sweeney. The committee’s gutting amendments, which the House and Senate adopted in full, were of two kinds: (1) the selling bans were all recast to apply only to minors; and (2) the bans on manufacturing, public smoking, and ads were struck altogether. The advertising ban was dropped at the suggestion of Representative K(aspar). K. Kubli, owner of a printing company, who was the driving force behind the session’s contentious anti-picketing bill, later—nomen est omen: his “initials earned him free membership in Klan No. 1”—was affiliated with and supported by the Ku Klux Klan, and became House speaker in 1923.

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1186 “Cigarette Ban Now for Minors Only,” MO, Feb. 13, 1917 (1:7). Two of the remaining three members, Bean and Lafferty, had voted for the original H.B. 268, the latter voting as well for H.B. 436, while the former was absent. The fifth member, Burdick, had voted for H.B. 436 and against H.B. 268.
1187 State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly: Regular Session...1917, at 424-25 (Feb. 12) (1917). For the statute, see 1917 Oregon Laws ch. 244 at 466. For a copy of the law as enacted from the TMA files, see Bates No. 501994504.
1190 On Kubli (1869-1943), who attended Harvard Law School but never practiced law, see 1910 and 1920 Census of Population (HeritageQuest); Harvard University Directory
Sweeney spoke on behalf of the watered-down bill that he had made possible and helped draft, although he did not wholeheartedly support it:

He said that while it does not represent the higher ideals of anti-cigarette legislation that he hopes eventually to obtain, he believes it to be a good bill and a step in the right direction.

“When members who had voted for my bill said that they believed they had used poor judgment...I consented to have it come back. I think I have shown my good faith by agreeing to the amendments that have been made, and I hope now that the other members will keep their faith with me and vote for the bill as it stands.”  

His apologia, which was designed to refute charges that he was not acting consistently, also included the claim that the amended bill was “the best that could have been brought out of such a chaos as had been raging about it.” Finally, he urged appreciation of the great educational benefit that the “agitation” had conferred on the state.  

In fact, Sweeney forfeited the faith of his closest allies in the struggle for cigarette prohibition. One of them, Dr. Anderson, declared on the House floor that the compromise was not the kind of measure that the sponsors of the original bill—the members of the WCTU and other women’s organizations—had wanted in offering “the bone-dry bill.” He hardly seemed to be exaggerating when he observed that the bill “probably had fallen into the hands of its enemies.” (Anderson’s intimacy with the Oregon WCTU’s intentions was suggested by his appearance later that year as one of the “distinguished guests” at its annual convention.) The enemy uppermost in Dr. Anderson was the American Tobacco Company, whose representatives “had been gumshoeing among the solons and exercising pernicious influences.” In the event, only a minority of
the hard-core prohibitionists joined Sweeney in compromising and defecting: of
the 19 representatives who four days earlier had voted both against Stott’s bill and
for Sweeney’s 12 opposed the diluted Sweeney-Brand bill. Eight of the 12 had
also voted against the anti-picketing bill and against recall of the anti-cigarette
bills. The 12 were Anderson, Belland, Burton, Childs, Crandall, Goode, Gordon, W. B.
Jones, Lunger, Meek, Small, and Thompson. In addition, five (Eaton, Porter, Sheldon,
Stephens, and Thomas) who had voted for both bills opposed the watered-down
compromise. Only three of these 18 representatives (Burton, Goode, and Gordon)
represented Portland. Anderson, Belland, Burton, Childs, Crandall, Lunger, Small, and
Thompson as well as Eaton, Sheldon, and Thomas voted against the anti-picketing bill;
Anderson, Belland, Burton, Crandall, Goode, Meek, Small, and Thompson as well as
Eaton, Porter, and Stephens voted against recall.

The Senators,” by whom the original measure was “frankly regarded...as a bit of
freak legislation to be classed with such measures as the anti-snuff bill,”
“demonstrated [their] desire to co-operate in the fullest extent with the House in
the passage of sane legislation, as opposed to laws of the freak type” by voting
(against only one Nay) to suspend the rules to expedite consideration of the
Sweeney-Brand bill. The Judiciary Committee then quickly, unanimously, and
favorably reported out the bill without any amendments, thus enabling it to avoid
what would soon become a clogged Senate calendar. On the anti-climactic
third reading the Judiciary Committee chairman (hyperbolically) praised the
measure as one of the best laws ever presented to the legislature, which the Senate
proceeded to pass unanimously.

Two years after having been killed, Sweeney’s original radical bill
experienced a quasihemidemisemi-resurrection when, availing himself of the very
extensively used initiative and referendum system that Oregon had adopted in
1902 and became a hallmark institution of the state’s progressivism until the mid-
One David E. Frost of Oregon City began circulating a proposed initiative bill petition whose purpose was “Abolishing cigarettes by prohibiting the sale, use or possession thereof,” and which, inter alia, made it a misdemeanor “for any person to smoke, use or be in possession of any cigarette in this State after January 1st, 1921.” This capacious proposal was, in large part, a verbatim reproduction of H.B. 268, and also banned advertising and required every mayor, sheriff, police officer, and other officer to ask all persons he found smoking or having in their possession a cigarette where and from whom they had obtained it; failure to comply with the request would have resulted in a subpoena, and refusal to reveal the information under subpoena would have been a misdemeanor.

To be sure, the real organizer of this petition drive was—according to press reports promoted by the newly formed Allied Tobacco League of America, an offshoot of the Association Opposed to National Prohibition—the WCTU. The ever vigilant tobacco industry was carefully monitoring the proposal’s progress. For example, the *United States Tobacco Journal* almost immediately reported that: “They are getting busy in Oregon again and an initiative petition has been filed with the authorities calling for a law prohibiting” the sale of cigarettes, thus understating the proposal’s scope.

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1201At the 1910 Census of Population he was returned as a 46-year-old carpenter; at the 1920 census the 52-year-old’s occupation was unfortunately illegible, but his address was the same as on the petition.

1202Ballot Title: Initiative Bill-Proposed by Initiative Petition (n.d.), Bates No. 501994485.


1204Initiative Petition Relation to Cigarettes, Initiated by D. E. Frost, 304 High st., Oregon City, Oregon, §§ 7 and 5 (n.d.), Bates No. 501994468. This version was even more radical than Sweeney’s bill in that the stop-and-interrogate provision in the latter applied only to minors.


1206“Oregon to Hold Referendum upon Cigarette Question,” *USTJ* 92(15):16 (Oct. 11,
Although in October 1919 the petition was reportedly being circulated for the requisite 9,940 verified petition signatures for the November 1920 election, by early 1920 the Tobacco Merchants Association, having become curious if not anxious about the status of the petition, received on February 10 from the Oregon Secretary of State, which was required to all petition forms before they were circulated for signatures, in response to an inquiry the information that: “The Anti-cigarette petition has not yet been presented to us for formal approval. We understand, however, that it is now in the hands of the printer and will likely reach us within the next few days.” The official went on to explain that following approval the initiators were required to secure the certified signatures of 9,940 legal voters and file the completed petition not later than July 1 in order for it to be voted on at the November 2 biennial election. The TMA Legislative Bulletin then appended its “own advices” contained in a dispatch from “disinterested sources: ‘Sufficient signatures no doubt will be obtained. Final results impossible to predict at this time. Little comment or publicity thus far.’” Nevertheless, the initiative failed even to appear on the ballot for the November 2, 1920 election, apparently because, contrary to the TMA’s earlier intelligence, it lacked sufficient signatures.

Although the Sweeney-WCTU bill also never appeared on the initiative ballot later in the 1920s, at the general election in November 1930, three years after Kansas had repealed the last statewide cigarette sales ban, Oregon voters faced a proposed constitutional amendment to ban the importation, manufacture, sale, purchase, possession, giving away, or advertising on billboards or in newspapers or other periodicals of cigarettes, cigarette papers, or materials for the manufacture of cigarettes, backed by fines ranging from $25 to $250 or confinement in county jail between 30 and 90 days or, in the judge’s discretion,
both.\textsuperscript{1212} More voters cast ballots on the cigarette amendment than any of the other dozen measures, but at 25.8 percent it received the second lowest proportion of Yes votes.\textsuperscript{1213} This share may appear to be strikingly small, but that more than one-fourth of the active electorate still supported an extraordinarily radical constitutional prohibition 13 years after House passage of the similar Sweeney bill, despite the fact that, in the interim, total annual national cigarette consumption had risen 3.3-fold to 119 billion and per capita annual consumption had increased 2.7-fold to 1,485\textsuperscript{1214} should give pause about the extent of acquiescence in hegemony well into the era of cigarette smoking laissez-faire.

**Kansas (1917/1919)**

“What can we do?” asked a Wichita man recently. “We have the law and those who are opposed to it haven’t the time to give to fight to rid themselves of it. I am a businessman. The people who got behind this statute didn’t have much else to do. They were set out for reform and they got it. I haven’t the time to spare from my business to organize an army of cigarette smokers to undo what has been done. We’ll just have to grin and bear it.”\textsuperscript{1215}

In Kansas, which was the last state to repeal its cigarette sales ban, government officials early on advocated prohibition of smoking in various public places, but none of their initiatives came to fruition. As early as 1915, Governor (and later U.S. Senator) Arthur Capper—“who refused to advertise the cigarette

\textsuperscript{1212}Proposed Constitutional Amendments and Measures (With Arguments) to Be Submitted to the Voters of Oregon at the General Election Tuesday, November 3, 1930, at 39 (Hal Hoss comp.).

\textsuperscript{1213}http://bluebook.state.or.us/state/elections/elections15.htm. See also “Oregon Keeps Cigarettes,” *NYT*, Nov. 7, 1930 (3). The proportion of Yes votes on a county basis ranged from 16.4 to 38.8 percent; in Multnomah, of which Portland is the county seat, a below-average 21.8 percent was recorded. These county-level figures were highly positively correlated with the vote three years later to retain the constitutional ban on alcohol. John Dinan and Jac Heckelman, “The Anti-Tobacco Movement in the Progressive Era: A Case Study of Direct Democracy in Oregon,” *Explorations in Economic History* 42:529-46, fig 1 at 533, tab. 5 at 539, fig 2 at 540 (2005).

\textsuperscript{1214}Calculated based on http://www.cdc.gov/tobacco/research_data/economics/consump1.htm (the per capita data are based on persons over 18).

\textsuperscript{1215}“How the Anti-Cigarette Law Works Out in Kansas,” *OS-E*, Jan. 11, 1921 (9:2-5 at 4).
in any of his publications” including the *Topeka Daily Capital*—declared in his first message to the legislature that: “Smoking in polling places should be prohibited.”

That an exceptionally militant antagonism toward public smoking had developed in segments of the population as well as among legislators spectacularly burst into popular awareness at the 1917 legislative session, when two ultra-radical anti-smoking bills were introduced in the House (before the Senate passed an anti-cigarette use amendment to the search and confiscation and anti-advertising bill that did become law).

The first measure, House Bill No. 257, perhaps the most radical anti-cigarette bill ever passed by a single chamber of any state legislature, went much further that several bills passed by a single chamber in other states in the 1890s that had prohibited cigarette smoking only in public places. The core of the bill, which was designed to supplement and not to derogate from the state’s existing cigarette laws, provided:

That it shall be unlawful for any person to smoke or use, or have in his possession for the purpose of using, cigarettes or cigarette papers in the state of Kansas. Every person who shall smoke or use, or have in his possession for the purpose of smoking or using, cigarettes or cigarette papers in any form in the state of Kansas shall be guilty of a misdemeanor and upon conviction shall be punished for each offense by a fine of not less than five dollars nor more than twenty-five dollars, and every person who shall furnish cigarettes or cigarette papers in any form to any other person or who shall permit any person to frequent any premises owned, held, leased or managed by him for the purpose of indulging in the use of cigarettes in any form shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty dollars and nor more than one hundred dollars.

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1216“Kansas Off on Another Crusade,” *Survey* 37:494 (Jan. 27, 1917).
1218See above this ch.
1219The assertion by Rev. A. P. Wilson (Central Christian Church), “Smoking, Box and Blue Laws,” *IDR*, Feb. 8, 1921 (8:1-5 at 1), that “Kansas at one time had a...law” that made it “illegal to smoke cigarettes” that “was TOO effective evidently for the lover of the ‘pill’ and so the law was changed to make it illegal to sell, etc. cigarettes or the ‘makin’s’” was incorrect.
1220See above Part I.
1221House Bill No. 257, § 2, By Mr Collins (n.d.) (copy furnished by Library & Archives Div., KHS).
1222House Bill No. 257, § 1, By Mr Collins (n.d.) (copy furnished by Library &
Within hours of its introduction the Topeka State Journal revealed in mocking the bill in above-the-fold, front-page bolded headline and subheads: “‘Pill Puffing May Be Made a Crime in Kan. House Members Has Plan to Abolish ‘Coffin Nail’ Smoke. ... It Provides a Fine for Everything Except the Desire.” Beyond the bombast, the article did correctly point out that the bill would strengthen the cigarette sales prohibition law.\textsuperscript{1223}

Introduced by Republican merchant R. A. Collins, the chairman of the Temperance Committee, H.B. No. 257\textsuperscript{1224} was recommended for passage by the Judiciary Committee\textsuperscript{1225} before being stripped by the committee of the whole of the penalization of furnishing cigarettes or permitting premises to be frequented for using cigarettes.\textsuperscript{1226} Then by a vote of 67 (including the chamber’s two Socialist Party members) to 20 the chamber breathtakingly banned the use of cigarettes.\textsuperscript{1227}

While Governor Capper’s Republican Topeka Daily Capital merely matter-of-factly noted that the “Collins anti-cigaret bill, providing a penalty for cigarette smoking...came up for final vote and was passed,”\textsuperscript{1228} the somewhat smaller-circulation Independent Republican Topeka State Journal of “editor, publisher, banker, capitalist” Frank MacLennan\textsuperscript{1229} devoted a front-page article exclusively to the bill, laying the scorn extra-thick on the measure (“It Even Prohibits Smoking Before one’s Own Fireside”) and especially on its author:

Collins came from the town of Penokee, Graham county. Penokee is located in the Graham county sand hills, and before coming to the legislature, Collins polled the Penokee social set and learned that simon pure reform was needed in Kansas. So the gentleman

\begin{itemize}
\item \textsuperscript{1223}“‘Pill’ Puffing May Be Made a Crime in Kan.,” TSJ, Jan. 19, 1917 (1:6).
\item \textsuperscript{1224}House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917, at 81 (Jan. 19) (1917). On Collins’ chairmanship, see id. at 62. On his occupation, see Senate Journal: Proceedings of the Senate of the State of Kansas: Twentieth Biennial Session...1917, at v (1917).
\item \textsuperscript{1225}House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917, at 223 (Feb. 1) (1917).
\item \textsuperscript{1226}House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917, at 355 (Feb. 10) (1917).
\item \textsuperscript{1227}House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917, at 370-71 (Feb. 13) (1917) (Elmer Barnes and J. S. Keller).
\item \textsuperscript{1228}“House Passes the State Highway Commission Act,” TDC, Feb. 14, 1917 (5:4).
\item \textsuperscript{1229}“MacLennan Takes Off His Coat to Work for Soldier Boys,” Editor & Publisher, July 27, 1911 (22).
\end{itemize}
from Graham has been quite active with his task of making the state better. After coming to the legislature, Collins landed at the top of the temperance committee. This committee drew the bone dry bill and jammed it thru the house. Then came a bill which made it a misdemeanor to own, sell or keep for sale any cigarettes, paper or tobacco used in cigarette making.

But Collins was not satisfied. He recalled the good old days of corn silk, catalpa leaves and grape vine cigarettes and cigars. So he drafted a bill to reach from the after dinner parties right on down to youngsters who gather behind the barn Sunday afternoons. Then in the names of the mothers and sisters and sweethearts and all the things that are nice and good and pure, Collins rallied the house members to his measure. All of which means Kansans must do their cigarette smoking before the statute books are printed. ... Collins must be horrified, shocked, humiliated and chagrined by cigarette smokers for the two or three months required to publish the new session laws.1230

Following House passage, out-of-state newspaper coverage focused on the bill’s “making it an offense punishable by a fine to smoke a cigarette even in one’s own home,”1231 while the Kansas press accurately stressed the measure’s limitless breadth, noting that it “does not exempt class, district or place, making it just as unlawful to smoke at home or a dinner party as in public.” Oddly, the most relevant category of “persons caught smoking cigarettes” was omitted by the Emporia Gazette1232—namely, adults, whose curtailed consumer freedom had always been at the heart of the controversies over statewide universal cigarette sales bans.1233 In the event, non-minors were spared this fate when the bill died in the Senate, where the Temperance and Hygiene Committee to which it was referred never acted on it.1234

Three days after Collins had introduced his measure, the Topeka State Journal wondered editorially “[w]hy the war on the meek and lowly cigarette, while the big black cigar and the clay pipe are allowed to go free?” The paper speculated that legislators, having learned from the liquor prohibitionists who at first “declared they merely wanted to banish the saloon,” “[p]erhaps...want to try out on the ‘coffin nail’ and if they get by will attack the weed in other forms

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1231“Can Be Fined for Smoking Cigarettes in Dry Kansas,” National Democrat (Des Moines), Mar. 1, 1917 (1:3-4). This same article under the same title ran in numerous papers; e.g., Muskogee Cimeter, Mar. 3, 1917 (2:2-3).
1233See above Part I.
1234Senate Journal: Proceedings of the Senate of the State of Kansas: Twentieth Biennial Session...1917, at 275 (Feb. 14) (1917).
later.”\textsuperscript{1235} Despite the press’s then common practice of massively infusing reportage with editorial bloviation, the editor apparently forgot that “later” was today: that very day’s front page bore the headline, “Cigar and Pipe Now Are on the Run in Kansas!”\textsuperscript{1236}

This second bill, introduced by House Democrat Oliver P. Jewett\textsuperscript{1237}—a farmer and grain dealer who as chairman of the House Temperance Committee in 1915 had pushed liquor prohibition\textsuperscript{1238}—made it unlawful for any person to smoke on any passenger train or on any car used to transport the public, or any other train, or on any interurban car, street car, omnibus, taxicab, automobile, or any other vehicle used for the transportation of the public, or on any street in any city or town, or in any room or building used by the public, and any rooms or buildings where children are kept: Provided, That smoking may be allowed in public rooms fitted up and used exclusively for smoking and designated as such by proper marking either on or above the door.\textsuperscript{1239}

In addition to imposing a $10 to $25 penalty for such unlawful smoking, Jewett’s measure also made it unlawful for any person having care or custody of any such vehicle, street, room, or building to allow smoking there.\textsuperscript{1240}

Decrying Jewett as a “Purist” and his bill as “even more drastic” than Collins’ ban on smoking, using, or possessing cigarettes because it applied to all kinds of tobacco, the Topeka State Journal on its front page mocked the author for “[h]is sensitive feeling against smoking,” which had “found several outbursts during former legislative sessions when he called up the anti-smoking rule in the house”; and just the previous week “he retained his former record by calling up the anti-smoking rule for the benefit of men working at the press table. Now Jewett

\textsuperscript{1235} \textit{TSJ}, Jan. 22, 1917 (4:2) (untitled edit.).
\textsuperscript{1236} \textit{Cigar and Pipe Are Now on the Run in Kansas!” TSJ}, Jan. 22, 1917 (1:4).
\textsuperscript{1237} \textit{House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917}, at 91 (Jan. 22) (H.B. No. 287) (1917).
\textsuperscript{1239} 1917 House Bill No. 287, § 1 (by Mr. Jewett) (bill text provided by KHS). The text was also published in “Cigar and Pipe Are Now on the Run in Kansas!” \textit{TSJ}, Jan. 22, 1917 (1:4).
\textsuperscript{1240} 1917 House Bill No. 287, §§ 2-3 (by Mr. Jewett) (bill text provided by KHS); “Cigar and Pipe Are Now on the Run in Kansas!” \textit{TSJ}, Jan. 22, 1917 (1:4) (printing text of H.B. No. 287).
would put King Nicotine out of business in Kansas....” The out-of-state press also exclaimed that pursuant to the bill “a man cannot smoke in his own home if he has a child” (presumably at any time, even when the child was not there).

That Jewett had long taken the issue of adults’ (including his own) exposure to tobacco smoke seriously and personally was obvious from the motion that he had offered during his first term in the House in 1909 that the House no-smoking rule be “rigidly enforced”: not only did it prevail, but “the chair instructed the sergeant-at-arms to enforce the rule.” In 1917, too, the press explained his “proposed law for protection” by reference to his having been “rowing for ten days over the fact that some house members and other persons smoke in the Representative hall while he is in the room,” adding that the bill “extends that protection against tobacco to every place in the state, except in private homes and in the wide open stretches of country.”

When, a week after his introduction of H.B. No. 287, the Public Welfare Committee recommended that it not be passed, Jewett displayed a sense of humor in offering this resolution:

Inasmuch as the Committee on Public Welfare has seen fit to report House bill No. 287 back to the House with the recommendation that it be not passed; a bill designed to benefit our boys growing to manhood, and to make them cleaner and more desirable for positions of trust;

Further, that this House has indorsed a bill compelling our county commissioners to offer a bounty on gophers, so that our farmers who are raising alfalfa can be protected against the ravage of the abovementioned gophers, and for fear that the alfalfa crop will be so increased that the over-production will have to be provided in some way; and inasmuch as this House has indorsed smoking: therefore be it

Resolved, That hereafter [in] all the cigars sold or smoked in this state, the filling shall be composed of three-fourths alfalfa instead of cabbage, and in the interests of economy the wrappers be made of gopher skins.

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1244“In the House Hopper,” *TDC*, Jan. 23, 1917 (5:3).

1245*House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917*, at 191 (Jan. 30) (1917). The text of the committee report in the bill file archived at KHS is merely a pre-printed form recommendation with “not passed” typed in.

1246*House Journal: Proceedings of House of Representatives of the State of Kansas: Twentieth Biennial Session...1917*, at 225 (Feb. 1) (H. Res. No. 20) (1917). It is unclear
One more effort to enact a partial public smoking ban was undertaken in Kansas in 1919, when the first woman elected to the Kansas legislature, Mrs. Minnie Grinstead, introduced her first measure. House Bill No. 208 to prohibit smoking in public dining places. Grinstead (1869-1925), a Republican, was a lecturer and Baptist minister who had joined the WCTU as far back as 1896, becoming an organizer for the state and national organizations. On the same day (February 1) that the House Public Welfare Committee, to which Grinstead’s bill had been referred and of which she, in her first term, was the chairman, introduced its own bill to “prohibit smoking in public dining places, where women or children are served,” it also recommended that her bill not be passed because the committee was offering a bill (H.B. No. 324) covering the same subject matter. (Because Grinstead’s H.B. No. 208 is not extant in the Kansas State Archives or the State Library of Kansas, it cannot be compared with the

why Jewett motivated anti-public smoking bill by reference to boys since the 1909 law that prohibited all cigarette sales also prohibited minors from smoking or using “cigarettes, cigar or tobacco in any form on any public road, street, alley, park or other lands used for public purposes, or in any public place of business....” 1909 Kansas Session Laws ch. 257, § 2, at 623.

1252House Journal: Proceedings of House of Representatives of the State of Kansas: Twenty-First Biennial Session...1919, at 118 (Feb. 1) (H.B. No. 324) (1919). A week later a bill was introduced in the West Virginia House of Delegates making it “unlawful for any person...to smoke tobacco, cigarettes or cigars in any public eating place, dining room, restaurant, cafe, or other like place where food is furnished, and where such places...are visited or patronized by females.” House Bill No. 268 (Feb. 8, 1919, by Mr. Vaughn), in Legislature of West Virginia, Bills of the House of Delegates of Regular and Extra: Sessions 1919, at 202 (1919). The Judiciary Committee recommended passage (Feb. 12) and the bill was read a first time and ordered to a second reading (Feb. 15). Id.
The committee bill, which has survived.)\textsuperscript{1254} The committee bill, “An Act to prohibit smoking in public dining places, where women or children are served,” provided:

SECTION 1. That after the taking effect of this act all persons engaged in conducting, within the state of Kansas, a place where food is served to women or children, shall prohibit smoking within said place during the hours when such food is being served.

Provided however, that this act shall not be construed to prohibit the smoking in a room adjacent to said public eating place and partitioned off therefrom.

SEC. 2. That upon conviction of any person for violation of section 1 of this act, they [sic] shall be punished by a fine of not less than $10 nor more than $25 for each such offense.

SEC. 3. Each calendar day this act is violated, shall be and constitute a separate offense.

SEC. 4. This act shall take effect and be enforced from and after its publication in the statute books.\textsuperscript{1255}

The measure’s protection was, then, not only confined to the times when women (and/) or children were present, thus subjecting them to the lingering stench of tobacco constantly replenished by smoking in their absence, but may have offered little or no protection against exposure to secondhand smoke emanating from the exempt adjacent rooms depending on how “partitioned off” was defined.\textsuperscript{1256}

Ten days later the House, acting as the committee of the whole, rendered the bill a virtual nullity by amending section 1 by: (1) substituting for “That after the taking effect of this act all persons engaged in conducting, within the state of Kansas, a” the language “It shall be unlawful for any person to smoke tobacco in any form or manner in any public”; and (2) adding at the end of section 1 (that is, at the end of the proviso paragraph exempting partitioned-off adjacent rooms) the

\textsuperscript{1254}Telephone interview with Susan Forbes, Reference Section, Library & Archives Division, Kansas State Historical Society, Topeka (Feb. 17, 2011); email from Cindy Roupe, State Library of Kansas (Feb. 21, 2011).

\textsuperscript{1255}House Bill No. 324 By Committee on Public Welfare (n.d.) (copy furnished by Library & Archives Div., Kansas State Historical Society).

\textsuperscript{1256}It is unclear what exactly a person conducting food service was required to do to comply with his duty to “prohibit smoking.” This gendered approach to secondhand smoke exposure was the mirror image of the purely moralistic discriminatory Sullivan Law, passed by a vote of 73 to 0 by the New York City Board of Aldermen in 1908, making it unlawful for the owner or manager of any hotel, restaurant, place of public entertainment, or other place of public resort to “allow any female to smoke” in any of those places “Women Mustn’t Smoke,” \textit{NYT}, Jan. 22, 1908 (4). The punishment meted out by the law, which did not make it unlawful for women to smoke, was a $5 to $25 fine and/or imprisonment up to 10 days.
language “nor in any room in which merchandise or drugs are sold at retail.”\(^{1257}\)
The bill’s supporters called the amendment, offered by Representative (and Judiciary Committee Chairman) Benjamin Hegler,\(^{1258}\) a Republican lawyer,\(^{1259}\) a “‘joker’” because, while ostensibly exempting drug stores that served lunch, it in fact provided that “‘smoking in public eating houses shall be unlawful except where cigars, merchandise and stocks of merchandise are kept for sale.’” Though no one objected to the amendment when it was offered, by the following day the “anti-smokers...discovered that it would exempt practically all restaurants for they all carry cigars and gum for sale.” Learning the intricacies and traps of bill drafting, “Mrs Grinstead sa[id] she will try to defeat the amendment when it comes up for passage.”\(^{1260}\) (Rather than objecting at the time that the House adopted the committee of the whole’s report embodying the amendment, “Mrs. Grinstead” immediately thereafter was selected by the chamber to “attend the banquet of the Antisaloon League in celebration of the ratification of the prohibitory amendment.”)\(^{1261}\) On third reading, the full House, which Republicans dominated with 110 seats to Democrats’ mere 15,\(^{1262}\) then proceeded to pass H.B. No. 324 by a vote of 64 to 37. Whereas two-thirds of voting Republicans supported it, of the nine Democrats who voted, five opposed it.\(^{1263}\) Grinstead tried to “re-refer the bill in the effort to get rid of the amendment, but without success.”\(^{1264}\) Hegler himself, the mastermind of the emasculation of

\(^{1257}\)House Journal: Proceedings of House of Representatives of the State of Kansas: Twenty-First Biennial Session...1919, at 196 (Feb. 11) (1919). A gross drafting error in the amendment made nonsense of the first paragraph of section 1, which now read: “It shall be unlawful for any person to smoke tobacco in any form or manner in any public place where food is being served to women or children shall prohibit smoking within said place during the hours when such food is being served.” Presumably the words “shall prohibit smoking within said place” were meant to be struck. In any event, the amendment shifted legal liability from food service owners to smokers.


\(^{1260}\)“Joker in the Law?” HN, Feb. 12, 1919 (11:6).


\(^{1262}\)House Journal: Proceedings of House of Representatives of the State of Kansas: Twenty-First Biennial Session...1919, at iii-v (1919).


\(^{1264}\)“Woman’s Bill Passed,” Emporia Gazette, Feb. 13, 1919 (1:3). The House
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Grinstead’s bill, explained his vote on the grounds that the “amendment excepting drug stores does not make the law unconstitutional, because it makes a classification between public dining rooms and stores, a classification which the Legislature clearly has a right to make. I do not think the owners of public dining rooms will generally be disposed to take an unfair advantage of the law in order to evade the law.” Interestingly, Grinstead, unlike Hegler and two other members, failed to avail herself of the opportunity to have her comment on Hegler’s machinations printed in the House Journal under the “Explanation of Votes” rubric. (The same day the Senate bill to prohibit smoking in public dining places expired when the Judiciary Committee recommended that it not be passed.)

The day the bill passed the House Progressive William Allen White’s Emporia Gazette reported that “it is generally conceded that the bill is ‘perfectly harmless,’” because “the Hegler amendment...exempted from the penalties of the bill all public eating houses carrying stocks of drugs or other merchandise.” The Hutchinson News chimed in by observing that Grinstead’s bill had “met with the ‘victory of defeat’....” Not only did the out-of-state press take note of House passage, but the International Journal of Surgery in its February issue injected into the debate this (doubtless embroidered) account in its advertising supplement:

Some horrid man smoked a cigar not long ago in the room where Mrs. Minnie Grinstead was dining, little suspecting she would have her revenge in a way given to few women. He did not know, of course, that she was the first woman legislator in the state of Kansas.

Mrs. Grinstead promptly introduced a bill prohibiting smoking in public dining-rooms. Her masculine colleagues passed the bill—but not until an artful masculine colleague had tacked on an amendment which provided that “smoking in public places shall be unlawful except where cigars, merchandise and stocks of merchandise are kept for sale.” Mrs. Grinstead, unused to legislative tactics, voted for the joker, and now discovers there are few lunchrooms which cannot boast a stock of merchandise consisting at least of a package

Journal does not reflect any such move.

1267 Emporia Gazette, Feb. 13, 1919 (1:3).
1268 The Results Not Large,” HN, Feb. 17, 1919 (7:3-4 at 4).
1269 E.g., “First Woman Lawmaker’s Anti-Smoking Bill Passes,” CREG, Feb. 14, 1919 (1:3).
of gum.

Women legislators are going to have a hard time taking tobacco away from smoking lawmakers.\textsuperscript{1270}

Despite the fatal dilution that H.B. No. 324 had suffered in the House, the Senate swiftly euthanized even that now innocuous bill when its Judiciary Committee recommended that it not be passed.\textsuperscript{1271} Consequently, Hegler’s speculation that owners’ opportunism would not lead to smoking as usual was never tested. Perhaps as partial compensation for having allowed herself to be snookered by her procedurally more agile colleagues, at the end of the session the House adopted a “resolution by way of testimonial to Hon. Minnie J. Grinstead,” lauding her, inter alia, for having, “[w]ith unfailing good nature and generosity...accepted victory and defeat alike....” Calling her “the fearless champion of every question she believed involved the progress of this state in intellectual and moral advancement,” “we, the brotherhood of this body, standing at attention, salute our sister and coworker....”\textsuperscript{1272}

\paragraph{Nebraska (1917/1919)}

In 1917, with Democrats in firm control of both Nebraska legislative chambers for the last time during the Progressive ascendancy (1909-17)\textsuperscript{1273} and until the Depression election of 1932\textsuperscript{1274} and liquor prohibition very much in the forefront of the legislative agenda,\textsuperscript{1275} Republican Representative and lawyer John Fults\textsuperscript{1276} introduced a bill prohibiting cigarette smoking in public places of such comprehensive scope that it must have been almost as discontinuous with


\textsuperscript{1271}House Journal: Proceedings of the Senate of the State of Kansas: Twenty-First Biennial Session...1919, at 230 (Feb. 19) (1919).

\textsuperscript{1272}House Journal: Proceedings of House of Representatives of the State of Kansas: Twenty-First Biennial Session...1919, at 645 (Mar. 15) (1919).

\textsuperscript{1273}James Olson and Ronald Naugle, History of Nebraska 273-77 (3d ed. 1997 [1955]).

\textsuperscript{1274}Michael Dubin, Party Affiliations in the State Legislatures: A Year by Year Summary, 1796-2006, at 115 (2007).


\textsuperscript{1276}The Nebraska Blue Book and Historical Register: 1918, at 273 (Addison Sheldon ed. 1918).
contemporaries’ experience as it would be unimaginable to historical amnesiacs a century later. House Roll No. 248 declared it to be a public nuisance, for any person to smoke cigarettes of any description whatsoever in any public place in this state: In any passenger, coach, street car, automobile, run and operated for the conveyance of passengers; any church, court house, school house, or outbuildings or grounds belonging and used in connection with any school building; any hotel, restaurant, butcher shop, store-room, barber shop, picture and theatre, bank building, public offices, public and private stairways and halls leading to any of the above described places; in any depot, box car while standing on any railroad right-of-way; in any livery stable, blacksmith shop, garage [sic] or in any cellar, basement, outbuildings, workrooms belonging to, or used in connection with any of the foregoing places or buildings.

The fine for any person over 16 violating any provision of the law ranged between one dollar and $25; alternatively, violators faced a maximum of 10 days in county jail. (In 1911, the legislature had already prohibited smoking cigarettes or cigars or using tobacco in any form by minors under 18.) Misdemeanor liability was also incurred by any person in possession or control of any public place who knowingly permitted anyone to smoke a cigarette there, subject to a fine ranging from $1 to $10. Finally, in order to insure prosecution—considerable dissatisfaction had developed over the failure to enforce the sales ban as the press reported that the 1905 law had “stopped the anti-cigarette agitation, but it has not stopped the sale of cigarettes”—the bill required all police to arrest all found violating the law, take them before a magistrate, and file a complaint against them; any officer who “knowingly [sic] and wilfully neglect[ed] or refuse[d] to perform the duties” was guilty of a misdemeanor and subject to a fine of $5 to $25; on a second conviction such

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1277 In its sparse coverage of the bill, the state’s leading newspaper twice misreported that it prohibited smoking only among minors, getting the facts right only on final passage. “Legislative Notes,” MW-H, Jan. 24, 1917 (2:2); “Legislative Notes,” MW-H, Feb. 7, 1917 (3:2); “Third Reading,” MW-H, Feb. 17, 1917 (2:3).
1280 Revised Statutes of the State of Nebraska: 1913, § 8846 at 2372 (1914).
violating officers were subject to impeachment. Though also drawn into this mandatory enforcement regime, county attorneys retained some discretion: it was their duty, when they had “reason to believe” that any of the law’s provisions had been violated, to investigate reports of such violations; if in a county attorney’s “judgment” a violation had taken place and “the proof obtainable would sustain a conviction,” it was his duty to file a complaint, cause the alleged violator to be arrested, and prosecute all such cases.

Editorially the press, which would profit from the advertising that would accompany legalization, favored legislation that proceeded in the opposite direction, but clothed its preference in laments about unenforceability:

The cigaret law which has been on the statute books for a number of years, has not been enforced. There were spasmodic bursts of enforcement when the law was new, but for several years there have been no prosecutions and the law has been wholly disregarded. Some places the cigarettes are kept out of sight in the stores, but even that dodge is not practiced in most places. ... The use of cigarettes by men has greatly increased in recent years, and there is less prejudice against the practice today than formerly. Public sentiment does not demand the strict enforcement of the present law.

After the bill’s introduction, it was referred to the Miscellaneous Subjects Committee, which recommended its passage with two amendments: the addition of post offices as covered public places and an increase in the age of liable smokers to over 18. (It is unclear why the committee would have believed that the U.S. Constitution permitted a state legislature to regulate activity inside a U.S. Government building.) Following adoption by the committee of the whole house of the committee amendments, the full House on February 16

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1286 Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 137 (Jan. 23) (n.d. [1917]).
1287 Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 151 (Jan. 23) (n.d. [1917]).
1288 Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives 311 (Feb. 6) (n.d. [1917]).
1289 Daily Proceedings of the Thirty-Fifth Session of the Nebraska House of Representatives
passed the comprehensive public cigarette smoking ban by the overwhelming majority of 79 to 9. In a chamber composed of 62 Democrats and 38 Republicans, the Nays were cast by six Republicans and three Democrats, while 28 Republicans and 51 Democrats supported the ban. Of the notoriously anti-prohibitionist 12-member (all-Democratic) Omaha delegation, six voted Yes and only two No.1290 (Oddly, a month after House passage the Judiciary Committee recommended passage of a much less restrictive measure that would have prohibited smoking in the dining rooms of hotels, restaurants, and boarding houses.)1291 Despite this broad base of support, H.R. No. 248 died in the Senate, which, following the recommendation of its Miscellaneous Subjects Committee,1292 voted 17 to 16 to postpone it indefinitely.1293 The press made contextually clear the limits on the Senate’s progressive agenda:

The state senate faced the inevitable...and put the finishing touches upon the work of granting partial suffrage to women. The day before it discarded its beer and whisky and went into the dry column. It was but a short step in the march of reformation to grant the ballot to women, but the senate be godarned if it would give up its cigarettes. It proposes to continue to blow cigarette smoke in public wherever it pleases. It was asking too much of the senate to quit the tobacco habit, so it indefinitely postponed H. R. 248, a bill to prevent the smoking of cigarettes in public places.1294
Unlike the House vote, the Senate’s manifested a greater role of party affiliation: only two Republicans voted to kill the bill, while eight opposed indefinite postponement; in contrast, Democrats split 8 to 15 with the entire five-member all-Democrat Omaha contingent voting to kill.¹²⁹⁵ One of those Omaha Democrats, lawyer John Moriarty, may have offered some insight into his anti-sumptuary colleagues’ mindset with his sarcastic observation on the Senate floor that “some people lost no time right after the [liquor] prohibitory amendment carried last fall in framing up a program to stop the use of everything not approved of by this class.”¹²⁹⁶

A watered-down cigarette smoking ban confined to public eating places was enacted in 1919 as one of the concessions that the anti-cigarette forces were able to extract in exchange for passage of repeal of the cigarette sales ban and introduction of licensure. It remained on the books until 1937.¹²⁹⁷

**South Carolina (1920)**

I respectfully recommend that you pass an Act prohibiting the smoking of cigarettes by boys under the age of sixteen years, and prohibiting the sale of cigarettes and cigarette papers in this State.¹²⁹⁸

A straw showing the direction of the wind!¹²⁹⁹

In January 1920, the Tobacco Merchants Association of the United States was

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¹²⁹⁵*Senate Journal of the Legislature of the State of Nebraska: Thirty-Fifth Session...1917*, at 1001 (Apr. 19). Party affiliation is taken from *id.* at 4-5. To be sure, the significance of the vote may have been somewhat diluted by the fact that it was simultaneously on three other recommendations of the committee of the whole that bills be engrossed for third reading.

¹²⁹⁶“Capitol Bill Gets New Lease on Life,” *NSJ*, Apr. 20, 1917 (1:3-4, at 5:1-2 at 2). He also “wanted to know why cigarettes were any worse than pipes or cigars.”

¹²⁹⁷See above this ch.

¹²⁹⁸*Journal of the House of Representatives of the General Assembly of South Carolina, Being the Regular Session...1911*, at 95 (Jan. 17) (1911) (Governor Cole Blease’s inaugural address). Cole “stood without peer as the classic example of the political mountebank,” who “won...the rural plebeians” while “[o]pposing labor legislation” and “openly advocating lynching....” Georg Tindall, *The Emergence of the New South 1913-1945*, at 21 (1967).

tracking the progress of a bill introduced in the South Carolina legislature to prohibit the smoking of tobacco during meal hours in any public eating room. S. 367 had been introduced by James Padgett (1869-1939), a state senator from 1914 to 1926, who was a lawyer, presidential elector in 1912, and delegate to the Democratic national convention in 1920; he was also an 1892 graduate and a member of the Board of Visitors from 1912 until his death of the Citadel Military College, at which a barracks still bears his name. Indeed, his attentiveness to the Citadel’s needs in the legislature was so intense that he was known as “‘The Senator from The Citadel.’”

If the bill were enacted, such statewide interference with at-will smoking in a southern tobacco state might have had serious national implications—more so than Nebraska’s imposition of a ban on cigarette smoking in public eating places in 1919 in the same statute that repealed the state’s cigarette sales ban. Indeed, an editorial in the New York Commercial that the trade journal Tobacco reprinted

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130 Journal of the Senate of the General Assembly of the State of South Carolina 50 (S. 367, by James Graham Padgett) (1920); TMA, Legislative Bulletin No. 5 (Jan. 27, 1920), Bates No. 502425067. To be sure, the TMA’s intelligence was not flawless: it mistakenly placed Padgett in the House rather than the Senate.


132 Resolutions, Board of Visitors of the Citadel, Charleston, S.C., Death of Colonel James G. Padgett (n.d. [1939]), in Minutes of The Citadel Board of Visitors, Folder 16 (Citadel Archives). (This resolution is in large part identical with the Bar Association obituary, but, since the former is undated, it is unclear which source plagiarized the other.) An editorial in his local newspaper after his death stressed that he “‘had strong likes and strong dislikes. ... There was no middle ground with Colonel Padgett.’” “In Memoriam: Colonel James Graham Padgett: 1869-1939,” South Carolina Bar Association, Transactions of the Forty-Sixth Annual Meeting 121-22 at 122 (Mar. 23-24, 1939) (reprinting editorial from unidentified issue of the Walterboro Press and Standard). According to the director of the Citadel Archives, Padgett’s papers there do not shed light on his position regarding smoking. Email from Jane Yates to Marc Linder (June 7, 2010). The fact that Padgett was a Methodist, the mainstream Christian denomination that opposed tobacco most strictly, may account for his advocacy of the smoking ban. Biographical Directory of the Senate of the State of South Carolina, 1776-1964, at 285 (Emily Reynolds and Joan Faunt comp. 1964).

133 See above this ch.
expressly stated that it was “[s]trange” that “the anti-smoke fiend has invaded the South.” But even though he had “not yet been able to go the entire length of his journey...he has got a fine foothold from which he will be able to widen his powers.” For both publications the South Carolina Senate’s action amounted to “intolerance with a vengeance prohibition run mad.” And if the antis wanted to justify this bill by reference to deference to women’s refinement, the editors let them know in no uncertain terms that “[m]ost women like to see a man enjoy his smoke,” and “[i]f they have the slightest revulsion to the practice in their impressionistic days, the antipathy quickly passes away.”

On January 22, the South Carolina Senate, after defeating a motion to kill the bill by a vote of 25 to 11, adopted an amendment subjecting hotel or other eating house managers to penalties (of fines of $10 to $20 or terms of 10 to 30 days on public work) for failing to post conspicuous notices prohibiting smoking as well as for knowingly allowing a violation of the law. The next day, however, the Senate weakened the bill by passing it with an amendment authorizing the management to provide separate dining rooms where smoking was permitted, and sent it to the House of Representatives.

South Carolina’s leading newspaper took little interest in the bill. On its second reading The State mockingly reported: “At first it looked as if the bill would be laughed off the calendar, but the egis of good manners and chivalry and every other good attribute of the people of the state was evoked and senators discussed the bill seriously for an hour or more.” In contrast, the press in the rest of the country took editorial note of this alarming development. One paper in Cincinnati—which had apparently slept through the past three decades of anti-cigarette legislation—intoning that the “crusade against the use of tobacco has won its first victory” and reminding readers of how alcohol prohibition had begun, warned against complacency, “as if distance lent you and your favorite habit immunity.”

A Wisconsin daily, sounding very much like cigarette...
companies’ restaurant-owners-know-best free-market propaganda directed at the burgeoning anti-secondhand smoke movement in the late twentieth century."1309 rebuked the legislature for “magnifying what is at worst a petty annoyance into a crime.” Instead, it declared that if smoking in public dining rooms were really “such a nuisance,” the proprietors had the power to stop it, and if the public really favored bans, the owners would be “quick enough to yield to it without having to be forced by a statute into taking action.” Interestingly, the only example that occurred to the editor of the need for a new criminal statute was the then “unprecedented situation” of the “plotting of radical agitators against the government.”1310 On the other hand, a small-town Iowa paper, echoing a commonly held view, commented that even if the bill were not enacted, it showed that “the smokers have some one [sic] after them, and they have no one to blame but themselves” because “[t]hey insist on smoking any and every place and have been known to light their cigarettes in church.” Tentatively detecting a coalescing resistance to secondhand smoke exposure, the Palo Alto Reporter observed that: “It begins to look as though the non-smokers were going to assert that they have some rights.”1311

In the end, however, the senate bill was, as someone (perhaps Harry H. Shelton) at R. J. Reynolds Tobacco Company handwrote on the copy of TMA’s Legislative Bulletin made public decades later by litigation, “killed”1312 without a dissenting vote five days later in the House, which adopted an unfavorable judiciary committee report.1313

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1309 See below Part VI.


1312 TMA, Legislative Bulletin No. 5 (Jan. 27, 1920), Bates No. 502425067/9. Since Shelton’s name is handwritten at the top of this page in a similar handwriting, perhaps the company’s general counsel was personally keeping track of the bill’s progress.

Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

North Dakota (1921)

At the same time that it was strengthening the state’s 1913 anti-cigarette legislation in other respects, the North Dakota legislature in 1921 also enacted a partial public smoking ban, making it punishable by a fine of between $5 and $25 to smoke any form of tobacco “in the dining room of any hotel, or in any cafe, restaurant or eating room in which both men and women are being served, or in any street car, or railway coach, except in rooms, coaches and compartments specially provided for that purpose”; proprietors of such establishments and conductors of such means of transportation who knowingly permitted such smoking were subject to the same fine. Despite numerous efforts to eliminate this significant government intervention, like the less capacious Nebraska anti-public smoking law, North Dakota’s was also not repealed until 1937.

The North Dakota WCTU energetically advocated for the partial ban on public smoking, which was introduced in the House by a member of the Nonpartisan League, A. J. McLarty, a farmer. The fact that when, at the legislators’ invitation, 12 to 15 women appeared on February 1 before the House State Affairs Committee, to which House Bill No. 51 had been referred, some lawmakers were smoking prompted the Bismarck Tribune to question whether the

1314See above this ch.
13151921 N.D. Laws ch. 127, at 211. Thus, unlike the smoking ban in eating establishments, which applied only when women were present, that in means of transportation applied all the time.
13171937 N.D. Laws ch. 217, at 394.
1318See, e.g., the numerous petitions that its various local groups submitted to the Senate. State of North Dakota: Journal of the Senate of the Seventeenth Session of the Legislative Assembly 156, 179-80, 198-99, 209, 220, 248 (1921).
1319State of North Dakota: Journal of the House of the Seventeenth Session of the Legislative Assembly 119 (Jan. 26) (1921); State of North Dakota: 1919 Legislative Manual 594. The bill was introduced one week after the similarly worded but more comprehensive Utah measure; see below this ch.
indication that the committee gave that it would recommend passage stemmed from its desire to “be courteous to the women” or from its real support for the ban. Women’s self-protective motivation underlying the bill was clearly set forth by the WCTU’s spokeswoman, who remarked that H.B. No. 51 “would not prevent anyone from smoking, who wants to smoke...but would prevent women from being subjected to its noxious fumes” in covered public places. After the committee majority had diluted the ban by recommending that it be amended to limit coverage to eateries “in which both men and women are being served”—thus reflecting the WCTU’s female-centric position—the House defeated the committee’s minority report recommendation to kill the bill by postponing it indefinitely.

Three days later the House, sitting as the committee of the whole, debated the bill at length, “fiery oratory” being hurled “[t]hrough clouds of smoke...from one side of the hall to the other....” Norwegian-born farmer and IVA member Christian Ness, who was especially active in seeking to kill the bill, persisted in urging extension of the smoking ban to haymows and barns “under present laws if the hired help on your farm want to smoke you can’t help yourself. ‘I found two men smoking in my haymow last summer...and I asked them to stop and they said they didn’t have to. I had to take one by the neck and throw him out.’” A majority of representatives disagreed with him, and the amendment offered by his fellow IVA member Dayton Shipley (a railroad brakeman who consistently voted against all anti-tobacco measures) “making it illegal for any man to use tobacco in any form east of the Missouri river” was ruled out of order. At least one IVA member who consistently voted for all anti-cigarette/smoking bills that session, declared to the House that “he couldn’t see why women should be required to submit to men smoking in dining rooms.” Asked whether he opposed smoking, ex-smoker William Bauer replied: “‘No, I don’t care how much they smoke. They can go to h--- and smoke there if they want to.’” One NPL member devised an idiosyncratic self-defensive basis for supporting the bill.

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1320 “Solons Smoking as Anti-Smoking Bill Comes Up,” BT, Feb. 1, 1921 (1:5). The House no-smoking rule did not cover committee rooms. See below Table 6.
1325 State of North Dakota: Journal of the House of the Seventeenth Session of the Legislative Assembly 272 (Feb. 5) (1921).
Farmer Charles Reichert, “holding a half-used cigar in his hand,” announced that: “I’ve been smoking, not because I want to, but to keep from getting sick, because these men around me are smoking. And you can’t be around where men are smoking without smoking yourself.” Ultimately, the House, rejecting Ness’s motion to re-refer the bill to committee, adopted the majority report, and the following day, after first defeating yet another motion to postpone indefinitely by a decisive vote of 32 to 76, passed the ban 78 to 30. Although votes were not cast along strict factional lines, only eight (or 15 percent of) voting Nonpartisan League members opposed H.B. No. 51 on each vote, while 43 percent and 39 percent, respectively, of the voting Independent Voters Association members supported the bill.

In the immediate wake of the strong anti-smoking vote in the House, similar action was forecast in the Senate. After its Temperance Committee had recommended passage, the Senate debated the “Smoke Outside” bill on February 26. Opponents “made an effort to laugh it out” by amendments to extend the ban to cover tobacco chewing, the Senate, and the House and Senate chamber, the first being adopted and the last two failing. The Senate also adopted a motion to halve the bill’s minimum and maximum penalties. The

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1326.“House Pushes Anti-Smoking Bill Onward,” BT, Feb. 5, 1921 (1:1). The occupational information is taken from the 1920 Census of Population (HeritageQuest). If House members were smoking they were violating a House rule. See below Table 6.

1327State of North Dakota: Journal of the House of the Seventeenth Session of the Legislative Assembly 252 (Feb. 4) (1921).

1328State of North Dakota: Journal of the House of the Seventeenth Session of the Legislative Assembly 272-73 (Feb. 5) (1921). The tallies were calculated according to the factional affiliation in “Names of Legislators Who Will Come to Bismarck in January,” BT, Nov. 5, 1920 (2 [sic; should be 4]:5).


1330State of North Dakota: Journal of the Senate of the Seventeenth Session of the Legislative Assembly 392 (Feb. 17) (1921).


1332State of North Dakota: Journal of the Senate of the Seventeenth Session of the Legislative Assembly 583 (Feb. 26) (1921). An IVA member moved the first amendment, while two NPL members moved the last two. The ban on smoking in the Senate was proposed by NPL member John Nathan, an Odessa-born farmer, while the ban in the House and Senate chambers was offered by NPL member Eric Bowman, a Swedish-born farmer, who was also the chamber’s president pro tempore. State of North Dakota: 1919 Legislative Manual 594, 579. The Senate appears not to have regulated smoking. See below Table 6.
Nonpartisan League then mobilized to reconsider the two successful amendments: 22 of its members joined by only four IVA members prevailed over 20 IVA affiliates joined by only two NPL defectors. The Senate then struck out the ban on public tobacco chewing, but retained the reduced fines. On third reading 22 NPL members voted for and only two against the partial public smoking ban, while 11 IVA affiliates joined the majority and 13 opposed the bill. On its return to the House, H.B. No 51 was passed by the overwhelming majority of 87 to 20, only four NPL members joining 16 IVA members in opposition.

Unsurprisingly, then, as was also the case with the 1921 session’s legislation strengthening the 1913 anti-cigarette law, the statist, anti-corporate Nonpartisan League supported the curb on laissez-faire smoking much more intensely than the conservative, business-oriented IVA.

When the law went into effect on July 1, headlines all over the United States trumpeted the message that: “N.D. Law Forbids Smoking with Meals,” “Men of North Dakota Can’t Smoke If Women Around”, “Smoking in Cafes, Hotels, Cars Banned.” More prosaically, numerous newspapers in Iowa informed readers that “[s]mokers of North Dakota can’t enjoy their cigars, cigarettes or pipes in public eating houses....”

**Utah (1913-1923)**

Insofar as the bill affects smoking in public places, it is only a question of those to whom the use of tobacco in their presence is offensive trying to obtain their rights which their smoking neighbors seem unwilling to concede them without compulsion. If a number

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1333 *State of North Dakota: Journal of the Senate of the Seventeenth Session of the Legislative Assembly* 583 (Feb. 26) (1921).

1334 *State of North Dakota: Journal of the House of the Seventeenth Session of the Legislative Assembly* 668 (Feb. 26) (1921). The four had also voted against the bill earlier.

1335 See above this ch.

1336 “Anti-Smoking Bill Becomes Law of State,” *BT*, July 1, 1921 (1:3).

1337 *WEC*, July 1, 1921 (2:1).

1338 *Woodland Daily Democrat* (Cal.), July 2, 1921 (5:3).

1339 *Oakland Tribune*, July 1, 1921 (1:6). See also “It’s Illegal Now to Smoke in Cafes in North Dakota,” *Evening Republican* (Mitchell, S.D.), July 11, 1921 (1:2).

of citizens, instead of using tobacco saw fit to amuse themselves by shaking flour bags in a crowd, for instance (and when one comes to examine the habit of burning a weed between one’s lips it does not seem any more sane than would the shaking of a flour bag for pastime!), every smoker would object. His “liberty,” the rights granted by his citizenship, would be in danger! Yet, he thinks nothing of blowing smoke in the face of those around him.... The fact is that tobacco is a drug, and the tobacco habit is a drug habit.\textsuperscript{1341}

Utah politics during the Progressive era underwent a transformation as anti-Mormons left the dominant Republican Party in 1904 in protest against church influence and formed the American Party, which then controlled Salt Lake City’s municipal administration until 1911, although it never gained statewide traction and disappeared by World War I. Moreover, by 1912 the Republican Party was losing support as a result of equivocating on the initiative, referendum, and recall, blocking ratification of the 17th Amendment (instituting popular election of senators), skirting enactment of a workers compensation system, and refusing to regulate railroads or public utilities. Two years later, Progressives and Democrats fused, virtually neutralizing Republicans’ control of the House; Republican Governor William Spry’s pocket-veto of the statewide liquor prohibition bill passed in 1915 together with the legislature’s failure to pass progressive measures such as workers compensation and railroad and public utilities regulation alienated the electorate sufficiently to eliminate Republicans altogether from the House (which was composed of 44 Democrats and 1 Socialist in 1917), produce a 14 to 4 Democratic majority in the Senate, and elect a Democratic Jewish governor, Simon Bamberger, who completed enactment of the Progressive legislative agenda, including liquor prohibition. Republicans were also totally excluded from the Senate at the 1918 elections, though they managed to recapture eight House seats, and not until the nationwide Republican restoration of 1920 did they regain their legislative majorities, expelling all but a single Democrat from the House and taking 11 of 18 Senate seats. At the following three sessions, Democrats retained only one Senate seat, while their House representation was reduced from 10 to 9 to 6.\textsuperscript{1342}

\textsuperscript{1341}Louis Ward, “‘Freak Tobacco Legislation,’” \textit{DN}, Jan. 20, 1921 (sect. 2, 3:6-7) (letter to editor). Louis Ward was the pen-name of Fredrick Louis Ward Bennett, the first president of the No-Tobacco League of Utah and a Mormon. Louis Ward, “The Anti-Cigarette Law Has Not Failed,” \textit{IE} 26(3):265-67 (Jan. 1923); see also below this ch.

Near-Successes Without Organized Mormon Church Support (1913-1919)

We [the Utah WCTU] are working for the prohibition of the liquor traffic, the opium and tobacco traffic, the gambling house and haunts of shame.

We believe in a living wage, an eight-hour day, in courts of conciliation and arbitration, in justice as opposed to greed of gain, in peace on earth, good will to men. ... We aim...to secure laws prohibiting the sale of all narcotics, including tobacco in all its forms.\(^{1343}\)

The Mormon church, as detailed below, did not organizationally support legislation to bar adults from buying cigarettes or smoking tobacco in various public places until after World War I, but its Deseret Evening News editorialized on behalf of such measures much earlier. For example, in 1907, sparked by a discussion of public smoking in the Portland Oregon press, the paper opined: “The question is not whether smokers have a right to smoke, but whether they have a right to compel everybody else, in the streets, in elevators, in public buildings, to inhale the smoke they have discarded. No refined gentleman will claim such a prerogative. The ordinance against soiling the sidewalks could profitably be augmented by a clause relating to smoking.”\(^{1344}\) Under the identically same editorial title seven years later, the paper, prompted by a debate going on in larger eastern cities concerning street cars, revisited the issue. This time, while conceding the “personal liberty” argument to the extent of agreeing that smokers had “the right to ruin their bodies and souls,” the News countered that they had “no right to make other people sick while they are exercising that privilege.”\(^{1345}\)

As far back as 1913 the Utah Senate considered a bill to “prohibit and punish the nuisance of smoking tobacco, cigars, or cigarettes in or upon street cars or railway passenger cars.”\(^{1346}\) The measure specifically made it unlawful “to smoke


\(^{1343}\)Mrs. C. A. Walker [State President Utah WCTU], “W.C.T.U. Will Work After Utah Goes Dry,” Salt Lake Telegram, Oct. 23, 1916 (sect. 2, 1:6-7). There is no evidence that the Utah WCTU ever concretely pushed for enactment of a statewide ban on the sale of all tobacco, which, however, from time to time opponents of anti-cigarette legislation offered as a bill-killing amendment.

\(^{1344}\)“Smoking in Public,” DEN, Apr. 1, 1907 (edit.), clipping in Selected Collections from the Archives of the Church of Jesus Christ of Latter-day Saints, vol. 2 (DVD 2002).

\(^{1345}\)“Smoking in Public,” DEN, Feb. 26, 1914 (edit.), clipping in Selected Collections from the Archives of the Church of Jesus Christ of Latter-day Saints, vol. 2 (DVD 2002).

\(^{1346}\)S.B. No. 205 (Feb. 18, 1913, by Republican Charles Cottrell, Jr., Salt Lake), on
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tobacco, whether by pipes, cigars, or cigarettes, within that compartment or portion of any street car or railway passenger car which women or children are permitted to occupy as passengers, or upon the platform or entrance to such car which women or children are permitted to use for purposes of ingress or egress.” To be sure, smoking compartments were permitted, but only if they were “so separated that the tobacco smoke therein is not permitted to enter that portion of the car which may be occupied by women or children.”

It is unclear whether some organization(s) had proposed the bill. At its annual convention in October 1912 the WCTU of Utah did not mention any tobacco-related legislation. Minutes of the Twenty-Second Annual Convention of the Women’s Christian Temperance Union of Utah...Oct. 8, 9, 10, 1912.

S.B. No. 205 (Feb. 18, 1913, by Cottrell), on http://images.utah.gov/cdm4/document.php?CISOROOT=/428&CISOPTR=12892&REC=20. An owner, conductor, brakeman, or porter having charge of or operating such a car who permitted prohibited smoking was subject to a fine up to $100 and/or imprisonment up to 30 days. This provision, too, was amended to make only the conductor criminally liable. Senate Journal: Tenth Session of the Legislature of the State of Utah: 1913, at 456 (Feb. 28).

According to the Tribune article, the 7 to 7 vote was on a motion to strike the enacting clause. Tribune: “Bill Prohibiting Smoking Is Killed,” SLT, Mar. 1, 1913 (9:5). The vote was 9 to 4 with 5 absent. Oddly, the Senate Journal did not reflect this vote, but only a 7 to 7 vote with Cottrell (impossibly) voting both Yes and No. Senate Journal: Tenth Session of the Legislature of the State of Utah: 1913, at 456 (Feb. 28).

On Southwick, see above this ch.

In 1917 a much more radical bill was introduced by Representative Edward Southwick. In addition to instituting a rather capacious ban on manufacturing, selling, exchanging, or keeping for sale any cigarettes, cigarette papers, or wrappers, subject to a maximum fine of $300 or imprisonment of six months for a second offense, Southwick’s House Bill No. 180 made it a misdemeanor, subject to a maximum $100 fine, for any person to “buy, accept or have in his possession any cigarette, cigarette paper or other wrapper intended for the wrapping of tobacco in the form of a cigarette, for the purpose of smoking....”

http://images.utah.gov/cdm4/document.php?CISOROOT=/428&CISOPTR=12892&REC=20. It is unclear whether some organization(s) had proposed the bill. At its annual convention in October 1912 the WCTU of Utah did not mention any tobacco-related legislation. Minutes of the Twenty-Second Annual Convention of the Women’s Christian Temperance Union of Utah...Oct. 8, 9, 10, 1912.

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Southwick, see above this ch.

Although the bill, the introduction of which was “somewhat belated” and had been “expected by tobacco dealers,”\textsuperscript{1351} would have outlawed not only smoking, but being in possession of, a cigarette,\textsuperscript{1352} the press did not always realize how expansively prohibitionist the measure was.\textsuperscript{1353} Unsurprisingly, more than 550 students at Southwick’s alma mater (Latter-day Saints’ University) and more than 350 at Ogden Senior High School petitioned the legislature to pass his bill.\textsuperscript{1354} Aware beforehand that high school petitions would soon reach the legislature, the Mormon church-owned\textit{Deseret Evening News} hailed them on the grounds that they “dispose of the time-worn argument of the tobacco advocate, manufacturer and dealer that such legislation appeals only to ‘a lot of narrow-minded old mossbacks who come in from the country and try to run the cities.’” Instead of explaining why these hundreds of “bright young men and women...who ha[d] taken up arms against the deadly coffin nail” were not merely young fogeys who had imbibed the same Mormon dogma as their elders, the\textit{News} assured its readers that the “maker of cigarettes, the dealer who sells them and the smokers themselves know that they belong in the same category with the drugs and liquors which the laws of enlightened peoples have placed under the ban.” The paper also preemptively defended itself against the charge that the anti-cigarette movement was a “proposal to legislate morals into a people” by distinguishing its program as “a simple proposal to prevent them from destroying themselves and

\textsuperscript{1351}“Anti-Cigarette Bill Appears in House,”\textit{SLT}, Feb. 20, 1917 (9:6). Two days later a local option tobacco bill was introduced that empowered town trustees to “license and regulate or prohibit the selling, giving away or disposition in any manner, or [sic; must be of] tobacco.” H.B. No. 204 (by Paxson) on http://images.archives.utah.gov/cdm4/document.php?CISOROOT=/432&CISOPTR=193&REC=3; \textit{House Journal: Twelfth Session of the Legislature of the State of Utah...1917}, at 379 (Feb. 21). It was killed in committee. “Consolidation Bill Is Killed in House,”\textit{SLT}, Mar. 6, 1917 (8:2).

\textsuperscript{1352}Since the bill did not specify that the “purpose of smoking” had to be the possessor’s, even giving away a cigarette to someone 21 or over, which was not expressly made unlawful, would presumably have been unlawful if the donee’s purpose was to smoke it.

\textsuperscript{1353}For example, “Proceedings of the Legislature,” \textit{Ogden Standard}, Feb. 20, 1917 (3:6-7) (“designed to absolutely prohibit the sale of cigarettes”). In contrast, “Saunterings,” \textit{Goodwin’s Weekly}, Feb. 24, 1917 (8:4), not only reported the possession ban, but, ironically, foreseeing cotinine tests, proposed appointment of “an inspector with authority to puncture the skin of anyone under suspicion for a blood test to be made to see if My Lady Nicotine or any of her offspring are hovering about in the smoker’s system.”

\textsuperscript{1354}\textit{House Journal: Twelfth Session of the Legislature of the State of Utah...1917}, at 459-60 (Feb. 27).
generations yet unborn.”

Three days after the Judiciary Committee had favorably reported the bill, it was considered by the full House, which just a few days earlier had—despite its two-decade-old standing rule prohibiting smoking—adopted a motion that smoking be prohibited in the House chamber at all times because it was “impolite to the women members.” The principal speech among the many given was Southwick’s, which, to judge by press excerpts, was well-stocked with venerable platitudes about “dull and degenerate” boys and Thomas Edison’s claim that burning the paper wrapper produced a poison that destroyed the nervous system, but nevertheless predictably sparked a round of applause from the gallery prompting the speaker of the House to declare ironically that “any further demonstrations would occasion an election.” Unclear was whether Speaker John Tolton—the Mormon church functionary who had led the opposition to anti-cigarette legislation at the 1907 session and now, once again, opined that the legislature lacked the right to “control the habits of mature men”—was still joking when he advised the bill’s advocates that if they sought passage, they should amend H.B. No. 180 to cover only minors (a superfluous task since the existing law already accomplished that objective). In the meantime, Southwick was busy taking umbrage at the levity of a motion to make the sale of tea, coffee, and tea- and coffee-pots a misdemeanor. The measure proved to be far too radical to secure majority approval, which was produced only by means of striking out two vital provisions, including and especially the ban on adults’ possession of cigarettes (the other being the penalty for selling cigarettes). Following this evisceration the House voted 25 to 11 for passage.

Without mentioning, let alone bemoaning, the deradicalization of Southwick’s bill, the Deseret News took heart editorially that enough “commonsense” legislators sat in the assembly to pass the bill “[i]n spite of the frivolous

1355 “A Plea that Should Count,” DEN, Feb. 24, 1917 (4:3) (edit.).
1356 House Journal: Twelfth Session of the Legislature of the State of Utah...1917, at 443 (Feb. 26).
1357 “Dry’ Amendment to Be Recalled,” DEN, Feb. 21, 1917 (2:3).
1358 “Anti-Cigarette Bill Passes House,” OE, Mar. 2, 1917 (3:1-2). On the law making it unlawful for anyone under 21 to buy, accept, or possess cigars, cigarettes, or tobacco, see 1903 Utah Laws ch. 135 at 186; 1911 Utah Laws ch. 51 at 68; Compiled Laws of the State of Utah §8443 at 1625 (1917). On Tolton in 1907, see above this ch.
amendments which some of the legislators with an embryotic sense of humor are trying to tack on to the anti-cigarette bill to make it ridiculous.” Its hopes were buoyed by its sense that the cigarette question was not only the last one still pending that was not a “‘party issue,’” but also no longer subject to controversy, there being “only one side to the question, political, medical, moral, or any other way; and that is that the miserable, filthy, deadly little coffin-nail should go.”

The next day the bill reached the Senate, where it was referred to the Public Health and Labor Committee, among whose members, the News reported, “the cigarette as such meets with but little sympathy....” In particular Chairman John Wootton, although he could not comment on the bill because he had not yet seen it, entertained a pronounced antipathy toward the use of cigarettes (but not at all toward tobacco): “As having employed in my time thousands of men...I may say I have noted the effects of the cigarette rather carefully. I have frequently noticed that it was impairing the usefulness of the men physically, and at times I have been able to persuade workmen to give up the cigarette and smoke pipes for a while. In as short a time as two weeks the physical change in the men for the better would be quite marked.”

Considerably less promising as an agent of change was committee member Archibald Bevan (who as a pharmacist and drugstore owner presumably sold cigarettes), who “intimated that he did not believe the legislature could ‘bring about the millennium’ all at once. He did not see any particular objection to letting a man of adult age having a cigarette if he insisted on smoking them.”

In the event, the Mormon newspaper’s headline (“Anti-Cigarette Bill Reaches Senate; May Become Law”) was overtaken by reality the day that it appeared, when Representative Daisy Allen of Salt Lake City announced that she would move reconsideration of S.B. No. 180. The genesis of the misunderstanding is difficult to reconstruct, but many representatives, according to the press, failing to grasp the amendments’ “exact significance,” “voted under the impression that...
they were legislating only against the use and sale of cigarettes as far as minors were concerned.” On learning after adjournment from one of the Nay-voters what the chamber in fact had just done to the bill, “[s]everal members showed great astonishment and could not be convinced for some time.” (Since the bill text underlined the new provisions proposed to be added to the existing no-tobacco-sales-to-under-21-year-olds law and the motion to strike out the ban on possession was expressly phrased in terms of “all new matter in Section 4469x,” members’ confusion is puzzling. Unknown is whether these members understood that they had banned all sale of cigarettes but deleted the penalty for it.) Two days later, on reconsideration the House, coming to its collective senses, voted to strike out the enacting clause, thus killing what was left of Southwick’s initiative.

A deeply disappointed Deseret News editorialist sought to turn his post mortem into resuscitation by expressing the belief that, no matter how late in the session, “the legislative champions of public health, intellect and morals” might reconstruct the bill into an “unobjectionable” measure and pass it. His failure to reveal exactly what had been objectionable to whom was unsurprising since he assumed that “there could have been no honest or intelligent objection” to S.B. No. 180’s purposes and “the disgusting and deadly cigarette was hardly less [than liquor], in the minds of the people, an evil that demanded early removal and eradication.”

After his election to the state Senate in 1918, Southwick introduced a bill (S.B. No. 105) at the 1919 session that was virtually identical to H.B. No. 180 except that it omitted the phrase “for the purpose of smoking,” thus expanding the scope of the ban on adults’ possession of cigarettes. Even more


1367 House Journal: Twelfth Session of the Legislature of the State of Utah...1917, at 500 (Mar. 1).

1368 According to one press account, had members realized that the amendment limiting coverage to minors did not apply to the whole bill, they would not have passed it. At this point the assumption arose that the bill would therefore be killed in the Senate. “Anticigarette Bill Is Passed,” Salt Lake Telegram, Mar. 2, 1917 (3:1).


1370 “Kill the Cigarette, Not the Bill,” DEN, Mar. 6, 1917 (4:3) (edit.).

1371 S.B. No. 105 (Feb. 11, 1919, by Southwick), on http://images.utah.gov (Series 428, Box 16, Fld 1); Senate Journal: Thirteenth Session of the Legislature of the State of
enthusiastically than in 1917, the student body of Brigham Young University, speaking through its three-member presidency, submitted a petition urging the legislature to make “Utah the first State of our Union to take this progressive step” of banning the manufacture, possession, sale, and use of cigarettes and cigarette papers. Residents of Lehi, Southwick’s hometown, also urged their county’s legislators to support Southwick’s bill.\textsuperscript{1373}

That the Mormon hierarchy, as explained below, did not concertedly and organizationally engage on behalf of Southwick’s measure in 1919 (as it would in 1921) did not mean that it failed to lend it any support. In particular, the church’s Deseret Evening News, one of the state’s largest-circulation dailies, editorialized twice in favor of S.B. No. 105. Indeed, just a week before the bill’s introduction, under the title, “Coffin for the ‘Coffin-Nail,’”\textsuperscript{1374} it used the occasion of a recent Colorado Presbyterian synod resolution advocating the prohibition of manufacture and sales in the entire United States to express the optimistic opinion—which stood the tobacco industry’s apprehension on its head—that “it becomes more and more evident that a great concerted move will be made against the cigarette by the present Anti-Saloon League, as soon as the changed conditions due to the demise and somewhat turbulent burial of John Barleycorn have been readjusted to the new order of things....” Despite the scorn and ridicule to which promoters of such a movement had been subjected, the Mormon editorialist assured his readers, “the same measure of success against the despicable and deadly cigarette will be eventually chronicled.”\textsuperscript{1374}

The day after devoting an entire article (including the full bill text) to the introduction of Southwick’s bill,\textsuperscript{1375} the News, under the title, “The Deadly Cigarette,” editorially emphasized that “[t]he great majority of this state are strongly opposed to the use of tobacco,” adding that all reputable doctors, joined by educators, agreed that it was “injurious.” Consequently, it asked, “why should it be tolerated, as a costly, filthy, indulgence? Why especially should the use of the cigarette—probably the most insidious and destructive form in which the addict can enjoy his poison—be allowed, nay even encouraged as has been the case since the war’s outbreak...to grow to the fabulous figures” of 39,000,000,000

\textsuperscript{1372}Senate Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 283 (Feb. 19).
\textsuperscript{1373}“Abolish Cigarettes Is Plea to Law Makers,” OE, Feb. 19, 1919 (8:6).
\textsuperscript{1374}“Coffin for the ‘Coffin-Nail,’” DEN, Feb. 11, 1919 (4:2-3) (edit). On industry fears, see below ch. 17.
\textsuperscript{1375}“Bill in Senate to Place Ban on Cigarette,” DEN, Feb. 12, 1919 (sect. 2, 1:7).
produced in 1918 or 400 per capita?\textsuperscript{1376} Focusing then on the course of the state’s legislation on the subject, the paper criticized previous efforts and proffered its advice on how to avoid repeating past mistakes:

Utah legislators have more than once been given an opportunity to place their state in the front rank of reform by enacting an anti-cigarette law. Measures of this kind have been presented, supported by strong public sentiment, but an insufficient number of the lawmakers have found themselves able to take the matter seriously. By some frivolous parliamentary trick, or by ridiculous amendments which the real friends of the original measures were not keen enough to detect and prevent, such legislation has thus far failed to reach the statute book except as applicable to minors. The present legislature will also have an opportunity to place itself on record; and friends of the bill introduced by Senator Southwick should see to it that no member be allowed to escape voting on the bill on its merits—in other words that it be not killed by a technicality.\textsuperscript{1377}

A month later, after the bill had passed the Senate and was pending in the House with only two days left in the session, the News, in a blunt message to the lower chamber (“Pass the Anti-Cigarette Bill”), insisted that “if the sentiment of the people shall be truly reflected by their representatives,” S.B. No.105 could be “adopted with practical unanimity.” Warning against forcing Utah to wind up in the rearguard rather than in the leadership of a movement that was “already strongly under way in other states”—though the editorialist would have been hard-pressed to name them—the Mormon newspaper made transparent the chronological context for its engagement: “now that [liquor] prohibition is out of the way...the next great logical reform measure” was “decreeing that tobacco also must go.”\textsuperscript{1378}

S.B. No. 105 encountered its first sign of resistance in the five-member Senate Public Health Committee, a three-member majority of which reported on it unfavorably “in its present form.” Chairman Daniel Stevens, a merchant, submitted a comment to the full Senate explaining in effect that he would support only an even more radical measure (that he knew stood no chance of passage). Since “[l]ittle or no attempt” was being made to enforce the existing no-sales-to-under-21-year-olds law:

If public sentiment against the cigarette is not sufficiently crystallized to secure an attempt at enforcement of the present law, a more drastic law would meet with popular disfavor and fail utterly of enforcement. ... It is his [Stevens’] opinion that S.B. No. 105 is

\textsuperscript{1376} “The Deadly Cigarette,” \textit{DEN}, Feb. 13, 1919 (4:1) (edit.).


\textsuperscript{1378} “Pass the Anti-Cigarette Bill,” \textit{DEN}, Mar. 11, 1919 (4:2) (edit.).
considerably in advance of public sentiment at this time. But if the Legislature is going to force this sort of legislation upon one class of smokers, regardless of public sentiment, it should do a good, thorough job of it and treat all classes alike.

If S.B. No. 105 were so amended to prohibit the sale and use of tobacco in any form for human use, and apply it to all ages, he would willingly and gladly support such a measure. 1379

Reinforcing this initial set-back, the bill’s consideration on second reading was accompanied by “considerable merriment and the general impression seemed to be that it would soon be killed,” 1380 but in fact it passed by a vote of 12 to 5 (one of the committee majority defecting to the Ayes) 1381 and made it through final passage by a vote of 11 to 6 (the defector reverting to the Nays). 1382 The anti-prohibitionist Salt Lake Telegram called this outcome “one of the biggest surprises of the session....” 1383 Despite these solid majorities a potential obstacle emerged when one of the senatorial Ayes intimated that he might offer an amendment to place the issue before the people of Utah for a popular vote, and even if he did not, the press conjectured that opponents might—if the House did not asphyxiate it first. But underlying approval for the general prohibitory approach was audible in the thunderous Aye accorded another Yes-voting senator’s proposal to raise the minimum age for sale/purchase from 21 to 91 on the grounds of the infeasibility of enforcement of a no-smoking law against a boy whose parents were free to smoke. 1384 Southwick pointed out that raising the age to 91 would render the rest of his bill dealing with sales to adults unnecessary. At least one senator opposed the bill on the grounds that, while tobacco use was harmful, so was chewing gum, but that sumptuary legislation was useless “until the people demand it,” and he saw no such public demand. Senator (and future

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1382 Senate Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 516 (Mar. 7); “Committee Ignored; Cigaret Bill Passed,” SLT, Mar. 8, 1919 (13:3).
1383 Senate Passes Anti-Cigarette Bill,” Salt Lake Telegram, Mar. 7, 1919 (sect 2, 1:7). Even the Telegram conceded that, despite the tendency to treat the bill as “adding to the gaiety of nations...the final vote indicates that the senators eventually gave it thoughtful consideration.” “Anti-Cigaret Bill Passes Senate; Goes to House,” Salt Lake Telegram, Mar. 8, 1919 (8:3).
1384 Utah May Have Cigarette Ban by State Laws,” OE, Mar. 7, 1919 (2:2-4).
Governor) George Dern confessed that he no longer believed that “all cigarette smokers were no good” because most of the U.S. soldiers who had gone to France smoked cigarettes, and they were “pretty good fellows,” although he personally found cigarette smoking offensive and “did not want to see his boys get the cigarette habit.” Moreover, if Utahns wanted such a law, they now had the initiative law to enable them to secure it.\textsuperscript{1385}

A month before S.B. No. 105 reached the House that chamber had received identically worded petitions from the student presidents and substantial numbers of students of two high schools urging elimination of “Utah’s greatest present menace—the cigarette.”\textsuperscript{1386} Although even the News noted that few legislators had initially expected what they deemed a “‘freak’” measure to become law, after Senate passage, “the odds against the enactment of this particular bit of moral legislation were reduced until” a few days before House consideration “its passage was assured.”\textsuperscript{1387} Nevertheless, on the last day of the session, weaker House backing for the bill became unoverlookable on a kind of test vote to table the measure in lieu of a third reading: the narrow 20-22 defeat nevertheless indicated that the constitutionally required 24-vote majority might not be available after all.\textsuperscript{1388}

Before the chamber proceeded to the final vote, opponents sought to amend the bill to death by making it “so blamed ridiculous everybody will vote against it.”\textsuperscript{1389} The most significant such amendment stemmed from Democrat Robert Hinckley—son of a well-known and influential Brigham Young University geology professor—\textsuperscript{1390}—who, in response to doubts expressed about his

\textsuperscript{1385}“Cigarette Measure Progressing in Senate,” \textit{DEN}, Mar. 7, 1919 (8:4). Using a common tactic of ridicule that opponents of anti-tobacco legislation had been enamored of since the 1890s, one senator tried to introduce a “companion bill prohibiting the use of hat-pins, rouge, powder, peek-a-boo waists and open-work stockings by women, but the senate would not let him present it.”


\textsuperscript{1389}“House Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 739-40 (Mar. 13). The last legislative “day” extended beyond March 13 as the clock was stopped to simulate compliance with legal limit on the length of the session.


“sincerity,” denied that his proposal to extend the bill’s ban to all tobacco was a “joker.” Hinckley appears to have been motivated by his view that Southwick’s bill did not give the returning “soldier boys a fair deal.” Instead of responding to a question as to how his amendment would help those veterans, Hinckley launched into a fascinating riff suggesting that implementation of such a ban would incite proletarian class war: he declared that his amendment was “totally discriminatory and in view of the labor unrest, adverse economic conditions and other misfortunes which the laboring man encounters under the present social conditions, to pass such drastic legislation was ‘like shaking a red flag in a bull’s face.’” Other opponents also stressed S.B. No. 105’s discriminatory aspect, while proponents focused on the “evils of the cigarette habit” without justifying the curtailment of adults’ freedom for the sake of adolescents. As had been the case in many other state legislatures going back to the 1890s, the sales ban was also attacked on the grounds that it would merely result in turning over the business to out-of-state mail-order houses. “The House rejected the killer amendment to extend the ban on possession of cigarettes to ‘tobacco in any form.’”

The vehemently anti-prohibitionist *Salt Lake Tribune*, the state’s largest-circulation daily, conveniently cataloged the anti-tobacco arguments as “perhaps, the most sweeping, unsupported and unproved statements that have yet been made by proponents of any measure in the present session.” They included the claims that “the people of Utah...resented the fact that the smoking habit was encouraged during the war” and that 75 percent of them “were against the use of tobacco.”

By this juncture, since “nobody seemed to know what they were voting for,” one representative requested and received permission from the speaker of the House to ask the assistant attorney general, who happened to be present, to lay out the measure’s “exact provisions.” As odd as this procedure was the official’s

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woefully inaccurate “decision” that “the bill as printed provided for the
prohibition of the sale of tobacco in any form to minors, and made it a
misdemeanor to sell cigarettes to both minors and adults” (thus omitting
mention of the bans on public smoking and advertising).

The 25 to 18 vote on third reading—which one newspaper described as
“Utah Legislators Go on Record Favoring Freak Cigaret Legislation”—would,
as the Tribune reported, have placed the legislature’s imprimatur on “regulat[ing]
the smoking habits of Utah adults, an advanced step in the line of radical
legislation that heretofore has not been put into effect.” Passage would also
have sent “one of the most drastic bills passed at this session” on to Utah’s
first non-Mormon Governor, Democrat Simon Bamberger, a non-smoking and
non-drinking German-born businessman as well as a progressive who strongly
supported liquor prohibition, but adoption of a minor amendment required a
concurring vote in the Senate.

On the bill’s return to the Senate Southwick’s motion to concur in the House
amendment carried, but Senator Allen Sanford urged jettisoning the bill
altogether on the grounds that it was unwise to try to “force this sort of sumptuary
legislation upon the people who were not in a mood for it” lest the resulting
“antagonism” carry over to compliance with the liquor law as well. Then a
conflict arose as to the law’s effective date on the grounds that dealers had a stock

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1397 “‘Fag’ Measure Passes After Warm Confab,” Salt Lake Herald, Mar. 15, 1919 (14:1).
1399 “Cigarettes to be Barred from Utah in Future,” OE, Mar. 15, 1919 (7:1).
1400 The Utah State Legislature: Centennial History, 1896-1996, at 325 (J. Hammond et al. comp. 1996). Whether he would have signed the bill was deemed “problematical” at the time: on the morning of the last day of the session he declined to reveal his position before the legislature acted, though its opponents claimed that he would return it for additional consideration. “Cigarette Bill Is Put to Death in Last Day Rush,” DEN, Mar. 15, 1919 (sect. 2, 1:6-7 at 7).
1401 House Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 740 (Mar. 13). “Cigarettes to be Barred from Utah in Future,” OE, Mar. 15, 1919 (7:1), incorrectly reported that the bill “now goes to the governor.” The amendment corrected what appears to have been an error and restored language from Southwick’s 1917 bill by declaring that anyone violating any of the provisions of the section was guilty of “a misdemeanor” (rather than of “violating any of the provisions of this section”).

1582
of hundreds of thousands of dollars worth of tobacco in the absence of a provision for them to dispose of it. Southwick strenuously opposed the proposed date of March 1, 1921 (that is, in the midst of the next session) as meaning the bill’s defeat; its proponent, Mormon anti-prohibitionist Uriah Jones, in effect conceded this decoding when he observed that the date “would give opportunity to get expression from the people on the subject and the next legislature would be guided by such opinion in either killing the act or letting it go into force.”

When, instead, a January 1, 1920 effective date prevailed, S.B. No.105 failed to pass on a 9 to 9 vote. Sentiment in favor of enactment, however, prompted reconsideration of that tie vote, rejection of the alternative later effective date, retention of the earlier date, and final passage by a still comfortable vote of 11 to 7.

Adoption of this amendment required House concurrence, the motion in favor of which carried, but opponents sought to block the vote on final passage with a tabling motion, which lost by a vote of 14 to 22. On passage of the amended bill, which would have prohibited possession of cigarettes by anyone in Utah, proponents were able to mobilize 23 Ayes against 14 Nays, but they fell one vote short of a constitutional majority on the final day of the session, thus killing S.B. No. 105 and ending a legislative process that had been “as exciting as a horse race.” The fact that the measure was extinguished on the basis of such a minor issue, especially when 10 members were absent, half of whom had voted on

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1402 "Anticigaret Bill Fails of Passage," SLT, Mar. 16, 1919 (11:1). On Jones, see above this ch.


1404 House Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 745-46 (Mar. 13); “Kill Anti-Cigaret Measure in Utah,” Sunday World-Herald (Omaha), Mar. 16, 1921 (1:7); “Vote That Killed Anti-Cigarette Bill in the Lower House,” DEN, Mar. 17, 1919 (2:2). The 10-member Salt Lake County delegation split evenly on all votes on the bill that day. Democrats for the first and last time until the New Deal overwhelmingly dominated both chambers in 1917 and 1919; no Republicans were elected to the House in 1917 and only nine in 1919; of the five who voted on final passage of S.B. No. 105 four cast Ayes. Party affiliation was determined on the basis of the vote for House speaker. House Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 3 (Jan. 13). “Thirteenth Session State Legislature Begins Its Labor,” DEN, Jan. 13,1919 (1:1-2, 2:7), provided a list of members by party, which differed slightly from that used in the text.

1405 “Smoke Pill Saved to Users,” Salt Lake Telegram, Mar. 15, 1919 (1:2).

1406 Some legislators opined that if the bill had included an effective date when it was introduced it would have passed. “Cigarette Bill Is Put to Death in Last Day Rush,” DEN,
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

the bill earlier that day, suggests that a more substantial and substantive opposition to passage of the radical prohibition underlay the failure to muster that one additional vote.\textsuperscript{1407} (Some House opponents had, after all, expressed the hope that some senators would reconsider the vote on the bill’s passage and “table it for the present session.”)\textsuperscript{1408}

Although a segment of the out-of-state press erroneously reported that “Utah is the first state to follow up [liquor prohibition] with an anti-cigarette law,” it added that: “It is the enactment of such laws that the wets are depending on for a revulsion of sentiment.” This editorializing was especially ironic because the newspaper did not even mention (if it knew about) the advertising and partial public smoking bans.\textsuperscript{1409} The near-passage was also, at least propagandistically, qualified by merchants’ threat, if the bill had become law, to challenge its constitutionality on the (novel if not bizarre) “grounds that since the United States government sells cigarettes to soldiers and includes the article in its allowances of overseas units, any act prohibiting its sale to soldiers at least is unconstitutional.”\textsuperscript{1410}

\textit{Enactment Based on Mormon Church Mobilization (1919-1921)}

[The rights of men and women who do not smoke are being offensively interfered with by tobacco smokers who either thoughtlessly or selfishly smoke in public places and thus pollute the pure air to which everyone is entitled.]\textsuperscript{1411}

\textsuperscript{1407}The Salt Lake Mormon daily noted that the “absence of advocates of the cigarette bill” was responsible for the bill’s defeat, adding in the session’s closing hours that “unless these member are present...and vote for a suspension of the rules to reconsider the measure, the Southwick anti-cigarette bill is an item of history.” “Cigarette Bill Is Put to Death in Last Day Rush,” \textit{DEN}, Mar. 15, 1919 (sect. 2, 1:6-7 at 7). According to “Cigarette Bill Is Killed by Amendment,” \textit{SLH}, Mar. 16, 1919 (32:7), the bill’s proponents claimed that a majority of the absentees were friends of the bill and that their absence was largely responsible for its defeat (without explaining why they were absent).

\textsuperscript{1408}“Anticigaret Bill Is Passed by House,” \textit{SLT}, Mar. 15, 1919 (9:4).


\textsuperscript{1410}“Cigarette Bill Is Put to Death in Last Day Rush,” \textit{DEN}, Mar. 15, 1919 (sect. 2, 1:6-7 at 7). The article did not make it clear whether merchants had made this threat before or after the bill’s defeat.

\textsuperscript{1411}Resolutions Authorized by the Convention of Y.M.M.I.A. Stake and Ward
Although the Mormon church did not openly intervene in the anti-cigarette legislative process until after the failed attempt to pass a general sales ban during the 1919 session, in 1918 it had published a book on tobacco by Frederick Pack, a geology professor at the University of Utah, who devoted a whole chapter to the subject of the poisonous effects of “second-hand” tobacco smoke under the playful but far-seeing title, “The Smoker and the Smoked.” Based on several studies Pack concluded that it was “already a scientifically demonstrated fact that individuals associated with smokers are adversely affected by their habits.”

Although “the injury is not so great as that produced by direct smoking,” nevertheless “[t]obacco smoke should be looked upon as a marked poison, whether used first—or second-hand.” Pack’s interest was especially focused on children, a “considerable percentage” of whom in the United States were “reared in an atmosphere vitiated and poisoned by such fumes” generated by their fathers.... Unfortunately,” however, “the opinion is almost universally held by smokers that if any injury is being done they alone are the sufferers.” Yet despite the inarguably serious injury that a “delicate infant” would sustain “in an atmosphere laden with tobacco smoke,...parents on every hand may be seen thus abusing their children.” Moreover, there was no doubt that “many of the ailments appearing in later life are the result of being subjected to tobacco smoke in childhood.”

In leaping from is and ought to ‘shall soon be’ Pack was, perhaps,
overstimulated by Kansas state legislator Oliver Jewett’s aforementioned (expeditiously killed) bill that was interpreted to prohibit smoking even in a home with children to make the hopelessly overoptimistic assertion that a prophet’s foresight was not needed to “declare that the time was not far distant when civil law will make it impossible for fathers to smoke in the presence of their children.” Nevertheless, Pack’s insight into the requisite scientific underpinnings of the articulation of public policy was deep enough to prompt him to formulate a research desideratum that almost a century later is still in its infancy—namely, whether, apart from social-psychological parental learning/imitative processes, addiction can be acquired biochemically and/or physiologically as a result of growing up in a smoking household: “It would be interesting...to investigate the effect of early exposure in producing a craving for tobacco a few years later. Do boys reared in smoke-saturated homes acquire the tobacco habit more readily than other boys? In other words does second-hand smoking lead to first-hand smoking? If we are not mistaken the future will answer these questions in a most positive affirmation.”

Though not a Mormon organization, the branch of the No-Tobacco League that began to be organized in Utah in April 1919, a month after the defeat of Southwick’s bill, enabled Mormons to secure prominent positions in this independent movement from the outset. Mormon church President Heber Grant also subsidized the group by advertising in its periodical his insurance business, which also housed the insurance business of the Utah No-Tobacco League’s Mormon first president, and the organization held its first annual meeting in the Mormon Granite Stake Tabernacle. As city organizer for the state the Indiana-based group, whose objectives encompassed the dissemination

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1415See above this ch.
1416Frederick Pack, Tobacco and Human Efficiency 37-38 (1918).
of information on and passage of legislation to prohibit tobacco use, appointed Fred L. W. Bennett\textsuperscript{1421} (1888-1944),\textsuperscript{1422} who had converted to Mormonism and emigrated from England to Utah in 1916.\textsuperscript{1423} A notice that Bennett requested the Mormon \textit{Improvement Era} to publish the month after his appointment as “organizing or field secretary for Utah” stressed that the “movement is non-sectarian and several non-‘Mormons’ as well as ‘Mormons’ have already joined the league in Salt Lake City...”\textsuperscript{1424} (To be sure, a year later the League admitted that it had “received more support from the officers and members of the dominant church than from others, for the obvious reason that this church alone regards abstinence from the use of tobacco as a Divine commandment.”)\textsuperscript{1425}

By the end of August 1919, 17 people formed a temporary organization of the No-Tobacco League of Utah,\textsuperscript{1426} which a few days later was formally established\textsuperscript{1427} and by its first anniversary boasted of having 800 members who had paid the 50-cent membership fee.\textsuperscript{1428} The League’s reason for existing was seemingly straightforward, highly political, and grounded in typical progressive-era anti-corporatism:

\begin{quote}
\textit{“No-Tobacco League Organizes in S. L.,” SLH, Apr. 14, 1919 (12:2). For the tobacco industry’s account of the No-Tobacco League, which was organized in Indiana in 1915 and by 1921 had branches in California, Kansas, and Utah, see Tobacco Merchants Association of the U.S., “Summary of Anti-Tobacco Educational Activities” at 12 (June 1, 1921), Bates No. 502359512/24.}
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\textit{“Passing Events,” IE 22(7):645 (May 1919).}
\end{quote}

\begin{quote}
\textit{“Non-Sectarian,” No-Tobacco News 1(2):5 (Oct. 1920). \textit{Improvement Era} advertised in the League’s periodical, soliciting subscriptions for “a magazine that is clean and wholesome” and that had “consistently opposed the tobacco habit since its first issue.” Id. at 2; No-Tobacco News 1(1):3 (Apr. 1920).}
\end{quote}

\begin{quote}
\textit{“No-Tobacco League Is Organized by 17,” SLH, Aug. 29, 1919 (16:6). Despite the general reference to the Utah entity as a branch of the national organization, it insisted that it was “not a branch or part of any other organization. It was founded by Utah people to whom it is alone responsible. A separate organization was considered desirable for Utah owing to the great distance from the headquarters of the national organization.” “In Brief,” No-Tobacco News 1(2):9 (Oct. 1920).}
\end{quote}

\begin{quote}
\end{quote}

\begin{quote}
\end{quote}
The tobacco trusts are today threatening to enslave the manhood and womanhood of our entire nation. In view of this fact it becomes absolutely imperative on the part of the non-smokers of our country to league against this pernicious propaganda.

More than two years have now passed since that most dastardly surprise attack was swiftly and secretly launched against an unsuspecting public. Simultaneously in more than five hundred of our leading newspapers and magazines of our fair land came the plea for “well filled” pipes and “abundant cigarettes” for our boys “over there.” These tobacco advertisements, for such they really were, caught the sympathy of thousands of well meaning men and women who, by their response, flooded our armies with untold quantities of the self-destroying evil.

We are finally awakening to the duplicity of the measures that were then employed, but in the meantime the tobacco trusts are flattering themselves that smoking has been popularized to the extent that their sales have nearly doubled.

It is to stem the tide of this evil and the salvation of our boys and girls and the race that the No-Tobacco League of Utah was organized.\footnote{J.M.A., “Why a League?” \textit{No-Tobacco News} 1(1):2 (Apr. 1920).}

The suspicion raised by this indictment that the Nicotine Trust had given the No-Tobacco League of Utah no reason to be called into being before U.S. entry into the world war in 1917 was borne out by the group’s peculiar reified conception of its real yet agencyless adversary:

We have no hatred against the tobacco manufacturer, or dealer or the smoker. In most cases the former entered the business in good faith, we have no doubt, little thinking that it would be regarded before long as a public menace whilst the smokers as a rule acquired the habit from others and would give anything if they could overcome it.

All our hate is for tobacco, and we are going to wage war on it. ... The aim of the No-Tobacco movement in Utah is...to arouse and crystallize the strong anti-tobacco sentiment which as always existed here.\footnote{Michael Mauss, “Our First Annual Report,” \textit{No-Tobacco News} 1(2):7 (Oct. 1920).}

Exactly how the No-Tobacco League of Utah intended to exterminate a commodity without attacking its capitalist monopolizer it did not make clear, but its publicly articulated aspirations were lofty: “We are prompted by a single desire: the uplift of humanity, and the destruction of tobacco will, we are convinced, do much in this direction.” And to this end during its first year it was industrious both internally and externally, holding 30 business and 125 public meetings.\footnote{No Apology Offered,” \textit{No-Tobacco News} 1(1):2 (Apr. 1920).}

The first public inkling that the Mormon hierarchy had finally resolved to place its considerable influence behind anti-tobacco legislation emerged in
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October 1919, seven months after the defeat of that year’s anti-cigarette bill, when, pursuant to a resolution passed on June 2, by a Convention of Social Welfare Workers held in Salt Lake City, the church Social Advisory Committee (which represented all of the church’s auxiliary organizations) issued a brief bulletin on “The Cigarette Evil.” Prompted by the “alarming rate” of increase of cigarette consumption both nationally and among Mormon youth, the Committee decided to call the attention of the “Saints” to “this growing menace...in order to arouse and crystallize a public sentiment that shall effectually stem this tide of evil.” Against the background of the non-enforcement of no-sales-to-and no-use-by-minors laws even in Mormon-populated states, the church identified three causes of the increase in the use of cigarettes: (1) their having been lavished on soldiers during the war; (2) an increased demand for narcotics prompted by the advent of alcohol prohibition; and (3) “and probably the main cause...the extensive advertising campaigns that the tobacco interests have carried on in recent years,” taking advantage of the war- and patriotism-inspired minimization of tobacco’s harmful effects. The ubiquitization of advertising went hand in hand with that of smoking itself: “In the street-car ads, on the billboards, in the pages of the magazine and the newspaper, and on the motion picture film—wherever, in short, your eyes may rest—you will see alluring invitations, sometimes open, sometimes covert, to indulge in smoking. And always these advertisements are associated with what attracts the youth—beauty, ease, leisure, wealth. Lately special efforts are being made in advertisements to induce women to take up the habit of smoking cigarettes.”

1432 The Social Advisory Committee was founded in 1916 by church leaders as an attempt to “coordinate efforts to promote both social reform and moral retrenchment....” The initial targets were young women’s attire, censorship of movies, and prohibition of dancing based on jazz and popular music. The auxiliary organizations included Sunday School, Young Men’s Mutual Improvement Association, Young Ladies’ Mutual Improvement Association, Relief Society, and Religion Classes. The Committee had promoted attendance at a national social work conference in Atlantic City during the first week in June 1919; when three members returned, the Committee held a meeting emphasizing a Saturday half-holiday and an anti-cigarette campaign to discourage tobacco use, but also juvenile delinquency, sexual immorality, venereal disease, dancing, and censoring commercial amusements. Later in 1919, Arthur Beeley, a professor of criminal sociology at the University of Utah and later founder of its school of social work, was hired as the Committee’s executive secretary. Thomas Alexander, “Between Revivalism and the Social Gospel: The Latter-day Saints Social Advisory Committee, 1916-1922,” BYU Studies 23(1):19-39 at 24-26, 29, 30 (1983).

the crucial role of advertising in priming children to become lifelong addicted customers went so far that by the 1921 legislative session the anti-cigarette bill’s Mormon introducer appeared to advocate a sales ban for the purpose of making an advertising ban possible: “we cannot prevent advertising of any article of which we permit the sale.”)\textsuperscript{1434}

The Social Advisory Committee declared that the church had to aid anti-tobacco organizations “to drive the cigarette from our communities. It is a struggle for the boy and the girl. The men and women of the future will not be so likely to use tobacco if the boys and the girls of the present do not form the habit. But the shrewd nicotine trust levels its guns at the growing generation, knowing that a youth who learns to smoke means from a thousand to fifteen hundred dollars more in its pockets than one who picks up the habit later in life.” Paying close attention to the capitalist profit/addicted young consumer link, Mormons understood that: “If they [i.e., young people] can keep from forming the tobacco habit till they are past the habit-forming period in life, they will be saved from the money-grubbing tobacco interests,” which “would coin the nation’s manhood and womanhood into filthy lucre.”\textsuperscript{1435} To be sure, a sustained systematic attack on wealth would, in light of the church leaders’ own generally sympathetic attitude toward business interests, have been unlikely.\textsuperscript{1436}

In addition to urging local social advisory committees to forge organizational links with community “uplift forces” and against the background of the overarching goal of securing enactment of “a State law banishing the cigarette forever,” the Committee formulated as its first objective the enforcement of the existing no-sales-to-minors law, without which enactment of other anti-tobacco laws would not be possible. Bolder and more radical was the second objective: “we should seek to destroy the power of tobacco agencies working through church had opposed sending tobacco to soldiers in Europe. “Tobacco Habit Condemned by Church Speaker,” \textit{OE}, Mar. 8, 1920 (2:3).

\textsuperscript{1434} Anti-Cigaret Bill Debated,” \textit{OS-E}, Feb. 3, 1921 (4:4). Edward Southwick made this statement during Senate floor debate in opposing an amendment that would have licensed the sale of cigarette. See also below this ch.

\textsuperscript{1435} The Cigarette Evil,” \textit{YWJ} 30(10):548-50 at 549, 550 (Oct. 1919). Since the Mormons presumably knew that adults too could become addicted, they must have meant that relatively few people began smoking cigarettes later in life—a fact a century later, but not the case among women at that time. David Burns et al., “Cigarette Smoking Behavior in the United States,” in National Cancer Institute, \textit{Changes in Cigarette-Related Disease and Their Implication for Prevention and Control} 13-112 at 22 (1997).

advertisements to entangle the youth. Public sentiment should be roused against tobacco; local authorities should be induced, as in Murray, Utah, to put a ban on the use and sale of cigarettes, and if possible to pass ordinances forbidding billboard advertising of tobacco in any form.” Persuading store owners not to sell tobacco, “or at the least, cigarettes,” was another vital tactic, which, the Committee imagined, “ought not to be difficult” to implement, at any rate with Mormon shopkeepers; regardless of their religion, civil complaints should be filed against persistent violators because: “No one who breaks this law deserves any sympathy.” Coordinated with persuasion and law were community-wide pledges to boycott stores that sold tobacco and newspapers and magazines that advertised tobacco.\textsuperscript{1437} The capstone of the Mormons’ totalizing attack was, ironically, both continuous with its (aforementioned) censorious moralistic approach to movies and anticipatory of an avantgarde strategy developed by the science-based tobacco control movement at the turn of the next century:\textsuperscript{1438} “[W]ork with those who operate motion pictures so as to secure the elimination of all plays that show the characters using tobacco in any form. The film is one of the most impressive means of instilling into the minds of the young any ideals.... Inasmuch...as so many of the pictures on the film nowadays show the characters in the act of smoking, this becomes one of the most insidious ways of advertising tobacco....”\textsuperscript{1439}

An editorial in early 1920 in the church’s periodical, which was edited by the Mormon church’s new President Heber J. Grant (1856-1945), underscored its new, aspirationally prohibitory position: “It would be a good thing if tobacco

\textsuperscript{1437}“The Cigarette Evil,” \textit{YWJ} 30(10):548-50 at 549 (Oct. 1919). Located near Salt Lake City, Murray was a smelter town of about 4,600 in 1920. A license law (under which four dealers were licensed) was in effect in Murray, but the city attorney and marshal stated that boys were still getting cigarettes, and that prohibition would be better. “Cigarette Bill on Calendar for Passage,” \textit{DN}, Feb. 17, 1921 (sect. 2, 8:6-7); “Amendments to Anticigaret Measure Rejected in Lower House,” \textit{SLT}, Feb. 17, 1921 (10:1). With regard to “Mormon shopkeepers”: during House debate on the 1921 Southwick bill, Rep. O. F. McShane, one of its leading opponents, admitted the truth of the accusation that he sold tobacco in his store, but added that he bought it all from the (Mormon church-owned) Zion’s Cooperative Mercantile Institution. “House Battles over Committee’s Amendments to Anticigaret Bill,” \textit{SLT}, Feb. 15, 1921 (10:1 at 2).

\textsuperscript{1438}Stanton Glantz’s “smoke free movies” proposal includes the U.S. movie industry’s voluntarily giving an R rating to any film showing or implying tobacco, subject to two exceptions: presentations of tobacco that clearly and unambiguously reflect tobacco use’s dangers and consequences or that are necessary to representing a real historical figure’s smoking. http://smokefreemovies.ucsf.edu/solution/index.html

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were cleared out of every grocery and other place of sale, in all the land, particularly where Latter-day Saints control. Why? Because it is not good to make profit out of that which is seriously detrimental to the human race, physically, morally and mentally.\[1440\]

In this respect Grant differed from his predecessor Joseph F. Smith (whom he had succeeded in November 1918), who had cooperated with Senator Reed Smoot, head of the Utah Republican Party and a member of the church governing body, the Quorum of the Twelve Apostles, in staving off enactment of statewide liquor prohibition (in contradistinction to a local option regime) lest it reignite the kind of anti-Mormon political formation previously embodied in the American Party, which threatened cooperation with the Republican Party’s non-Mormon business faction. During the decade preceding his presidency, Grant—who had also been one of the Twelve Apostles (since 1882)—had been both liquor prohibition’s leading advocate among the latter and the foremost Mormon Democrat, who inserted the issue into every election in contrast to Smith, who, at least in public, argued that compliance with Mormon doctrine regarding liquor should be left to individual church members.\[1441\]

Not having been sheltered from secondhand tobacco smoke exposure, Grant knew firsthand of its detriments, particularly because as a boy he had worked in a non-Mormon office where everyone had smoked: “I had to stand by a desk with my boss smoking all day long. It made me sick and I would go out in the backyard and ‘cast up Jonah’ regularly until I got used to it.”\[1442\]

That some Mormons were, however, continuing to use tobacco underlay the talk that one of the Utah No-Tobacco League’s traveling speakers gave in a


\[1441\] Jan Shipps, “Utah Comes of Age Politically: A Study of the State’s Politics in the Early Years of the Twentieth Century,” UHQ 35(2):91-111 at 103-107, 111 (Spr. 1967). Despite his Democratic activism before becoming head of the Mormon church, Grant was only nominally a Democrat, his program being limited to effectuating liquor prohibition; once this goal had been achieved, he resolved his differences with Smoot, and the two parties operated without his advice let alone consent. Id. at 111. In 1932 he supported Hoover and in 1936 Landon against Roosevelt; he vociferously opposed the New Deal for “breeding idlers.” “Mormon Church Head Feted,” LAT, Nov. 23, 1932 (A5); “Utah Republicans See Landon Gains,” NYT, Aug. 7, 1936 (9); Arthur Henning, “Prosperity in Utah Traced to New Deal Cash,” CT, Sept. 26, 1936 (6) (quote).

\[1442\] President Heber Grant, “On the Use of Tobacco,” YWJ 33(9):471-76 at 472 (Sept. 1922) (address at Mutual Improvement Association Conference, June 10, 1922). Even after his elevation in the Mormon hierarchy, he went on to relate, his wife once had to leave a banquet because the man seated next to her “smoked continually in her face.” Id. at 473.
Mormon ward in Ogden in March 1920 under the auspices of the Mutual Improvement Associations marking the opening of an educational campaign against tobacco use in any form. Observing that “it ought not to be necessary to address the subject before a congregation of Latter-day Saints because in the early days of the church a revelation was received from heaven declaring that tobacco was not for the use of man,” W. D. Livingston nevertheless informed his Mormon audience that the League “intends to work up a sentiment of ‘herd spirit’ that will cause our young men who are addicted to the habit of smoking [to] understand they cannot pay attention to our daughters. We intend to make these young men so ashamed of themselves that they will either quit the habit or leave the community.”

The church’s comprehensive approach to the legislative campaign was encapsulated in the slogan adopted by its Mutual Improvement Associations’ conference in June 1920: “‘We stand for the non-use and non-sale of tobacco.’” At that same conference, a member of the Council of the Twelve (Apostles), Melvin Ballard, in seeking to contextualize this “slogan” theologically, reveled in revealing just how literally dogmatic it was. It derived from the Word of Wisdom, Joseph Smith’s (alleged) revelation in Kirtland, Ohio, on Feb. 27, 1833: “‘Tobacco is not for the body, neither for the belly, and is not good for man, but is an herb for bruises and all sick cattle, to be used with judgment and skill.” Ballard emphasized that there is in this revelation no particular argument of a scientific character to show why these things that are forbidden are not good for man. Quite like the teachings of the prophets in all ages is this revelation through the Prophet Joseph Smith. Not by way of argument nor

1443 “Tobacco Habit Condemned by Church Speaker,” OE, Mar. 8, 1920 (2:3). W. D. Livingston was presumably the William Livingston who had been on the three-member committee that drafted the League’s constitution and by-laws. “No-Tobacco League Is Organized by 17,” SLH, Aug. 29, 1919 (16:6).

1444 Katie Blakesley, “‘Sin Is Creeping in Among Us:’ [sic] The Fight to Save the Youth and the 1921 Anti-Cigarette Campaign” at 1 (M.A. thesis, History Dept., University of Utah, 2004), unaware of the preceding years of Mormon anti-cigarette action, regarded the slogan announced on June 13, 1920 as an innovation, if not a deus ex machina: “No sooner had the war to make the world safe for democracy ended, than young men and women of the Church of Jesus Christ of Latter-day Saints...in Utah opened a new front against a deadly enemy.”

1445 Editors Table: Enforce the Cigarette Law,” IE 25(2):164-65 at 164 (Dec. 1921).

scientific reasoning giving forth evidences of the correctness of the doctrine have the prophets taught, but by positive, clear-cut statements, principles of truth afterwards demonstrated to be true. The prophet himself never engaged in any fine theories as to why tobacco was not good for man. The Lord Jesus taught this same way: “Blessed are the pure in heart for they shall see God.” That was sufficient. This ought to be sufficient for Latter-day Saints. It is on this basis that we shall conduct our campaign. I am glad, however, that those who have given the subject attention have brought forth abundant evidence to prove that the revelation is true and the doctrine correct, and that there is no good in those things which the Lord has commanded we should not use, and the command came when men did not know that tobacco was injurious.\textsuperscript{1447}

Shortly after the June 1920 conference the Social Advisory Committee published in its newsletter the recommendations of a small “Committee on Tobacco” that had been amended and adopted by a larger SAC group and then submitted to SAC for its consideration, after which they were to be submitted to the General Boards of the church auxiliary organizations (including the Mutual Improvement Associations).\textsuperscript{1448} These recommendations are of especial interest because they were much more comprehensive and radical than any proposals that the Mormon church ever publicly pursued or that the Utah legislature ever considered.

Significantly, although the Committee on Tobacco formulated its charge as considering and making recommendations “on the problem of controlling the tobacco habit among the Latter Day Saints,” it in fact set forth proposals with “the purpose of stamping out the use and sale of tobacco” for entire populations and


\textsuperscript{1448}Social Advisory Committee, “News Letter,” No. 3 (July 12, 1920), at 1 (copy furnished by LDS Church History Library, Salt Lake City). The “News Letter” did not identify the members of the committee, but they may have been the members of the “sub-committee acting for the Social Advisory Committee” that “prepared and approved” the material in a pamphlet (used in 1921 to support the campaign for passage of Southwick’s anti-cigarette bill) “[i]n order to guard against extravagant statements about tobacco and to secure the most authentic data.” The pamphlet presented “a digest of the most approved facts, figures and arguments for use during the campaign.” The members were largely stellar Mormon figures in higher education and medicine: Dean Thomas A. Beal, University of Utah Commerce School; Psychology and Education Assistant Prof. Arthur L. Beeley, University of Utah; Dean Milton Bennion, University of Utah Education School; Dr. George W. Middleton, former president of the Utah State Medical Association; Geology Prof. Frederick Pack, University of Utah; and Stephen L. Richards, member of the Council of Twelve (Apostles). \textit{The Case Against Tobacco} 1 (Social Advisory Committee of LDS Church, Pamphlet No. 8, Jan. 1921).
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not merely among Mormons. The committee divided these proposed measures into the “coercive” and the “pursuasive” [sic]. Beginning with the former, the committee first dealt with the traditional no-sales-to or use-by minors laws before proceeding to more controversial intervention:

[W]e as social workers favor using every legitimate means to promote the passage in our respective states of the following: (a) a law prohibiting the sale, distribution, and use of manufactured cigarettes or of cigarette papers; (b) a law providing for the adequate licensing of all stores and other agencies that handle tobacco in any form; (c) a law prohibiting the advertising of tobacco by means of any periodical, newspaper or circular published in the state or on any billboards or display window, or by any means whatever, that is subject to the control of the state, [sic] and (d) a law prohibiting the smoking of tobacco in any cafe, store, or other enclosed public place, except those especially designated for the purpose.1449

Every one of these proposals was more radical than the bill that Mormon Senator Southwick would introduce six months later: (a) prohibited the use and not merely the sale of cigarettes; (b) provided for licensing of the sale of non-cigarette tobacco; (c) prohibited advertising non-cigarette tobacco; and (d) prohibited tobacco smoking in any store or other enclosed public place (whereas Southwick did not cover stores or numerous other enclosed public places), although the exception, since it did not identify who would designate public places for smoking, left open the possibility that it would swallow the rule. (To be sure, the ban on the use of cigarettes in (a) meant that the exception could apply only to non-cigarette tobacco.)1450

1450 The phrase “our respective states” indicated both that some of the Mormon social workers came from states other than Utah and that the Mormon church aspired to influence public policy in such states. Numbers alone suggest that the only other state in which organized Mormons might have been able to secure passage of anti-cigarette legislation was Idaho. Whether in fact the anti-cigarette sales law that the Idaho legislature passed in 1921 was inspired by the SAC proposals is unknown, but it is any event noteworthy that, in keeping with Mormons’ much lower profile there, the bill and law did not encompass the further-reaching bans on advertising and public smoking. Also unknown is whether SAC influenced the introduction in Arizona in 1921 of a radical local option bill that would have empowered voters in counties and cities to determine whether to prohibit the sale of tobacco, cigars, and cigarettes. On the bill, which died on a 9 to 9 vote in the Senate, see above ch. 15. The introducer was Mormon Joseph G. Lines, superintendent of his stake Sunday schools and a member of its high council. List of Stake Officers and Bishops of the Church of Jesus Christ of Latter-day Saints n.p. (1907); James McClintock, Arizona: The Youngest State 771-72 (1913), on http://files.wsgarchives.org/az/pima/
The Committee on Tobacco’s proposed “coercive measures” also included a plan for every (local) stake and ward Social Committee to choose counterpart tobacco committees to help enforce existing laws dealing with minors and—on the apparent assumption that tobacco addicts could not be trusted to enforce anti-tobacco laws strictly—to “work for the election and appointment of [sic; should be “to”] all county and local office, of men who[,] other qualifications being equal, are themselves exemplary in regard to the use of tobacco.”

With regard to the “Pursuasive [sic] Measures” the Tobacco Committee proposed an impressive networked panoply of means of enlightenment about and denormalization of tobacco use: (1) wide dissemination of “knowledge of the detrimental effects of tobacco on old and young and of the destructive designs of the American Tobacco Trust against the nation in general and our people [i.e., Mormons] in particular”; (2) encouragement by social workers of all Mormons to use their influence to elect and support “officers who are sympathetic with our views and desires in regard to tobacco laws and their enforcement”; (3) encouragement of all Mormons “to work constantly for the creation of such public sentiment as shall ultimately insure nation wide [sic] prohibition of the culture, manufacture, and sale of tobacco in any form”; (4) “minimiz[ing] so far as possible...suggestions tending to encourage the tobacco habit” by insuring that Mormons “endeavor to exclude from their homes the cheaper grade of magazines and newspapers, which feature tobacco advertising” and, where the presence of such publications was unavoidable, protest to and urge the publishers to discontinue such ads; and (5) carrying on by the Mormon church “if possible [of] an aggressive campaign of counter-advertising, showing the evil effects of the use of tobacco”; and “condemn[ation] without reservation” by the committee itself of “plays or other entertainments, presented for the amusement of our young people, in which the characters use tobacco.” Finally, the Committee on Tobacco also recommended the closest possible cooperation among the church’s general, stake, and ward officers, in particular with regard to requiring stakes, wards, and priesthood quorum officers to report at regular intervals on the sale and use of tobacco.

Like the Mormon church Social Advisory Committee, the No-Tobacco

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bios/lines.txt. As late as 1905, when based on 1900 data, Mormons accounted for but 7,000 of the territory’s 123,000 residents, a magazine opined that they were “enough to hold and exercise the balance of power whenever they act together under the direction of the Mormon hierarchy.” “Do We Want Four New Partners?” Outlook, Dec. 16, 1905, at 911-12 at 911.

League of Utah was also probing the acceptability of and support for expansively prohibitory legislation far more stringent than any that the legislature would consider. In August it sent out questionnaires to the state’s “[l]eading men and women,” inquiring whether they would help, hinder, or be neutral if bills were introduced in Utah: (1) forbidding the use and sale of cigarettes; (2) prohibiting tobacco use in public places such as hotel lobbies, on the street, and elsewhere; and (3) completely abolishing tobacco.\textsuperscript{1453} Noteworthily, not only did the bill that Southwick would introduce five months later not propose banning the use of cigarettes generally, let alone tobacco, but Southwick himself expressly pointed out that it did not include hotel lobbies or streets in its partial public smoking ban.\textsuperscript{1454}

In October 1920, the No-Tobacco News did not know whether a bill similar to Southwick’s 1919 measure would be introduced in 1921, but it did know that if one were, its opponents would no longer have the excuse that they had used two years earlier that they were unaware of “any demand for the destruction of the cigarette....”\textsuperscript{1455} During the weeks before the 1920 state legislative elections, the officers, teachers, and students of the Weber County (Mormon) stake Sunday school adopted a resolution to use all their influence to secure prompt enactment of a law prohibiting cigarette sales and to ask all nominees to declare their position. All 11 who responded stated that they were very definitely willing to support such a measure.\textsuperscript{1456} By the end of 1920, more than a year after Nebraska had inhibited advertising and public smoking,\textsuperscript{1457} the church’s Young Men’s Mutual Improvement Association and Social Advisory Committee initiated discussion and drafting of legislative bills to ban cigarette sales, smoking in

\textsuperscript{1453}“No-Tobacco Crusade,” \textit{OS-E}, Aug. 31, 1920 (4:1) (edit.). A month later the No-Tobacco League’s periodical published a piece by a member of the group’s executive committee complaining about a “tobacco fiend[s]” blowing smoke in non-smokers’ faces in public parks and demanding a law under which “the person who must smoke will be compelled to do so in such seclusion as will not endanger the health and happiness of a great majority of the people.” Prof. J. M. Anderson, “A Menace,” \textit{No-Tobacco News} 1(2):4 (Oct. 1920).

\textsuperscript{1454}“Bill Presented in Senate Deals with Evils of Cigarette,” \textit{DN}, Jan. 20, 1921 (6:3); “Cigarette Measure Is Discussed in Senate,” \textit{DN}, Feb. 3, 1921 (sect. 2, 6:1-4 at 2). Finding the results of the No-Tobacco League survey and determining whether negative responses deterred Southwick from including such radical prohibitions in his bill are research desiderata.

\textsuperscript{1455}The Cigarette Must Go!” \textit{No-Tobacco News} 1(2):6 (Oct. 1920).


\textsuperscript{1457}See above this ch.
various public places, and tobacco advertising.\textsuperscript{1458}

As early as January 3, 1921, before the legislature had even been organized, the press, against the background intelligence that “36 States to Consider Bills Against Fags,” made it front-page news that: “Utah Legislature One Body Before Which Strong Fight Will Be Waged.”\textsuperscript{1459} Three days later, Senator Edward Southwick, who had also introduced the anti-cigarette bills in 1917 and 1919, announced that shortly after the legislature convened he would introduce what the \textit{Deseret News} called a “\textit{drastic}\textsuperscript{1460}” bill that was “designed to abolish the manufacture, sale and use of cigarettes in Utah and would also “prohibit the smoking of pipe [sic] or cigars in any public place, with the exception of the street....”’ He included non-cigarette tobacco “because he felt that smokers should be compelled to show consideration for non-smokers. His attitude respecting cigarettes has been made public before, and he would legislate them out of existence.” Southwick denied reports that he would also file a bill to prevent the sale or use of tea or coffee, which he viewed as rumors intended to ridicule his anti-cigarette bill, which he knew had majority support in the Senate and felt that it would also secure in the House.\textsuperscript{1461} No doubt as an admonition to pro-tobacco forces about the not yet introduced measure, within days an Ogden paper published a long piece about the Kansas anti-cigarette law, the point of which was to underscore that it had been enacted because single-issue reformers had nothing else to do, while businessmen lacked the time to “organize an army of cigarette smokers....”\textsuperscript{1462}

The political significance that the Mormon hierarchy assigned to enactment of general anti-tobacco legislation was signaled by President Heber Grant’s 1921 New Year message, which called “attention to the necessity of observing what is known among us as the Word of Wisdom, in all particulars, but especially that part relating to the non-use of tobacco, which is now prominent before the people,

\textsuperscript{1459}`36 States to Consider Bills Against Fags,” \textit{OS-E}, Jan. 3, 1921 (1:2).
\textsuperscript{1460}“Lehi Man Will Sponsor Anti-Tobacco Measure,” \textit{DN}, Jan. 7, 1921 (8:5).
\textsuperscript{1462}`How the Anti-Cigarette Law Works Out in Kansas,” \textit{OS-E}, Jan. 11, 1921 (9:2-5).
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and in which appeals are also made to those of our Latter-day Saint merchants who are selling this weed, to abandon the sale thereof, as an example of their willingness to avoid setting the wrong example before the youth of Israel.” If the fact that even Mormon merchants’ profit-driven business practices suggested that forging public support for passage of a bill prohibiting the sale, advertising, and use of cigarettes might face considerable obstacles, Grant revealed that religious dogma might be no match for the power of addiction either: “The Lord has pronounced tobacco not good for man, and that should be sufficient reason for the Latter-day Saints to abandon it. But instead, many of our people are becoming careless in the observance of this law, and consider it a very slight matter to use tobacco in various ways. I cannot believe...that it is a slight affair for any man, woman or child, to do that which God...has commanded us not to do.” If blind faith did not suffice to guide his co-religionists’ behavior, Grant reverted to the monetary incentive: “I believe, beyond a doubt, that the financial saving to this community, by a strict observance of the Word of Wisdom...especially in the use of tobacco, tea and coffee, would amount to enough to build two sugar factories annually.” Only after underscoring that “[t]his money saved, instead of absolutely lost as it is now, could be used for many noble purposes...in furtherance of the cause of righteousness in the earth,” did Grant deviate from cost accounting that was “only financial” to ask briefly about “the moral, the mental, and the physical costs to the youth” before mentioning the “spiritual blessings” accruing to those who kept God’s commandments but “irretrievably lost to all who disobey this particular commandment of the Lord.” Indeed, as far as the Mormon president was concerned, “the financial, moral, physical, and spiritual deterioration that is correlated with this evil...appears to be a certain consequence of the breaking of the word of the Lord on this subject.”

In the same January issue of the Mormon church magazine Improvement Era, Professor Pack objectively nudged the debate in the direction of a universal ban by arguing that no-tobacco-use-by-minors laws were doomed to be unenforceable because their administrators had “been unable to see the justice in punishing a boy for an offense when his father or some other adult, guilty of the same thing, is permitted to go uncensured and even unnoticed.” Then shifting the perspective to “the average American boy,” who idealized his father and was “constantly striving to be like him,” Pack insisted that the boy who saw “adults smoke...very naturally turns to the habit himself.”

1464 Frederick Pack, “How the Impending Tobacco Crusade Can Be Avoided,” IE 24:218-28 at 226 (Jan. 1921). Pack was unable to pursue the logic of his argument to the
During the run-up to Southwick’s introduction on January 19, 1921, of the bill prohibiting cigarette sales and ads and tobacco smoking in specified public places, the Mormon church announced that: “An intense campaign against the use and sale of tobacco will be carried on in all wards and stakes of the Church during the week of January 16 to 23. This campaign has been inaugurated by the Correlation-Social Advisory Committee, with the approval of the First Presidency and General Authority, and the General Boards of the Church.” The hierarchy conferred such great importance on this effort to shape public opinion against smoking that during that week “the regular work of all priesthood quorums and auxiliary associations will be set aside in order that programs and other exercises devoted to the tobacco campaign may be carried out.” To be sure, the basis on which Mormons sought to propagandize may have been less than optimally designed to persuade outsiders of the need for state intervention. For example, almost all the reasons that the campaign adduced for women to oppose tobacco use by men were moralistic or religious, such as “The Spirit of God can not dwell in an unclean body.”

Nevertheless, the Committee’s executive secretary, Arthur Beeley, a sociology professor at the University of Utah (who later became the founding dean of its School of Social Work), urged members to counteract pressure that was already being brought to bear by business interests against the bill. In the context of the Southwick campaign the Mormon church distinguished between its “ultimate purpose...to promote health, citizenship and spiritual welfare amongst its own membership and in society generally” and its “immediate purpose...to create a strong public sentiment in favor of the ‘non-sale and the non-use of tobacco’ by the Latter-day Saints in their communities.” In order to secure non-sale the church asked each ward social committee to “[i]nduce all merchants not to handle tobacco” and to report and help prosecute violations (of the existing

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no-sales-to-minors law). The strategy with regard to achieving non-use focused on making “an individual canvass of all persons of smoking age in their homes and with their families” urging them not to use tobacco and, instead, to “become vigorously active in some form of Church work...”[1467]

The 50,000-member-strong Young Men’s (and like-sized Young Ladies’) Mutual Improvement Associations also mobilized on behalf of Southwick’s bill.[1468] Ironically, five local social advisory committees were so radical that they presented petitions to the House disfavoring Southwick’s bill on the grounds that it was “not sufficiently drastic.”[1469]

In the days immediately preceding the bill’s introduction, the Mormon

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[1467] The Case Against Tobacco 15 (Social Advisory Committee of LDS Church, Pamphlet No. 8, Jan. 1921). See also “Will Wage Campaign Against Vicious Weed,” DN, Jan. 15, 1921 (2:5). The goal of eliminating the sale of all tobacco appears to have (often) exceeded the Mormons’ capacity on the local level. For example, in early February 1921 the Deseret News reported (under a misleading headline) that more than 700 people had signed a county-wide petition in Morgan County requesting all places of business to stop selling tobacco; the result was that the Morgan stake social committee approached all businesses in the country, all of which, “without exception,” including those merchants who had previously sold tobacco, signed a written agreement to stop selling all kinds of tobacco except cigars and chewing tobacco after March. “Morgan Merchants Stop Tobacco Sales,” DN, Feb. 5, 1921 (8:6). In Ephraim, the Mutual Improvement Associations met with local merchants many of whom expressed a willingness to stop selling tobacco if such a movement were instituted; however, all of them favored discontinuing tobacco advertising (even in show windows) and prohibition of smoking in their places of business. “Ephraim Mutuals Enter into Tobacco Crusade,” DN, Feb. 1, 1921 (sect. 2, 10:2). This campaign ante-dated the opening of the new legislative session. As early as August 1920 it had been reported that the Mormon stake Relief Society in the small town of Pleasant Grove (in heavily Mormon Utah County) had visited all merchants and “received the promise that after September 1, 1920 the sale of tobacco will be entirely discontinued.” In addition, the mayor had secured a promise from the Utah Bill Posting Company that “after the expiration of the present lease of bills...no more tobacco advertisements will be posted on the billboards.” The somewhat larger Utah County towns of Lehi and American Fork and the whole Alpine stake were supporting the same program. “Tobacco League Accomplishing Much,” American Fork Citizen, Aug. 7, 1920 (5:2). Ironically, however, this newspaper continued to publish large ads for Camel cigarettes. E.g., American Fork Citizen, Sept. 4, 1920 (7:4-6) and Nov. 13, 1920 (7:4-6).


church-owned Deseret News orchestrated an elaborate support campaign, beginning with seven columns of extracts from the Social Advisory Committee’s (newly published 16-page) pamphlet, The Case Against Tobacco, a compilation of “strictly scientific evidence,” itself excerpted from various prominent medical-scientific authorities such as Dr. William Osler and Dr. William Mayo. To be sure, this “new scientific approach” contrasted oddly with the closing paragraphs asserting that: “The most competent authority on the human body is God who created it” and in 1833 told Prophet Joseph Smith that “‘tobacco is not good for man,’” so that its use was an “affront” and an “insult to the Creator.” Two days later the newspaper published a lengthy report on the “[a]ppalling [d]estruction of life and property” caused by fires started by careless smoking, which prompted the policy conclusion that “no step looking to the abolition or restricted use of the cigarette can be too stringent.”

Suggesting a coordinated Mormon legislative strategy in Utah and Idaho in the following day’s editorial (“The War Against Nicotine”), the News observed that Utahns were familiar with and interested in “the campaign being waged this week throughout all these intermountain communities, to create and strengthen public sentiment against tobacco.” This “movement” not only conformed to the aforementioned Mutual Improvement Associations’ slogan (“We stand for the non-sale and non-use of tobacco”), but was also “representative of the belief and convictions of thousands of non-Church members, professional people, educators, employers, social workers, etc., who almost unanimously recognize in the poisonous narcotic one of the greatest perils that menace the physical, mental and moral welfare of the human race....” The News, which had “always” given “space and approbation to this worthy movement” and was “particularly pleased to do so during this organized campaign”—that is, now that the Mormon church was finally publicly backing it—was encouraged by the “nervousness and terror into

\[1470\] The Case Against Tobacco (Social Advisory Committee of LDS Church, Pamphlet No. 8, Jan. 1921).

\[1471\] D N., Jan. 15, 1921 (sect. 4, VI:1-7).

\[1472\] Single Cigarette Cost Government $3,000,000, D N., Jan. 17, 1921 (7:3-4). Ironically, the paper’s claim that the fire in Washington, D.C., a few days earlier that burned census records would cost the government millions of dollars to replace overlooked the fact that the virtually total and irreplaceable destruction of the 1890 census manuscripts would leave an enormous gap in the Mormons’ obsessive genealogical activity. The fire also prompted Mormon Senator Reed Smoot to introduce a bill to prohibit smoking in federal executive buildings in Washington, D.C. “Would End Smoking in Capitol Offices,” N Y T, Jan. 16, 1921 (14); “United States Senate Rejects Ban on Smoking,” S L T, Feb. 6, 1921 (1:4, 3:1).
which the tobacco trade had been plunged by the spread of the anti-nicotine activity.” Having divined the industry’s “semi-panic,” the newspaper for good measure published a lengthy “symposium” of condemnation of cigarettes “born of scientific tests and observation” by such luminaries as Thomas Edison and Hudson Maxim (the inventor of smokeless gunpowder). The day of the introduction (on January 19, 1921) of the cigarette sales ban bill that also prohibited smoking any kind of tobacco in specified enclosed public places, the Deseret News published a lengthy article on the huge cost of tobacco use. The following day it furnished specifically tailored support for this legislative effort to reduce secondhand tobacco smoke exposure by printing pertinent excerpts from Pack’s book (which it had published for the church) and elaborating his “intimation...that the boy who is daily ‘fumigated’ with tobacco smoke acquires the habit not alone by power of example, but...he actually and literally gets the poison in his system and is one day easily lured into taking his first cigarette. If this be true, every smoker is burdened with...responsibility for forming, perchance, the habit in others—as it were by proxy.” Without expressly drawing the conclusion, the newspaper also implied that, in the wake of smoking’s ubiquitization, which had emboldened smokers to “acquire a strange indifference to the sensibilities of others,” a compulsory law was needed to counteract non-smokers’ spreading timidity: “It has come to the point where it requires almost heroic courage to venture a word of protest.”

Initial Enforcement (1921-1922)

Professor Newell K. Young of the L.D.S. university...said that the law would also

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1473 The War Against Nicotine,” DN, Jan. 18, 1921 (4:1).
1474 Prominent Men Condemn Cigarettes,” DN, Jan. 18, 1921 (5:2-4). Bizarrely, Edison stated that: “The injurious agent in cigarettes comes principally from the burning paper wrapper,” which produced acrolein. Not only is acrolein, which is a harmful substance, not the principal injurious agent in cigarettes, it results from burning tobacco. Zhauwei Feng et al., “Acrolein Is a Major Cigarette-Related Lung Cancer Agent: Preferential Binding at p53 Mutational Hotspots and Inhibition of DNA Repair,” PNAS 103(42):15404-409 (Oct. 17, 2006); ch. 6 above.
1475 On passage of the Southwick bill, see above this ch.
1476 Enormous Cost of Use of Tobacco,” DN, Jan. 19, 1921 (sect. 2, 9:5-7).
1477 Tobacco Injurious Alike to Smoker and Smoked,” DN, Jan. 20, 1921 (sect. 2, 3:5-6).
protect the nonsmoker from being smoked.\textsuperscript{1478}

One loophole that surfaced shortly before the Southwick law was to go into effect was its lack of jurisdiction over federal reservations, in particular Fort Douglas, which was located in Salt Lake City. (A similar anomaly had arisen under the Kansas law with respect to Fort Riley, which, however, was not located in the state’s largest city.) At the post exchange anyone would have been free to buy cigarettes with impunity, but, since the federal government was inclined to help observe state law, it appeared unlikely that any wholesale dealing would take place there.\textsuperscript{1479}

Right up until the eve of the law’s effective date a “bitter controversy ha[d] been raging between the merchants and business interests generally on the one side and...the anti-cigarette people on the other side concerning administration and interpretation of the state’s new law.” With regard to two major issues Republican Attorney General Harvey Cluff favored the tobacco industry. The first involved cans, packages, and cartons of smoking tobacco whose labels indicated that it was suitable for pipes or cigarettes. Though sale of the tobacco itself was permissible, the question was whether the word “cigarette” on the label constituted unlawful advertising. In order to avoid as much loss as possible to tobacco retailers and trouble to manufacturers, the Utah-Idaho Wholesale Grocers’ Association requested a ruling from Cluff soon after the governor had signed the bill and almost three months before it was to go into effect. Cluff opined that the courts would interpret the lettering as cigarette advertising and thus in violation of the law if a merchant had such containers “‘in his store window, shelves or any other place within the state of Utah.’” Consequently, “‘the only safe thing to do would be for the merchants to either have the lettering on these cans, packages and cartons changed, removing entirely any reference to cigarettes, or not to carry them at all in their merchandise.’”\textsuperscript{1480} Unwilling to acquiesce in this outcome, the manager of Kahn Brothers Wholesale Grocers wrote Cluff on April 21 presenting a somewhat different form of tobacco labeling, which prompted the attorney general both to uphold his original opinion with regard to exhibiting cans and cartons of tobacco\textsuperscript{1481} and to backtrack, “to the

\textsuperscript{1478}“Anticigaret Measure Is Warmly Debated Before Senate Committee,” \textit{SLT}, Jan. 28, 1921 (10:7 at 17:2).
\textsuperscript{1479}“Fort Douglas to Continue Cigaret Sale After June 7,” \textit{SLT}, June 3, 1921 (20:2-3).
\textsuperscript{1480}“Carton Must Not Carry Word Cigaret,” \textit{OS-E}, Mar. 23, 1921 (3:3-4).
\textsuperscript{1481}Biennial Report of the Attorney General to the Governor of the State of Utah for the Period Ending November 30, 1922, at 88-90, at 88-89.
satisfaction of the merchants,” to the position that dealers could lawfully have cans of tobacco (to be used to make cigarettes) on their shelves for sale so long as they were without any special exhibit or display. Cluff sought to justify these seemingly discordant opinions by rooting them in legislative intent. If advertising something meant calling attention to it, the tobacco cans or cartons “could, perhaps, even create the desire for a cigarette, which is the prime object of advertising. I believe it was the intent of the legislature to absolutely do away with and prevent the exhibition of all signs, pictures, lettering or anything that would suggest to the mind cigarettes....” So focused had he been on this aspect, he confessed, that he did not consider any other thought, let alone his first opinion’s effect on interstate commerce. On reconsideration, he felt that “I, perhaps, went a little too far” in finding a violation in merchants’ having cans on shelves or elsewhere. His thinking now evolved toward the insight that, since the Southwick law did not prohibit the sale or advertising of (smoking) tobacco, and the shipment of cartons into Utah and the sale and distribution of cans constituted interstate commerce, “therefore, even though the lettering on the cartons and cans might be objectionable, especially if the cartons and cans were used as a special display and exhibit in the show windows, still the mere possession of the same, in connection with a stock of goods for sale and distribution” would not be prohibited by the anti-cigarette law.

Attorney General Cluff's other pro-tobacco opinion restrictively interpreted the law’s ban on smoking in public buildings not to apply at all to privately owned public places such as office buildings or grocery, dry goods, or department stores, or to offices of public officials, but only in halls, corridors, waiting rooms, and other offices of government buildings to which the public had access.

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1482“San Francisco News Notes,” *Tobacco* 72(7):36 (June 16, 1921).
1483Biennial Report of the Attorney General to the Governor of the State of Utah for the Period Ending November 30, 1922, at 89-90. Cluff purported to have been enlightened in his rethinking by *Post Printing & Publishing Co. v Brewster*, 246 F. 321 (D. Kansas 1917), which, however, dealt with the different issue of the (interstate commerce) constitutionality of the Kansas anti-cigarette law in the context of prohibiting a Missouri publisher from sending into Kansas newspapers containing inserted advertisements for cigarettes that could be (lawfully) sold and bought in Missouri.
While enforcement officials optimistically anticipated little in the way of bootlegging, in Ogden, the state’s second largest city, anticipatory compliance was signaled by workers’ preparing to install small signs in public buildings indicating certain rooms as “smoking rooms.” Nevertheless, the day after the law went into effect on June 7, the Ogden press reported smoking as usual in cafes and other places. In Salt Lake City, too: “Right in the very citadel of truth and justice and sane legislation, the state capitol itself, people were strolling non-chalantly about office and corridor, smoking as usual. In the city and county building they were doing the same thing.” At a meeting with Salt Lake City and County law enforcement officials in mid-August President Milton Bennion of the Social Welfare League, a staunch Southwick supporter, both called attention to continued cigarette sales by some tobacco dealers and “declared that smoking is permitted in inclosed public places contrary to the statute.” Against the background of this paired lack of compliance and enforcement, a month later the No-Tobacco League of Utah asked the Salt Lake City Commission whether it had passed an ordinance in conformity with the Southwick law and if so, whether it was enforcing the ordinance, and if not, whether it intended to adopt one and if not, why not. After that squeaky wheel had failed to get any grease, in mid-October five officers and directors of the League—headed by Michael Mauss, who, 16 months later, would lawfully take the law into his own deputy sheriff hands—petitioned the commission to begin enforcing the anti-cigarette law while questioning the police department’s ability to enforce this or indeed any state law properly without the backing of a city ordinance. And from the commissioners’ failure to adopt such an ordinance the League, unsurprisingly, drew the conclusion that they were averse to enforcing the Southwick law.

Despite the initial setback, in September Ogden recorded Utah’s first raid and
seizure, which netted cigarettes valued at $1,500 and the arrests of five dealers, the biggest being the national chain United Cigar Store. Although initially it was understood that the defendants would combine to test the law’s legality, eventually United Cigar, which—as the local press reported under a front-page, six-column banner headline—claimed that it had originally sent all of its stock of cigarettes out of state, but then resumed selling after its competitors had because it had lost sales of other merchandise to them as well, pleaded guilty and was fined $150. (Other sellers did as well.) More significantly, after the Salt Lake City police had finally notified cigar stores that cigarettes sales had to be discontinued immediately, the chain not only complied, but stated that it would not attack any law of Utah or of any other state so long as it was uniformly enforced. In the wake of the high-profile raid and seizure in Ogden, the county attorney in Weber County (of which Ogden was county seat) announced that: ‘‘No more cigarettes will be sold in Weber County. The law will be vigilantly enforced. ... The law relative to smoking in public places enumerated in the law will also be rigidly enforced.’’

By the end of 1921 a phenomenon—jury nullification—had emerged that opponents of the law would adduce as evidence that it was unenforcible because it was not rooted in popular approval. The first case in which a seller was tried in Salt Lake City involved a pharmacy clerk who had sold a package of cigarettes to an anti-vice squad policeman, who provided the only trial testimony. After the four jurors—two of whom stated during voir dire that they used tobacco but not cigarettes, and one of whom had smoked for 30 years but had quit six years earlier—had (surprisingly) acquitted the defendant, the judge cautioned them about their oath and told them to base their conclusions on the evidence, admonishing them that their verdict indicated that they believed that the officer had been guilty of the very serious offense of perjury. In response they justified their verdict on the grounds that because the package shown them in court had been unopened they did not know whether it contained cigarettes. This threadbare excuse, which was prefigured by the jury’s having interrupted its 30-

1493 “Cigarets Seized in Raid; Five Dealers Under Arrest; Value of Haul Set at $1,500,” OS-E, Sept. 27, 1921 (6:1-2).
1496 “Cigaret Sellers Fined Here,” OS-E, Dec. 1, 1921 (1:7). Nevertheless, on the last day of 1921 raids on five United Cigar Stores outlets in Salt Lake City netted 339 cartons of cigarettes, which company officials risibly claimed were ‘‘privately owned and were merely being held at the stores until called for.’’ “Cigarets Seized in Salt Lake Raid,” OS-E, Jan. 1, 1922 (8:3).
minute deliberations to ask the judge several questions circling around the issue of entrapment, insinuated itself into the verdict despite both the excusal of one juror on the basis of his opposition to enforcement of the Southwick law and the prosecution’s having taken the precaution of peremptorily challenging three members of the jury pool. 1497

Yet despite these prosecutions, Fred Bennett, the head of the 1,200-member strong No-Tobacco League of Utah, 1498 wrote in the November issue of the Mormon magazine, Improvement Era, that the law, “except insofar as it relates to the advertising of cigarettes, is more or less a dead letter....” 1499 And by the end of 1921 President Grant was becoming increasingly disgruntled with the level of noncompliance with the new law. At a quarterly conference of the Ogden stake he bluntly denounced (unnamed) transgressors:

“High toned, highly educated, first class men of the state,” were scored by President Grant...for their violation of the anti-cigaret law. He said he had visited the best hotels in Salt Lake and had seen men of high standing in the community smoking in places where the habit was prohibited and these men, he said, would feel insulted if they were told they were law breakers. “Men are disobeying this law because they don’t like it. Men don’t like laws that hit them. They are in the same class as the thief who objects to laws against thievery.” 1500

Though only obliquely, Grant hinted that some of these delinquents might be found in the upper echelons of his own Saints: “In referring to the Word of Wisdom he did not wish to cast any reflections but desired to remind bishops that ‘as with the priest, so with the people.’ He said the conduct of the people depends absolutely on the example and energy of those standing at the head of the organizations.” (More transparent was Presiding Patriarch Hyrum G. Smith, who at the same conference “deplored the fact that members of the priesthood were users of tobacco....”) Only vis-a-vis Mormons could Grant have imagined that his call for blind Kadavergehorsam would enhance the commitment to compliance with Caesar’s laws: those who disobeyed the Word of Wisdom “are decaying in wisdom and power because they had cut themselves off from the life

1497”Clerk Acquitted in Cigaret Trial,” SLT, Dec. 8, 1921 (24:3); “Cigaret Clerk Freed by Jury,” OS-E, Dec. 8, 1921 (4:3).
1500Heber J. Grant Raps Cigaret Law Breakers,” OS-E, Nov. 14, 1921 (1:2, and 2:2). For a briefer account, see “Tobacco Law Violators Are Likened to Thieves,” SLT, Nov. 15, 1921 (1:1).
giving stream. Obedience is the thing which counts most in the battle of
life....\textsuperscript{1501}

Violations of the cigarette sales ban and police failure to enforce it prompted
an editorial in Improvement Era urging each Mormon stake and ward to appoint
a committee to lobby local government officials in an effort to interest them in
and help them with law enforcement.\textsuperscript{1502} The authoritative Mormon editorialist
also admonished businessmen both for violating Southwick’s prohibition of
public smoking and for their self-regarding and quasi-anarchistic neglect of the
second-order effects of their transgressions on the maintenance of law and order:

There are a great many men, we should judge from casual observance in mingling with
the community, who have not yet learned to obey the law against smoking in public places.
... They seem to think that a law which interferes with their actions is not as valid as any
other law which interferes with the illegal actions of other men. They scarcely stop to
consider how very dangerous such an attitude becomes for the welfare of the community.
All others who break any law take the same liberty, from their example, and argue that if
a business man can break the law without being punished for it, all may do so. The result
is...a great contempt for law and order which is a menace to the stability and well-being
of the community. If it is illegal to smoke in public places, no man having at heart the
welfare of the youth of the land and community in general will smoke there, for if he does,
he will show publicly that he has a contempt for the law—a very dangerous example! ...
If men were at liberty to break any law they did not like there would be chaos, disorder and
anarchy as a result.\textsuperscript{1503}

Ironically, the Mormon hierarchy was, rather late in the process, lending credence
to the warnings that Southwick’s legislative opponents had voiced all along that
the consequences of mass non-compliance with the cigarette-selling and public
tobacco-smoking bans in terms of undermining the social-psychological micro-
foundations of civic cohesion were graver than the dangers posed by tobacco use
itself.

As 1922, the law’s first full calendar year of being in force, got underway,
contradictory indicia of its effectiveness came to light. In Logan, Utah’s fourth
largest city (pop. 9,439), the city commissioners decided that it “must be strictly
enforced...in the future”; in particular, officers would be “instructed to eliminate
smoking in public places.” As a result, the police chief “placed placards in all
public places such as cafes, restaurants, lobbies, railroad station waiting rooms
and other places where smoking has been indulged in, bearing a warning from

\textsuperscript{1501}``Heber J. Grant Raps Cigaret Law Breakers,” OS-E, Nov. 14, 1921 (1:2, and 2:2).
\textsuperscript{1502}``Enforce the Cigarette Law,” IE 25(2):164-65 (Dec. 1921) (edit.).
\textsuperscript{1503}``Support the Law,” IE 25(4):359-61 at 359-60 (Feb. 1922) (edit.).
the city commissioners that smoking will not be allowed.”

At the same time the Ogden Standard-Examiner published a lengthy, (unusually) bylined article on the first half-year’s experience with the Southwick law, which purported to offer an overview of the whole state, though most of its factual details came from Ogden. In order to find a gauge of public sentiment concerning the law, reporter Floyd A. Timmerman focused on jurors (whose nullifying stance has already been alluded to), insisting that it had become difficult even to impanel a jury because in response to voir dire questioning by prosecutors prospective jurors stated that they were unable to deal fairly with a case on the grounds that they were not in favor of the law. He noted that the several trials thus far had not resulted in a single conviction despite the (aforementioned) water-tight evidence. As an example he instanced two recent Ogden cases in which juries refused to convict on the basis of dealers’ (illogical) defense that the cigarettes found in their store were not there for sale, but were owned by people who kept them there for private use. Summarizing the conclusion of public officials charged with enforcement of a law they deemed ineffective and lacking the support of public opinion, Timmerman wrote that they “feel that it is only a matter of time until it is thoroughly determined that convictions cannot be obtained and the wide-open sale will return.” In addition, Ogden Mayor Frank Francis—a former owner and associate editor of the newspaper—while agreeing that cigarettes were “a very bad habit,” believed that the (liquor) bootlegger and gambler represented bigger tasks of reformation. More pointedly, Ogden Public Safety Commissioner J. Ray Ward opined that the Southwick law’s prohibition should have been limited to the sale of cigarettes inasmuch as its smoking ban was “superfluous” and turned public opinion against the statute. Interestingly, however, the law that he deemed a “failure” had nevertheless made it more difficult for smaller boys to obtain cigarettes and form the “habit.”

This last point was one that Timmerman himself was constrained to book as a success for Southwick; in particular, he observed that the law had reduced boys’ access to cigarettes because the boy was handicapped in ordering from out-of-state dealers (under the shelter of interstate commerce): “He may not have the price to pay for a carton and he would also experience difficulty in having the

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1505 Born in 1892 in New York, Timmerman was returned as a newspaper reported at the 1920 census and as living in Brooklyn, New York in 1910. He was killed in an airplane crash in Idaho in 1928.
package sent to his home if he did.” The reporter also focused on addiction as a motivator: “The desire of a cigaret to a boy who has not yet formed the habit is in the majority of cases only momentary and if a steep barrier is to be overcome, he generally forgets and goes about his way without them.”

Finally, Timmerman also conceded that although the law had thus far failed to prohibit smoking in public places, “it may have brought about a decrease of the practice. Most proprietors of restaurants and stores who allow their patrons to smoke have set aside a portion of the place and designated it a ‘smoking room’ and have had no trouble.” Such a separate-room regime—which should have offered greater protection from secondhand smoke than the within-room designated smoking/non-smoking areas that became a legal norm in numerous states during the last quarter of the twentieth century—notwithstanding, Timmerman was unaware of any case in Utah in which “a man was arrested and prosecuted for smoking in places where the new law prohibits.”

In an address to the Mutual Improvement Associations conference on June 10, 1922, shortly before reports began circulating that pro-tobacco forces would push for repeal in 1923, President Grant first preemptively urged the attendees: “Vote for no candidate who will not declare his willingness to retain the anti-cigarette law on the statutes,” and then issued this campaign slogan: “The Anti-Cigarette Law Ought to be Enforced—not Repealed.”

That the one provision in the Southwick law that was being obeyed was the prohibition of cigarette advertising meant both that newspaper publishers were losing $100,000 to $200,000 in revenues annually and that they were animated by a powerful self-regarding financial incentive to advocate restoration of that cash flow. It did not take Utah country newspapers long to “discover that newspapers” were the new law’s “chief victims.” A copy of the October 7, 1921
Iron County Record sent to capitol officials noted that the previous week the paper had received a contract for several hundred inches of advertising from a well-known tobacco company together with copy for a cigarette ad, which, however, the Southwick law prevented the publisher from accepting. The paper claimed that it would not have objected if only the law had had a noticeable impact on cigarette sales or smoking, but, since it could detect none, “‘the newspapers are the only firms or individuals affected by this freak legislation.’” The publisher may have been merely a frustrated profit seeker, but the paper closed with a question as to why a law officer pursued it when it was engaged in the pursuit of happiness in “‘the form of a cigarette.’”

The annual meeting of the Utah Press Association was, unsurprisingly, the site, about a year after the law had gone into effect, of what was “probably the first public attempt to inaugurate a campaign to repeal the anti-cigaret law.... [T]he assault was made by A. L. Fish, general manager of the Salt Lake Tribune,” the state’s largest-circulation daily, who, according to the Association’s report, “‘brought out the fallacy of the cigaret law in that it was hurting the newspaper advertising to the extent of $150,000 annually and really doing no good for us. He suggested that efforts be made to take this up in the next legislature.’” (The Provo Daily Herald, which reported this initiative, editorially boasted that it was “willing to continue WITHOUT cigaret advertising money from now until the end of its existence if by so doing it can help in making this a better city and county and state in which to live.”)

To be sure, Grant had pointed to a vitally significant link between smoking and advertising that the Southwick law had only partially severed: “Every full grown man who uses the cigarette, places an object lesson before the boy, which he ought not to do.” To the extent that compliance with and enforcement of the statutory ban on public smoking was actually appreciably reducing the volume of smoking visible to boys, this form of gratis advertising was becoming less effective. However, since the act did not prohibit adults from smoking tobacco in various enclosed public places or any unenclosed public places, let alone in any non-public places, as long as adult smoking remained lawful, it would constitute the cheapest effective advertisement.

Shortly before the state and county convention primaries were held in 1922,

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1512“First Yell to Repeal Cigaret Law,” Daily Herald (Provo), July 6, 1922 (2:1) (edit.).
the Mormon First Presidency (that is, Grant and his first and second counselor), issued a special notice underscoring the church’s “positive stand in favor of the laws in support of peace and good order, whether national or local.” Having heard of efforts in Utah to prevent their enforcement and secure repeal of some of them, the troika requested lower echelons of the hierarchy to impress on Utahns the importance of attending those primaries and on “all persons of influence” to help elect state legislators and county officers who would execute those laws and defeat obstruction.\textsuperscript{1514} Just in case the reference was unclear, Improvement Era specified the subtext:

It is well known that certain declarations have been made here and there owing to an indifferent enforcement of the tobacco law and other health laws, that efforts are brewing to have the Legislature repeal the anti-cigarette law. ... The experience of the past two years has proved that there are officers who are not in favor of the enforcement of the anti-cigarette law, but who are rather in favoring of annulling it. Some of these people are in high positions in the state, in the counties and in the cities. ... Flagrant violations in the way of sale of tobacco and smoking in public places are numerous and it has been difficult to get officers, including judges, officers of courts, mayors, policemen, and others in charge of the execution of the law, to take any interest at all in its enforcement. These men should be remembered in the election to come, and be set aside to give place to men or women chosen and publicly pledged to put forth their efforts to see that the law is properly enforced.\textsuperscript{1515}

As the fall 1922 state legislative elections approached, the Mormon hierarchy, repeating Grant’s aforementioned declaration, made clear that it was imperative that all Utahns, regardless of party affiliation, who supported the principles of the non-sale and non-use of tobacco and the strict enforcement of the Southwick law—and the church believed that “the great majority” of the state did—“should see to it that every individual candidate is publicly pledged to allow the anti-cigarette law to remain on the statute books, and to stand firmly for its enforcement.”\textsuperscript{1516} In Utah County (whose county seat Provo, the state’s third largest city, had recently been the site of a large cigarette raid and seizure),\textsuperscript{1517} all


\textsuperscript{1516}Editors Table: How Are You Going to Vote?” IE 25(11):1030-31 at 1030 (Sept. 1922).

\textsuperscript{1517}“41,280 Cigarettes Seized in First Southwick Raid in Provo,” Daily Herald (Provo), Sept. 25, 1922 (1:1) (newsstand).
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legislative and judicial candidates did in fact endorse the law.1518

In the interim between the elections and the opening of the new legislative session, the anti-prohibitionist Republican Salt Lake Tribune revealed that among the major tasks awaiting the legislature was a decision on the Southwick law, concerning which three policy lines had emerged: (1) providing for strict enforcement, to which newly elected Salt Lake City Republicans appeared to be pledged (“rigid enforcement of all laws”); (2) letting the anti-cigarette law preserve its “‘innocuous desuetude’”; and (3) repeal in order to inculcate proper respect for the law.1519

In the context of proliferating repeal talk shortly before the legislature convened in January 1923, Louis Ward—the pen name sometimes used by Fredrick Louis Ward Bennett (aka Fred L. W. Bennett), the first president of the No-Tobacco League of Utah—a leading Mormon anti-tobacco writer, suggested that the bans on cigarette sales and public smoking had not so much failed as never been tried. The latter, Ward confirmed, had been “a dead letter from the start. It was even ignored in the City and County Building itself.” Under the former, to be sure, several cases were tried in early 1922, but “most of them failed through the unwillingness of juries to convict....” This outcome he in part explained as a function of their having been initiated by complaints sworn to by a No-Tobacco League representative rather than by law officers; as a consequence, the public, that is, the jury pool, got the “impression that the enforcement of this particular law was only desired by a ‘few cranks’....” This impression was mightily and ironically reinforced by the fact that “violation of the law was even allowed in the court room during the trials, for no effort was made to stop smoking although the law expressly states it is forbidden in the City and County Building, particularly in the public sections.” In contrast, Ward emphasized that “one section of the law...has been obeyed to the letter, and that is the one forbidding the advertising of cigarettes in any form.” So highly did he value this third prohibition that he opined that it “alone stamps the act as a worth while measure” even if the other two never became enforceable. Ward adhered to this view despite his knowledge that the total withdrawal of cigarette ads in

1518“‘All Endorse Cigaret Law,” Daily Herald (Provo), Nov. 2, 1922 (1:3-5).
1519“Big Tasks Wait for Legislators,” SLT, Dec. 12, 1922 (20:1). President Grover Cleveland had used the phrase in internal quotation marks to refer to a law with which he refused to comply.
Utah (in the amount of $150,000) had “not made much difference, so far, to the popularity of this form of tobacco”—because, as every advertising and businessman understood, the disappearance of the country’s “great tobacco manufacturers[... educational campaign on behalf of cigarette smoking in the state” would eventually “have its effect....” Indeed, Ward was unwilling to abandon this position “even if the advertising stopped by the state law could have no effect on the demand for cigarettes owing to the advertisements appearing in national publications sold here.” The reason that he would “still be proud of the law” was that someone had to be “first in these matters.” His strategic model was supporters of liquor prohibition who had succeeded in imposing it in scattered small towns prior to the Eighteenth Amendment and had not despaired when unfettered availability of liquor in neighboring towns turned “dry” islands “wet” because they were “idealists” who “looked ahead to a time when prohibition would be general, and that time came.”

Ward’s elevation of the advertising ban above all other anti-tobacco measures may seem counterintuitive, but in fact it was consistent with the explanation that Southwick himself had presented on the Senate floor in 1921 as to why he wanted his bill passed. Dwelling at length on its advertising ban, he had stated that the Utah Billposting Company had unexpired contracts worth $40,000 for cigarette advertising, and “spoke of what that means per capita to the citizen.” Southwick then launched into a decidedly modern diatribe that dismissed out of hand the cigarette industry’s never-ending, transparently false claim that its ads target(ed) only existing smokers: “It is not...those who have acquired the cigaret habit, but new material and victims, that this advertising seeks to find. Therefore, it is necessary to prohibit the sale of cigarettes in order to prevent this advertising of them.”

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1522 Senator Southwick Tells Why He Desires Passage of Anticigaret Measure,” SLT, Feb. 3, 1921 (10:1). Shortly after Southwick had introduced his bill the Brigham Young University student body submitted a supporting petition to the legislature stating, inter alia, that tobacco advertising, which “takes undue advantage of the immature mind...can not consistently be prohibited unless the sale of tobacco is prevented.” “B.Y.U. Faculty and Student Body Ask for Anti-Tobacco Law,” DN, Jan. 29, 1921 (6:2). Compare also the statement made in 1923 by Prof. Milton Bennion, Mormon chairman of the Social Welfare League and long-time dean of the University of Utah Education School, that the promoters of the Southwick law “‘had the sale of cigarettes forbidden because they were advised by lawyers that in case they forbid the advertising without forbidding the sale the courts would declare the law unconstitutional.’” Moreover, in the interim between passage of the Senate and House amendments to the Southwick law in 1923, Bennion, because he took the
Finally, Southwick had affirmed the same logic from a different perspective during the same floor debate in response to a killer amendment that would have prohibited advertising all tobacco products. He averred that the bill’s backers would pledge their support for such a measure, but insisted that a universal tobacco sales ban simply could not be anchored in S.B. No. 12 because the latter did not prohibit the sale of non-cigarette tobacco products.1523 (To be sure, when non-smoking1524 Mormon Senator Harrison Jenkins—who was ultimately one of only three senators to vote against the bill on final passage—called Southwick’s bluff by slyly offering to rectify this situation by proposing to treat cigarettes and all other tobacco products equally throughout the bill, Southwick quickly backtracked: “‘I...think that would be going too deep. We should tackle the matter one step at a time....’” In fact, only Jenkins voted for his own amendment.)1525

Almost nine decades later the time has still not come for cigarette sales to be banned in order to ban cigarette ads, but the question here is not whether anti-smoking Mormons were able to see a century into the future, but whether, in the very short run of the 1923 Utah legislative session, idealists or realists were able to articulate and implement the more effective strategy for retaining as much of the 1921 law as possible against the tobacco industry’s onslaught on restrictions on selling, advertising, and smoking cigarettes. The outcome of the 1923 proceedings revealed that Southwick, who was no longer a legislator and played no visible role in public debate, had spoken prematurely in 1921 when he “celebrated the first anti-cigarette day by asserting that ‘in a short time the last cigarette will have been smoked in Utah.’”1526 (Even more wildly overoptimistic
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was the No-Tobacco News, which as a result of the bill’s passage had suspended publication indefinitely.\textsuperscript{1527} Instead, in 1923 the legislature did away with the general sales prohibition, turning it into a local control licensure law cum sales tax adopted in large part verbatim from the 1921 Iowa law,\textsuperscript{1528} while at the same time both severely diluting the public smoking ban and expanding the scope of the advertising ban.\textsuperscript{1529}

The Tobacco Merchants Association Abandons Hope of Repeal in Utah (1922)

“[W]e are of the opinion that the Citizens of Utah generally have not become disgusted enough with the existing Cigarette Prohibition Statute...to secure its repeal. [W]e are of the opinion that it would be advisable to let the thing rest for this session of the Legislature, at least, or until such time as the Citizenship generally is converted to the fact that it is a farce and public opinion created by this thought, to such an extent, that its repeal could be made easy.”\textsuperscript{1530}

Evaluating this statutory outcome, which will be undertaken below, requires familiarity with the campaign for repeal of the Southwick law in Utah in 1923 that the Tobacco Merchants Association of the U.S. (the cigarette manufacturing oligopoly’s propaganda and legislative organ),\textsuperscript{1531} sought to initiate in late 1922 after the November elections had determined the composition of state legislatures. Despite the fact that the letters that Charles Dushkind, TMA’s managing director, had received from the Utah tobacco trade held out “no encouragement” “that a movement looking to the repeal of the existing statutes be inaugurated,” “[s]hould it be determined [by the cigarette manufacturers] to inaugurate such movements” in Utah (as well as in Kansas and North Dakota),\textsuperscript{1532} he “respectfully” enumerated

July 6, 1921 (2:6-7).

\textsuperscript{1527}“Pacific Coast,” \textit{American Printer} 72(7):64 (Apr. 5, 1921).

\textsuperscript{1528}1923 Utah laws ch. 52, § 1, at 110-13. Utah even copied Iowa’s failure to impose punishment for selling cigarettes to adults without a license; indeed, its law was even less stringent in that, unlike Iowa, it did not even impose Iowa’s 20 percent plus 1 percent a month late fee.

\textsuperscript{1529}See below this ch.

\textsuperscript{1530}Tobacco Merchants Association of the U.S., “Excerpts from Letters Received from the Trade” at 8 (n.d. [ca. Dec. 1922]), Bates No. 501870678/85 (Utah Wholesale Grocery Co., Salt Lake City).

\textsuperscript{1531}On TMA, see below ch. 17.

\textsuperscript{1532}Charles Dushkind, “Memorandum in re:-Existing Anti-Cigarette Statutes in Kansas,
several suggestions for what in reality was the staging of the semblance of such a movement.

In first place, Dushkind recommended as a “forceful presentation against prohibition statutes”\textsuperscript{1533} a recently compiled, transparently biased booklet, “What Is the Duty of the State in Regard to Cigarettes?,”\textsuperscript{1534} one of whose virtues was that it contained “but brief references to the merits of the cigarette....” He was certain that both editorialists and lawyers would find abundant material in it for editorials and briefs. If the sheer persuasiveness of this pathetically primitive compilation did not do the trick, next he urged the cigarette manufacturing companies (that is, his paymasters), to pay advertising companies “with a view to securing the cooperation of the press.” Dushkind also advised the manufacturers to “instruct their retail sales forces or missionary men to endeavor to get retailers to write their...legislators, urging the passage of repeal....” In addition to TMA’s own various propagandizing activities, Dushkind stressed proposing, in connection with repeal bills, “[s]ubstitute restrictive legislation” with regard to minors and license fees, cautioning, however, against following Iowa in enacting a cigarette tax.\textsuperscript{1535}

The ultimate point of manufacturing public opinion was, then, to draw it to state legislators’ attention and convince them that it was real because, as Dushkind assured his oligopolist bosses:

\[1\]t is my firm conviction that insofar as the legislators are concerned the majority in all cases would unhesitatingly vote for the repeal of such statutes, and that it is only because of their erroneous impression that public opinion and their constituencies are in favor of prohibitory laws that they may be prompted to vote against repeal.

Hence, it would seem that it is essential that the legislators be brought to a realization that public opinion is really against such obnoxious statutes.\textsuperscript{1536}

To be sure, there was one little pesky boomerang problem that had to be weighed: “It is true that too much publicity may arouse and stir the fanatics into more intensive activity than otherwise, but can these statutes be repealed without the

\textsuperscript{1533}Charles Dushkind, “Memorandum in re:-Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah” at 1 (Dec. 4, 1922), Bates No. 501870676.
\textsuperscript{1534}For an analysis, see below ch. 17
\textsuperscript{1535}Charles Dushkind, “Memorandum in re:-Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah” at 1-2 (Dec. 4, 1922), Bates No. 501870676.
\textsuperscript{1536}Charles Dushkind, “Memorandum in re:-Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah” at 2 (Dec. 4, 1922), Bates No. 501870676/7.
force of public opinion and, at any rate, is it possible to make any effort in that direction without attracting attention of the intolerants?"  

Common to the responses from tobacco businesses in Utah that Dushkind received after soliciting their views on November 23, 1922, on the need for repealing the 1921 Southwick law was, interestingly, whether they favored it or not, that they emphasized the Mormon church’s outsized influence as the decisive factor. For example, one company desiring repeal nevertheless had “‘some doubt as to whether or not this could be accomplished’” because “‘the cigarette law was a measure fostered by the L.D.S. Church, introduced by a prominent member of the Church and passed a [sic] L.D.S. Legislature.’”  

Categorized among the “Contrary Opinions” was the reply by Hemenway & Moser, tobacco distributors and retail merchants, which purported to express also “‘the concensus [sic] of opinion of others,’” including “‘a number of our prominent political, financial and publicity men,’” that a repeal effort “‘would be useless’” during the 1923 legislative session. The reason was straightforward:

“Both political parties were pronounced in their expression of no freak legislation this year. They are also committed to certain remedial laws on state finances. To put these over they feel that they must have the support of the dominant element in our politics, which is the Mormon Church. The head of this institution is decidedly strong against the

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1537 Charles Dushkind, “Memorandum in re:-Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah” at 2 (Dec. 4, 1922), Bates No. 501870676/7.

1538 Tobacco Merchants Association of the U.S., “Excerpts from Letters Received from the Trade” at 7 (n.d. [ca. Dec. 1922]), Bates No. 501870678/84. Unfortunately, the poor quality of the “best copy” made the company’s name and that part of the excerpt illegible which speculated about the church heads’ response to any efforts to repeal in 1923.

1539 Hemenway & Moser was one of the tobacco stores raided in Ogden in 1921 for violating the Southwick law that initially threatened to litigate its validity. “Anticigaret Law to Be Tested in Ogden Cases,” SLT, Oct. 30, 1921 (17:4). It continued to maintain a high political profile: 16 years later it was still corresponding with Dushkind about the Southwick law’s remaining advertising restrictions related to window displays; specifically, it complained about R. J. Reynolds Tobacco Co.’s salesmen’s posting “obnoxious advertising material,” which might attract the Church’s attention and undermine the chance to repeal the “foolish law” altogether in 1939. Hemenway & Moser Co. to Charles Dushkind, Aug. 30, 1938, Bates No. 501996404. Two weeks later it expressed the belief that all major tobacco companies “should be reasonable in their placement of advertising materials” in order to avoid “agitat[ing] the situation and prompting enactment of additional anti-tobacco legislation. Hemenway & Moser Co. to Charles Dushkind, Sept. 12, 1938, Bates No. 501996402.

1540 Tobacco Merchants Association of the U.S., “Excerpts from Letters Received from the Trade” at 7 (n.d. [ca. Dec. 1922]), Bates No. 501870678/84.
smoking of cigarettes and tobacco in all forms and recent expressions would lead us to believe that his efforts would be lent towards a stronger enforcement of the law rather than to submit to any change or repeal and our politicians feel that any effort at this time on this bill would avail nothing and would probably detract from other matters which they wish to put across.”

To be sure, the company recognized that “‘the political situation is never stable,’” so that if a movement developed to pass a license and regulatory bill, it would turn to TMA for assistance, but otherwise it “‘would not approve of an effort being made on this thing in this winter’s session.’” Hemenway & Moser’s pessimistic evaluation of the constellation of political forces for 1923 may have been influenced by its experience in 1921 when it (together with United Cigar Stores), provoked by declarations by Southwick supporters in the legislature that 90 percent of Utahns supported the bill, initiated an “eleventh-hour endeavor to get some evidence as to what percentage” of voters opposed the bill. After three days—during which Senate passage intervened—a total of 12,000 signatures, 8,000 of which were obtained in Salt Lake and Ogden, had purportedly been collected. That the tobacco industry, despite this undertaking, which presumably rested on mobilizing smokers, nevertheless suffered a sharp defeat with respect to every aspect of the Southwick bill, may well have made Hemenway & Moser at the end of 1922 very wary of confronting the Mormon church and its allies so soon again.

The upshot of TMA’s inquiries and deliberations was that it was very unlikely that pro-tobacco forces could overcome the Mormon-backed legislative status quo in 1923. Ironically, contrary to Dushkind’s prognosis, not only did the legislature pass a partial repeal of the Southwick law, but it came freighted, as had been the case two years earlier in Iowa, with the cigarette tax that the oligopoly was determined to avoid. Whether the cigarette manufacturers were instrumental in destabilizing the political situation and whether the tax—these government revenues represented a crucially important talking point on behalf of licensure—was the price they were forced to pay for repeal of the sales ban and partial repeal of the partial smoking ban are questions on which the as yet available internal tobacco industry documents shed no light.

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1541 Tobacco Merchants Association of the U.S., “Excerpts from Letters Received from the Trade” at 7 (n.d. [ca. Dec. 1922]), Bates No. 501870678/84.
1542 Tobacco Merchants Association of the U.S., “Excerpts from Letters Received from the Trade” at 7 (n.d. [ca. Dec. 1922]), Bates No. 501870678/84.
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Sheriff Harries Harries Capitalist Public Smokers (1923)

“The Senate bill is prohibitory. We have had too much of this ‘verboten stuff.’ One would think he was living in Prussia.”

One of the difficulties in the way of reform in the matter of the use of tobacco is the many men who are addicted to the habit, and who therefore stand as advocates of the evil. ... This, with the amount of money that is at the command of workers for nicotine, stands largely in the way of any effort that people who are not in favor of tobacco may exercise, to drive the stuff out of existence, or to compel the observance of law and decency in regard to smoking and other uses of tobacco in public places.

A crucial step that shaped the course of legislation took place at the outset of 1923 when the 51-year-old new Salt Lake County Sheriff Benjamin R. Harries (who had taken his oath of office on January 1) announced that he would begin enforcing the prohibition of smoking in public places. On January 6 he announced a policy statement pointing out that his office had received complaints concerning enforcement of state laws: “Most particular among these are ones pertaining to the enforcement of the cigaret law, which is apparently ignored by the public generally.” And in response to inquiries as to whether the sheriff intended to enforce it he noted that it was his purpose “to enforce all laws, whether they be popular or unpopular with the public.” Harries went on to administer a lesson in the interaction between the amendatory and enforcement processes: “If there are laws on the statute books that are bad laws the enforcement should bring about the proper remedy. The offenders and violators of any of the laws, including the cigaret law, will be prosecuted. If any of the

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1545.“Tobacco and the Public Schools,” IE 25(5):455 (Mar. 1922) (edit.).


1547.“Sheriff Harries Promises Strict Enforcement of All Laws Including Anti-Cigarette Statute,” DN, Jan. 6, 1923 (sect. 2, 1:5-6).
laws are bad laws the proper place to adjust them is in the legislature and not in
various law-enforcing bodies of the state."**1548** Indeed, as long as the anti-cigarette
law remained on the statute books, it "would be especially enforced."**1549** Little
wonder that by the end of February conjecture arose that the "sheriff...may be
working for the repeal of the law. The Lord and Harries only know."**1550**

Although he had not yet had an opportunity to organize his forces completely
and instruct his deputies regarding the Southwick law, on January 11, in an
apparently chance encounter, a "deputy sheriff informed a violator of the law that
smoking was forbidden in the corridors of the City & County building." This
incident prompted Harries’ announcement that evening of a smoking ban in the
corridors and outer offices of the city and county building, which would also be
enforced in all other Southwick law-covered enclosed public places.**1551** In the
meantime his deputy sheriffs began warning, but not arresting, violators. As to
his construction of the law, Harries specified that a man could lawfully smoke in
his own private office, but he had already prohibited smoking in the outer room
of the sheriff’s office; moreover, bailiffs had been instructed not to smoke and not
to permit jurors to smoke in the courtrooms or corridors of the county and city
building during court adjournment, though they would be allowed to smoke in
jury rooms, which, for reasons he did not explicate, he did not consider to be
covered by the law.**1552**

Harries’ vigorous enforcement policy was especially impressive in light of the
fact that at the time he was the target of a court action to oust him from his office
on the grounds that his election had been invalid. This judicial complaint is
highly pertinent in the present context because it was based on the claim that the
Mormon church had violated the Utah constitution’s prohibition of church-state
union and church domination or interference with state functions by virtue of its
unduly influencing, intimidating, and compelling its members to vote for

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**1548**"Enforcement of Anticigaret Law Is Plan of New Sheriff; Invites Letters of


**1552**Sheriff Harries Begins Enforcement of Ban on Smoking in Public Places in Salt
Lake," SLT, Jan. 12, 1923 (22:2-3). A month later, Judge G. Iverson of the Third District
Court in Salt Lake prohibited smoking in his courtroom or chambers. "Judge Will Enforce
Law Against Smoking," SLT, Feb. 8, 1923 (10:5). In contrast, "[s]ome years" before
1920, according to a Mormon bishop who had served on a federal grand jury in Salt Lake
City, some witnesses "puffed away at a cigar or cigarette between answers." David Lyon,
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Mormon President Heber Grant had in fact at a church body meeting at the end of October “invited people to vote for” Harries for sheriff, explaining that representatives of the Salt Lake Ministerial Association and Social Welfare League (including Milton Bennion, dean of the University of Utah School of Education), which had endorsed Harries, had recently visited him; Grant then convened the presidencies of the seven Salt Lake County stakes, which unanimously approved his candidacy. Church officials characterized the filling of the sheriff’s office as a moral rather than a political issue and Harries’ election as “of distinct moral value to the community.” Grant stressed that since becoming Mormon president (in 1918) he had never announced his preference for anyone’s candidacy (thus contradicting charges that he had “more political control than any other man in this country”), but also apparently sought to justify his departure from that course by arguing that the administration of the sheriff’s office had been “unsatisfactory for a number of years,” which condition he hoped would also prompt “the people...to ignore political preferences....” The president of the Salt Lake Ministerial Association also urged Harries’ election for the reason that none of the other candidates had enforced the law. Ultimately, the Ministerial Association’s and Grant’s backing rested on vetting done by the Social Welfare League, which had reported that “as a deputy sheriff Harries had been a sincere advocate of law enforcement.”

Bennion’s and the League’s energetic efforts on Harries’ behalf beginning in October 1921 may have been linked to a disappointing reply that they had received from the Salt Lake City police chief and city attorney and the Salt Lake County sheriff and county attorney in response to an oral inquiry concerning violations of the cigarette sales ban by certain merchants. Following several appearances before the League during the previous few weeks, these officials wrote a letter that, despite admitting that they had a sworn duty to uphold and enforce the law without questioning its wisdom, elaborated an excuse for failure: “We appreciate that in Salt Lake City and in some other communities in the county there is no pronounced public sentiment in favor of the enforcement of this law. [W]e realize fully the difficulty of enforcing a law of the character...

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1554 “Churchmen Seek Aid in Electing Harries Sheriff,” SLT, Oct. 30, 1922 (1:7, 2:3). Interestingly, Milton Bennion stated in 1923 that, as a result of divided views among the organization’s officers, the Social Welfare League had had nothing to do with passage of the Southwick law in 1921. “Would Enforce Cigaret Law,” SLT, Mar. 5, 1923 (14:5).
which is not supported by a strong public sentiment....”  

(The League knew how to put the issue of “enforcing rigidly all laws” to good anti-communist propagandistic effect: a few months later it sponsored a law enforcement week—focusing on the laws most frequently violated in Salt Lake County with the anti-cigarette law one of the top four—on the grounds that it rendered “a great service to the United State [sic] government by curbing ‘the threatening menace of bolshevism by showing respect for law and order....’”)

A Mormon active in church work, Harries made a career in law enforcement from 1900 into the 1930s, having been a deputy sheriff, chief probation officer, and superintendent of a boys’ home before serving as Salt Lake County sheriff from 1923 to 1927. That Harries, a “staunch Democrat” (who had been defeated in the Democratic county convention), was running as an independent strongly supported by the Mormon church and the Ministerial Association, largely composed of Protestant Republicans, signaled to political forecasters on the eve of the election that the chief collateral damage of Harries’ campaign and victory might be inflicted on the head of the Republican ticket, its candidate for U.S. senator, Ernest Bamberger: not only would churches explain to their congregations why they should vote for Harries, but a thousand church workers would canvass virtually every voter in the county on his behalf, supplanting Republican efforts on Bamberger’s behalf.

Grant welcomed Bamberger’s defeat because, although as a Jew he satisfied the church president’s desideratum of a non-Mormon senator, Grant “detested” Bamberger, whom he viewed as an “unsavory machine politician” in the group in control of the state Republican Party. In the event, Bamberger (1877-1958), a mining engineer with degrees from Williams College and Columbia University, who was general manager of mining companies, president of utility companies,

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1556“Ban on Cigaret to Be Enforced,” SLT, Oct. 5, 1921, clipping in Selected Collections from the Archives of the Church of Jesus Christ of Latter-day Saints, vol. 2 (DVD 2002).
1558“Death Claims Former S. L. County Sheriff,” SLT, Jan. 20, 1941 (11:3). Harries was a member of the high priests’ forum of Wells stake. In the 1930s he worked as an enforcement agent for the Utah liquor control commission. Id. See also “Harries Files in Race for Commissioner,” SLT, Oct. 3, 1939 (20:2); “Former Salt Lake County Sheriff Dies,” OS-E, Jan. 20, 1941 (8:3). At the outset of his career he was involved in trying to apprehend Butch Cassidy. “Butch Cassidy to Surrender,” DEN, June 29, 1900 (1:1-2).
1559“Split Hurtful to Bamberger,” OS-E, Nov. 5, 1922 (10:3).
and regent of the University of Utah,\textsuperscript{1561} lost to the Mormon Democratic incumbent by 561 votes,\textsuperscript{1562} while Harries won a plurality (39.4 percent) over the Republican and Democratic candidates.\textsuperscript{1563}

About a week before he was due to be sworn in, 92 complainants—reportedly including Republicans, Democrats, Mormons, and non-Mormons—brought an action in state district court to enjoin Harries from taking office and for a temporary injunction to the same effect pending a hearing. The complaint alleged that a majority of Salt Lake County electors were members of the Mormon church, who “are taught to believe and do believe that the directions, orders and advice emanating from the head officer of said church...known as the president [i.e., Heber J. Grant]...is [sic] and shall be controlling, not only in spiritual matters, but with respect to temporal affairs, and that the requests and advice received from such authority is [sic] inspired and the word of God, and the members of said church have ever been, in the majority of instances, in the habit of obeying such requests and advice.” The pith of plaintiffs’ case was that the Mormon church through Grant, combining with and acting in concert with the Ministerial Association, had violated the Utah constitution (“There shall be no union of church and state, nor shall any church dominate the state or interfere with its functions”) by virtue of having “resolved and determined to procure the election of...Harries, and to do so by exercising the ecclesiastical authority” of the Mormon church and other religious bodies, to which end Grant “in writing and by speech directed and instructed the members of the...church (the...instructions being authoritative and purporting to be the inspired word of God) to cast their ballots for...Harries, regardless of their personal opinions because they were so advised by” Grant. Since the other ministers heading the other churches in the “combination” advised and directed their members to vote for Harries, “by reason of the undue influence...and against the will and personal opinion of the...electors..., a large number, to wit, a number sufficient to change the result of said election, were induced and compelled to vote for...Harries, which...votes would have been otherwise cast and would have prevented the election of...Harries had they been permitted to cast a free and untrammeled ballot in accordance with their own conscience and opinion.” The complainants therefore

\textsuperscript{1561}Men of Affairs in the State of Utah: A Newspaper Reference Work (n.p.) (Press Club of Salt Lake 1914).
\textsuperscript{1563}Calculated according to data in “Sheriff Must Stand Trial in Ouster Action,” SLT, Mar. 25, 1923 (1:1 at 17:4).
concluded that on account of this “intimidation” the “election was not free and equal,” but rather the “result of undue influence and coercion and...wholly invalid.”

During January and February 1923, Harries’ aggressive enforcement of the cigarette sales ban—the complaint filed on January 16 was the first prosecution in more than a year—and hearings and submissions in the suit against him proceeded in tandem. (Two weeks after passage of the Southwick repeal bill in March the district court denied Harries’ demurrer to the amended complaint and ruled that he would have to stand trial, but he remained in office. Later that year the Utah Supreme Court denied Harries’ request for a writ prohibiting the judge from proceeding on the grounds that as an equity court it lacked jurisdiction to inquire into the validity of his election; although the court ruled that the judge did lack such jurisdiction, it held that the action could proceed as an election contest. In November 1926, less than two months before the end of Harries’ term, the Utah Supreme Court ruled that the lower court had erred in refusing to permit plaintiffs to amend their complaint and in dismissing their case, and remanded the case to district court, but also

1567 Inter alia, the complainants were required to file an amended complaint offering greater specificity of charges, which alleged that Harries was a co-conspirator. “Sheriff Will Deny Charges,” SLT, Jan. 5, 1923 (22:2); “Demurrer Filed in Sheriff Case,” SLT, Jan. 6, 1923 (20:4); “Court Study in Harries Case,” SLT, Jan. 16, 1923 (16:3); “Court Rules for Sheriff Harries,” SLT, Jan. 21, 1923 (24:3); “Efforts Renewed to Oust Harries,” SLT, Jan. 24, 1923 (18:1-2); “Church Influence Denied by Harries,” OS-E, Feb. 4, 1923 (8:4); “Harries Counsel Moves to Strike Out Ouster Action,” SLT, Feb. 6, 1923 (7:3).
1568 Sheriff Must Stand Trial in Ouster Action,” SLT, Mar. 25, 1923 (1:1).
1569 Harries v McCrea, 62 Utah 348 (1923).
1570 Ewing v Harries, 68 Utah 452 (1926). Without deciding the ultimate point in the case, the Utah Supreme Court made it clear that church officials had the same rights and privileges as other citizens and electors to reason with fellow citizens. Moreover, it asked how a court could prevent any number of electors, whether affiliated with a church or not, “from combining and uniting their efforts to bring about the election of a particular
expressed great skepticism about its underpinnings. The case became moot both because Harries’ term was expiring and, running as a Democrat, he was overwhelmingly defeated by a Republican in his bid for reelection.\textsuperscript{1571}

In the midst of this increasingly active implementation of, at least, the Southwick law’s central (sales) provision, the legislative landscape changed on Valentine’s Day, when a bill was introduced in the Senate, whose impact a two-column, front-page headline in the \textit{Deseret News} judged to be: “Anti-Cigaret Law Threatened.”\textsuperscript{1572} Senate Bill No. 108 was introduced by 69-year-old Republican Henry N. Standish,\textsuperscript{1573} one of only three senators to have voted against Southwick’s bill in 1921, at which time he went on record on the Senate floor as “opposed now and forever to any such legislation. He said he had used tobacco all his life and he failed to see the harmful effects of it.”\textsuperscript{1574} Speaking immediately after and in response to Southwick’s lengthy recitation of the deleterious health effects of smoking, which he himself had invited Southwick to give for his enlightenment as a smoker, Standish, “not among the ‘kindergarten’ class” of the legislature, “wondered what kind of an old man he would be if he had not” been a lifelong tobacco user, “seeing that it must have had such an injurious effect on his system.” Having drunk heavily mineral-impregnated water from the hills of Bingham for 45 years, he conjectured that his by now “‘copper-lined’” stomach might be untouchable by the poisonous carbon monoxide that Southwick had mentioned. Doubtless more serious and relevant was that “‘most of the men’” in the locality he came from were smokers, which would have made him derelict in his duty if he failed to “recognize the fact that they do not want this bill. I am everlastingly and all the time opposed to any kind of a measure of this sort.”\textsuperscript{1575}

\textsuperscript{1571}“Patten Gains Sheriff Place,” \textit{OS-E}, Nov. 3, 1926 (2:3).


\textsuperscript{1573}\textit{Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923}, at 277 (Feb. 14). At the 1880, 1900, 1910, and 1920 population censuses, Standish was returned as a miner, lumber merchant, real estate agent, and city health officer, respectively.

\textsuperscript{1574}“Cigarette Measure Is Discussed in Senate,” \textit{DN}, Feb. 3, 1921 (sect. 2, 6:1-4 at 3).

Although the Southwick law repealer had been anticipated for several days, a “visible flurry” nevertheless “passed through” the Senate chamber at the reading of the title of S.B. No. 108, which gave all prospect of reopening the intense debates of 1921 and becoming “the most animated battle of the session.” Standish’s bill repealed the 1921 law almost in its entirety, leaving, oddly, only the ban on smoking in enclosed public places intact (which may have been retained as a way of attracting the votes of legislators who would otherwise have opposed licensure). Otherwise quite similar to the 1921 Iowa repealer, the bill subjected cigarette sales to a licensure regime, the permits, costing $25 to $50 a year depending on city size, to be issued by city councils and county commissions on an optional basis, though these local governments were required to revoke the permit of any holder who violated any provision. Each cigarette was also to be taxed one mill (or two cents per package of 20), which Standish guesstimated would yield annual revenues of about $150,000 based on annual consumption of 150,000,000 cigarettes under the existing law, which outlawed their sale altogether. Places where cigarettes were sold illegally could be declared nuisances, which could be abated pursuant to the laws governing the sale of intoxicating liquor. Finally, the penalty for selling cigarettes to minors was set at $25 to $100 or a maximum 30-day jail sentence for a first offense and $100 to $500 and/or a one- to six-month sentence for additional convictions.

1576“Anti-Cigaret Law Threatened,” DN, Feb. 14, 1923 (1:1). The bill’s provisions are cited according to press reports because S.B. No. 108 is the session’s only Senate bill missing from the Utah State Archives collection.
1577“Local Option on Cigaretts Urged,” SLT, Feb. 15, 1923 (8:7, 14:2); “Stormy Scenes Expected in Closing Rush of Legislature,” OS-E, Feb. 15, 1923 (2:1-2). According to another account, unnamed “proponents” of the bill believed that it would generate $300,000 in revenue, while reducing the price of a 10-cigarette package, which cost 11 cents “in any city on the coast,” but 20 cents in Utah. “Proposed New Cigaret Law Provides Special Stamp Tax and License Fees; $300,000 Annual Revenue Estimated,” Salt Lake Telegram, Feb. 14, 1923 (Local page 1:5, 6:1). Standish’s estimate—the basis of which he did not disclose—sheds light on some important consumption phenomena. In 1923, national per capita annual consumption of manufactured cigarettes by all persons 18 and over amounted to 911. http://www.cdc.gov/tobacco/research_data/economics/consump1.htm (visited Nov. 22, 2006). The corresponding figure for Utah, based on Standish’s 150,000,000, was 561 or 61.6 percent of the national rate. U.S. Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970, Pt. 1, tab. A195-209, at 35 (Bicentennial ed. 1975) (Utah population data). Although Utah’s substantially lower level is thoroughly plausible, the situation becomes murkier when it is taken into account that 60 percent of the
population was Mormon in 1920. Deseret News 1983 Church Almanac 272 (1983). Had no Mormons smoked (cigarettes), Utah adult non-Mormons’ per capita annual consumption would have been 1,403 or 54 percent higher than the national average. (To be sure, this figure is probably too high because Mormon families were larger and therefore non-Mormon adults presumably accounted for more than 40 percent of the adult population.) In the event, Standish’s estimate was itself too high: during the first full year that the cigarette tax was in effect (1923-24) 112,314,000 cigarettes were sold, which worked out to an average of 420 for the entire 18 and older population and 1,051 for the non-Mormon adults. “$112,313 Paid in Cigaret Taxes,” Daily Herald (Provo), May 13, 1924 (sect. 2, 1:5-8). (This figure may be too low since it did not reflect bootlegged cigarettes or cigarettes that consumers mail ordered from other states.) The non-Mormon figure was very close to the national average and would have been even closer if the presumably relatively small number of Mormon cigarette smokers were added to the denominator. In 1923-24 the cigarette tax revenue in Iowa amounted to $700,079 or about 6.2 times more than Utah’s, while Iowa’s population was about 5.2 times greater. See below ch. 19, tab. 7; U.S. Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970, Pt. 1, tab. A195-209, at 27, 35 (Bicentennial ed. 1975).

Despite indorsement by the Salt Lake Chamber of Commerce’s legislative committee and board of governors,\textsuperscript{1579} initial prospects for passage were poor. Three days after S.B. No. 108’s introduction, the Senate Public Affairs Committee, to which it had been referred, went into executive session after having granted a hearing to Standish, who agreed that a public hearing would be unnecessary. He sought to stress the bill’s merits, including retention of the public smoking ban and the optional nature of licensure, meaning that localities desiring to retain the existing sales prohibition could retain it. He also cited the experience of forerunner Iowa, where in the previous year $593,279.74 in cigarette tax revenue had been generated. After Standish had left the committee session, its chairman announced that its five members had unanimously decided to report it unfavorably. On reaching the full Senate, it was then referred to the bottom of the second reading calendar.\textsuperscript{1580}

The bill’s negative treatment may not have expressed a substantive judgment: some senators, the Tribune reported, believed that the Southwick law would be repealed “sooner or later,” but did “not consider it an opportune time so late in the session, to permit the legislative machinery to become clogged with the discussion that will inevitably follow the serious consideration of such legislation.”\textsuperscript{1581} A very different take on the all-sidedly satisfactory stasis was offered by committee members, who wryly opined: “‘People who want cigarettes

\textsuperscript{1579}“So The People May Know,” Salt Lake Telegram, Feb. 20, 1923 (1:3).

\textsuperscript{1580}“Cigaret Measure Disfavored,” DN, Feb. 17, 1923 (sect. 2, 1:1).

\textsuperscript{1581}“Change Opposed in Cigaret Law,” SLT, Feb. 18, 1923 (15:7).
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

have them and people who want the anti-cigaret law have it." How long that make-believe equilibrium would last was put into question a few days later, when the committee’s executive session rejection of the bill was bandied about as having “given rise to much of the agitation over the existing anticigaret law.”

In Provo, a center of Mormon anti-tobaccoism, the prevailing reaction to Standish’s initiative was that the Southwick law should be strengthened rather than weakened and that “a local option law would be worse of a joker than anything tried thus far.” The stake president of the Young Men’s Mutual Improvement Association argued that local control would be worse than the current unenforced law because boys would simply buy cigarettes in nearby towns that did not choose to retain prohibition—a conclusion that, to be sure, seemed overdrawn since that option was apparently available to them even under the Southwick regime.

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The dragnet that was about to descend was deprived by just moments of considerable piquancy: Nebraska federal District Court Judge Joseph Woodrough “‘had scarcely passed through the door onto the street with a cigar in his mouth when the officers entered....’” Displaying their badges, the deputies informed the two businessmen that they were under arrest (for violation of the statutory ban on smoking in an enclosed public place). While Deputy John Harris was left in charge of them, Deputy Michael (Mike) Mauss walked on toward the back of the cafe, where he discovered the 32-year-old department manager of the American Smelting and Mining Company, Edgar Newhouse, smoking a cigarette. Initially, Mauss believed that the latter’s lunch-mate, Le Roy Eccles of Ogden (scion of Utah’s richest family and one-time vice-president and general manager of the family-owned Amalgamated Sugar Company), was also smoking, but Eccles showed an unlighted cigarette, prompting Mauss to apologize for having suspected him, before informing Newhouse that he was under arrest but free to finish his meal if he had not yet done so. In the welter of the ensuing commotion a customer pointed out Ambrose N. McKay, the general manager of the anti-prohibitionist *Salt Lake Tribune*, who was about to leave after having paid the bill at the cigar counter, to Deputy Harris, asserting that he too was smoking, but the latter was too concerned about guarding Bamberger and Lynch to arrest McKay at that time. Because the deputies had neither driven a car to the cafe nor requested one after making the arrests, they “marched” the three in their custody in a kind of extended perp walk down Main Street to the county jail for booking, but because of an argument over the demand for $10 bail for their court appearance, they were then taken to the county attorney, who issued formal complaints (also against McKay to be served later that day). The three appeared before a judge, who released them on their own recognizance to appear in court the following morning. Amusingly, the arrestees insisted that McKay had also violated the law and that “the officers dare not take the newspaperman into

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1588 “Protest of Cigaret Law to Be Shown by Blowing of Whistles Today Noon,” *SLT*, Feb. 24, 1923 (1:6-7 at 7:2). This statement was made by Minnesota federal District Court Judge Page Morris three days later at a luncheon at the Exchange Club of Salt Lake City in the presence of Judge Woodrough (who died at age 104). Morris confessed that until recently he himself had violated the law every day since arriving in Salt Lake except when he smoked in his hotel room or in his court chambers at the federal building.
custody”; they were to be summoned the next day as witnesses against him.\(^{1589}\)

Despite their admission that they had been smoking in the restaurant, Bamberger, Lynch, and Newhouse were nevertheless “indignant” at having been subjected by the law officers “to arrest and detention as they would [treat] any other criminal”—an indignation manifestly shared by the Los Angeles Times, whose front-page, top-of-the-fold subhead read: “Wealthy Smokers Are Arrested.”\(^{1590}\) Mauss and Harris denied not only trying to frame the four as “outstanding examples of flagrant anticigaret law violation,” but even knowing their prisoners’ identities until they arrived at the jail. Moreover, Mauss insisted that if they had identified themselves in the cafe and said that they would appear in court the next day, “we would have never taken them into custody.”\(^{1591}\) Thus, although the deputy purported to acknowledge the privileged criminal process status to which capitalists were entitled, it is unclear why their mere presence in the lofty Vienna Cafe would not have sufficed to convey the requisite socio-economic and political signifier to him.

Deputy Mauss (1871-1937), a Mormon who served as a ward bishop and high priest and stake high councilman,\(^{1592}\) may have been one of those few lucky mortals whose vocation and avocation coincided: in 1919 he had been on the three-member committee that drafted the constitution and by-laws of the No-Tobacco League of Utah,\(^{1593}\) whose vice-president and treasurer he then became\(^{1594}\) and whose short-lived periodical, The No-Tobacco News, he

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\(^{1590}\)“Halt Crime in Utah!” LAT, Feb. 21, 1923 (1:8). While Bamberger and Lynch denied that they had intentionally violated the law, Newhouse “protested that [since] he was seated in a private booth he was under the impression that he was within the law by reason of the provision which legalizes smoking in rooms set aside for such purposes.”


\(^{1593}\)”Marshall Mauss Is Now a Bishop,” Salt Lake Telegram, Jan. 25, 1909 (1:5); http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=127125 (visited July 18, 2011). Although his obituary stated that he had been in law enforcement his whole life and the 1910 census returned him as city marshal of Murray, the 1920 census returned him as a field man in a canning factory.

\(^{1594}\)”No-Tobacco League Is Organized by 17,” SLH, Aug. 29, 1919 (16:6).

published. In his capacity as a League officer he also traveled around the state as a speaker. Then in February 1921 he submitted a petition to the Utah House “favoring the Southwick bill, but claiming it is not a church measure.” (At the time of the arrests in 1923, the press referred to him indiscriminately as the League’s president and former president.)

The press was hardly alone in taking ersatz-umbrage at the dignitaries’ treatment: Assistant County Attorney George Cannon, Jr. not only “protested against alleged indignities” to which Mauss and Harris had subjected them, but told Chief Deputy Edward Doherty that the two deputies “should be reprimanded for taking the prisoners to the county jail to book them when, because of their prominence, it would have been more fitting and courteous to have conducted them to the committing magistrate, swore [sic] to the complaints there and fixed bail.” Doherty—without explaining how and why they had selected the where-the-elite-meet-to-eat Vienna Cafe—defended his deputies, who had merely “picked up the first three men we saw when we entered the cafe. ... Our deputies didn’t know Bamberger, Lynch and Newhouse from Jones, Smith or Brown. Any person who smokes in a cafe violates the law. All violators will be treated alike. This office will play no favorites. We shall continue arrests relentlessly.”

Sheriff Harries, too, indignantly rejected all claims that he was trying to make an example of these prominent Utahns:

“Any charges that this was a frame-up to bring this law more prominently before the public is bosh.... I have instructed my deputies to enforce this law while they are engaged in their other duties and it just happened that they dropped into the Vienna cafe and found these men smoking. Had there been other men in there smoking they would have arrested them too.

“This law is on the statute books and as long it remains there we are going to enforce

1596 No Tobacco’ Meeting at Sixth Ward Sunday,” OS-E, June 26, 1920 (8:3); “No-Tobacco League Speakers Here Sunday,” OS-E, July 16, 1920 (7:3).
1597 House Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 223 (Feb. 9). Unfortunately, the petition is not preserved in the Utah State Archives.
1598 Harries’ Deputies Arrest Prominent Business Men,” Salt Lake Telegram, Feb. 20, 1923 (1:4); “Smokers Arrested in Grill Room; Capitol Also Scene of Raid,” Salt Lake Telegram, Feb. 21, 1923 (1:2, at 5:5); “More Utah Smokers Taken,” NYT, Feb. 22, 1923 (7). By mid-1922, Fred Bennett was the former president. “Passing Events,” IE 25(9): 854-58 at 858 (July 1922).
1599 Smokers Arrested in Grill Room; Capitol Also Scene of Raid,” Salt Lake Telegram, Feb. 21, 1923 (1:2, at 5:5); “No Tobacco Is Slogan,” LAT, Feb. 22, 1923 (1:8).
Bizarrely, then, Harries, the hand-picked Mormon choice of the Mormon president, appeared to be virtually inviting anti-prohibitionists to avail themselves of his smoking busts to break the legislative log-jam over the Standish bill in order to secure repeal of the unpopular Southwick law. At the time, too, even though no plausible political logic for them was offered, “[s]tories persisted that the crusade was the result of a carefully laid plan to discredit the anticigarette law and force action on a repealer by the Legislature...,” but these reports were vigorously denied by the County Attorney and Sheriff.” Admittedly, Grant and the Mormon hierarchy had a difficult decision to make—either acquiesce in the status quo with a much flouted law or seek to ratchet up enforcement with high-profile arrests at the risk of triggering a repeal backlash.

To be sure, Newhouse had not yet come to that realization; instead, as McKay’s newspaper reported, he denounced the “outrage” that the deputies had picked out one cafe for invasion without visiting the (Mormon church-owned) Hotel Utah and other dining places: “it is another attempt of Sheriff Harries to make a record for his office by sending his assinine [sic] deputies around to arrest smokers.” In fact, several hours after the Vienna raid Mauss and Harris arrested non-prominent bridge-builder Nels Carlson as he was lighting a cigarette in another cafe. When they were arraigned the following day—The New York Times reported the arrests on page 2—before City Judge Noel Pratt the threesome waived a preliminary hearing and availed themselves of the prescribed period to plead two days later, while the separately represented McKay pleaded not guilty as did Carlson. In the meantime, Harries’ deputies were showing themselves to be

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1600a. “Deputies Arrest Citizens Smoking in Public Place,” SLT, Feb. 21, 1923 (22:6-7). The aforementioned visiting federal Judge Morris took the same stance: “‘rigid enforcement’” would work out best whether the law was repealed or not, but if the law was bad, such enforcement would lead to its repeal. “Protest of Cigaret Law to Be Shown by Blowing of Whistles Today Noon,” SLT, Feb. 24, 1923 (1:6-7 at 7:2).
1604e. “Accused Violators of Public Smoking Statute Deny Guilt,” DN, Feb. 21, 1923 (1:3). When the accused appeared they declined to plead and the judge ordered pleas of
equal opportunity enforcers as their raid of the Hotel Utah’s grill room that same day netted four more violators, paper company officers entertaining an out-of-state manager, while the State Capitol itself yielded five arrests.\textsuperscript{1605} At the conclusion of their two-day campaign, Mauss and Harris estimated that their visits to almost a dozen restaurants and cafes had resulted in 11 arrests, though apparently none had been able to compensate Mauss for his let-down at the state house; “Commenting on his desire to catch one of the legislators in the act of violating the antismoking law, Deputy Mauss said he had even invaded the cafeteria at the state capitol in the hope of sighting some lawmaker indulging in a smoke. In this quest he was disappointed, and was forced to change his scene of operations to other parts of the building before making an arrest.”\textsuperscript{1606} To be sure, despite the fact that the latter raid was “spectacular,” involving a prominent American Legion member and “Utah’s worst-wounded World War veteran,” the “outcry against the forcible handling of Bamberger” and consorts prompted a change in tactics: the sheriff’s office had instructed the deputies not to “drag[ ] the offenders to a committing magistrate,” but merely to notify the violators that they were under arrest and to order them to make an appearance.\textsuperscript{1607}

Neither the press nor owners explained either the basis of their indignation or why enforcement of a duly enacted state statute to protect non-smokers amounted to a “crusade against...smokers,” who needed “protection” so that they might “enjoy an after-dinner cigar or cigaret.”\textsuperscript{1608} As a puzzled Milton Bennion of the Social Welfare League observed:

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\textsuperscript{1607}“No Tobacco Is Slogan,” \textit{LAT}, Feb. 22, 1923 (1:8).

\textsuperscript{1608}“Signs Warn Salt Lake’s Smokers,” \textit{SLT}, Feb. 22, 1923 (20:1-2). One editorialist argued that the Southwick bill had been passed before “the people” were “educated to the point of seeing the necessity of or demanding the law” as shown by the fact that cigarette smoking had come to include a “big percentage of the male and part of the female population.” “Excitement over the Cigaret,” \textit{OS-E}, Feb. 24, 1923 (4:1) (edit.).
“It is a custom of long standing throughout the country to forbid smoking in certain inclosed places—dining cars, for instance. If public service corporations can make and enforce such rules in the interests of the non-smoking public, why such a commotion over a similar provision in the Utah law? Does not the person who is nauseated by inhaling second-hand tobacco smoke have any rights? If the smoker is to be so insistent on his inalienable rights to smoke where and when he pleases, may he not with equal force contend for like liberty to spit on the sidewalk in defiance of the law?”

Ironically, the very same day that Mauss nabbed the capitalist smokers, across the country in distinctly non-Mormon New York City Harlem Court Magistrate Charles E. Simms fined 16 men $5 each for having smoked in the 125th Street Station of the Lexington Avenue subway. The aroused judge’s firmness by far exceeded the Salt Lake sheriff’s: “Conditions at this subway station have grown simply terrible.... They have become so bad in the last few months that men even light their cigars, cigarettes and pipes in the vestibules of the cars. I am going to do everything I can to stamp out this nuisance, and any subway smoker who comes before me may expect to get the limit.”

The day after the initial Salt Lake arrests owners of Southwick-covered enclosed public places, in response to “the two days’ crusade of deputy sheriffs against Salt Lake smokers,” began trying to subvert enforcement by posting signs such as, “This is a public smoking room, so far as Sheriff Harries is concerned.” Chief among these proprietors was George Morgan of the Vienna Cafe itself, whose sign read: “Vienna Cafe: Public Smoking Room.” Even he was dubious about the law-conformity of his own ploy: “Although not certain that he could include so much territory in his pronouncement, Mr. Morgan virtually included his entire establishment within the protected [i.e. for smokers] area by erecting a notice which announces in very black block letters, ‘Vienna Cafe Public Smoking Room.’ The restaurant man said he was accepting the advice of City Attorney William H. Folland that such was the best course to pursue in view of the hectic occurrence Tuesday.

161016 Subway Smokers Fined; Violations Arouse Court,” NYT, Feb. 20, 1923 (20).
1612 1921 Utah Laws ch. 145 § 4, at 390, 391 (italics added).
sign that the cafe was “open to the public for smoking purposes” he had “changed the status of his restaurant” was on its face so preposterous that it is difficult to imagine the legal reasoning that might have prompted a city attorney to express approval of such a manifestly non-conforming practice as a “bona fide attempt to circumvent the provisions of the two-year-old anti-smoking law by placing the room or store in the category of a place set apart where smokers may be immune from the clutches of the law”—when in fact they were not being “set apart” from non-smokers in “extra rooms.” To be sure, with breathtaking celerity this interpretive overreaching would become self-fulfilling: just two weeks later the legislature would gut this section of the Southwick law by adding the exception that “the owner or proprietor of any hotel dining room, restaurant, cafe or cafeteria may designate the same as a public smoking room by a conspicuous sign at or near the entrance.”

Sheriff Harries appeared not in the least perturbed by these verbal shenanigans: again intimating that his enforcement policy might be aimed at ridding Utah of the law altogether, he stressed that “the war on those who violate the state law has scarcely started. If it fails to bring about a repeal or amendment of the law at the present session of the legislature the fight will go right on until the next session is held, and then go on another two years if smoking in public is a crime at that time....” His chief deputy, Edward H. Doherty, was even blunter. Charging that dealers who were “reaping a harvest of anywhere from 50 to 80 per cent from the [illegal] sale of cigarettes...do not want this law repealed. They accused us of picking on foreigners for the enforcement of this law, so now we will show them that we can also pick up some of those who can, or would if they cared to help to bring about the repeal of this law if it is an unpopular one. This fight is going to go right on for the next four years if the present law remains on the statute books that long.” Doherty, who did not explain why the sheriff’s office was permitting this lucrative illegal trade to continue, was apparently referring to the Greek, Italian, Croatian, Mexican, and other sellers born outside the United States who had been arrested in February in the aforementioned raids, although why their U.S.-born competitors would have complained about their arrests is unclear, especially since some of the latter were also arrested. In

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16151923 Utah Laws ch. 52 § 4, at 110, 114.
1617The nationalities of several arrestees’ listed in the aforementioned newspaper articles were identified in 1920 Census of Population; several others with names suggesting Latin or eastern European origins were absent from that census.
any event, the chief deputy’s hardly veiled reference to the prominent Utahns arrested for smoking—*The New York Times*, which was following events closely and pouring generous doses of editorial sarcasm on Utah’s entry on to “the path of perfection,” noted that the law, whose “terrors are falling on its violators,” was being enforced “partially”\footnote{\textit{Utah Lawbreakers}, \textit{NYT}, Feb. 23, 1923 (12) (edit.).}—suggested, once again, the possibility that Harries’ strategy was, oddly, contrary to his Mormon benefactors’ prohibitionist goal, geared toward repeal.

At this juncture in the coalescing of business opposition to the Southwick act the chief Mormon daily took stock of its tenability and concluded not only that in principle it “should be as sacred” to Utahns and thus as “strictly obeyed” as any other state statute, but that in fact there could be “little, if any, doubt that a majority” of Utahns “favor regulation by law of certain phases of smoking.” Indeed, the newspaper’s overoptimism pushed it into making the non-self-fulfilling prophecy that it was doubtful, if given the chance “freely and sincerely to express themselves,” that Utahns “will ever permit the law to be repealed.” And while the editorialist paid lip service to opponents’ right to make their views known, especially during the legislative session, it urged that “[a]ny effort at compulsion or duress should be strongly resisted by the people themselves” and by legislators without in any way identifying that objectionable politicking.\footnote{\textit{Smoking and the Law}, \textit{DN}, Feb. 23, 1923 (4:1) (edit.).}

The defense of the Southwick law by the *Deseret News* focused on public health to the total exclusion of moral considerations while minimizing (the impact on) male smokers’ rights:

Men who want to smoke may do so. Men and women who wish to avoid the contamination of the smoke should be permitted, and have the right to be able to do so. Under the law restaurant keepers can arrange to permit smoking in their places of business if they so desire. Those who wish to keep away from tobacco smoke need not and doubtless will not patronize their places of business.

To many people tobacco smoke is not only offensive but absolutely injurious; particularly it is distasteful to them when it contaminates their food. Smokers have no more right to infringe upon the rights of others in this regard than they would have of disturbing the peace or molesting the property of their neighbors in other directions. Men who smoke are accustomed to regulation, in railroad cars and theatres, for example. In such places they do not hesitate to comply with the requirement that if they want to smoke they must go to the special compartment designed for this purpose. ... The smoker’s personal rights are not taken from him. He may smoke in his home, on the street, in his office—almost any place, in fact, except those enclosed places into which the public comes
and where health, sanitation and the general welfare demand that the air be not defiled.\textsuperscript{1620}

Astonishingly, after the smoking ban had been in force for almost two years and despite the intense and roiling public debate over it, the Mormon editorialist appeared confused about its scope. In stating that restaurant owners retained the right to permit smoking and that secondhand smoke non-enthusiasts could simply (continue to) avoid such places, the newspaper implied that the law had changed nothing, whereas in reality smoking was permissible only in special extra rooms. (The innovation by the Hotel Utah—owned by the Mormon church\textsuperscript{1621} and the intermountain region’s leading hotel\textsuperscript{1622}—initiated within three days of the first arrests, of maintaining two dining rooms, a smoking room on the main floor and a no-smoking room on the mezzanine, would have been compliant if the former rather than the latter had been the extra room,\textsuperscript{1623} but in fact, as the \textit{Telegram} precisely expressed it, “Hotel Offers Non-Smokers Private Room.”)\textsuperscript{1624} If, in contrast, the \textit{Deseret News} was subtly intimating that the law was feckless because smoke drifted from those extra smoking-dedicated rooms into the main, non-smoking dining areas, which would thus not be smokefree, then the ban was a hoax and smokers would have had little reason to protest. However, this second interpretation appears implausible because the paper had already made the analogy to railroad smoking compartments without hinting that secondhand smoke foes had reacted defeatistically and simply stopped traveling by railroad.

If a top-down repeal movement was the sheriff’s objective, then Salt Lake City’s businessmen were rushing toward its achievement. By the second day after the initial wave of public smoking arrests—“all Republicans, by some curious coincidence”\textsuperscript{1625}—about a hundred local businessmen (including Newhouse) met at the Chamber of Commerce and appointed a 15-member committee to appear before the legislature the next day “to provide other means of interesting the public in opposition to the anti-cigarette law and what was designated as ‘other freak legislation.’”\textsuperscript{1626} The Chamber’s interest derived at least in part from its and

\begin{footnotes}
\item[1620]“Smoking and the Law,” \textit{DN}, Feb. 23, 1923 (4:1) (edit.).
\item[1622]“Salt Lake Fights Anti-Cigarette Law,” \textit{NYT}, Mar. 4, 1923 (XX2).
\item[1623]“Crime Lull in Utah?” \textit{LAT}, Feb. 24, 1923 (1:1, at 2:4). That profit trumped religious dogma was not unprecedented: the Hotel Utah had also served alcohol before Prohibition. Email from Prof. Thomas Alexander to Marc Linder (Aug. 21, 2011).
\item[1624]“Hotel Offers Non-Smokers Private Room,” \textit{Salt Lake Telegram}, Feb. 23, 1923 (Local page, 1:6).
\item[1625]“Salt Lake Almost Pure,” \textit{LAT}, Feb. 28, 1923 (sect. 2, at 10).
\item[1626]“Business Men Urge Repeal Cigaret Law,” \textit{DN}, Feb. 22, 1923 (1:5). The chairman
\end{footnotes}
of the group, Lester Freed, a former president of the Commercial Club, was a furniture merchant.

1627“‘No Tobacco Is Slogan,’” LAT, Feb. 22, 1923 (1:8). Without any evidence, “So the People May Know,” Salt Lake Telegram, Feb. 20, 1923 (1:3), asserted that “our broadminded people,” in contributing to this fund, “expected that new legislators, representatives of the broader thought of Utah, would repeal this disgraceful lie” (i.e., the Southwick law).

1628“‘Protest of Cigaret Law to Be Shown by Blowing of Whistles Today Noon,’” SLT, Feb. 24, 1923 (1:6-7 at 9:3).


1630“Business Men Call on State Solons to Kill Cigaret Law,” DN, Feb. 23, 1923 (sect. 2, 1:4). The aforementioned Freed was assigned to sound out the governor on the Standish bill. According to “Protest of Cigaret Law to Be Shown by Blowing of Whistles Today Noon,” SLT, Feb. 24, 1923 (1:6-7), the committee was unable to meet with Standish.

1631“Attempt to Kill Cigaret Law Blocked,” DN, Feb. 23, 1923 (1:7). These proceedings are not reflected in the House Journal.
cigarette law was “making Utah a joke to the rest of the country”—on behalf of a mass meeting on Saturday afternoon, February 24 at the Orpheum theater.\footnote{1632}

The holding of this meeting left Frederick Loofbourow, who, as chairman of the Salt Lake County Republican committee and campaign manager during the recent election, was alleged to have made a secret pledge that the county “delegation would not tamper with the anti-cigarette law if elected,”\footnote{1633} in disbelief and resenting the businessmen’s lack of gratitude for the “proper spirit and purpose” demonstrated by the “safe and sane” legislators who thus far during the session had taken such pro-business action as defeating monopolistic insurance and added taxation and not proposing any sumptuary or income tax laws. The 1896 U.C. Berkeley law graduate, former state district judge, and future congressman lost his patience: “What more do the business interests of this state demand? Why hire a theater in order to blacken the reputation and standing of your fellow townspeople...?”\footnote{1634}

The more than half-page paid advertisement that appeared in the \textit{Salt Lake Tribune}—which was both reporting in great detail on and cheerleading the repeal campaign—on the morning of the meeting left no doubt that businessmen were in control: “We are all stockholders in the Commonwealth of Utah and we all expect dividends from our investments and our efforts. We are entitled to legislative action that will not only protect our interests, but enhance their value, and when a legislature enacts a law like our Cigaret Law, that will provoke, however facetiously, an assumption that Utah is without the pale of the United States and itself a stench in the nostrils of the free peoples of America, it is time the free people of Utah act together in an effort to remove this impression.” Bizarrely, in unoverlookable contradiction of the movement’s underlying animus, the anti-freak law executive committee’s concluding line claimed: “We do not oppose the enforcement of any law on the Statute Books of the State of Utah.”\footnote{1635}

\footnote{1632a} Antifreak Law League Launched; Legislators Deny Smoke Pledge,” \textit{SLT}, Feb. 23, 1923 (22:2-3).


\footnote{1635} “Why Don’t You Move to America?”, \textit{SLT}, Feb. 24, 1923 (7:4-7).
The Tribune also editorially set the tone for the meeting by conjuring up a nightmarish Zion—that legislators “surrounded...with barb-wire entanglements of freak legislation”—in which “peace officers patrol the lobbies of our hotels for unsuspecting tourists and reckless business men” and from which Utahns “exclude fumigating desperadoes of commerce and travel who insist upon spending their smoke-tainted money in our stores, hotels and restaurants....”

At the meeting, whose more than standing-room-only attendance of more than 4,000 made for front-page headlines, speakers assailed the law for having “‘made criminals out of our most splendid citizens” and took issue with the claim (of the Deseret News) that tobacco smoke contaminated food or that “smoking in dining rooms was objectionable to many people.” Availing himself of a rhetorical tactic of which pro-tobacco forces are still enamored, Herbert R. MacMillan (a well-known lawyer and former president of the Utah State Bar Association) irrelevantly pontificated that: “Corn beef and cabbage...is obnoxious to some people, and they do not like to have it served at an adjoining table, but their objection would be a weak basis upon which to construct a law prohibiting the serving of such food.” In the end, the meeting decided to change the organization’s name from Liberty League of Utah to Party of Freedom, whose purposes were to “promote...the highest ideals of American citizenship, fair play, personal liberty, unrestrained [sic] government, to combat all freak legislation,” of which, according to the supporting resolution, the Southwick law, “deemed by a large and respectable portion of the citizens of...Utah to be an unjust and unwarranted curtailment of the rights and liberties of the people,” was the prime example, because: “Large sums of money have been raised and efforts expended to advertise to the entire nation the state of Utah, its scenery, its resources and its attractive possibilities, endeavoring to create a favorable impression abroad and to attract new people and new capital[, w]hereas, [t]he effects of such advertising are nullified by the continuance of and enforcement of such legislation as the Southwick anti-tobacco law making the state of Utah an object of ridicule among the people of our sister states.”

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The day after the mass meeting the *Salt Lake Tribune* seamlessly picked up editorially where its biased reporting had left off. In concentrated form its position expressed the either ignorant or make-believe view that behind Southwick-type state intervention stood nothing but moralistic “superannuated puritanism” bereft of even the slightest whiff of public health logic and intruding into harmonious social life in a nation in which no sane adult male had ever contested the monopolization of public breathing space by smokers:

Deputies have invaded restaurants and hotels where...customers have smoked from time immemorial; inoffensive, upright citizens have been apparently singled out for the obvious purpose of making examples of them in order to intimidate others and cause the iron hand of intolerance to be felt in the community.

These smokers were annoying no one, nor had anyone present made complaint; the cigars had not made them sick, nor hilarious, nor belligerent in conduct nor in speech; there were no ladies present and no known reason for laws or officers to interfere with the harmless enjoyment of an after-dinner smoke in a peaceful gathering of mutual friends and acquaintances.

After disregarding the facts that Utah legislators had debated the public health consequences of secondhand smoke exposure at length in 1921, that the law did not place the burden of enforcement on private complainants, and that, although at least the public smoking ban may not have been enforced in 1921 or 1922, Sheriff Harries had put Salt Lakers on notice seven weeks earlier that he would enforce it, the *Tribune* went on to castigate both owners who dignified the law by simulating compliance with it and anti-smoking customers who insisted on foisting cleaner indoor air on smokers despite the existence of pre-Southwick smoke-free restaurants thanks to market demand or owners’ proprietary preferences:

Placards are being displayed notifying smokers that they may continue to smoke in rooms where they have always smoked, at tables where they have been arrested for smoking, provided some separate nook, corner, room or alcove is indicated where smoking is not

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Meeting,” *Salt Lake Telegram*, Feb. 25, 1923 (1:1, 4:2), reported the speech by the meeting chairman, which was overtaken by events, denying reports that the committee calling the meeting intended to form a new political party; rather, stated Lester Freed, “it was purely a meeting of liberal minds...looking to the correction of a condition that had become unbearable.” On MacMillan, see *History of the Bench and Bar of Utah* 171 (1913).

1640...Small Town Stuff,” *SLT*, Feb. 25, 1923 (edit. sect. 2, 2:1).

1641...Small Town Stuff,” *SLT*, Feb. 25, 1923 (edit. sect. 2, 2:1).
permitted. This is nothing but a subterfuge. It has always been possible for diners to whom smoking was objectionable to patronize places where signs forbade indulgence in the weed. They did not have to go to restaurants where practically everybody enjoyed smoking after meals.\footnote{\textit{Small Town Stuff,'" SLT, Feb. 25, 1923 (edit. sect. 2, 2:1).}}

In contrast, the \textit{Telegram},\footnote{\textit{After having bought the \textit{Tribune}, U.S. Senator Thomas Kearns started up the \textit{Telegram} in 1902 as his afternoon paper. William Roper and Leonard Arrington, \textit{William Spry: Man of Firmness, Governor of Utah} 69 (1971).} As Senator Warnick said: “The only reason for permitting magazine advertising of tobacco to come into the state was because ‘we cannot help it. If we could, we would stop them, too.’” \textit{Tobacco Bill Amended and Passed by Senate," SLT, Mar. 4, 1923 (24:2-3 at 3).} which was, arguably, even more hostile to regulation, focused its attack on the moral dimension. Because Standish had retained Southwick’s partial public smoking ban, the newspaper’s prominent front-page editorial (bearing the page’s only headline in large, thick, upper-case, bolded letters) concluded that both act and bill “protect[ ] the nonsmoker against what he may deem an infringement of his rights. The nonsmoker is not injured by the sale of cigarettes when they are not smoked in his presence.” To be sure, since most (even enclosed) public places were not covered, this latter claim was hardly robust, but since it applied to both Southwick and Standish equally, it could withstand scrutiny. Where it broke down was in its neglect of the impact that the lawful sale of cigarettes had both on their perceived normality and on their attractiveness to children. The \textit{Telegram} sought to minimize this difference by asserting that the Southwick law (like Standish’s bill) imposed “no legal restraint over the purchase of cigarettes” because it “casts no reflection on the man who buys his smoking materials in another state.”\footnote{So the People May Know,” Salt Lake Telegram, Feb. 25, 1923 (1:3-5).} But this argument overlooked three important differences: (1) the diminished spontaneity associated with being forced to place mail orders—rather than being intrusively reminded of cigarettes’ availability on every commercial district street—presumptively reduced consumers’ purchases and use; (2) the prohibition of in-state sales and the compulsion to order from other states, again, interfered with children’s perception of cigarettes as a normal commodity; and (3) but for the constitutional constraints of the interstate commerce clause, anti-cigarette militants would have banned imports for personal consumption as well.\footnote{As Senator Warnick said: “The only reason for permitting magazine advertising of tobacco to come into the state was because ‘we cannot help it. If we could, we would stop them, too.’” \textit{“Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2-3 at 3).}} The editorial then unjustifiably concluded that: “In a moral way the Southwick law has no
advantage over” the Standish bill because “[n]either one prohibits or discourages smoking; neither one encourages it.” Rather, in deciding whether to amend the existing law, legislators “face two identical propositions, with the one exception that the one provides a revenue of $300,000 a year while the other does not.”

This claim was irretrievably undermined both by the Telegram’s suppression of the crucial fact that the Southwick law prohibited cigarette advertising and by the pretense that those liberty-loving smokers who were allegedly driven by respect for the law would have welcomed strict enforcement of the law because it was the ‘hypocrisy’ of unenforced prohibition that disturbed them beyond the substance of the sales and public smoking bans themselves. Yet their reaction to Harries’ raids demonstrated beyond doubt that it was that pretense that was hypocritical.

The real point of contention between the anti-cigarette sales movement and cigarette smokers emerged in a comment made a few days later by Milton Bennion of the Social Welfare League explaining his allies’ support for the Southwick law as rooted in their thinking, “whether correctly or not, that with the local sale of cigarettes forbidden it would be easier to prevent sale [sic] to minors.” This sales focus was even more derivative because advocates, who had acted on legal advice that prohibiting cigarette advertising while permitting cigarette sales would have been unconstitutional, regarded “‘alluring cigaret billboard advertisements...as a menace to youth and a hindrance to the enforcement of the law which forbids the use of tobacco to minors. ... This was at least one reason why they adhered to the clause prohibiting sale.’”

In light of the several logical and socio-psychological steps separating the total ban on in-state cigarette sales and the basis for it that Bennion conceded, he and his comrades would have had a difficult argument to fashion to persuade adults that they should sacrifice their freedom to buy cigarettes whenever and wherever they pleased solely in order to shore up the constitutional basis for prohibiting billboard ads that might tempt children to start smoking. But since they never undertook to construct and debate such reasoning with adult smokers in 1923 (or 1921 for that matter), it is easier to understand why they may have been willing to accept a compromise amended law that jettisoned the sales prohibition but

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1646“So the People May Know,” Salt Lake Telegram, Feb. 25, 1923 (1:3-5).
1648In 1921, for example, the editor of the B.Y.U. student newspaper stated at the Senate Judiciary Committee hearing on the Southwick bill that “[p]ersonal rights...ought to be sacrificed to protect the young people of Utah”; a ban on cigarette ads would, moreover, put an end to the growth of smoking. “Fistic Encounter over Cigaret Measure Marks Bitter Capitol Dispute,” SLT, Feb. 2, 1921 (10:2-3).
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"grant is wavering," lat, mar. 1, 1923 (1:5, 2:4). prof. thomas alexander, a leading mormon historian, when asked about Lynch’s criticism of grant, expressed the belief that most businessmen in Utah did not feel that way about grant—who was a businessman himself before and during his presidency—whose attitudes generally coincided with the business community’s. Email from tom alexander to marc linder (july 21, 2011). Lynch’s remarks may in part have been dictated by the needs of the aforementioned legal action to unseat sheriff harries on the grounds of the mormon church’s and grant’s undue influence over mormon voters, which, as Lynch mentioned in the interview, would form one of the bases of his defense against prosecution for smoking.

Despite the mass meeting in Salt Lake City, “no concerted opposition” was reported in Utah’s smaller cities. In fact, in the provinces “[a]ntitobacco crusades promising a temporary rigid enforcement” of the Southwick law had sprung up. For example, city commissioners in Logan decided to enforce all of its provisions, preliminarily ordering the police to notify all dealers that cigarette

1649. “grant is wavering,” lat, mar. 1, 1923 (1:5, 2:4). prof. thomas alexander, a leading mormon historian, when asked about Lynch’s criticism of grant, expressed the belief that most businessmen in Utah did not feel that way about grant—who was a businessman himself before and during his presidency—whose attitudes generally coincided with the business community’s. Email from tom alexander to marc linder (july 21, 2011). Lynch’s remarks may in part have been dictated by the needs of the aforementioned legal action to unseat sheriff harries on the grounds of the mormon church’s and grant’s undue influence over mormon voters, which, as Lynch mentioned in the interview, would form one of the bases of his defense against prosecution for smoking.

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sales had to stop; once they, in turn, passed this word on to their customers, their stocks were quickly depleted.\(^{1650}\) The intense focus of public controversy surrounding the Southwick law may have turned to its smoking ban—after a two-day hiatus in arrests in Salt Lake City the slack was taken up in Provo, where an 18 year-old in a restaurant became that city’s first\(^{1651}\)—but purchasing cigarettes in the state capital had also become “increasingly difficult.”\(^{1652}\)

By the last days of February, the “fight between pro and anti tobacco forces in the Utah...ha[d] developed into the bitterest political controversy of the decade...”\(^{1653}\) As the end of the legislative session loomed, the executive committee of the newly organized Party of Freedom—which “rose like the fabled Phoenix from the ashes of forbidden cigarettes smoked in Salt Lake City” and was “accepted by some as an indication of a renewal of the bitter controversy

\(^{1650}\)“Utah Smokers Feel Pinch of Southwick Law,” *Salt Lake Telegram*, Feb. 27, 1923 (Local page 1:7).


\(^{1652}\)“To Protest Cigarette Law,” *NYT*, Feb. 24, 1923 (6). Despite the nationally declining vitality of statewide tobacco-related bans, at exactly the same time such measures were introduced in several legislatures. A bill prohibiting the manufacture and sale of cigarettes in the Texas House of Representatives was almost immediately killed in committee before ever reaching the floor. “Fine for Manufacture or Sale of Cigarettes Proposed in House Bill,” *GDN*, Feb. 25, 1923 (6:2); “Where Texas Should Not Imitate,” *San Antonio Evening News*, Feb. 28, 1923 (4:1) (edit.). Four bills to prohibit advertising cigarettes or tobacco for smoking or chewing, sale or smoking of cigarettes, and smoking in public eating places were indefinitely postponed when the Indiana House adopted committee reports to that effect. *Journal of the House of Representatives of the State of Indiana During the Seventy-Third Session of the General Assembly...1923: Regular Session*, 41, 44, 70, 124, 318, 441, 532 (Jan. 11, 17, 24, Feb. 9, 16, 21) (1923) (H.B. No. 48, 62, 208, 469, by Peterson, Shall, Peterson, and Brown); “State Senate Now Finished with Budget,” *Kokomo Daily Tribune*, Feb. 21, 1923 (1:2). A bill to prohibit selling or smoking of cigarettes or possession of the makings was killed in the Washington House. *Chehalis Bee-Nugget*, Feb. 23, 1923 (4:2) (untitled edit.); “Anti-Tobacco Bills Fail in Washington,” *USTJ* 99(10):7 (Mar. 10, 1923). The Vermont Senate killed a bill to prohibit cigarette sales. *Id.* Ohio House Bill 257 to protect the children by prohibiting the manufacture, sale, and use of cigarettes and cigarette papers (and imposing a $10-$20 fine) did not make it out of committee. *Journal of the House of Representatives of the Eighty-Fifth General Assembly of the State of Ohio: Regular Session...1923*, at 195, 215 (Feb. 6, 7) (by John T. Brown) (vol. 110, 1923); “Cuyahoga-Co to Force Minimum Wage Bill Fight,” *Star Journal* (Sandusky), Feb. 7, 1923 (1:2).

waged for years between the old American party and the [Mormon] church”—urgently convened in order to press for passage of the Standish repeal bill, which the new group had indorsed.\textsuperscript{1654} And the \textit{Salt Lake Tribune} was doing its utmost to enhance the chance for last-minute action in the legislature by publishing long articles detailing the humiliating ridicule that was being lavishly heaped upon the anti-cigarette and anti-smoking law and, therefore, upon Utah as well, throughout the United States. In addition to reprinting a potpourri of editorials from big-city dailies,\textsuperscript{1656} it devoted a front-page article to a remarkable meeting at the Boston Forum, where “eminent clergymen, prominent physicians and attorneys scathingly flayed the attempts to send Lady Nicotine across the river Styx” and denounced “the war being waged against tobacco users” in Utah (and other states) as “undemocratic, unconstitutional and ridiculous...” A certain Dr. J. R. McCarthy produced the high point of the Sunday afternoon’s apologia for laissez-faire smoking by asserting that “90 per cent of the skilled surgeons of the country are heavy smokers, in some cases even during delicate operations...” Smoking “considerably” himself, McCarthy so strongly felt and knew that he had that right—just as Utahns did to bathe in the Atlantic Ocean—that he transcontinentally declared his intention to violate the law should he ever travel to Utah.\textsuperscript{1657}

Curiously, four days later, as the Southwick repeal bill was finally proceeding through the legislature, when the \textit{Tribune} resumed its review of the out-of-state press reaction to the Utah anti-smoking law, it included editorials from New York City newspapers demonstrating that public places had been and continued to be contested space between smokers and nonsmokers. While the \textit{Tribune} was

\textsuperscript{1654}“Salt Lake Fights Anti-Cigarette Law,” \textit{NYT}, Mar. 4, 1923 (XX2). Inasmuch as the organization began to succeed within several days of its founding, it is difficult to credit the report that “despairing of positive action by the present Legislature, [it] was perfecting plans for a State-wide organization to obtain the election two years hence of members of the Legislature pledged to repeal the Southwick anti-cigarette law....” “Ask Lighter Tobacco Ban,” \textit{LAT}, Mar. 2, 1923 (1:3-4). Party formation pursued larger objectives: Ernest Bamberger and the group controlling the Utah Republican Party promoted the Party of Freedom, which was eventually given the name of the old anti-Mormon American Party, but it was killed after its decisive defeat in the Salt Lake City Commission elections later in the year. Thomas Alexander, \textit{Mormonism in Transition: A History of the Latter-Day Saints, 1890-1930}, at 56 (1996).


\textsuperscript{1657}“Utah Cigaret Law Cause of Stir in Boston,” \textit{SLT}, Feb. 26, 1923 (1:7).
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constrained to concede that the “arrest of smokers in public places is not a new undertaking,” the Ogden Standard-Examiner added that some editorial writers had “discover[ed] some small degree of merit in the effort to curb smokers.” For example, the New York Sun pointed out that while many in the East might find the Salt Lake City arrests “a strange invasion of personal liberty,” just the previous day a dozen men were fined for smoking in a New York subway station and might have been likewise punished for smoking in an elevated train or street car. The Utah law is an extension of these regulations to other public places.... It apparently is based on similar grounds—the discomfort caused to non-smokers when forced to go about in public rooms filled with tobacco fumes.

Smoking in public places, indoors or out, has not always been considered proper. In former days fastidious gentlemen did not smoke in the streets or even in their own dining rooms.

To be sure, the Sun observed that it would no longer be easy to find a tobacco smoke-free restaurant in central parts of New York City or any other large U.S. or European city, but understood that it was “[p]robably...the tendency to smoke everywhere and at any time, a comparatively recent one, that brought about Utah’s strict legislation.” Nevertheless, the newspaper objected to Utah’s “opposite extreme” of protecting non-smokers from discomfort as “unfair to the smoker” in places like restaurants, whereas elsewhere the practice had “safely been left to custom”—without explaining how indiscriminate smoking was safe for the discomforted.

The New York Mail modified and corrected the Sun’s account to the extent of mentioning that in fact some restaurants in New York allowed smoking in their public rooms, while other restaurants and hotels did not allow smoking in some dining rooms and in others did: “There have been arrests in New York for...a breach of the peace which followed in restaurants when the waiters tried to make the smoker desist.” Nevertheless, this paper, too, saw no need for a law: sounding

like cigarette manufacturers later in the century, it deemed “[o]rdinary courtesy” and regard for others’ claims adequate to confine smoking to places especially set apart for it.\footnote{1662}

\section*{Evisceration with Mormon Church Connivance (1923)}

If there is any one rule of the [California] assembly that...is “cussed and discussed” more than any other, it is Rule 71, forbidding smoking while sessions are on. When the afternoon session started yesterday somebody moved to suspend the rule, and it was so ordered. Pretty soon it appeared that Governor Mabey of Utah was to be the guest of the assembly.

“Mr. Speaker,” said Miss Broughton, “inasmuch as they have a law against smoking in Utah, it seems to me it would be courteous to Governor Mabey if we suspended the suspension of Rule 71, while he is in the chamber.”

“But Mr. Speaker,” said Frank Eksward, “that law has been repealed, at least in part, so I don’t believe we need stop smoking for the Governor.”

“Mr. Eksward,” rejoined Speaker Merriam, “the repeal of the Utah law is not effective until May, so I think we might dispense with the smoking while the Governor is with us.”

It was so ordered, the windows were opened, and the atmosphere was clear when the Governor arrived.\footnote{1663}

Despite these multifarious nationwide expressions of solidarity with Utah’s smokers, S.B. No. 108 “appeared to be in danger” during the morning of February 27, when Senator LeRoy Dixon, a member of the Public Affairs Committee who was not viewed as the bill’s friend\footnote{1664}—indeed, pro-Southwick senators were already “mustering” under his leadership\footnote{1665}—moved for taking it up immediately as a special order, prompting suspicion that his purpose was “murderous.”\footnote{1666}  (A Mormon, Dixon, like Southwick, had attended Brigham Young Academy.\footnote{1667}  He

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\item \footnote{1663}{Utah Governor Finds Assembly Clear of Smoke,” \textit{Oakland Tribune}, Mar. 30, 1923 (24:5). See also “Smoking Is Suspended as Courtesy to Mabey,” \textit{SLT}, Mar. 30, 1923 (24:6).}
\item \footnote{1664}{To Consider Cigaret Bill Today,” \textit{SLT}, Feb. 28, 1923 (8:1).}
\item \footnote{1665}{Cigaret Bill Fight to Shift to Legislature,” \textit{Salt Lake Telegram}, Feb. 26, 1923 (Local page 1:6).}
\item \footnote{1666}{To Consider Cigaret Bill Today,” \textit{SLT}, Feb. 28, 1923 (8:1).}
\item \footnote{1667}{Who’s Who in the Legislature,” \textit{Salt Lake Telegram}, Jan. 8, 1923 (Local page 1:6).}
\end{itemize}
also performed magnificently as a turn-the-other-cheeker during a “Fistic Encounter” with President Church P. Castle of the Utah Manufacturers’ Association in the capitol following a Senate Judiciary Committee hearing on Southwick’s bill, at which Dixon, as mayor of Provo, spoke in favor and Castle against the measure.1668 Because, fortuitously, his motion was procedurally out of order, before he had time to offer a motion to strike the measure’s enacting clause (and kill it), Standish moved to make his own bill a special order for the afternoon. When he explained that “a committee representing various sides on the tobacco question was at work...to frame a compromise” and would probably decide the issue by that time, no senator opposed his motion.1669

The lobbying efforts of the businessmen’s Party of Freedom (to smoke wherever smokers wanted) bore first fruit on February 28 in the Senate, which, on the motion of Senator Jenkins, who had voted against Southwick’s bill in 1921, recommitted S.B. No. 108 to the Public Affairs Committee.1670 The chamber took this step after Standish had stated that the so-called citizens’ committee had requested recommittal so that certain amendments might be

1:2). In 1921, as mayor of the Mormon center of Provo, Dixon had actively participated in committee hearings on the Southwick bill. “Compromise Cigaret Bill Is Introduced in Senate,” SLT, Mar. 2, 1923 (22:5).

1668 The assault occurred after Castle had persisted in claiming that no efforts had been made to enforce the no-tobacco-sales-to-minors law despite Dixon’s statement that he had tried to enforce it during his 10 years as head of Provo’s public safety department. Dixon’s charge that Church was a liar prompted the latter to invite the former to take off his glasses; when Dixon did so, holding them in both hands with his arms extended downward, “Castle struck the Mayor a stinging blow on the head”; acceding to Castle’s invitation to “‘come over here,’” Dixon “invited the Salt Laker to go ahead and hit him again. ‘I will not strike you.’” “Fistic Encounter over Cigaret Measure Marks Bitter Capitol Measure,” SLT, Feb. 2, 1921 (10:1). See also “Come to Blows at Utah Hearing on Measure to Ban Cigarettes,” NYT, Feb. 2, 1921 (13); “Manufacturers of State in Meeting,” OE, Jan. 15, 1920 (4:3). Aggressive appears to have been Castle’s general approach to public policy disputes. In the course of his testimony before the Senate Judiciary Committee he tried to kill two birds with one stone in alluding to calls for increased taxation: “‘Are you going to raise taxes from the W.C.T.U., or from the Brigham Young college, or from business men?’” “Fistic Encounter over Cigaret Measure Marks Bitter Capitol Measure,” SLT, Feb. 2, 1921 (10:1-3 at 3).

1669 To Consider Cigaret Bill Today,” SLT, Feb. 28, 1923 (8:1). According to Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 433 (Feb. 27), on Standish’s motion his bill was made a special order for the following afternoon (Feb. 28).

offered; his own belief that the section in his bill retaining Southwick’s public smoking ban—which had “met with some objection”—would be the one targeted for amendment was both accurate and by this point an almost risibly vast understatement.\footnote{1671} The private group from which Standish was taking direction had met the night before at the exclusive Alta Club—which from its founding in 1883 had “attracted the financial, industrial and social leaders of the west”\footnote{1672}—at which “representatives of all parties interested in the anti-cigeret bill, for and against the amendment,” as well as legislators discussed whether anything could be done so late in the session to pass a “more workable law.”\footnote{1673}

In fact, the marathon meeting, at which “lay leaders” of both the pro- and anti-tobacco forces were said to have achieved sufficient common ground to persuade optimistic observers that enough House and Senate members could be mustered to pass a compromise bill, had lasted from 9 a.m. until 11 p.m. Hope for breaking the legislative deadlock was rooted in the presence of conservatives “aligned on both sides” who favored “some adjustment” between the “extremists on both sides,” to “a considerable following” of whom Standish’s bill had proved “unacceptable in some points”: whereas “[a]nti-tobacco radicals had previously” insisted that the Southwick law be retained intact and their counterparts demanded repeal, the compromisers sought to insure the prevention of juvenile use and protection of “the rights of nonsmokers” while granting a “full measure of personal liberty to adult users of tobacco.”\footnote{1674}

\footnote{1671}“Senate Blocks Judgeship Cut,” \textit{DN}, Feb. 28, 1923 (1:1).
\footnote{1672}http://www.altaclub.org/about/history.php (visited July 24, 2011).
\footnote{1673}“Restaurant Smoke Room Designations to Be Questioned,” \textit{DN}, Feb. 28, 1923 (1:3). The next day the \textit{L.A. Times} published a front-page canard, which without attribution was clearly derived from the foregoing article, but in headline and subheads shouted: “Grant Is Wavering. Recedes on Utah Smoking Law. Mormon Church Head calls Conference to Discuss Changes in Act.” It claimed that the prospects for amendment had improved “as a result, it is intimated, of the quiet influence of President Grant of the Mormon Church in the direction of adjusting the matter.” The paper admitted the lack of any confirmation of Grant’s reported personal interest, but asserted that “men prominent in church councils were present” at the “secret meeting at the Alta Club....” “Grant Is Wavering,” \textit{LAT}, Mar. 1, 1923 (1:7). The introduction the very next day of the substitute for Standish’s bill prompted the newspaper to concede that the day’s events had “disposed of reports that at a secret meeting at the Alta Club, representatives of the dominant church expressed sympathy with the movement” to modify the Southwick law: “it is known that leaders of the church are opposed to touching the present law.” “Ask Lighter Tobacco Ban,” \textit{LAT}, Mar. 2, 1923 (1:3-4, 2:6).
\footnote{1674}“Modification of Southwick Cigaret Bill Seems Likely as Compromise Is Proposed,” \textit{Salt Lake Telegram}, Feb. 28, 1923 (Local page 1:1). Because the first five or
Seemingly unfazed by this amendatory process, Sheriff Harries initiated an innovative phase of prosecution against another downtown cafe owner, Nelson Van Dyke—the ubiquitous Deputy Mauss was the complaining witness—to test restaurant operators’ right to designate “the major part of their places of business as smoking rooms or compartments.”

When Mauss and another deputy entered the Van Dyke Cafe the owner was standing near the cash register smoking a cigar; they told him that he was under arrest despite his statement that he had displayed a “‘This is a smoking room’” sign in the cafe proper and posted “‘No smoking allowed’” signs in three booths or compartments. While confirming the existence of the signs, the deputies explained to the press that all were printed in small type and that the object of the arrest was to “test what constitutes a smoking room or compartment in cafes.”

Harries intervened to deal with owners’ swiftly proliferating practice of posting signs, in response to his first wave of arrests, permitting smoking in the “main portions of their dining rooms as smoking rooms,” while “reserving but the smaller compartments or private booths” as smoking prohibited, which the sheriff (correctly) viewed as “contrary to the spirit and meaning of the law....” The aforementioned Hotel Utah would, the irrepressible Harries announced, be the next test case. Shifting his focus to another section of the Southwick law, on March 2, accompanied by Mauss, Sheriff Harries personally raided three cigar stores (including one owned by the United Cigar chain), confiscating cigarettes at two of them.

In its March 1 morning edition the Tribune disclosed that...
a committee of representative men...are seeking a sane solution of what has become a most troublesome problem in the state. The committee includes some legislators from both houses. It includes some of the most prominent business men of Salt Lake, of whose whole hearted interest in the temporal welfare of the state there cannot be the slightest doubt. And it includes some representatives of the leading religious thought in the city and state—men recognized as church leaders.

The committee, in other words, is composed of men from both the anti-cigaret and the personal liberty side of the present argument. ... Whether it would be possible to adopt a middle ground on a question and problem upon which views are frequently so radically different has been a matter of some doubt. [I]f present hopes are fulfilled...a bill which conservative churchmen approve, as well as conservative business men and leaders of thought on both sides of the cigaret question, can be evolved.1679

The committee was considering four features of a possible bill, three of which—the Iowa-borrowed licensure and tax regime and the public smoking ban—were already incorporated into the Standish bill; the fourth—the ban on cigarette advertising—was already in force under the Southwick law, though Standish had excluded it from his bill. With regard to the smoking issue, whereas S.B. No. 108 simply retained the existing law, the committee was discussing permitting restaurant and barber shop owners to reserve a part of their premises “as compartments, separated from the main eating room or shop by partition,” provided that a sign indicated the smoking-designated area.1680 Compared with the Standish bill, this iteration offered the anti-tobacco forces potentially stronger smoking regulation and retention of the advertising ban without giving the pro-tobacco movement anything that was not already in S.B. No. 108, which, to be sure, already proposed the overriding goal of abolishing Southwick’s cigarette sales ban.

At the Senate’s afternoon session that same day the Public Affairs Committee reported its unanimous recommendation that S.B. No. 184, its substitute for Standish’s bill, be passed; by virtue of being a committee substitute its course was streamlined and upon its introduction the bill was immediately placed on the second reading calendar.1681

Like the 1921 Iowa law1682 and S.B. No. 108, the committee substitute repealed the cigarette sales ban, replacing it with a local option licensure system;

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1679“Licensing and Sales Tax on Cigaretes Are Advocated,” SLT, Mar. 1, 1923 (24:3-4).
1680“Licensing and Sales Tax on Cigaretes Are Advocated,” SLT, Mar. 1, 1923 (24:3-4).
1682See above ch. 15.
although it doubled the annual license fee for sellers in first-class cities, $100\textsuperscript{1683} was by no means “heavy.”\textsuperscript{1684} Similarly, the new bill imposed a one mill per cigarette tax,\textsuperscript{1685} which was now guesstimated to generate $300,000 in state revenue.\textsuperscript{1686} S.B. No. 184 also exceeded Standish’s bill in stringency in extending the ban on furnishing, giving, or selling cigarettes to minors under 21 to include “any tobacco of any kind whatever.”\textsuperscript{1687} The most expansive feature of the committee substitute was its incorporation of cigars, chewing tobacco, and smoking tobacco into the existing law’s broad prohibition of cigarette advertising,\textsuperscript{1688} which prompted the Tribune to comment that the bill “out-Southwicks Southwick....”\textsuperscript{1689} Finally, the Senate Public Affairs Committee sought to deal with the “furore”\textsuperscript{1690} over the arrests of violators of the smoking ban in public enclosed eating places by adding (on to the existing provision concerning “extra rooms”) an exception that the owner or proprietor of any hotel dining room, restaurant, cafe or cafeteria may designate by a conspicuous sign a part or portion of the same as a public smoking room provided that such part or portion shall be separated by a partition so constructed as to prevent the passage of smoke from one of such parts or portions of such rooms to the


\textsuperscript{1684}“New Cigaret Bill Introduced,” DN, Mar. 1, 1923 (1:1).


\textsuperscript{1686}“New Cigaret Bill Introduced,” DN, Mar. 1, 1923 (1:1). Why the amount was doubled in relation to S.B. No. 108 is unclear.

\textsuperscript{1687}S.B. No. 184, § 1 (Substitute for S.B. #108, by Public Affairs Committee, 1923), on http://images.archives.utah.gov/cdm4/document?php=CISOROOT=/428&CISOPTR&23769&REC=4. The new bill also restructured the penalties without clearly making them more severe. Standish would have imposed a $25 to $100 fine or a 30-day jailing for first offenses and $100-$500 or one to six months for additional offenses; S.B. No. 184 imposed a uniform fine of $25-299 for all offenses and/or a maximum six-month imprisonment.


\textsuperscript{1689}“Compromise Cigaret Bill Is Introduced in Senate,” SLT, Mar. 2, 1923 (22:5-6).

\textsuperscript{1690}“The Cigaret Situation,” DN, Mar. 2, 1923 (4:1).
Although this language might at first blush appear to have diluted the “extra rooms” regime and therefore constituted a “concession[ ],” the requirement that partitions render the non-smoking section “tobacco smokeproof”—“[I]f a whisp [sic] of smoke gets into that room from the adjoining section, the proprietor is a law violator”—that is, totally protect people in the non-smoking parts from exposure to smoke produced in the designated smoking rooms would, as the Tribune pointed out, often make such physical reconfigurations financially unaffordable: “in many instances the restaurateur will be unable to comply with this provision without going to lengths which will make him hesitate before he undertakes to alter his premises so as to permit smoking.”

To be sure, where owners could afford to undertake such renovations, S.B. No. 184’s lack of a provision guaranteeing non-smokers a certain minimum proportion of the establishment’s floor space would have made it possible for them practically to be squeezed out of the use of such eateries. As the Telegram put it: “there

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1691S.B. No. 184, § 4 (Substitute for S.B. #108, by Public Affairs Committee, 1923), on http://images.archives.utah.gov/cdm4/document?php=CISOROOT=/428&CISOPTR&23769&REC=4. Less controversially, the bill also essentially codified existing enforcement by a proviso that “in any state, county or city building, any public officer who has a private office separate and apart from his public office, he [sic] may if he so desires, designate such private office as a place where smoking may be permitted, and so long as such private office is so designated, smoking therein shall not be considered a violation of this act.” Id.

1693“Cigaret Measure Contains Startling Clauses;” Salt Lake Telegram, Mar. 2, 1923 (Local page 1:3, at 3:3). Letting its sarcastic imagination run wild, the Telegram added: “The proprietor of any restaurant or barber shop...must have an inclosed section for the nonsmoker. One or two barber chairs may be glass inclosed for the nonsmoker or so sealed that there is no chance of smoke getting in. In the same way one or two stools or tables in a restaurant may be similarly inclosed.”

1694As a result, these partitions differed qualitatively from the feckless ones provided for under the Minnesota Clear Indoor Air Act of 1975. See below ch. 24.
1695“Compromise Cigaret Bill Is Introduced in Senate;” SLT, Mar. 2, 1923 (22:5-6). This financial burden presumably underlay cafe, restaurant, and downtown hotel managers’ belief that the new bill “would prove more onerous than the law it would displace.” “New Smoking Ban Decreed;” LAT, Mar. 4, 1923 (1:4-5, at 2:1).
1696Perhaps such a consideration prompted Senator Dixon’s judgment that the public smoking provision was the bill’s “only weakness.” “Advertising of Tobacco Would Be Prohibited;” Salt Lake Telegram, Mar. 1, 1923 (1:7).
must be room for at least one nonsmoker in the place of business."1697

Although Standish opined that certain amendments might be offered, he
stated that he accepted the bill, and he and Public Affairs Committee Chairman
John W. Peters agreed that S.B. No. 184 “would meet with less objection than”
Standish’s proposal.1698

Abstracting from S.B. No. 184’s proposed repeal of the cigarette sales ban,
the Tribune’s judgment was plausible that: “Boosted as a compromise measure,
arranged between friends and foes of the Standish measure, the bill bears every
indication that the foes of that bill were at least very much in evidence, if not the
controlling factor at the conference of the committee...in reaching this solution
of the problem presented to the state in the attempted literal enforcement of the
Southwick act.” Much less plausible, however, was the claim that the measure
“would throw more stringent regulations around both the use and sale of tobacco
than anything that has been accomplished under the Southwick act.....”1699

The Telegram, an even more radical opponent of regulation, also saw the substitute
as a vehicle of reconciliation by virtue of its merging and embracing “essential
features” of the Southwick law and Standish’s bill, which “represented extremist
views of the pro and anti tobacco forces,” leaders of which endorsed the
committee bill. “Antitobacco chiefs” rationalized their support on the grounds
that it strengthened the existing law by focusing on the main objective of
preventing the spread of cigarette and tobacco use to minors, whereas
“[p]rotagonists of personal liberty in matters of habit” argued that “tobacco users
can have no objection” to enactment of the substitute since “it takes full
cognizance of the personal rights of of adult users of tobacco.”1700

Very quickly the latter would be disabused of their premature enthusiasm for
the original text of S.B. No. 184. The next day the Liberty League’s 15-member
committee branded the bill as “‘far worse’” than the Southwick law and declared

1697aCigaret Measure Contains Startling Clauses,” Salt Lake Telegram, Mar. 2, 1923
(Local page 1:3, at 3:3).

1698aNew Cigaret Bill Introduced,” DN, Mar. 1, 1923 (1:1). A Mormon, Peters had
a B.S. from Utah State Agricultural College, did one year of post-graduate study at the
University of California, and taught high school social science before becoming mayor of
Brigham City, where he owned a jewelry business and fruit orchards. At the 1921 session
he had been Republican floor leader. J. Cecil Alter, History of Utah, the Storied Domain:

1699aCompromise Cigaret Bill Is Introduced in Senate,” SLT, Mar. 2, 1923 (22:5-6).

1700aAdvertising of Tobacco Would Be Prohibited,” Salt Lake Telegram, Mar. 1, 1923
(1:7).
During the recess between the morning and afternoon sessions on March 2 Chairman Peters, based on soundings he had taken, predicted that the bill would pass the Senate unanimously. Yet in spite of that confidence, he was still undecided as to whether he would move to suspend the rules that afternoon in order to consider the bill on second and third readings so that it could immediately go to the House. Bizarrely, Peters denied that his committee’s bill was a “‘compromise’”: “It is not a new measure in any sense but a strengthening of the Southwick act” by virtue of the expanded tobacco advertising ban. Moreover, he appeared to be motivated by moral rather than public health concerns: “The measure has the support of the best people of Salt Lake. It is the result of the combined efforts of those standing for high morality, and is enforceable.”

Just before the afternoon session and the bill’s second reading got underway, the Deseret News went to press with an editorial that revealed that the Mormon church had abandoned its defense of the Southwick law and the two-year-old ban on cigarette sales. Once the law’s principal supporter had signaled that it was seeking to salvage as much as possible of the bans on public smoking and advertising in exchange for local-option licensure, repeal of the one and passage of the other became a foregone conclusion. The capitulatory editorial was based on the claim that the purpose of anti-tobacco legislation was to discourage use among youth on the grounds that if tomorrow’s men can get through childhood “without having acquired a taste for tobacco” (and especially for cigarettes), “most of them will go through life without the habit.” As far as the Southwick law was concerned, the newspaper could not deny it had not been enforced, especially in the larger cities and towns; but rather than asserting that it was unenforceable, the editorialist merely stated that its enforcement had not been “insisted upon,” adding that if law enforcement officials had acted “vigorously” from the very beginning, it was “quite likely” that by March 1923 compliance would have been “general.” Without explaining why the Mormon church had not insisted on enforcement, he expressed understanding that when, suddenly, an effort was made to enforce, the resulting “furore...quite naturally assumed large proportions and did considerable damage to the state.” In what can only be

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1701. “Cigarette Bill to Be Expedited,” DN, Mar. 2, 1923 (1:1). Peters also stated that he would oppose any amendments to the tobacco advertising ban on the grounds that it was “entirely constitutional to the best of his belief.”
viewed as an admission that the anti-tobacco movement had committed an historically irreversible strategic error that doomed the stringent Southwick law’s viability and required enactment of an at best amended compromise law, the *Deseret News* wrote: “The intensity of feeling aroused and the enmity created on the part of some gave rise to the necessity of seeking to formulate a plan by which the chief differences might be composed and the welfare of the state in all its phases protected.” (Ironically, the outcry had erupted over enforcement of the public smoking ban, not the cigarette sales ban, and yet the former, which benefited non-smoking adults much more than children, was, arguably, being strengthened, not weakened by S.B. No. 184.) Putting the best possible face on the Public Affairs Committee measure, the paper incorrectly characterized its proposed license fee as “high,” while accurately portraying the expanded ad ban as “a most important feature” that would insure that “the boy of Utah will not be jeopardized by the alluring advertisements of chewing and smoking tobacco which have enticed him in the past.” Plausible, too, was the editorial’s assessment of the revised public smoking ban as “aim[ing] to protect the rights and privileges of the non-smoker.” In the end, the Mormon newspaper offered the same justification for accepting the compromise that opponents of cigarette sales prohibitory bills and laws had been touting for many years: conditions under a regime that “bids fair to be enforced” would be “much better” than under “a more severe measure which remains unenforced.” Profound political astuteness was not required to predict, as did one representative hostile to any tobacco regulation, that the editorial practically insured the bill’s passage “unless the unexpected happens.”

Whether the bill as it stood before its second reading would be as substantively acceptable at the end of the legislative process remained to be seen. While the *L.A. Times*—which was covering the anti-smoking arrests and legislative proceedings systematically and in depth, but from a blatantly biased perspective that may have underlain the gross factual errors that permeated its articles—with some exaggeration observed that the *Deseret News* editorial “practically demanded passage of the measure which has been denounced as far more restrictive and freakish than the present law and the Senators belonging to the Mormon church acted accordingly,” its insistence on treating (unidentified)

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1703“The Cigaret Situation,” *DN*, Mar. 2, 1923 (4:1) (edit.). On much higher cigarette sales license fees in various states and cities, see above Parts I-II.


1705The articles largely derived from the *Salt Lake Telegram* without attribution.
Mormon senators as church automatons was made possible only by its suppressing the Yeas and Nays, which would have revealed only two of the latter, at least one of which was cast by a Mormon.

By the middle of the March 2 afternoon session, when word reached the lobbies that the debate was starting on the second reading of S.B. No. 184, a “sort of sigh of expectancy went over” the chamber and galleries began to fill with spectators. After the adoption of a series of “technical amendments” correcting, inter alia, typographical errors, farmer William Candland moved to amend the bill by striking barber shops from the covered universe of enclosed public places because he was unable to see why a man should not smoke there since usually none but men went there. The proposal provoked Senator Dixon, a well-known smoking opponent, to complain that it was “annoying when a man is ‘helpless’ in a barber chair, to have someone in the next chair puffing at a cigarette.” The defeat inflicted on the amendment suggested to the Tribune that if the motion was designed as a test to determine which senators favored the bill as it was and which wanted to liberalize it, the outcome offered little encouragement to the latter. Regardless of its resolution, this conflict illustrated that at least Southwick’s ban on public smoking was primarily designed to protect adult non-smokers rather than children.

After this “preliminary skirmish” had cleared the field for further action, Chairman Peters gave an overview of his committee’s bill, beginning with the “‘purposely high’” license fees designed to limit cigarette traffic “‘as much as possible by a law that will not be easy to circumvent.’” More realistic was

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1706“New Smoking Ban Decreed,” LAT, Mar. 4, 1923 (1:4-5). The statement that “[t]here was no opposition vote,” could only have referred to the third reading, with which the article hopelessly confused the second reading. See below. The paper’s claim that “the proceedings were in keeping with the machine-like working of the radical majority in the Chamber to which tobacco in any form is anathema” was, since the bill repealed the ban on cigarette sales, absurd with respect to both readings, but especially regarding the debate on final passage, when several of the bill’s more radical provisions were struck.


1708“Senate Advances Tobacco Measure to Third Reading,” SLT, Mar. 3, 1923 (20:4) (quotes); Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 502 (Mar. 2). One amendment, offered by Salt Lake lawyer Alonzo Irvine, was adopted, permitting advertising on “the package containing the merchandise licensed to be sold in this act.” Id.

1709“Senate Advances Tobacco Measure to Third Reading,” SLT, Mar. 3, 1923 (20:4) (quotes). With an annual license fee of $100/$75/$50/$25 (depending on city size), a
seller would have to have sold 100,000/75,000/50,000/25,000 cigarettes to break even. With the aforementioned estimated annual sales of 150,000,000 or 300,000,000 cigarettes in Utah, there would have been a large enough market for 1,500 or 3,000 sellers in the first class cities or 6,000 or 12,000 in the smallest. These very rough magnitudes serve merely to indicate that the fees were in fact hardly designed to limit the number of sellers in a state with a population of only a half-million. For more detailed calculations of this type, see above ch. 4.

During the first two months that the amended Southwick law was in effect in 1923 average monthly cigarette tax revenues were $12,000 or close to a projected annual $150,000. By that point 597 dealers had obtained permits. “Cigaret Tax Yield Large,” SLT, July 8, 1923 (24:3). Two weeks after the law’s effective date, Ogden, a city of about 35,000, had issued 58 permits at $75 each. “The Cost of Cigaretts,” OS-E, May 22, 1923 (4:1) (edit.). To be sure, during the new law’s first full year of operation (May 8, 1923 to May 7, 1924) cigarette tax revenues amounted to only $112,000. “$112,313 Paid in Cigaret Taxes,” Daily Herald (Provo), May 13, 1924 (sect. 2, 1:5-8).

Perhaps because this description suggested that the tobacco industry was not among the consultees, Senator H. C. Tebbs, a member of the Mormon high priests’ quorum, who regarded the bill as a compromise between Senator Standish and some of S.B. No. 108’s opponents, asked Peters who was behind the new bill. Instead of giving a straight answer, Peters denied Tebbs’s premise (that the bill was a compromise), and in the end Tebbs, apparently failing to insist that his question was not contingent on whether a compromise existed, did not challenge another committee member’s evasive statement that the committee itself was behind the bill. Senator William Smart, whose controversial

Peters’ assessment of the expanded ban on tobacco ads designed to rid Utah of “‘the alluring pictures spread over the country depicting the use of smoking or chewing tobacco as a desirable thing. I think I have been more mortified, embarrassed and chagrined by these than anything else. In my opinion, in that particular alone the bill is worth the amendment to the present law.’” The amendment to the public smoking ban also came in for praise inasmuch as it “‘require[d] no mere sign nor [sic] sham, but a solid partition to prevent the fumes of tobacco reaching into the nonsmoking compartments in hotel dining rooms and restaurants.’” The committee was able to draft such provisions, Peters explained to the Senate, by “‘consult[ing] those who have large interests, not only in the welfare of the community materially, but also educationally, morally and spiritually.’”

Perhaps because this description suggested that the tobacco industry was not among the consultees, Senator H. C. Tebbs, a member of the Mormon high priests’ quorum, who regarded the bill as a compromise between Senator Standish and some of S.B. No. 108’s opponents, asked Peters who was behind the new bill. Instead of giving a straight answer, Peters denied Tebbs’s premise (that the bill was a compromise), and in the end Tebbs, apparently failing to insist that his question was not contingent on whether a compromise existed, did not challenge another committee member’s evasive statement that the committee itself was behind the bill. Senator William Smart, whose controversial
injection of Mormon doctrine into the debate on Southwick’s bill in 1921 had not been forgotten, forcefully presented a perspective reminiscent of that associated with the WCTU (which opposed licensing “evil”) when he expressed his one regret about the bill (for which he announced he would vote as a strengthening measure): “There was nothing of a commercial nature in the consideration two years ago of the present law. I regret that the committee is bringing the state into partnership with those who sell these commodities, by the special tax which the bill imposes.” Smart found it “humiliating” that the advent of the cigarette tax coincided with the state’s increasing need for funding: “I would much prefer to economize in every way possible in the departments than to obtain revenue from such a source.”

An emperor-wears-no-clothes moment finally intruded into the debate with the intervention of Wilford Woodberry Warnick, a Mormon farmer and superintendent of the Alpine Stake Mutual Improvement Association, representing the Mormon heartland of Utah County, which in 1921 had submitted an above-average volume of petitions supporting the Southwick bill. Warnick (who would vote against S.B. No. 184 on second reading before switching sides on final passage) charged that: “It is said that this bill strengthens the law.... It is a question if our constituents will feel that we have strengthened a law which prohibited the sale of cigarettes when we repeal that prohibition.” He elicited a response from Public Affairs Committee member and Southwick advocate in 1921, Dixon, his Utah County colleague, who “defend[ed] himself from the criticism implied” by Warnick: “If we were prohibiting by the present law...I would agree with Senator Warnick. If we could prohibit, I would not be for this bill, but I would rather have a regulated traffic than an indiscriminate traffic. This bill will curtail the sale of cigarettes to the minimum. I do not regret that the Southwick bill was passed. It was an achievement, an accomplishment. I do not know that it has failed in the law, but it has failed in the enforcement.”

There was no evidence that the rather low license fees would reduce sales, at least to adults, at all—let alone to “the minimum,” whatever that meant—though refusals...
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

At the time the new law went into effect it was reported that: “So far no community in Utah has undertook [sic] to resist issuance of permits to dealers in tobacco who qualify to handle cigarettes, as far as is known at the state capitol.” “Nearly 200 Permits to Sell Cigarettes Issued,” SLT, May 9, 1923 (22:5). Even the city commission of Provo, the home of Brigham Young University, passed an ordinance requiring a $75 license to sell cigarettes. “Cigaret Ordinance Passed by Provo,” Salt Lake Telegram, May 3, 1923 (8:4). However, later in May, the city council of the small town of Midvale, in which important lead, zinc, and silver smelter operations were located, adopted an ordinance prohibiting the sale of cigarettes; the city recorder also announced that anyone offering cigarettes for sale would be prosecuted. “Cigaret Sale in Midvale Forbidden,” Salt Lake Telegram, May 23, 1923 (9:3). It remains a research desideratum to identify local governments that passed such ordinances or denied cigarette sales permits on a broad scale. In 1921, Rep. McShane argued that under his (rejected) licensure amendment the $100 license fee was adequate because “the local authorities, if they really wish to prohibit cigarettes, can tack on local licenses and absolutely prevent their sale. I have taken this position on this amendment for the particular purpose of giving the towns in my county an opportunity if they actually want to prohibit cigarettes to fix a local license which would force prohibition if they want it.” “Anticigaret Measure Passes Utah Legislature,” SLT, Feb. 25, 1921 (1:7). In fact, the amendment, unlike the 1923 law, neither provided for local issuance of licenses nor conferred discretion on local governments to deny licenses; rather, under it the “Secretary of State shall issue” the license upon payment of the fee, affidavits of three property owners within a mile’s radius of the applicant’s place of business testifying to his “moral fitness to engage in the handling and selling of tobacco,” and written approval of the district juvenile judge. House Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 378-79 (Feb. 24).

1718Senate Advances Tobacco Measure to Third Reading,” SLT, Mar. 3, 1923 (20:4-5).

1719Senate Advances Tobacco Measure to Third Reading,” SLT, Mar. 3, 1923 (20:4-5).

Standish’s amendments, to which considerable objection was raised, especially by Public Affairs Committee members, included: reinstating the lower permit fees in his bill; permitting tobacco advertising in newspapers and magazines; and permitting smoking in barber shops, railway station waiting rooms, and similar places. “House Favors New Judgeship,” DN, Mar. 3, 1923 (sect. 2, 1:1).
Senate then ordered the bill to its third reading.\textsuperscript{1719}

Significantly, that evening after the Senate’s action the 15-member executive committee of the Party of Freedom met at the Alta Club—present were also a number of non-member Salt Lake businessmen—and decided unanimously not to endorse the bill before the legislature. The group was “unalterably opposed” to the substitute for Standish’s bill on the grounds that it was “equally as [sic] objectionable as” the current anti-cigarette law.\textsuperscript{1720} The Freedom Party’s leaders did not explain their objections, but presumably as Utah’s bulwark of anti-legislative freakishness—Mormon-Republican Governor Charles Mabey had concluded his condition of the state message to the legislature with the admonition that the law-giver exercise restraint because “[f]reakish enactments are as perilous as the disdain with which they are met”\textsuperscript{1721}—they were repulsed by precisely what Peters had lauded in the substitute: the retention and strengthening of Southwick’s advertising and public smoking bans. However, the fact that S.B. No. 184 also repealed the existing cigarette sales ban made it difficult to credit the assertion that the bill was literally just as objectionable to Newhouse and his comrades as the Southwick law—unless the new organization was a stalking horse for the cigarette manufacturers’ oligopoly, which was, as noted earlier, reflexively hostile to any cigarette tax. It is unclear whether the Party of Freedom controlled or influenced any votes in the Senate or House, but it may simply have been signaling its displeasure with respect to the extent to which the Public Affairs Committee in revising the Standish bill had gone in accommodating the Mormon and other anti-tobacco militants and in departing from whatever provisions the executive committee had proposed. Whether this public expression of dissatisfaction with the Senate’s action carried with it any clout to shape the debate in the House during the final few days of the session or was, rather, designed to put legislators on notice that the Freedom Party, which “expect[ed] to win sufficient votes [at the 1924 state legislative elections] in the populous counties, Salt Lake, Weber and others, to force repeal of existing legislation directed at public smoking,” still planned to “make the freak laws...a political issue in the next campaign,”\textsuperscript{1722} remained to be seen.

At the same time, City Judge Pratt indefinitely continued the trial of 	extit{Tribune} general manager McKay and those of five other public smokers on the grounds

\textsuperscript{1719} Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 502 (Mar. 2).


\textsuperscript{1721} House Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 28 (Jan. 10).

that there were “too many serious cases on the calendar at present” to hear public smoking cases. 1723 The Telegram chimed in with the headline: “Court Too Busy to Waste Time in Cigaret Cases,” noting that the assistant county attorney agreed. 1724 Despite this disposition, the same day Sheriff Harries’s deputies raided more than a score of business district cigar stands and tobacco stores, including four or five United Cigar stores, confiscating more than 700 cigarette packages. 1725

As the Senate was poised to vote on the committee measure, the Telegram editorially unleashed a full dose of its (overwrought) sarcastic venom against a bill that it denounced as even worse than the existing law:

If the tobacco bill brought into the senate as a substitute to the Standish bill...is a compromise with the Southwick law...may the shades of our forefathers save us from a complete surrender of the Southwick forces. Perhaps we are bound to admit that this is a compromise bill since it compromises even the liberties enjoyed under the Southwick act, which were not compromises at all, but compromises with decency and respect for the law, permitting the smoker to have his cigarets and intolerance to have its law.

Under the Southwick act it was a crime to smoke in an inclosed public place. Under the new law it’s almost an impossibility. The trade negotiated between the advocates of the new bill and the supporters of Southwickism makes the requirements on the owner of a public place so strict that there would seem to be no course open. [T]he proposed law puts the man in the position of the minor. 1726

The next day, Saturday, March 3—the same day that a 75-member American Legion post, joining the chorus of businessmen purportedly concerned that “freak legislation,” having made Utah a nationwide “laughing stock,” would keep away tourists and conventions, petitioned its legislators to use their influence to secure the Southwick law’s repeal 1727—the Senate took up S.B. No. 184 on third reading. 1728 As announced, Standish opened the amendatory process with a
motion to reinstate the lower permit fees contained in his S.B. No. 108 in lieu of
the committee substitute’s somewhat higher fees—$50/$100 in first-class cities,
$35/$75 in second-class, $25/$50 in third-class, with smaller locations unchanged
at $25—on the grounds that the higher amounts would defeat the bill’s purpose,
which could hardly have been captured by his argument that “frequently persons
who would otherwise be indigents eke out a livelihood by conducting stands at
which tobacco, candies and newspapers are sold. He thought such persons would
be deprived of a part of their livelihood by the terms of the bill.” Senator Dixon,
one of the substitute’s co-authors, disagreed, insisting that “the spirit of high
license is to place the tobacco business in the hands of reputable and responsible
persons” (who were deemed less likely to sell to minors). Chairman Peters
informed the chamber of the experience of Brigham City—whose mayor he had
been—which had imposed a $50 license even before the Southwick law had gone
into effect, which helped stop illegal trafficking without prompting dealer
protest. The first of Standish’s pro-tobacco initiatives went down to defeat.

Senator Peters then succeeded with one of his own, designed to meet
“criticism” that had arisen since the bill’s introduction, which created an
exception to the advertising ban so that “a dealer in tobacco and cigars [but not
in cigarettes] may have a sign on the front of his place of business stating that he
is dealing in such articles.” Peters sought to justify this relaxation of
“stringent regulations around the advertising of the cigaret or tobacco generally
on the grounds that there was “something to the fear felt by some dealers that if
a cigar merchant placed the words ‘cigars and tobaccos’ on the sign in front of his
business, he would be violating the law.”

Perhaps emboldened by this inroad into the strict anti-advertising regime,
Standish immediately reacted with a “counter-proposal” that proposed striking
the bill’s entire ad ban section and replacing it with a severely diluted version that

513 (Mar. 3).

1730 "Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at
519 (Mar. 3).

1732 "Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at
519 (Mar. 3).

1734 “Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2). Though
the Tribune termed it an amendment to Peters’ amendment, the Senate Journal made it
clear that Standish offered his amendment after Peters’ had already been adopted. Senate
merely prohibited “display[ing] on any street sign, placard, bill board or street car any advertisement of cigarettes or cigarette papers or tobacco in any form,” thus totally jettisoning S.B. No. 184’s ban both on all in-state newspaper, magazine, and circular ads and on all displays of cigarettes/papers or ads for them in any store, store window, or elsewhere. Asked to explain the need for the amendment, Standish declared that “he stood for justice” and (hearkening back to an argument akin to Southwick’s in 1921 that a cigarette sales ban was a constitutional predicate for an ad ban) that it was “not just to charge a man $100 for the privilege of selling a commodity and then not permit him to advertise the sale.” And Senator Jenkins, who had opposed regulation in 1921, sought to justify Standish’s deregulation of newspaper and magazine ads on the grounds that “in this effort to fight the tobacco evil the cooperation rather than the hostility of the press is required, if advances are to be made.”

This claim’s perverse and implausible logic imputed the same meretricious editorial policy to an allegedly free press that undergirded the cigarette manufacturing oligopoly’s successfully implemented plan, in Iowa and elsewhere, to buy newspapers’ editorial favor with respect to securing and retaining deregulation by pumping considerable ad revenues into their coffers. Senator Warnick, the Mormon tobacco antagonist, preferring economic reality, replied that: “He would expect no better cooperation from the press if advertisements of tobacco were permitted. The press would support the advertiser rather than the public.” After Senator Dixon had, once again, inveighed against “alluring advertisements that entice children to use cigarettes,” Senator Winder—who, as a representative in 1921, had, from a libertarian position, attacked his own Mormon church’s advocacy of the Southwick bill—called for realism: “[t]he real menace” was “attractive billboard displays” and colored magazine spreads manufactured by a process unavailable in Utah newspapers and imported by the hundreds of thousands; in that sense Standish’s amendment would not weaken the bill. Winder’s illogic was immediately uncovered by Senator Tebbs, who, by pointing out that the legislation’s “fundamental purpose” was “to do away with the use of

\[^{1735}\text{Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 519 (Mar. 3).}\]

\[^{1736}\text{Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2).}\]

\[^{1737}\text{Also Senator Charles Cottrell, Jr., who in 1913 had introduced a partial smoking ban bill and was now once again in the Senate, took the position during floor debate that “any person should have a right to advertise what he had a right to sell.” “Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2-3 at 3).}\]

\[^{1738}\text{Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2).}\]

\[^{1739}\text{See below chs 17 and 19.}\]
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tobacco as far as possible, had no trouble concluding that Standish’s amendment was at odds with it. Senator Candland, the friend of barber shop smoking, was certainly getting at a vitally important social-psychological fact when he provocatively observed that “the most attractive” cigarette ads for the young were not printed ones, “but seeing the big fellow smoking.” However, since not even the Southwick law banned smoking—only “back east” were Sheriff Harries’ recent interventions interpreted “to mean that any man smoking a cigarette in Utah will be arrested”—“we are going to permit the big fellow to smoke.” Consequently, Candland concluded, if the law was going to be enforced, “we must not overdo this thing.” Without articulating the issue expressly, he was essentially advising his more radical colleagues not to sweat the small stuff since they had already either acquiesced in eliminating the big stuff (such as a sales ban) or never proposed it (a statewide smoking ban). Nevertheless, why retention of the stricter version of the ad ban would have been excessive he failed to explain.

In the end, only seven senators voted for Standish’s amendment. But where Standish had failed, Peters once again succeeded in whittling away the breadth of the advertising ban: the Senate adopted his amendment to confine the ban on displays of cigarettes/papers and ads for them to store widows by striking that on “stores” and “elsewhere.” Building on this dilution, Senator Irvine tried out a further liberalization of advertising by proposing a proviso that nothing in the section “shall be construed so as to prohibit the display of tobacco and the advertisements thereof other than cigarettes and the advertisements thereof in store windows.” On the grounds that the amendment failed to conform to the spirit of “compromise” that characterized the committee substitute, the Senate at first defeated it, but on reconsideration adopted it. By this point, the advertising section of the Southwick law was so weighed down with committee

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1740SLT Mar. 4, 1923 (24:2-3).
1742SLT Mar. 4, 1923 (24:2-3).
and floor amendments that “it was generally admitted” that it had become “rather incomprehensible not to say cumbersome and almost ungrammatical.”

Unsuccessful as his amendatory mission had been so far, Standish had hardly given up. Now he turned his attention to relaxing the public smoking ban. His first effort, to strike “motor and other passenger vehicles employed as common carriers,” failed, but he finally restored smoking laissez-faire to Utah’s barber shops.

The last amendment adopted by the Senate was also the most consequential in terms of gutting the Southwick law, though the Tribune’s account left opaque its importance both for protecting non-smokers from secondhand smoke exposure and for accommodating the business groups that had protested against the ridicule to which the sheriff’s arrests had exposed Utah elsewhere. The identity of the author of the amendment was almost as surprising as the virtual unanimity with which senators adopted it. Republican Senator David Jenson, a 45-year-old lawyer and former three-term Weber County county attorney, had, as chairman of the Judiciary Committee in 1921, faithfully voted with Southwick on the latter’s bill. Moreover, as a senatorial candidate in October 1920, he had, in response to a formal written request from the Weber stake Sunday school, “very definitely” expressed himself as willing to support a bill to prohibit cigarette sales. During the final passage debate on March 3, 1923, Jenson moved to amend the exception for enclosed public eating places that conferred discretion on their owners to designate a portion of them as a “public smoking room” by constructing smoke-impervious partitions. The provision now read: “excepting that the owner or proprietor of any hotel dining room, restaurant, cafe or cafeteria may designate the same as a public smoking room by a conspicuous sign at or

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1747 “Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923; at 520 (Mar. 3).
1748 “Republican Nominees in Weber County,” OS-E, Nov. 6, 1922 (7) (advertisement); 1910 and 1920 Population Census (HeritageQuest). Jenson was elected to a two-year term in 1920 and re-elected to a four-year term in 1922. The official retrospective list of all Utah legislators misspelled his name and erroneously listed him as a different person (“David Jensen”) for his first term. The Utah State Legislature: Centennial History, 1896-1996, at 273-74 (J. Brent Haymon et al. comp. 1996); http://le.utah.gov/asp/roster/roster.asp?year=1921.
near the entrance.”

Simply by posting a sign owners would be able to convert their restaurants in their entirety back into smoking-permitted areas and thus both to restore Utah to membership in good standing in the laissez-faire smoking world so beloved by the tobacco oligopoly, the chamber of commerce, nicotine-addicted tourists and conventioneers, and skew-viewed libertarians and to free up Sheriff Harries and Deputy Mauss for other law enforcement duties. Jenson’s amendment, which eliminated the mandatory partitions, apparently without any fundamental debate, “met with the approval of all but Senator Dixon,” and even he was reduced to merely quibbling over the location and size of the sign, and fecklessly at that: not being “ready with an amendment worded as he wanted it,” he “lost out.”

Dixon was actuated by not wanting to be “humiliated by going into a restaurant and having to leave when he found that it was a ‘smokehouse.’” He therefore proposed amending Jenson’s amendment to require “the sign to be at the entrance, at least seven feet high and with lettering six inches high.” Perhaps disoriented by the untoward consequences of his unpreparedness, Dixon later tried to insert a similar signage requirement in barber shops, but desisted when its illogic was pointed out in the wake of the chamber’s just having struck barber shops from the list of covered enclosed public places.

After all the amendments had been defeated or adopted, the Senate, astonishingly—in light of the far-reaching character of the changes to a radical and polarizing piece of legislation—passed the bill unanimously (18 to 0), even Warnick voting Aye. What the Tribune termed “[t]he nearest approach to

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1751 Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 520 (Mar. 3); S.B. No. 184, Substitute for S.B. No. 108 (1923, by Public Affairs Committee) at 7, on http://images.archives.utah.gov/cdm4/document.php?CISOROOT=/428&CISOPTR=23769&REC=4 (handwritten insertions in bill text). Jenson’s initiative was consistent with his Senate floor statement in 1921 that he had “nothing to gain personally” from Southwick’s bill because “he can go where smokers are or can stay away, as he chooses, but it is to guard the young people that he will vote for the measure....”

1752 The influential Literary Digest, which focused on synthesizing press accounts ridiculing the Southwick law, erroneously stated that the enactment contained the partitions provision. “Utah’s ‘No Smoking’ Signs,” LD 76(12):14-15 at 14 (Mar. 24, 1923).

1753 Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2-3 at 3).

1754 Senate Adopts Bill Licensing Cigaret Sales,” Salt Lake Telegram, Mar. 4, 1923 (1:1 at 12:4).

1755 Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2-3 at 3).

1756 Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 520 (Mar. 3).
opposition...against the bill" arose in the explanation that Salt Lake Republican Antoinette Brown Kinney offered in support of her (successful) request to be excused from voting:

The senator...said that the present bill places no more safeguards around traffic in tobacco, to prevent the sale of such to minors, than does the Southwick act. And the Southwick act, she added, is no improvement in this respect on former statutes. As a woman and a representative of women, she felt that she was not much interested in the measure. "The woman of the home...does not smoke. Therefore I am perfectly willing to permit the men to legislate for and impose penalties on themselves as may best suit them, since neither women nor minors are particularly interested in the outcome of this measure."  

The claim by Kinney—the only senator not to vote on the Southwick bill in 1921—that the Southwick law was no more efficacious than its no-sales-to-minors predecessor was dubious enough, but the assertion that women as non-smokers had no stake in a law that prohibited public smoking and advertising that could lure their children into smoking was unfathomably preposterous.

The press reported that "the vote was a complete change from that of two years ago when the Southwick bill was passed, the opponents of the measure then being the friends of the measure now," but absent from that circle of friends was (a section of) the press itself: "From various parts of the state newspapers are wiring the representatives to vote against the bill because it prohibits the advertising of tobacco in the papers, which means to most of the smaller country papers a direct loss of from five hundred to one thousand dollars a year."

Whether that telegram campaign bore fruit immediately or not, House passage was already deemed "questionable" because at least some members’ sentiment was that the bill should not pass. That opposition encompassed both anti-tobacco representatives who regarded the whole 1923 amendatory initiative as anathema and House members who excoriated even the profoundly diluted bill

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1757 An 1887 graduate of the University of Michigan, Kinney, a women’s suffrage advocate and organizer of the Utah State Federation of Women’s Clubs, was the first librarian of the Utah State Historical Society before becoming a University of Utah regent in the first decade of the twentieth century; her husband was a Salt Lake City lawyer. Gary Topping, “One Hundred Years at the Utah State Historical Society,” UHQ 65(3):200-302 at 213 (Summer 1997); Catalogue of the University of Utah: Announcements for 1908-1909, at 6 (1908).

1758 Tobacco Bill Amended and Passed by Senate,” SLT, Mar. 4, 1923 (24:2).

1759 Senate Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 275-76 (Feb. 3).

1760 Senate Passes Cigaret Bill; Fate in Doubt,” OS-E, Mar. 4, 1923 (1:2).
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exiting the Senate as quintessentially evil. The exceptionally lush rhetoric of Republican George J. Constantine, who had extensive economic interests in development projects in southeastern Utah and was one of the few lawyers in the House, may have been situated in this ideology’s upper price range, but it nevertheless encapsulated the spirit. One of the House members “flooded...with telegrams from the country newspapers protesting against the passage of the cigaret bill because it cut out all advertising of tobacco or its products,” Constantine telegraphed back:

“[E]ach reading of that freak of freaks substituted for the Standish cigaret bill brings to realization its un-American, unjust discrimination. I will work against it, talk against it and vote against it... This freak disregards and tramples down American liberties and will breed contempt, ridicule and disrespect. The blood of the Revolution, Civil and World wars cries out against such confiscatory, discriminatory and un-American legislation. Thank God the Federal Constitution guarantees my freedom of speech and as a member of this Legislature I denounce the substitute as a worse freak than the Southwick law.”

The same day (March 5) that S.B. No. 184 had its first reading in the House—which continued to prohibit smoking “within the House, or gallery, while the House is in session”—Party of Freedom officials announced that they would “make a vigorous effort to have the bill killed by a filibuster.” Sparing no vitriol, former Democratic Attorney General Dan Shields inflationarily developed hyperbole far beyond even Constantine’s imagination in declaring that “it was not a far cry from the burning of witches to the regulation of the every-day conduct of citizens such as is proposed by this and other freak legislation.” Individual House members’ attitudes toward devoting legislative resources to repeal or amendment of the Southwick law may also have been shaped by the “belief” that even if the Southwick amendments were passed, the revised law would “prove a dead letter” in the two largest cities, Salt Lake and Ogden, whereas in “the smaller communities where the Mormon church influence is complete, however, the new law will probably be rigidly enforced as the Southwick law has been


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On the bill’s arrival in the House there was “some talk” of amending the advertising provisions, but some members believed that too little time remained before the end of the session to do so. That belief was prevented from turning into a majority view when the House that same day received a communication—which was read aloud to the members—from Salt Lake Chamber of Commerce President L. B. Hampton concerning the result of a special meeting of the organization’s governors the night before, at which the board unanimously adopted a motion recommending to the House that it strike the law’s prohibition of cigar and chewing and smoking tobacco advertising. Implicitly lauding their own toleration and moderation, the board members noted that although their proposal would not make the bill perfect, it would become more acceptable. To some House members this initiative was welcome because they themselves argued that it would be unconstitutional for the state to prohibit the advertising of a product that it licensed. However, such a constricted view was hardly compelling: at the very same time, Attorney General Cluff, responding to a request submitted by Salt Lake Republican Representative Amy Brown Lyman, who was both the head of the Mormon Relief Society Social Welfare Department and married to one of the church’s 12 apostles, opined that a law since its enactment.”

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1765aUtah’s Smoke Law Is Given to House,” LAT, Mar. 6, 1923 (2). The dead letter claim was exaggerated in the sense that, as noted above, even if for no other reason, the advertising ban was generally complied with. Shields, who had been attorney general from 1917 to 1921 and later became a state senator, in 1933 was appointed by President Roosevelt U.S. district attorney for Utah, which he remained until 1949. http://www.justice.gov/usao/ut/history.html.

1766aHouse May Act on Cigaret Bill Some Time Today,” SLT, Mar. 6, 1923 (3:4).

1767aChamber Asks for Change in Cigaret Bill,” Salt Lake Telegram, Mar. 6, 1923 (Local page 1:4).


1769aC. of C. Moves on Cigaret Bill,” DN, Mar. 6, 1923 (sect. 2, 1:1). See also “Smoke Law Debate Looms,” LAT, Mar. 7, 1923 (1); “Commerce Men Propose Change in Cigaret Bill,” SLT, Mar. 7, 1923 (17:4).

prohibiting the advertisement of any form of tobacco while exacting a fee licensing their sale violated neither the state nor the federal constitution.\textsuperscript{1771}

The following day, when the calendar (or sifting) committee,\textsuperscript{1772} by a four to three vote—the minority being composed of Salt Lake Republicans\textsuperscript{1773}—adopted a motion to let the bill die in committee rather than return it to the house with a favorable report ("amended to strike the adverse advertising feature"),\textsuperscript{1774} the Deseret News jumped to the conclusion that that outcome was "practically certain to result in the death of the cigaret bill...."\textsuperscript{1775} In the event, the process of raising the bill from the undead was initiated by Salt Lake Republican William C. Stark, a former secretary of the Salt Lake Commercial Club,\textsuperscript{1776} retail coal company manager,\textsuperscript{1777} and president of the Utah-Idaho Retail Coal Merchants Association,\textsuperscript{1778} who "started the fireworks"\textsuperscript{1779} by moving that the sifting committee be discharged from considering S.B. No. 184 so that the House could consider the bill\textsuperscript{1780} that "had excited more interest than any other before the legislature." During the ensuing extended and sharp debate Representative

\textsuperscript{1771}Email from Tom Alexander to Marc Linder (Aug. 2, 2011).
\textsuperscript{1772}On Feb. 26 the House speaker had appointed the committee, whose duty was to "consider all bills with respect to their importance in the following order: State, County, Municipal Government, Miscellaneous, and provide a Calendar for each session of the House." House Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 391 (Feb. 26).
\textsuperscript{1773}Party affiliation is taken from "Utah Senate Is Republican," OS-E, Nov. 9, 1922 (7:1).
\textsuperscript{1774}"Cigaret Bill Made Special Order of House Business," SLT, Mar. 8, 1923 (Mar. 8, 1923) (20:5).
\textsuperscript{1776}Men of Affairs in the State of Utah: A Newspaper Reference Work (n.p.) (1914).
\textsuperscript{1777}1920 Census of Population (HeritageQuest).
\textsuperscript{1778}Outlook Slight for Lower Coal," SLT, Apr. 8, 1921 (22:3).
\textsuperscript{1779}"Cigaret Bill Made Special Order of House Business," SLT, Mar. 8, 1923 (Mar. 8, 1923) (20:5).
\textsuperscript{1780}House Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 508 (Mar. 7).
Constantine honed his hortatory hyperbole by charging that “gag[ging] the house” would be

“the greatest mistake that this body has yet made.... Utah is now the laughing stock of the nation because of the freak Southwick law and this substitute in its present shape is a worse freak: legislating against the business of Utah’s own citizens in favor of those who pay no taxes and do not even have a place of business in the state. The bill in its present form so regulates dealers in the state as to say to the small man, ‘Get out of business and let the big man have it all,’ because the confiscatory licenses will legislate out of business the small dealer. Then again if the Utah tobacco dealer wishes to advertise his wares it forces him to send his advertising to concerns outside of the state to the detriment of the state’s own tax-paying newspapers and printing houses. Why hit the home business solar plexus blows and say to the man who pays no taxes in our state you may have the business that rightfully belongs to the dealers of this state.”

Constantine’s oratory was to no (immediate) avail: following a motion to amend and to amend the amendment to make the bill a special order for the following afternoon, the House on a voice vote tabled all the motions and amendments. A few minutes later, however, those wanting to repeal as much of Southwick as possible countered with a motion to take the bill together with its amendments from the table, which prevailed on a 31 to 21 roll-call vote. Before the vote on scheduling the special order Stark concluded the debate by letting the rest of the cat out of the bag: “He said that he might be prejudiced as he had been smoking cigarets for more than thirty years, but that he would rather see his boy smoke a cigaret than telling such stories as he had heard in the house from some of the members.” Perhaps the fact that Stark was only 38 years old impressed some of his colleagues, who now voted 34 to 18 to take up S.B. No. 184 the following afternoon.
As the House took up the bill on March 8 “every seat in the house and all of the standing room in the galleries was occupied.”1787 Debate opened with a motion by Republican Randall Lunt Jones (1881-1946), southern Utah’s greatest tourism booster, an architect who worked for the Union Pacific Railroad and was a Mormon leader.1788 His amendment, which was regarded as a “big point in the bill and was warmly contested,”1789 proposed adding this exception and proviso to the advertising ban: “and excepting further that cigars, chewing tobacco and smoking tobacco may be advertised in any newspaper published within the State of Utah, provided however that nothing herein shall be so construed as to permit advertizing [sic] of cigarettes in any manner.”1790 Jones argued for this change on the grounds that the many small manufacturers of tobacco products in Utah—a later speaker put the number at 27—would otherwise not be permitted to advertise in the state’s newspapers; looking at the situation from the other end of the transaction, Jones also justified his amendment by reference to the unfairness to Utah newspapers, which were disadvantaged vis-a-vis out-of-state papers regarding the revenue from tobacco ads.1791

A principal rebuttal came from Republican Alonzo Stookey, a 62-year-old Mormon rancher, civil engineer, and surveyor, who after studying mathematics at the University of Utah was a teacher, principal, and county superintendent for 14 years (in addition to being state superintendent of Sunday schools).1792 Mincing no words, the acid-tongued cattle-raiser insisted on the necessity of doing everything to stop tobacco advertising: “he never had advertised on his ranch and hadn’t gone out of business. He predicted that the tobacco manufacturers would not go out of business if deprived of the privilege and

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1787Id. at 527 (Mar. 8).
17891920 Census of Population (HeritageQuest); “Randall Jones, Utah Scenic Booster, Dies,” SLT, July 11, 1946 (9:7); “Passing of Randall Jones, Beloved Son of Utah,” SLT, July 13, 1946 (6:1).
1793Utah from Statehood: Historical and Biographical 3:928-29 (1919).
intimated that it would be no great damage to anyone in particular if they did. He declared that he did not want tobacco advertising before his boys.\footnote{New Tobacco Bill Passes Legislature, Signed by Governor,” SLT, Mar. 9, 1923 (1:7, at 10:2-3).}

Other representatives—including Constantine—pushed Jones’s points further, adding that, since tobacco users were the majority in Utah as elsewhere, law could not be used to prevent that use. Jones himself then concluded debate on his amendment by urging his colleagues to “consider the rights of those who might think just a little differently from them”\footnote{New Tobacco Bill Passes Legislature, Signed by Governor,” SLT, Mar. 9, 1923 (1:7, at 10:2-3).}—a topos to which he would return during the general debate.

By the large majority of 41 to 13 the House then adopted this further evisceration of the Southwick law, the entire 16-member Salt Lake delegation voting Yea (including all three female House members) along with six of 11 Democrats. All 13 representatives casting Nays would also vote against the bill on final passage.\footnote{House Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 541-42 (Mar. 8). There is some confusion in the sources as to whether 10 or 11 (or even 12) Democrats sat in the House. “New Legislature Includes 75 Members: Lone Democrat Holds Senate Place,” Salt Lake Telegram, Jan. 7, 1923 (2:5-6) (11); “Democrats Help 20 Republicans in First Fight,” Salt Lake Telegram, Jan. 8, 1923 (1:1) (10); The Utah Legislature: Centennial History, 1896-1996, at 251-301 (1996) (12); Michael Dubin, Party Affiliations in the State Legislatures: A Year by Year Summary, 1796-2006, at 184 (2007) (10); The most reliable seems to be 11. They were Atwood, Bailey, Brewer, Browning, Hollenbeck, Jacobs, Judd, Naylor, Nix, White, and Wilkins.}

The WCTU’s constant refrain echoed in the House chamber when Republican N. Enoch Iverson—who at the 1921 session was the author of a memorial petitioning Congress to pass legislation prohibiting “Oriental aliens,” whose “presence in large numbers in our midst will always be a source of trouble,” from immigrating to the United States\footnote{H.J.M. No. 1 (1921, by Iverson), http://images.archives.utah.gov/cdm4/document.php?CISOROOT=/432&CISOPTR=138370&REC=19 (passed both houses almost unanimously); “What Happened at the Legislature,” OS-E, Jan. 18, 1921 (4:6). At the same session, the Salt Lake post of the American Legion, endorsing action of the national}—opened the debate on passage of the bill,
which he charged had been “placed before us in a sort of state of hysteria” by asking: “Do we want the income from tobacco sales? I think we cannot conscientiously license that which we believe to be wrong.”

Samuel Browning, the former mayor of Ogden and president of the Mormon high priest quorum of Weber stake, pithily objected to the bill on the grounds that “a thing was either right or wrong and this was a case of the dollar against his boy.”

Another pro-tobacco celebrant of diversity and moral relativity was Democrat and lawyer Leroy Adelbert Hollenbeck (1856-1950), a most unusual figure, who had previously been elected county judge in Colorado and to two terms in the Colorado House as a Democrat/Progressive; while he was in the Utah legislature he conveniently also edited his hometown newspaper and was an amateur(ish) critic of socialism and Marxism. Hollenbeck unmistakably displayed his deviance on the day the Utah legislature convened by self-publishing a pamphlet—which he dedicated to his fellow legislators without the slightest hint as to how it might in any way be relevant to their work—containing a risibly confused attack on Karl Marx’s theory of Surplus Value and the Law of the Falling Rate of Profit. Exactly two months later, having seemingly made his
way back to planet Earth, he criticized Iverson from a moral perspective inasmuch as “each man was entitled to his own moral code...and the codes of one could not be called wrong because these differed from another. Every man must judge for himself and it is not the prerogative of this legislature or any other body to say what is right or wrong....”

Although in this absoluteness such a vision was otherworldly—since all societies prohibited certain behaviors—his claim that the smoking debate implicated a moral issue connected back to a fellow representative’s rhetorical effort to turn Browning’s position against him by insisting that “it was not a question of income but a moral question.”

Jones then concluded the debate by returning to his aforementioned rhetorical ploy of re-imagining the controversy as one of state-enforced intolerance of others who thought differently: “‘I don’t smoke and smoke is annoying to me, but that does not give me the right to tell the men who do not think as I do what they shall do.’” Turning to his vocation/avocation, southern Utah tourism, he continued: “‘We are expecting many visitors here in the near future, thousands of them in fact. I have been with many of our visitors during the last few years who have

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an Adverse Criticism of an Essential Tenet of Socialism (Jan. 8, 1923). Apparently the only library owning a copy is Weber State University in Ogden.


1804 In fact, not even Hollenbeck himself believed in such absolute relativity. A few months after the session he published an editorial on moral questions in which he stated outright that: “We all agree on some things as being moral or immoral.” From there he slipped into discussion of a man’s “habits,” which it would be “intolerant” to try to make him give up, because they were “his real rights” and “his life” and “[h]e will violate the law—any old law—prohibition of whisky or tobacco.... It matters not to him. [I]n striking at his habits, you may have gone too far and infringed on his real rights. If you have, then, beware, for you will have trouble. Didn’t we see it in the drastic cigarette law. Didn’t both sides later agree to a compromise? Of course the compromise is probably worse than the original law, and if so you will hear from it again.” L. S. Hollenbeck, “Moral Questions,” Duchesne Courier, Sept. 28, 1923 (8:2) (edit.). With regard to smoking in public places and exposing non-smokers to tobacco smoke Hollenbeck was blind to the harm inflicted on others, which he would never have regarded as acceptable collateral damage of the exercise of a right if that activity were, for example, recklessly exposing others to poison gas. On the other hand, the anti-cigarette movement in Utah, as elsewhere, typically failed to justify the prohibition of in-state cigarette sales to adults insofar as they smoked them in private without physically harming others (though when wives and children at home were taken into account, such harmless smoking may have been less commonplace than pro-tobacco forces or libertarians imagined).

come here to see the wonders of the southern part of this state. Most of the men
with whom I have mingled, and they are most estimable men, smoke and think
nothing of it. We must not expect everybody to see things as we see them, but to
be considerate of the rights of others." Jones’s persistent, self-serving
conflation of thinking and smoking and of the right to have differing views about
smoking and to expose non-smokers to tobacco smoke was grotesquely ironic in
light of his admission that male tourists thought "nothing" of smoking (in non-
smokers’ presence), whereas Jones pleaded with non-smokers to be considerate
of smokers’ right to smoke wherever they felt like it.

In a final effort to take back some of the voluminous clean indoor air space
that had been ceded to smokers in the amendment granting public eating place
owners the power to permit smoking provided that they posted signs to that effect,
Democrat Lawrence Atwood—like his anti-smoking brother-in-law, Senator
Warnick, a Mormon farmer from Utah County—offered an amendment to
divide restaurants “so that there would be dining rooms for those who smoke and
for those who do not.” Following an objection based on a single instance in Salt
Lake City, where a hotel’s main dining room was reserved for smokers and
another room set aside “as a private dining room where no smoking was allowed,”
in which purportedly no meal had been served yet, the chamber defeated the
proposal—which essentially would have restored the original Southwick
provision—by a vote of 20 to 33, which prefigured the final vote.

On final passage 34 House members approved the evisceration of the
Southwick law against 20 who cast Nays. Significantly, 15 of 16 Salt Lake
representatives (including all three women, one of whom, Lyman, was a high-
profile Mormon welfare functionary) voted Yea. Of the nine representatives

1806 “New Tobacco Bill Passes Legislature, Signed by Governor,” SLT, Mar. 9, 1923
(1:7, at 10:3).
1807 “Who’s Who in the Legislature,” Salt Lake Telegram, Jan. 23, 1923 (16:3); Viola
1808 “New Tobacco Bill Passes Legislature, Signed by Governor,” SLT, Mar. 9, 1923
(1:7, 10:3). Noteworthily the non-smoking room violated the still effective Southwick law
because the statutory “extra room” was set aside not for smoking, but non-smoking. This
room may also have deterred diners precisely because it was the main dining room.

1809 House Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at
541-42 (Mar. 8). Almon T. Butterfield, the only Salt Laker to vote No, was a Mormon.
http://www.humpherys.org/paf/humpherys/aqwn85.htm#2047. In 1921, only five of the
10 Salt Lake representatives had voted for the Southwick bill on final passage, but even
three of those had voted for licensure and switched when it became clear that the
alternative was Southwick or no law at all. House Journal: Fourteenth Session of the
Legislature of the State of Utah: 1921, at 379-80 (Feb. 24).
Repeal, Reinforcement, Last New Laws, and First Public Smoking Bans

who had voted on Southwick’s bill in 1921 and on the gutting amendments in 1923, seven voted consistently—that is, for the former and against the latter (or, in one case, against the former and for the latter). Of the two who had voted for Southwick and two years later to weaken the law, one, Mormon Republican and livestock raiser H. H. Crouch, explained that in 1921 it had been estimated that 80 percent of his constituents wanted the anti-cigarette law: “But now those people have reelected me, knowing just how I stand on this subject and I have not received one protest. Evidently the people at home approve of the stand I have taken on this question.” His position was that high license would prevent minors from obtaining cigarettes. Of 11 Democrats six also voted against passage.

House passage of the bill was signaled by the gathering in the Senate gallery of a “considerable crowd” and on the Senate floor of “certain prominent citizens who ha[d] been watching the progress of the cigaret bill....” Because, according to Senator Peters, its “essential fundamentals” had been retained despite the House amendments, he urged the Senate to concur. The only senator to vote Nay (against 15 of her colleagues) was Kinney, who, this time, did not explain her action.

TMA’s lawyer, Charles Dushkind, termed the Utah legislature’s about-face the result of a “strategic error” committed by “reformers...attempting to enforce the law while the legislature was in session. In most instances our opponents show better judgment than that.”

The rather similar editorial reactions of the Mormon Deseret News and the anti-prohibitionist Tribune—both of which celebrated diversity and coexistence—were emblematic of the acquiescence in smoking that would characterize the following four to five decades of laissez-faire even in the only

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1815 Charles Cushing, “Prohibition as ‘Big Brother’ Fails to Win for Blue Laws,” NYT, May 20, 1923 (sect. XX at 5).
state with a majority religion that bound its adherents to eschew tobacco altogether and despite the survival there into the 1970s of the fragile remnants of the Southwick law. Without in the slightest conceding that the bill that it had editorially supported a week earlier had been significantly diluted before final passage, the News chose to view the amendments to the Southwick law as an example of the “universal rule” that every community is characterized by divergent views and habits: “Those who enjoy smoking are entitled to smoke as much as they please, provided in doing so they are not offensive to those who do not smoke, many of whom become positively ill when compelled to breathe smoke-laden air. On the other hand the non-smoker is equally entitled when he goes out in public to be able to enjoy a good meal, a theatre or whatever other diversion or pleasure he seeks, free from the, to him, offensive fumes of tobacco smoke.” Despite the unoverlookable fact that, as now amended, the Southwick law no longer protected non-smokers in public eating places and that even in some of the small number of kinds of enclosed public places in which smoking was permissible in extra rooms there was no statutory requirement to prevent the wafting of smoke, the Mormon editorialist, in effect, anticipated the cigarette oligopoly’s late-twentieth-century propaganda to stave off government regulation with a we-can-work-it-out-with-common-courtesy campaign: “The new cigarette bill...is an expression on the part of both sides to outline the ordinary rules of gentlemanly consideration obtained among men of good intentions. Non-smokers who are fair minded will concur in the decision of the legislature to allow the smoker to enjoy his cigar, cigaret or pipe, and on the other hand, the honest smoker...will concede to the non-smoker the consideration which is his due.”

Ironically, when asked why the Mormon hierarchy had caved into business’s demands and abandoned its own religious tenet and public health, a leading Mormon historian sought to dissolve the alleged inconsistency by observing that “Mormon leaders had always been in business.” Moreover, since neither the Word of Wisdom nor any other “revelation” stated that cigarettes (let alone tobacco) should be prohibited in society at large, the church leadership’s attitude toward the issue became a mere “matter of policy,” from which prohibitory position it could therefore “back away...on the basis of public opinion.” Here Professor Thomas Alexander meant that: “You can only go so far in opposing public opinion. The leaders of the LDS Church were realistic in understanding that the public would not support tobacco prohibition, so they backed off.”

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1816 “The Tobacco Law,” DN, Mar. 9, 1923 (4:1) (edit.).
1817 Email from Prof. Thomas Alexander to Marc Linder (Aug. 3, 2011). In published work Alexander had also erroneously asserted that Southwick’s initiative entailed the
empirical scrutiny: in addition to being factually wrong that the prohibition of tobacco was on the Utah legislative agenda during the early 1920s, Alexander cannot sustain his assertion with regard to “the public,” which, on this matter, did not even exist as such a monolithic entity. On the contrary, Utahns and public opinion were fractured, and although the fissure did not run strictly along religious lines, pitting (majority) Mormons against (minority) non-Mormons, the division appears to have reflected a sharp conflict between smokers and non-smokers, which, to a large extent but by no means univocally, overlapped with that sectarian divide.1818

Alexander invoked the experience of liquor prohibition, which “did not work in Utah either, even though the church leadership supported it,” to buttress his argument that when “[t]he people pushed back...the state leaders would back down, whether they were Mormons or not.”1819 While superficially pregnant with analogy, the appeal to alcohol prohibition was misleading. First of all, the ban on liquor was much more comprehensive and stringent than Southwick’s ban on cigarette sales and public smoking. Adults were free not only to continue to buy all forms of non-cigarette tobacco, but also to mail order cigarettes from other states in any quantities for their own personal consumption. Second, cigarettes were still a distinctly minority form of tobacco use.1820 And, finally, smoking could take place in numerous enclosed public places (such as stores) unconditionally, and even in some Southwick-covered places (such as restaurants) smoking was permitted under rather easily satisfied conditions only marginally inconvenient to smokers. Since alcohol drinkers benefited from no such alternative forms or venues of consumption, resistance to and violation of the relatively permissive Southwick law should have been expected to be much less pervasive and intense than was the case with regard to alcohol drinkers lacking comparable alternative forms and venues of consumption. Consequently, the Mormon hierarchy’s policy choices were considerably less constrained by public opinion than Alexander (whose grasp of the main components of the Southwick

1818As explained above, some Mormons smoked and some Mormon legislators opposed Southwick’s bill, while some non-Mormons did not smoke and some non-Mormon legislators voted for Southwick’s bill.

1819Email from Prof. Thomas Alexander to Marc Linder (Aug. 4, 2011).

1820In 1921 and 1923 manufactured cigarettes accounted for only 25.9 and 29.1 percent, respectively, of all tobacco leaf used in the manufacture of cigars, cigarettes, tobacco, and snuff in the United States. Calculated according to data in U.S. Department of Agriculture, Agricultural Statistics: 1937, tab. 158 at 130 (1937). Not until 1935 did cigarettes exceed 50 percent.
law was deficient) imagined; in particular, once the church leadership had
acquiesced in the overriding importance of repealing the cigarette sales ban in favor
of licensure, it would and should at the very least have pushed more strenuously
and openly for something akin to designated smoking/nonsmoking areas in order
to keep alive the struggle against secondhand smoke exposure.\textsuperscript{1821}

The \textit{Tribune}, which regarded “modification of the obnoxious tobacco law of
1921” as “[t]he best advertised and in some respects the most important issue
before the legislature,” also stressed that the amended law “embodies recognition
of the rights of smokers as well as nonsmokers. Both classes are far too
numerous to be ignored by any body selected to represent the entire state.”\textsuperscript{1822} To
be sure, beyond this nod to an undefined set of rights for each, the newspaper, far
from being conciliatory, overtly postulated smokers’ chronological and quasi-
natural precedence:

The amendment of the law tends to legalize certain practices which experience proved
could not be suppressed by legislation and which, indeed, are not sufficiently iniquitous
to be suppressed. Liberalization of the provisions with respect to smoking in “enclosed
public places” is proper recognition of a practice which is and has been recognized
throughout the civilized world ever since tobacco smoking commenced. It is well known
that smokers enjoy their relaxation, or “vice”…especially at or immediately following
meals, and it has been demonstrated here that they will smoke at such times, law or no law.
When those who object to such indulgence are fully advised, as required by the amended
law, where smoking is and is not permitted, the predilections and sensibilities of both
smokers and nonsmokers are protected.\textsuperscript{1823}

In other words, since there was nothing the law could or should do to stop
smokers from smoking wherever and whenever they wanted to smoke, the
amendments created the best of all possible worlds by requiring owners of
enclosed public eating places to post signs putting non-smokers on notice that
smokers held sway there, thus enabling them to about-face and look elsewhere
for a (voluntarily) smoking-prohibited restaurant (if any existed) without ever
exposing themselves to tobacco smoke-polluted indoor air.

Oddly, although the amendments adopted by the Senate on final passage
gutted the bill, especially with regard to ban on public smoking, neither the
\textit{Tribune} nor the \textit{Deseret News} reported or evaluated them that way. The former
merely observed that the changes were “apparently intended to make more

\textsuperscript{1821}See below this ch.
\textsuperscript{1822}“The Legislature,” \textit{SLT}, Mar. 10, 1923 (6:1) (edit.).
\textsuperscript{1823}“The Legislature,” \textit{SLT}, Mar. 10, 1923 (6:1) (edit.).
workable the terms of the bill to license the sale of cigarettes,” when in fact, ironically, the strengthened provisions that they displaced had been designed to secure the support of anti-tobacco militants for a bill that repealed Southwick’s ban on cigarette sales. Consequently, Mormons and other smoking opponents received so much less in exchange for acquiescing in that fundamental repeal than the grand compromise for which they had bargained in S.B. No. 184 that the question arises as to whether they would have settled for such an outcome as an original matter and, if not, why they backed the bill in the end.

In a class by itself was the party-independent *Salt Lake Telegram*, by this time the smallest of the three papers, which fiercely denounced tobacco regulation and referred to a merchant convicted of selling cigarettes as a “violator of Southwickism.” Back in January, as soon as Sheriff Harries had announced that he would enforce the law’s no-smoking provision in the city and county building, the *Telegram* editorialized that in “all the history of the state of Utah there is no piece of legislation more asinine than the antismoking law....” A few days later, with no evidence of enforcement in the meantime, the editor charged that the law’s “chief evil” was the “hypocrisy attending it, which is infinitely worse than the evils of tobacco.” And the day the new law went into force the paper lovingly wrote of “innumerable cigarettes...burned on the altar of freedom. Today the Southwick anticigaret law is a fading memory of hateful history.” Insisting that “removal of the Southwick law from the statute books of Utah,” of its own sponsoring of which it was “proud,” was “not a victory for tobacco and cigarettes, but a triumph for law and order in Utah,” the *Telegram* purported to be concerned with eliminating the “hypocrisy at home and stinging ridicule abroad.” Without explaining, for example, why it would not have been possible to enforce the smoking ban in certain indoor public places, the editor asserted both that “the example of strict observance of the law is more essential to the welfare of our children than tobacco prohibitions which merely

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1825The *Tribune’s* weekday and Sunday circulation in 1922 was 42,000 and 71,000, respectively, while that of the *Telegram* was 24,000 and 27,000, respectively; the weekday figure for the *Deseret News*, which did not publish Sundays, was 26,000. *N. W. Ayer & Son’s American Newspaper Annual and Director* 999-1000 (1922).
1826“Chamber Asks for Change in Cigaret Bill,” *Salt Lake Telegram*, Mar. 6, 1923 (Local page 1:4).
make a farce of the law” and that “the good people who are opposed to the use of tobacco and the children as well will be better off without the Southwick law.”

The press’s global claim that the “new bill nullifies the Southwick act” was blatantly exaggerated and in no respect more so than regarding the retention of the ban on smoking “tobacco in any form in any enclosed public place within the state of Utah, except in extra rooms, compartments or coaches specially provided for smoking purposes,” whose crucial term, “enclosed public place,” was now “construed to mean...theatres, passenger elevators, street cars, interurban and railway passenger coaches, motor and other passenger vehicles employed as common carriers, railway station waiting rooms, [and] State, county and city buildings, excepting that...in any State, county or city building, any public officer who has a private office separate and apart from his public office, may if he so desires, designate such private office as a place where smoking may be permitted...” (The ban on advertising—which meant, for example, as the attorney general opined several weeks before the amended law went into effect, that pictures of “Uncle Ephraim taking a generous-sized corner off a plug of chewing” tobacco displayed on automobiles would be unlawful—has remained in effect ever since.) Clearly, then, although owners of eating places now had discretion to convert them into uninhibited smoking locations, several types of “enclosed public place,” such as elevators and wide swathes of government buildings, did not lend themselves to dual use by means of the construction of “extra rooms,” and would continue to be legally off limits to tobacco smoking.

Although the sheriff’s office had announced shortly before the new bill’s passage that it would make no further arrests for smoking in public places until the aforementioned test cases had been disposed of, on May 16 (eight days after the amended law had gone into effect) Harries dissolved any suspicion that his wave of enforcement in February had been designed to provoke repeal. He
now issued a warning to offenders against the law, especially with respect to smoking in public buildings, calling special attention to the state capitol, in whose corridors, according to complaints he had received, people had frequently been seen smoking; reports had identified state employees as smoking in various offices’ public sections: “The practice must stop in all public buildings, Harries said, and promise[d] to arrest offenders.” And, despite the virtual fiat that the legislature has conferred on owners to permit smoking, the sheriff was not giving up on enforcement in restaurants and cafes either: he warned them, too, that if they failed to comply with the formality of posting a card declaring a public smoking place, his enforcement campaign would be extended to those locations as well.

Sketch of Utah’s Surviving Unique Partial Indoor Smoking Ban During the Heyday of Smoking Laissez Faire (1923-1976)

Utah...cannot demand or even expect serious consideration in Washington when the state acts as official jester to the assembly of states.

A half-century after the events, one local historian opined that the “whole affair of cigarette prohibition in Utah can be dismissed as part of the season of excess that all America experienced in the twenties.” He went on to assert, self-contradictorily, on the one hand, that “[n]o one will deny that non-smokers have a right to protection from the tyranny imposed by smokers in enclosed public places”—Harries’ enforcement of which right was, after all, the trigger and fulcrum for the national mobilization against the Southwick law—and, on the other hand, that “[w]here the prohibition erred was in promoting an unrealistic law that went far beyond those goals the prohibitionists considered most

1835a “Smoking in Public Buildings Is Complaint,” Salt Lake Telegram, May 16, 1923 (Local Page 1:8).

1836 “Sheriff Is Again After Smokers in Public Places,” SLT, May 23, 1923 (22:7). On the other hand, two days before the amended law was to go into effect, the prosecutor announced that he would move to dismiss the charges against the 21 defendants (including the original four) arrested in February. “Charges Pending Against 14 Salt Lake Citizens for Alleged Violation of Former Law to Quashed by Prosecutor,” SLT, May 6, 1923, clipping in Selected Collections from the Archives of the Church of Jesus Christ of Latter-day Saints, vol. 2 (DVD 2002).

desirable—protecting minors and controlling the sale of tobacco.”

Not only is this latter assertion factually incorrect—protecting adults from secondhand smoke exposure and prohibiting tobacco advertising ranked among their highest priorities, whereas controlling the sale of non-cigarette tobacco did not—but these alleged excesses long outlived the 1920s.

Utah’s statewide ban on smoking in certain enclosed public places did not—contrary to the U.S. Tobacco Journal’s Schadenfreude-drenched headline: “Mormons Can Smoke Anywhere, Any Place, Any Time in Utah”—expire in 1923: until the modern anti-smoking movement prompted the legislature to enact the Utah Clean Indoor Air Act in 1976, it remained in the Utah Code and was not an entirely dead letter. It was enforced, though with what frequency is unknown.

For example, in a dance hall in Salt Lake City in 1927, a 22-year-old man was “[a]rrested because he was smoking a cigaret in a public place, and charged with being a disorderly person” when he refused to obey an order to “douse the ‘fag.'”

More interesting and consequential is that in 1929—when, according to the Brown and Williamson Tobacco Company, “per capita consumption of tobacco in Utah [w]as lower than in any other place in the entire world with [sic] exception of India, where nicotine is taboo”—an initiative in the House, whose internal rules continued to prohibit smoking, to repeal the amended Southwick

1839 John H. S. Smith, “Cigarette Prohibition in Utah, 1921-23,” UHQ 41(4):358-72 at 372 (Aut. 1973). Although Smith was aware that many other states had prohibited the sale of cigarettes before 1921, he mistakenly asserted that “the difficulties of enforcing anticigarette laws brought about their repeal within one or two legislative sessions of their enactment.” Id. at 359.

1839 On the partial advertising ban, which remains in effect, see above this ch.


1841 The following survey of the succeeding half-century’s enforcement merely underscores that a detailed study of Utah’s experience of local anti-smoking activity remains a research desideratum.

1842 “Cigaret Smoker Lands in Hoose-Gow: Jailed for Refusal to Douse ‘Fag,’” Salt Lake Telegram, Feb. 14, 1927 (Local page 1:6-7). A city judge sentenced him to one day in jail. To be sure, it is unclear why a dance hall qualified as a covered “enclosed public place.”

1843 “News Notes: It’s a Privilege to Live in Utah,” Garfield County News (Panguitch), Mar. 29, 1929 (2:4). This same column, which recounted the statement that company vice president Gregory Graham had recently made in Salt Lake City, ran in numerous Utah newspapers.

1844 House Journal: Eighteenth Session of the Legislature of the State of Utah: 1929,
law’s surviving public smoking ban, was summarily rejected. Jacob Thompson, a farmer, livestock raiser, and wool grower “deep-rooted in Republicanism,” introduced such a bill in February 1929. Thompson seemed to be as confused about the law as the press. The Telegram, by way of background, mentioned Sheriff Harries’ arrest of “three prominent Salt Lake citizens,” and then, as if struck by amnesia, speculated: “The result, presumably, was the repeal of the rule, but Thompson insists that section 4 of the cigaret law is a ‘joker’ and really did not effect a repeal.” The less forgetful Tribune seemed to mock Thompson more than the law:

Scanning the voluminous statutes of Utah, Representative Jacob Thompson... discovered one that offended him.

It prohibits smoking in inclosed public places. ...

It might mean that it would be unlawful to smoke in the cloak rooms of the house or senate, to smoke in the capitol rotunda or in the elevators.

The law might also be construed to mean that smoking was taboo in any public place, and, in the last analysis, that smoking would be lawful only in the great open spaces where the wind blows out the matches and lighters never work.

Thompson’s bill garnered a modicum of attention from the Judiciary Committee, which reported it favorably; the full House then adopted the Sifting Committee’s recommendation that it be placed on the House calendar for third reading, but after the Sifting Committee had recommended that it be placed back on the calendar and the House agreed, in the end-of-session rush the Sifting Committee ultimately recommended that the bill’s enacting clause be stricken, and the House accordingly “killed” H.B. No. 74.

That the unrepealed ban lived on was unmistakably on display in Ogden in


1847 “‘Joker’ Claimed in Utah Cigaret Law,” Salt Lake Telegram, Feb. 6, 1929 (5:2).


1944, where the law had been ignored “for a number of years.” On February 4 a joint board meeting of city and Weber County commissioners was called at the request of the police chief and sheriff to clarify a motion adopted by the same body the day before to prohibit smoking in the city-county building. In the course of discussion the statewide smoking ban in certain enclosed public places was both “upheld and ridiculed,” one “faction” urging literal enforcement and the other insisting that it could not be. Belonging to the latter group were the mayor, who opined that morals could not be legislated, and the police chief, who, in addition to reciting the (legally irrelevant) “fact that smokers and non-smokers had helped build the city-county building,” shared his belief that the habit was one of “personal preference,” although he was personally opposed to smoking. A legal justification for overriding an unambiguously clear and valid state statute the city’s chief law enforcement officer did not offer. Despite having just characterized the dispute as moral, the mayor, joined by all the commissioners, “admitted that persons not addicted to the use of tobacco were unable to find any retreat in the building not permeated by the ‘obnoxious fumes.’” A non-smoking city commissioner announced that, if a resolution were passed banning smoking, he would propose directing city and county law enforcement agencies to assign officers to patrol the building and arrest violators—a admittedly “absurd” proposal, but, he noted, “certainly no more absurd than the law on the question.”

The local officials’ utter confusion as to the act’s substance or even words was highlighted by their voting to kill a city commissioner’s proposal to permit all office holders to post “‘no smoking’” or “‘smoking permitted’” signs in their individual offices—spite of the 1923 law’s proviso that “in any State, county or city building, any public officer who has a private office separate and apart from his public office, may, if he so desires, designate such private office as a place where smoking may be permitted, and so long as such private office is so designated, smoking therein shall not be considered in violation of this Act.” But the joint body also killed the mayor’s proposal to prohibit smoking in all elevators, halls, and meeting rooms during commission sessions, while permitting those in charge of individual offices to designate their preferences. At least one attendee, a justice of the peace, pointed out to the commissioners that they were wearing no clothes: he demonstrated his charge that they were “‘making [them]selves ridiculous’” by requesting permission to include in a published article the announcement that a joint board meeting would soon be called “to consider whether some other law should be enforced.” Having reached

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1853. 1923 Utah Laws ch. 52, § 4, at 110, 114 (codified at Utah Code Annotated § 93-3-2 (1943)).
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an impasse, the joint board voted to postpone final disposition by referring the matter to the chairman (the county chairman) and vice chairman (the mayor) for study and recommendation.1854

In 1944, the Mormon church also pressed for enforcement of Utah’s partial public smoking ban, focusing attention especially on public transportation. By the middle of the last full year of World War II, which was characterized by a shortage of cigarettes for civilians1855 driven by the huge military consumption,1856 the Deseret News devoted a lengthy editorial (“Newcomers May Not Know It—But It’s Illegal”) to the increasing number of violations on street cars and buses in Salt Lake City and its suburbs. Often the vehicles were so crowded that operators were unable to see passengers smoking, and sometimes they simply ignored violations. Preferring (without explanation) not to believe that “anyone would willfully violate this law,” the editorialist felt that violators—especially the new arrivals from states and cities lacking such bans—were unaware of the law’s existence; to be sure, signs on street cars and buses notified the public of the prohibition, but they were easily overlooked or liable to be regarded as obsolete. The newspaper pleaded on behalf of thousands who found tobacco smoke “offensive” and did not want to be “forced to inhale it against their will,” especially since they had “watched the increase of smoking in cafes and dining rooms and cafeterias without raising their voices in protest”—presumably because the gutting of the Southwick law in 1923 enabled all owners of enclosed public eating places to turn them lawfully into entirely smoking-permitted areas just by posting signs—“but they feel that they, at least, should be permitted to ride buses and street cars without having to submit to breathing second-hand tobacco smoke.”1857

1854“Officials Wrangle over Smoking in Joint Building,” OS-E, Feb. 4, 1944 (B1:1-3). The press appears not to have reported further on resolution of the issue. A few days later the police chief reiterated to the Kiwanis Club that the law was “‘highly desirable, but impractical’” because “‘[w]e must have the active support of the people.’” “Chief Requests Kiwanians’ Aid,” OS-E, Feb. 10, 1944 (1:3). At the same time, officials at Weber College in Ogden, which until recently had banned smoking anywhere on campus, relaxed that rule because they had found it “impossible to enforce”; smoking remained prohibited in school buildings, but was now permitted outside. “Officials Clarify Smoking Rule,” OS-E, Feb. 9, 1944 (7:4). Though originally and for decades a Mormon school, more than a decade earlier it had been taken over by the state.

1855“Cigarettes to Be Scarce,” NYT, Oct. 8, 1944 (11); “Cigarette Shortage to Continue,” NYT, Oct. 18, 1944 (6).


1857“Newcomers May Not Know It—But It’s Illegal,” DN, July 22, 1944 (4:1) (edit.).
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A month later the Mormon church made its move when a 10-member delegation, led by one of the 12 apostles, appeared before the Utah Public Service Commission urging immediate strict action to enforce the ban in public conveyances. The commission chairman quickly agreed that it was a misdemeanor to smoke tobacco in such places “unless special compartments or sections” were provided, adding that since 1937 smoking had been allowed on interstate and state buses “on certain seat sections, usually the back row”; he also admitted that smoking on trains was not always confined to smoking compartments, even when they were furnished. But the chairman stated that steps would be taken in “the very near future” to enforce the ban.  

Support for protection from secondhand smoke exposure in public transport had apparently spread such extensive roots by the end of World War II that in 1946 even the *Salt Lake Tribune*, which in 1921 and 1923 had strenuously opposed Southwick’s approach, found its heart for beleaguered nonsmokers. Complaining of “flagrant violations” of the no-smoking law he had experienced during a bus ride from Ogden to California, Army Chaplain John W. Fitzgerald wrote Utah Attorney General Grover Giles declaring that “[n]on-smokers...object to breathing poisonous and obnoxious tobacco fumes in public vehicles” and suggesting that “the state post a plain clothes officer on each bus to enforce the law” and “remove smokers from buses.” The attorney general acknowledged that the law should be enforced, but observed that the state had failed to appropriate funds for enforcement and dismissed hiring plain clothes enforcers.  

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1858 “Smoking Ban to Be Enforced,” *DN*, Aug. 30, 1944 (9:4-5). The Public Service Commission rules permitted motor carriers to designate car rear seats as smoking-permitted. “LDS Urges State Ban Bus Smoking,” *Salt Lake Telegram*, Aug. 30, 1944 (10:2). Such a rule did not conform to the law, which permitted smoking only in “extra rooms, compartments or coaches,” but not in “sections.” 1923 Utah Laws ch. 52, § 4, at 110, 114 (codified at Utah Code Ann. § 93-3-2 (1943)). Despite the great communitarian fervor inspired by World War II, some smokers ignored and defied no-smoking rules voluntarily implemented by privately owned railroads. For example, the Boston and Maine Railroad placed a large ad in a New Hampshire newspaper in 1943 describing how five of nine passengers violating the company’s clearly posted “‘smoking in smoking cars ONLY’” rule protested even after the conductor had pointed out the signs to them. “Let’s Smother Mother—This Is a Free Country,” *Portsmouth Herald*, Mar. 29, 1943 (3:1-5) (advertisement).


1860 “Spotlighting Utah,” *San Juan Record* (Monticello, UT), Jan. 17, 1946 (5:1). This column ran in numerous Utah papers.


1862 “Spotlighting Utah,” *San Juan Record* (Monticello, UT), Jan. 17, 1946 (5:1).
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officers as prohibitively expensive.1863 The chaplain, the Tribune editorialized, was merely

express[ing] sentiments often entertained by many who have suffered the imposition in silence. [P]eople who flaunt [sic; should be flout] the law, ignore the regulations and behave like hoodlums ought to be ejected from all public places and vehicles where “no smoking” signs are displayed.

They forfeit any claim to leniency they may assert....; they are boorishly indifferent to the comfort and enjoyment of nonsmokers....

If...the legislature cannot appropriate funds enough to put plain clothes officers on the many buses to take these offenders in custody, the citizens who travel over the various lines should be deputized to serve without pay and authorized to report violations to the bus drivers and to the police....1864

Within days Giles discussed means of enforcing the bus smoking ban with a statewide conference of county officials.1865 The attorney general’s engagement with the issue was impressive considering that five years earlier he had written an opinion in which he mistakenly claimed that the legislature had repealed the public smoking prohibition (while at the same time opining that the legislature had the power to prohibit the sale of tobacco and cigarettes entirely).1866

An extended debate in the Tribune in 1947-48 revealed that even during the absolute heyday of smoking laissez-faire, at least in Utah, non-smokers fought back, in part because an awareness of the existence of a semi-dormant ban on public smoking survived. A few days before Christmas 1947 the newspaper published a letter to the editor by war veteran Arthur Jensen, who ironically remarked on the “Utah, the friendly state” license plate motto and the “No Smoking” sign in the employment office where he was looking for a job, which he otherwise encountered only in the state tax office, which issued license plates. Because, in contrast, no such signs were to be seen at Okinawa or elsewhere out


1865a Giles Will Speak,” OS-E, Jan. 16, 1946 (3:2).

1866a Biennial Report of the Attorney General to the Governor of the State of Utah for the Biennial Period Ending June 30, 1942, at 312-13 (No. 72, Feb. 15, 1941). In response to a question concerning the advertising ban, Giles opined that the 1921 law, “because of the widespread use of tobacco, was impractical, its enforcement impossible, and the Legislature in 1923 repealed the act, with the exception of one section” dealing with advertising.
in the Pacific, the vet wondered whether “these ‘state parasites’” were “so
delicate they can’t stand a little cigarette smoke.” Without understanding that he
had identified a quarter-century-old exemption from the statute, Jensen related
that the “fellow in his private office had a cigarette in his hand, a privileged man,
I suppose, not a citizen.”

This broadside provoked a visceral controversy that lasted for two months.
The first responder saw Jensen as a typical smoker in that he regarded as
unfriendly anyone or anything that interfered with his “‘rights’ (contaminating
the air and blowing smoke in the faces of any and all who may be around)....”
Turning the screw further, the response attacked smokers in general for lacking
any “consideration for that other portion of humanity that doesn’t need a drug to
get a little enjoyment out of life” and called for even more no smoking signs.

The debate took an unexpected turn with the intervention of Frank W. Joesten,
who during the New Deal had been a Utah lieutenant of Democratic National
Committee Chairman James Farley. Joesten, who sympathized with Jensen,
related that he had taken up the issue six months earlier with the
governor—Democrat Herbert Maw was a Mormon who opposed relaxing
enforcement of Utah’s liquor law—at the protest of some returned vet and the
governor assured me in a letter that the tax commission would have the sign
removed.” Joesten, who was apparently unaware of the law, conceded that it was
“possible that these ‘bureaucrats’ have found some loophole to crawl through and
put the signs back up but the vengeful voters won’t forget this on election day.”
While purporting not to smoke, Joesten was manifestly gladdened that “[t]he
banks, post office, federal income tax and all public offices have long ago put the
‘No Smoking’ signs in the ash barrel where they belong,” because they were
“offensive to a big percentage of our people, notably to the returned vets.”

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More expressly ignorant of the law was a later letter writer who asserted: “When the petty
official in charge smokes, he is just exceeding his authority and violating his own orders.”


1869 Alan Brinkley, Voices of Protest: Huey Long, Father Coughlin, and the Great
Depression 204 (1983 [1982]).

1870 Utah History Encyclopedia (Kent Powell ed. 1994), on http://www.media.utah.edu/

If these federal offices had in fact at one time posted such signs, they would not
have been required to do so by a Utah state law, which would have had no jurisdiction
over them.
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Another Utahn who confirmed that all of those offices lacked signage complained that “I am forced to breathe second-hand smoke which is blown into my face by the cigarette, cigar and pipe smokers who lack the decency to respect the rights of others to breathe pure air.” The letters to the editor debate concluded with a contribution by a Mrs. R. J. from Ogden, who, stressing that she became “quite ill...when forced to breathe smoke-filled air,” wondered whether, if she worked in a public office, she would simply have to give up her livelihood “just for a few smokers who come in for a few minutes and yet have to befoul the air the rest of the day....” Shifting the terms of the controversy away from the moral sphere by bringing to bear the crucial point some years ahead of her time, she insisted that: “it isn’t the idea that smoking stinks! It’s the fact that smoking is deleterious to health.” Her final (ironic) word also underscored that even anti-smoking militants who had not lost track of the existence of the Southwick law’s ban on public smoking did not entertain inflated expectations of its enforcement to achieve smoke-free indoor public space: “We can control smoking in public places.... Let us not even mention that it is against the law to smoke in public buildings and vehicles.”

In the meantime, the upshot of the dispute in Ogden continued unresolved. Even as late as 1955, a resident who was outraged over her exposure to tobacco smoke in restaurants (though willing to accept accommodation in the form of separate sections at counters and booths) observed in the local newspaper that “one notices that there is no smoking allowed in public buildings” in Utah, but she succeeded only in provoking contradiction from another reader, who asked why the city did not start enforcing the law by posting no-smoking signs at every entrance to the Municipal Building as well as on every floor. But the amnesia that had descended over both the law itself and the Ogden city government’s quondam interest in compliance with it was brightly illuminated three years later during city council discussion of a new pool hall law: “Goaded by statements that the new measure was severe in its non-smoking requirements,” City Attorney Paul Thatcher “left the Council chambers for a few moments and returned with a heavy volume from which he read a section making it a misdemeanor to smoke

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1873 Mrs. R. J., “Control Smoking,” SLT, Feb. 20, 1948 (14:1-3) (ltr to editor). As an example of health impacts, she mentioned that “[i]nhaling smoke is distressing inasmuch as it often starts a coughing spasm and choking.”
in public places....” From the perspective of the Ogden Standard-Examiner, “[o]ne saving grace in the law” was the discretion accorded owners to post eating places smoking-allowed or to provide special smoking rooms in railway stations and hotels. The salient upshot of the council members’ deliberations was their “agree[ment] that it is a law a little out of date in many ways.”  

By 1961 sufficient momentum, presumably driven by the proliferation of smoking even in Mormon Utah, had built up to coordinate the state with national trends that its House of Representatives unanimously passed a bill that stripped away additional elements of the Southwick law’s ban on public smoking. Guided by the notion that the prohibition “should be enforced where it can, removed where it cannot,” the House articulated as its philosophy: “‘Smokers have a right to smoke; I have a right to breath [sic] clean air.’” Yet the “test” for implementing that philosophy was blatantly incompatible with it—namely, “allow[ing] smokers the right to smoke ‘in places I can walk out of.’” Where people are held in captive air...the ban should be enforced.”  

Why smokers should receive absolute and, in effect, exclusive priority in restaurants and cafes, legislators failed to explain, but House Bill No. 137 proposed to strike, after forty years, coverage of eating places and railway station waiting rooms altogether. What the press characterized as “[t]ighten[ing] the clamps on smoking” in buses turned out to be somewhat less unalloyed. On the one hand, the bill required passenger-carrying common carriers to cooperate in enforcing the law and to post no-smoking signs and drivers to advise passengers of the ban and of the penalty for its violation and promptly to report violators to law enforcement officers. On the other hand, H.B. No. 137 conferred on owners the discretion to declare any enclosed rest or wash room a smoking room merely by posting a sign. Despite a unanimous vote in the lower chamber, three weeks later the Senate voted to kill the bill.

Southwick’s long amputated public smoking ban survived that threat, but its prominent mention three years later in a Tribune article on little known and
largely ignored laws as “[o]ne of the most often violated laws”\textsuperscript{1882} suggested that presence in or removal from the Utah Code might be a mere formality. However, events at the beginning of the 1970s suggested otherwise. When the state fire marshal proposed a bill to the legislature in 1971 prohibiting smoking in various places for purposes of fire prevention, he made it clear that he did not quarrel with the existing law’s ban for medical or comfort purposes.\textsuperscript{1883} The bill, however, repealed the surviving provisions of Southwick’s ban on public smoking, substituting for it the fire chief’s empowerment to order owners of a broad array of places in which conditions were such as to make smoking a hazard to post No Smoking signs and declaring those who smoked in such places guilty of a misdemeanor.\textsuperscript{1884} The bill as introduced had lacked such a provision, but as amended in committee and passed by the House, the measure provided that owners “may post No Smoking signs and designate areas where smoking is permitted, subject to approval of the Fire Chief.”\textsuperscript{1885} In other words, the House dropped Southwick’s statutorily imposed prohibition of smoking in a limited number of public places in favor of a merely permissive ban within owners’ discretion.\textsuperscript{1886} Although the House—whose own more expansive no-smoking rule now read: “No person shall be permitted to smoke within the House or gallery, in and out of session, and it shall be the duty of the Sergeant-at-Arms to enforce this rule”\textsuperscript{1887}—passed the bill by a vote of 38 to 26,\textsuperscript{1888} the Senate killed it,\textsuperscript{1889} thus

\textsuperscript{1883}Old Law on No Smoking Also Labeled No Safety,” SLT, Mar. 15, 1972 (17:4-5).
\textsuperscript{1885}Journal of the House of Representatives of the State of Utah: Thirty-Ninth Session of the Legislature...1971, at 510-11, 681 (Feb. 19, Mar. 3).
\textsuperscript{1886}A provision in a substitute version of the bill that apparently was not adopted provided that owners “may post conspicuous No Smoking signs in all areas within these premises where smoking shall be prohibited for reasons other than” the aforementioned (fire) hazard-related reasons and that those smoking where such signs were posted were also guilty of a misdemeanor. http://images.archives.utah.gov (Substitute H.B. No. 66, § 3, bill text). A fire-hazard bill with this language was introduced in 1973, but it was killed. Journal of the House of Representatives of the State of Utah: Fortieth Session of the Legislature...1973, at 313, 1047-48 (Feb. 1, Mar. 8) (H.B. No. 201, by Gardner and Orton).
\textsuperscript{1887}Journal of the House of Representatives of the State of Utah: Thirty-Ninth Session of the Legislature...1971, at XII (Rule 18).
\textsuperscript{1888}Journal of the House of Representatives of the State of Utah: Thirty-Ninth Session
leaving the half-century-old Southwick law still alive.

The Salt Lake County commissioners were also directly confronted with the issue in 1972 by German immigrant Hermann Neumann, who complained that he had attended a meeting at a county multi-purpose center at which “‘the whole place’” was “‘filled with smoke.’” When he told a security guard about the 51-year-old state law and asked him to enforce it, the latter’s refusal triggered this revealing dialog: “Guard: ‘Are you Mormon?’ Mr. Neumann: ‘Yes.’ Guard: ‘That explains it!’” The county commissioners, whose chambers were posted with no-smoking signs, lamely replied that “they would ‘follow the law as far as possible.’” before passing the buck for study to the county attorney, whose deputy later (incorrectly) expressed his feeling that the state law “would ban smoking except where officials would permit it.” As soon as the Southwick law and its real prohibitory bite had once again re-emerged in public consciousness, the conflict between smokers and non-smokers immediately loomed: “concerned [county] employees began making their ‘smoking allowed’ signs. Some even substituted ‘preferred’ or ‘encouraged’ for ‘allowed.’”

By 1973, with Arizona having crossed a threshold by enacting the first so-called modern (but very limited) designated-smoking area law, the Utah legislature, in connection with undertaking a sweeping revision of its penal code, repealed and then re-enacted Southwick’s ban on public smoking, this time converting the misdemeanor/jail punishment to an infraction/fine penalty. The press described this change as “[o]utlaw[ing] smoking where signs are posted not to smoke, reversing present law allowing smoking only where permission is designated.” As a sign of legislators’ intensifying and coalescing personal anti-smoking militancy, at the outset of the session both chambers, which had banned smoking since statehood, finally extended the prohibition to committee rooms as well. The Senate, which adopted the amended rule without debate and

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\text{References:}
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190\textit{See below ch. 23.}


192\textit{“Legislative Log,” OS-E, Mar. 5, 1971 (2:1-2).}
unanimously, limited the ban to “committee meetings while committees are in session.” The more radical House rule amendment, which prohibited smoking in committee rooms both in and out of session, prompted lengthy debate, during which several members “said smoking was extremely offensive to them and one said he couldn’t ‘concentrate on the important matters before us if I have to sit in smoke-filled committee rooms.’” Ultimately, the House voted 49 to 16 for smoke freedom.

At the 1975 session, coinciding with the enactment of Minnesota’s landmark but still merely designated smoking area law, the Utah legislature took a step that objectively imparted a dynamic to the anti-smoking law (and movement) that would soon catapult it into the modern transitional period. Proceeding from the “widely-accepted and medically proven fact” that tobacco smoking substantially increased smokers’ likelihood of falling victim to cancer and heart disease, House Joint Resolution No. 15 found (with less certitude) that “it also appears that the inhalation of smoke by non-smokers of tobacco from tobacco being smoked by a smoker may have much the same results [sic] on the non-smoker as if he or she actually smoked.” The legislature characterized its aforementioned 1973 revision of the penal code as having “made provisions to make unlawful smoking of tobacco in public places,” but then declared that despite that step and various ordinances adopted by local governments in its wake, “the law enforcement agencies and officers charged with the same being enforced have almost without exception failed to effectuate such enforcement for one reason or another.” Consequently, the legislature resolved that “all law enforcement agencies and officers charged with enforcement of the statutes of Utah are directed to enforce the restrictions and prohibitions against smoking in public places contained in these statutes in the manner contemplated thereby.”

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1898 See below ch. 24.
1899 One of the resolution’s House sponsors may not have shared or foreseen this development in characterizing it as “mostly meant to remind smokers of the discourtesy of smoking in the presence of nonsmokers.” “Utility Bill Rates Doomed, Weber Legislator Says,” OS-E, Feb. 7, 1975 (1A:1, at 2A:1) (Rep. Glade Sowards).
In order to preclude pretextual claims of lack of knowledge, the legislature also directed the secretary of state to send copies of the resolution to all of Utah’s county attorneys, county commissioners, city attorneys, city commissioners, mayors, sheriffs, and police chiefs. The action was not uncontroversial: unlike the Senate, which adopted the resolution unanimously, the House saw 20 members vote Nay.

Quickly local governments all over the state did in fact begin implementing enforcement, although, despite the American Cancer Society’s complaint about Utah’s “long-standing but generally unenforced law,” prior municipal observance of the law had not been unheard of. All this interactive statewide-local momentum set the scene for enactment in 1976 by huge majorities of

1900 1975 Utah Laws H.J.R. No. 15 at 1115-1116
1904 Signs to Emphasize ‘No-Smoking’ Law,” OS-E, Nov. 28, 1974 (1B:7-8).
1905 For example, the mayor of South Ogden (a town of about 10,000) stated in connection with the commitment by all the city council members to enforce the law within the framework of their various official responsibilities that “the city actually has been ‘observing the law since 1969.’” “Unlawful to Smoke at South Ogden City Hall, Council Says,” OS-E, Apr. 16, 1975 (18B:3-8).
1906 To be sure: “Pledges of support from local officers immediately followed the legislative action, but many officers said actual enforcement was difficult to impossible.” “Utah Legislators Agitate for Cut in Income Taxes,” OS-E, Jan. 21, 1976 (1:1-2 at 2:4-5). By inadequate enforcement was apparently meant that violators were asked to put out their cigarettes, but no arrests were made. “House Votes to Consider Stronger Antismoking Enforcement,” SLT, Jan. 21, 1976 (4:1-6). City and county attorneys’ refusal to file charges prompted introduction of an “innocuous bill” in 1976 that merely transferred enforcement powers from them to state and local health boards, for which however the clean indoor air act was then substituted. “Far-Reaching Anti-Smoking Bill Passed by Both Houses,” Sunday Herald (Provo), Feb. 1, 1976 (16:4-7).
1907 H.B. No. 25 passed the House and Senate a vote of 51 to 16, 59 to 5, and 54 to 5, and 21 to 1 and 23 to 3, respectively. Journal of the House of Representatives of the State...
the Minnesota (MCIAA)-like Utah Clean Indoor Air Act, which enormously expanded the scope of covered places, but, ironically, unlike the Southwick law, absolutely prohibited smoking nowhere, replacing that approach with the feckless designated smoking area regime, which became the hallmark of late-twentieth-century regulation. This transitional character was underscored by its chief sponsor, Mormon Democrat Gerald Woodmansee, in explaining to his House colleagues why he regarded the bill as “fair”: “It is not an anti-smoking bill; in fact, it will give provisions for smoking so that you could call it either way if you would want to—a smoking bill or a non-smoking bill.”

In 1921 anti-smoking activists were operating under a decided disadvantage in Utah because they acted at the tail end of the era of anti-cigarette/smoking legislation when the few states that still had such laws on the books were repealing them. With the half-century era of national smoking laissez-faire looming, a single state would have had to overcome exceedingly powerful economic forces and social-psychological trends in order to sustain even a partial public no-smoking regime. What is remarkable about the legislative process in Utah is that when the Standish bill was introduced in early 1923 to repeal the Southwick law, it initially had very little support; only after Sheriff Harries had undertaken a series of high-profile arrests did stronger backing arise, but even then the compromise bill that was devised in certain respects actually strengthened the Southwick regime. Only during the last few days of the session was it watered down, though, again, even then it retained certain prohibitory elements that no other state law embodied until the end of the century (absolute smoking bans in various public places in contradistinction to designated smoking areas) or ever (e.g. with regard to advertisements).

The crucially explosive issue in 1923, once Harries entered the scene, was restaurant smoking, but this confrontation could have been handled differently in order to defuse it. First of all, the anti-smoking movement should have combated...
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the widespread misunderstanding (especially outside of Utah) that smoking was
per se prohibited in eating places by widely publicizing the fact that so long as
owners created separate rooms, smoking remained lawful. Harries could and
should have approached the matter from that perspective. His motivation is
unclear: he repeatedly stated that he would enforce the law until it was repealed,
but he apparently did not want repeal because after Southwick’s dilution in 1923
he continued to enforce whatever shreds of the law were left (such as signage).

One possible (legislative) compromise would have been designated
smoking/nonsmoking sections. To be sure, this regime may be virtually without
value as a public health matter, but in fact many states adopted this regime in the
last quarter of the twentieth century (for example, Iowa relied on it exclusively
from 1978 to 2008). If Utah had enacted such a system in the 1920s, it would
at least have legislatively acknowledged, kept alive, and reinforced the notion that
secondhand tobacco smoke was a public health problem and that people who
objected to exposure were not (exclusively) religiously-motivated ideological
extremists, thus making a small but enduring dent in laissez-faire.

\[\text{1911See below Part VI.}\]

\[\text{1912When the Utah legislature in 1976 was considering the bill that became the Utah Clean Indoor Air Act, Ogden Democratic Senator Darrell Renstrom remarked that “many Utahns are hesitant to take action on the matter for fear of “being criticized” or linked with the “dominant” church in the State. He was referring to the Church of Jesus Christ of Latter-day Saints’ avowed stance against smoking.” “Utah Legislature Vote Gives Strength to Statute Curbing Smoking Areas,” SLT, Jan. 31, 1976 (1:3-5).}\]
The Tobacco Merchants Association of the United States: The New Cigarette Oligopoly’s Legislative and Propaganda Arm—A Proto-Tobacco Institute (1915-1922)

Scarcely does a legislative season begin when interests inimical to tobacco loosen a veritable flood of anti-tobacco measures of every description. On some occasions the tobacco industry seemed to be facing a perfect epidemic of hostile legislation. ...

Undoubtedly the tobacco trade in every State, supported by the great army of consumers, constitutes a force sufficiently powerful to combat hostile legislation. But to set that force in motion, to render it effective, and to secure concerted and quick action, it is necessary to supply direction and leadership. This is a task of no ordinary difficulty, especially in cases, as is frequently true, where legislative measures are introduced and advanced to a point of passage before the trade or the public at large is at all aware of their pendency. It is here that the services of a national bureau with its eyes wide open, and with adequate connections in every State...becomes [sic] indispensable.¹

In the wake of the resolution of the anti-trust action in 1911 by which the American Tobacco Company’s “Trust monopoly was replaced by oligopoly”² and especially by the time the United States entered World War I in 1917, an understanding of the industry’s nationwide efforts to repeal or defeat state-level legislation to control or prohibit cigarette sales can be considerably enhanced by paying attention to the often behind-the-scenes, subterranean, and secret activities of the industry’s new public trade organization. This perspective also embeds the analysis of developments in Iowa in a national context.

The Tobacco Merchants Association was formed in 1915 in response to the consequences of the U.S. Supreme Court’s decree that ATC was an attempt to monopolize and a monopolization.³ To be sure, James McReynolds, the special assistant to the attorney general prosecuting the case (who was later appointed by President Wilson attorney general and then associate justice of the U.S. Supreme Court), characterized the plan for disintegration of the Tobacco Trust as a “‘plain subterfuge which deserves an expeditious commitment to the scrap-heap’” because “it was merely a scheme to create three big holding companies in place of one, and...these three companies would be practically under the same control

¹“President Bloch’s Address a Thorough Survey of Industry’s Progress,” USTJ 99(20):12, at 53 (May 19, 1923) (Pres. Jesse Bloch speech at TMA convention).
Tobacco Merchants Association of the United States

as the one. The circuit court upheld ATC’s proposal under which ATC retained assets giving it 33 percent of the value of cigarette production and two entities to be organized (Liggett & Myers Tobacco Company and P. Lorillard Company) were apportioned 21 and 26 percent, respectively, for a grand total of 80 percent. Moreover, the 29 individual defendants retained 35 percent of ATC’s voting stock and received 40.76 percent of each of the two new cigarette producers. Little wonder that the independent tobacco companies complained that these entities would still dominate and “could crush” the independents.

Nevertheless, largely as a result of the so-called Camel Revolution, launched by R. J. Reynolds Tobacco Company in 1913 (which within five years secured a 40-percent market share) and soon countered by Ligget & Myers and ATC with Chesterfield and Lucky Strike, respectively, a new oligopolistic competitive regime emerged that by 1915 prompted TMA’s president to explain that: “Since the disintegration of the former tobacco combination into a number of rival concerns competition has been so keen and so violent that the industry has become very much demoralized.” Even at the organization’s first exploratory meeting on September 25, 1915—called by “the nicotine press,” which purportedly believed that it could not prosper unless the industry was at peace—its counsel described its main object as a union of all industry interests, elements, and branches (including leaf dealers, larger manufacturers, cigar store chains, and smaller independent dealers) in order to effect changes in business methods designed to remedy trade evils. The American Tobacco Company’s chief counsel, Junius Parker, declared that it was “high time” for an industry with an annual product totaling $700,000,000 to form a trade organization. During the weeks before TMA’s formal founding on November 8, the group stressed that one dimension of its activity would be “to keep a watchful eye on legislation affecting the tobacco trade.” In the past, a spokesman argued, “tobacco people”

9“Tobacco Men Form $1,500,000,000 Union,” NYT, Nov. 9, 1915 (18) (Jacob Wertheim).
10a“Tobacco War Ends; Cigarettes to Rise,” NYT, Sept. 26, 1915 (11).
11a“Meet Today to End Tobacco Trade War,” NYT, Nov. 8, 1915 (14).
had been so busy fighting one another that the government found the business “easy prey” for tax increases. “All!” that TMA was aiming at was the “‘square deal’” that the industry’s disorganization had prevented it from achieving. Whatever kernel of truth this claim may have embodied made a mockery of the very effective lobbying and bribery in which the Tobacco Trust, as the de facto trade organization for two decades, had engaged to defeat anti-cigarette legislation. In any event, the industry’s very size required “some power, some substantial organization to speak for it with influence and authority,” and there was no reason to doubt the president’s expectation that TMA would soon be one of the country’s biggest trade organizations.

TMA’s Intertwined Lobbying and Propaganda Functions

[O]utright tobacco bans were passed in twelve states. In response, the Tobacco Merchants Association was formed in 1915, with the central task of squelching hostile legislation.

TMA’s articles of association set out that one of the principal objects for which the organization was formed was “to protect the tobacco industry from unfair and hurtful movements and agitations” as well as “to oppose the passage and procure the repeal of unjust and detrimental legislation affecting the tobacco industry....” Already by the time of the 1918 annual meeting of the board of directors, the president praised TMA for having defeated state-level anti-tobacco legislation. In addition, as part of its mission to counteract anti-tobacco

13See above Pt. I-II and vol. 2. The TMA acknowledged that the Tobacco Trust in its time had “look[ed] out for the very things that properly come within the functions to be performed by an active trade organization.” “Jacob Wertheim First President of Tobacco Merchants’ Association,” WTJ 42(46):2 (Oct. 15, 1915).
14“Tobacco Men Form $1,500,000,000 Union,” NYT, Nov. 9, 1915 (18).
15Jane Rosecrans and John Rosecrans, “The Tobacco Wars” at 18 (n.d. [1995]), Bates No. 2060538562/79. The daughter and father authors were cigarette company apologists, who informed Philip Morris that “we have taken the side of the smoker.” Letter from John Rosecrans to Dr. Richard Carchman (Aug. 8, 1995), Bates No. 2060538599. John Rosecrans, “an occasional smoker,” was a pharmacology professor at the Medical College of Virginia. Jane Rosecrans and John Rosecrans, “The Tobacco Wars” at 1 n.1 (n.d. [1995]), Bates No. 2060538562.
propaganda, it had not only “distributed thousands of pamphlets demonstrating the harmlessness of the use of tobacco products,” but had also “persuaded the Industrial Commission of the State of New York to promulgate rules and regulations permitting smoking in factories, whereas previously it was a misdemeanor even to sample a cigar or cigarette in a factory,” thus making a vitally important contribution to the normalization of smoking in the workplace, where “arrests for smoking” had been “reported almost daily,” but many employers supported the change because “employees would work more enthusiastically if permitted to smoke.”

A report of the new organization’s ways and means committee stressed that no national tobacco organization was “known to have extended its activities to State or local matters, nor is it possible for them to keep in touch with the various movements that spring up from time to time in different parts of the country that are intended to injure the tobacco industry, such as high licenses, prohibitive statutes, anti-tobacco agitation, elimination of smoking car facilities or overstringent regulation in regard to smoking in various buildings, all of which not only intend to undermine the tobacco industry and diminish its income, but every successful move against the industry brings renewed vigor, strength and encouragement to the anti-tobacco forces.” Of overriding importance in the present context is the committee’s insight that such local measures “are even more injurious to the tobacco industry than excessive Federal taxation, for taxation simply diminishes the net income, while prohibitive and restrictive measures reduce the volume of business and cut out the income altogether.”

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19 Jacob Wertheim First President of Tobacco Merchants’ Association,” WTJ 42(46):2 (Oct. 15, 1915). Even before the tobacco trust was dissolved, an organization, the National Allied Tobacco Trades Association, had been formed to oppose all sumptuary legislation and especially to monitor the Anti-Saloon League and the WCTU in order to insure that the tobacco industry not sink in the same boat with liquor. The NATTA’s secretary, Phil Grau, argued that: “The constant repetition of anti-cigarette laws and the ever menacing and threatening attitude of prohibitionists and Anti-Saloon League agitators regarding tobacco forced the conclusion upon them that sooner or later their business would be looked upon as the next unpopular commodity in the market, and it would be as viciously attacked as the liquor industry is today.” “To Fight Prohibition,” USTJ, vol. 72, July 24, 1909 (1:4). The U.S. Tobacco Journal was skeptical of NATTA’s approach because liquor prohibition had not revealed itself to be an enemy of the tobacco trade and
Tobacco Merchants Association of the United States

The kind of state legislative presence that the new organization would mobilize was bluntly limned by the ways and means committee report (Congressional action would be launched on a far grander scale encompassing a delegation of 50 to 100 representatives and mass meetings in large cities):

Let us suppose a case where a bill has been introduced in a certain State legislature imposing prohibitory license fees for the sale of tobacco products. Such cases occur not infrequently...and we also know that such bills have been passed and that no organized opposition has ever been presented. A live trade organization would not only appear by its committee and perhaps also by special counsel to oppose such measures, but it would send one or more of its representatives to the State in question to organize the trade and to march down to the legislative halls with a big body of men. The Association would also circularize the tobacco trade in that State and move them into action.20

On November 18, 1922, Charles Dushkind, from its founding until his death in 1945 TMA’s managing director and general counsel,21 which performed some of the legislative monitoring, lobbying, and propaganda functions later conducted on a much larger, lavishly funded, and more sophisticated scale by the Tobacco Institute, sent a special bulletin to cigarette manufacturers pointing out that prior to the 1921 state legislative session Arkansas, Iowa, Kansas, North Dakota, and Tennessee had cigarette (sales) prohibition laws, but that after Arkansas, Iowa, and Tennessee had repealed their laws and Utah enacted one that year, Kansas, North Dakota, and Utah were still left “in the prohibition column.” Dushkind expressed the opinion that the three repeals “after repeated efforts, especially at a time when anti-cigarette agitation was most intensive, should operate as a stimulant to renewed activities looking to the repeal of the obnoxious statutes” in the three remaining states. He then suggested TMA propaganda literature be “freely distributed...among legislators, newspapers, bank presidents, and other leading citizens” in those states, arguing that: “It is altogether probable that most of the papers in these States will warmly support any movement for the repeal of these statutes and for the enactment of laws providing for reasonable license fees and proper restrictions as to sales to minors under 18, instead.” Dushkind reminded his bosses that since the state legislative sessions were “rapidly...

References:
20 Jacob Wertheim First President of Tobacco Merchants’ Association,” WTJ 42(46):2 at 3 (Oct. 15, 1915).
approaching early attention is essential.”22 The literature that Dushkind had in mind was, in addition to or in conjunction with the booklet About Cigarettes (which had been published in 1920 and is discussed below), excerpts from William W. Young’s book The Story of the Cigarette and Dushkind’s/TMA’s Tobacco Manual. In fact, three days earlier the TMA had put out precisely such an excerpts booklet titled, “What Is the Duty of the State in Regard to Cigarettes?”23—the title having been taken almost verbatim from Young’s book24—consisting of the chapter in the latter book dealing with cigarette legislation and that in Dushkind’s on a poll of newspaper editors’ opinions as to their communities “general sentiment” on prohibiting the use of cigarettes by adults.25

William Wesley Young was a 48-year-old journalist26 in 1916 when he published The Story of the Cigarette, which fairly reeked of abject apologetics on behalf of the American Tobacco Company, which would have been impossible to overlook even had he not expressly acknowledged the firm’s “courtesy”of “permitting me to go freely through its warehouses and factories” and making its experts available to him.27 For example, in the teeth of the decades-long

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22Charles Dushkind, Tobacco Merchants Association of the U.S., Special to Cigarette Manufacturers (Nov. 18, 1922), Bates No. 501870686. Those who prepared the document for release on the website deciphered the date as “16” but it appears to be “18.”

23Tobacco Merchants Association, “What Is the Duty of the State in Regard to Cigarettes” (Nov. 15, 1922), Bates No. 501870658-9. The fact that the TMA “reproduced” ten pages of Young’s book without an accompanying statement of permission suggests a close relationship among the cigarette manufacturers, the author, and the publisher D. Appleton. The TMA attended to copyright issues somewhat more closely in publishing About Cigarettes, for “many of the references and quotations” in which it acknowledged its indebtedness to Young. About Cigarettes n.p. (n.d. [1920]). The TMA’s advertising/public relations firm, Newell-Emmett, received permission from Appleton “to copyright the booklet in their name or in the name of Liggett & Myers Tobacco Company,” but suggested that complications might arise from reopening copyright and permitting the TMA to copyright it. Frederick W. Galbraith Jr., suggested to the cigarette manufacturers’ general counsel that the TMA publish it with copyright in the name of Appleton and Newell-Emmett. F. W. Galbraith, Jr. to W. B. Bell et al. (June 29, 1920), Bates No. 502359617. The copyright did appear that way. About Cigarettes n.p. (n.d. [1920]).

24William W. Young, The Story of the Cigarette 270 (1916) (“What is the duty of the State in regard to the cigarette?”).

25On the poll, see below this ch.


widespread outrage at cigarette manufacturers’ insertion of “lascivious” pictures to entice purchases by children, Young not only omitted mention of this practice, but praised the firms for including “in many cases...pictures of real educational value.” By these he meant color pictures of national flags, cities, buildings, battleships, military uniforms, and war scenes constituting “a complete running pictorial history” of the world war then in progress. Young pretended to be just as blind to the lures that such paraphernalia represented to children as to “the real truth,” delightedly propagated by him, that, far from being “a caprice of the small boy and the dissipation of the dude,” the cigarette since the war’s start had “fairly leaped into its legitimate position as the smoke of manly men”—a truth exemplified by the “well-known fact that no men age more slowly or sturdily than the cigarette smokers in our fighting forces.” Luckily for the shareholders, there was, “[i]t would seem...in every male human being an inborn desire to smoke something, a desire that in most of us manifests itself at a very tender age”; and luckily for smokers, there was “not an authentic case on record where rational smoking injured anyone.”

When he arrived at his chapter on legislation—the chapter that TMA included in whole in “What Is the Duty of the State in Regard to Cigarettes?”—Young outdid himself in sycophancy and mock-surprise at the Tobacco Trust’s state of enlightenment. Certain that he would disagree with the “invective” a manufacturer would heap on anti-cigarette laws, he decided to speak to a manager in order to collect information to refute. Young interviewed one of the highest officials of the largest corporate cigarette manufacturer and was surprised to hear that:

“No intelligent manufacturer objects to sweeping prohibitive laws that deny grown men the right to smoke what they please. Such laws never are enforced.... A law passed without the force of general public opinion back of it, one that encroaches upon the thoroughly American principle of personal liberty, always is a dead letter. A few states have been wise enough to enact good laws prohibiting the sale of cigarettes to minors. They could be and are being enforced.”

For the time I was dumfounded. Here was one of the heads of a vast cigarette manufacturing concern taking a sane, temperate and aloof view of a question that vitally affected his business. It was the view...that, I am convinced, must be held by any individual who is neither profiting by the cigarette industry nor taking part in one of the crusades against it.

The further I sought...the more I came to see that cigarette manufacturers as a class agree with that opinion.... Perhaps this is because only men of a broad mind can successfully manage a great business.\textsuperscript{32}

Why, if cigarette producers did not object to unenforced and unenforceable cigarette sales bans, the Tobacco Trust had, for two decades, intensively and extensively devoted considerable resources to trying to defeat, repeal, and invalidate them\textsuperscript{33} it did not occur to Young to ask.

The reader is left with the conclusion that Young had originally imagined that the president of ATC would have told him flat out that his shareholders were clamoring for the unimpeded right to addict six-year-olds in order to take advantage of the fact that “the tobacco habit is easily formed, and the fragrant ‘smoke’ is more apt to be indulged in to excess by the youth....”\textsuperscript{34} But, on the contrary, cigarette manufacturing executives, like “all fair-minded people,”\textsuperscript{35} agreed with Young that “lads” should “should refrain from the use of tobacco during their tender years...for the same reason” that they should “refrain from too much meat, and from the use of strong spices, cocoa, tea and coffee,”\textsuperscript{36} which “are harmless, or even beneficial, for the adult.”\textsuperscript{37} Indeed, although Young, like his successors decades later at the Tobacco Institute, never disclosed what about cigarette smoking was harmful to children that was harmless to adults\textsuperscript{38}—it was, after all, “slander” to assert that nicotine or carbon monoxide was harmful to them—he would “just as enthusiastically advocate legislation prohibiting children, during their years of bodily and mental development, from using a good many foods and beverages that parents unthinkingly permit them to eat and

\textsuperscript{32}William W. Young, \textit{The Story of the Cigarette} 271-72 (1916).

\textsuperscript{33}See above Pt. I -II and vol. 2.

\textsuperscript{34}William W. Young, \textit{The Story of the Cigarette} 236 (1916).

\textsuperscript{35}William W. Young, \textit{The Story of the Cigarette} 274 (1916).

\textsuperscript{36}William W. Young, \textit{The Story of the Cigarette} 234-35 (1916).

\textsuperscript{37}William W. Young, \textit{The Story of the Cigarette} 274 (1916).

\textsuperscript{38}“If smoking is not injurious to one’s health, why should the decision to smoke or not be postponed to adulthood? Why do you regard smoking as an exclusively ‘adult custom?’ [sic] Given that few people over the age of 21 begin smoking, how can your industry expect to survive without encouraging young people to smoke?” Letter from Elizabeth Whelan to Horace Kornegay, Tobacco Institute (12/18/1984), Bates No. 521043898. “No purpose would be served by engaging in a dialog with you.... These important issues can only be resolved within the framework of our democratic system.” Horace Kornegay to Elizabeth Whelan (undated), Bates No. 521054452.
drink....”39 It was this kind of “compelling argument” that Dushkind commended to TMA’s membership when he reprinted the chapter on anti-cigarette legislation as “What Is the Duty of the State in Regard to Cigarettes?”40

TMA apparently regarded *The Story of the Cigarette* as its most powerful propaganda tool, still stockpiling, four years after its publication, enough copies to send them out to doubters. For example, in late 1920 a very small-town school superintendent in Kansas (which would be the last state to repeal its cigarette sales ban in 1927) had written to R. J. Reynolds Tobacco Company requesting literature on cigarettes. The latter’s general counsel sent the letter on to Dushkind, who, in turn, sent the superintendent a copy of Young’s book by special delivery together with the excerpted version and two articles, assuring the educator that reading them would bring him to the realization that “there is no justification for attack against the use of cigarettes or tobacco in any form.”41

TMA carefully scrutinized the preparation of *About Cigarettes*, which borrowed heavily from Young’s book. In mid-1920, Frederick Galbraith, Jr., charged with supervising the organization’s anti-anti-tobacco propaganda, sent the galley proofs of the booklet to the cigarette firms’ general counsel who formed the membership of the Executive Committee of the Tobacco Committee—corporate counsel control or oversight of campaigns to defeat anti-tobacco legislation appears to have continued for some time42—requesting their approval of several changes he had suggested (which, presumably, they gave, since the published version reflected Galbraith’s changes). The booklet—authorship of which Galbraith ascribed to Richard Strobridge, one of the founders of Newell-Emmett, TMA’s advertising/public relations firm—had originally borne the subtitle, “The Smoker’s side of the story,” which Galbraith

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40TMA, Memorandum in re “What is the Duty of the State in Regard to Cigarettes?” (Dec. 29, 1922), Bates No. 501870638.
41Chas. Dushkind to R. C. Kantz (Nov. 26, 1920), Bates No. 501870731.
42In 1924, for example, corporate counsel of ATC, Reynolds, and Lorillard met with TMA president Jesse Bloch and Dushkind to discuss the latter’s proposals for the 1925 legislative sessions. A memorandum written by Reynolds lawyer (and future president and board chairman) S. Clay Williams closed by noting that Dushkind, who was himself the TMA general counsel, “is to work as closely as possible with and under the advice of all of us.” Since the ATC, Liggett, and Lorillard lawyers were “easily available at practically all times in New York,” Dushkind was “to take no important action without consultation with them” and—since Williams and Reynolds were located in North Carolina—“when possible, [wa]s also to confer with us.” S. Clay Williams, Memorandum (Nov. 5, 1924), reprinted in *American Tobacco Co. v. United States*, 328 US 781 (1946), Transcript of Trial, 5:*2611-13 at 2613 (Exhibit No. 771) (1945).
deemed undesirable because this booklet and others were “educational pamphlets giving the truth as scientists and other eminent people see it, about tobacco.” In the same vein, he proposed striking “A word with you Mr. Smoker,” from the heading to the foreword because it gave “the Anti an opening.”

The text of About Cigarettes, 40-some large-print pages, purported to be “a composite of common sense and medical opinion by eminent experts,” offering “the real truth” about tobacco use. The medical statements, for none of which was a bibliographically verifiable source provided, all went to proving that physicians and chemists were “in substantial agreement, not merely that tobacco is harmless, but that in several respects it is actually beneficial.” Among the high points was a “notable investigation” that “effectively spikes the ‘‘bad for the lungs’ argument’’: it “appears to demonstrate conclusively that smoking is often a protection to the lungs against tuberculosis bacilli....” Doubtless in conformity with the claim that “[n]owhere have we distorted the evidence,” the booklet cited a “famous experiment” that “clearly showed that nicotine cannot get into the blood by means of smoke inhaled into the lungs”; indeed, it was “doubtful whether any nicotine ever” reached the smoker’s mouth—and even if nicotine did, it would presumably be irrelevant since tobacco’s smoke products contained no “important quantity of nicotine.” TMA deemed it unnecessary to cite any medical authority at all in support of the more far-reaching claim that “even in excessive smoking, there is no reliable scientific proof that any real ailment is produced in the smoker.” It generously conceded that “if a man is going to smoke hundreds of cigarettes a day, he will undoubtedly tax his health—but the same would be true (only more so), if he drank coffee by the quart, or ate several pounds of candy a day. But even the universally valid maxim that “[e]xcess in anything is harmful” was put out of action by this particular commodity: “[W]hen cigarettes no longer ’taste good’ to the smoker, he stops. And that’s all.”

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43 F. W. Galbraith, Jr. to W. B. Bell et al (June 29, 1920), Bates No. 502359617.
44 About Tobacco n.p. [Foreword] (1920).
45 About Tobacco 7 (1920).
46 About Tobacco 14 (1920).
47 About Tobacco 8-9 (1920).
48 About Tobacco 19 (1920).
49 About Tobacco 27 (1920). One difference between these claims and the infamously obfuscatory filmed assertion more than half a century later by Helmut Wakeham, Philip Morris’s vice president for science and technology, that “apple sauce is harmful if you get too much of it” is that Wakeham (who had a doctorate in chemistry from U.C. Berkeley) demonstrably knew a great deal about and was trying to deceive his interviewer and the audience about cigarettes’ lethality. Death in the West (1976).
the still skeptical reader, the clincher was four pages devoted to a parade of cigarette-smoking athletic champions—from quarter-milers to marathoners—some of whom smoked “right up to the very hour of their contest.” No one “open to reason” could disagree with the conclusion: “Not bad for men who had ‘ruined their physical health by the deadly cigarette habit.’” TMA was well aware of the existence of readers who would learn such “facts about tobacco with a shock of surprise amounting at first almost to disbelief.” But they were facts “nevertheless...even though we tobacco merchants have a natural bias in favor of tobacco....”

At the end of 1922, TMA sent out a memorandum on “What Is the Duty of the State in Regard to Cigarettes?,” which, purporting to point out the impracticability and unpopularity of anti-cigarette laws, argued against enactment of new ones and for repeal of the three remaining ones, and was designed to be distributed during the 1923 state legislative sessions “through such channels and among such people as may be proper and advisable.”

This tantalizing memorandum is, unfortunately, one of only a few TMA documents from this period that were extant in the R. J. Reynolds files and required to be disgorged by litigation in the late-twentieth century. Although no such document dealt with Iowa, it is plausible that TMA had been behind similar repeal campaigns in Iowa, which began in 1917 shortly after TMA’s formation in 1915; in 1917, its Legislative Bureau and Legislative Bulletin were, for

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50 *About Tobacco* 32 (1920).
51 *About Tobacco* 33 (1920).
52 *About Tobacco* 7 (1920).
53 *About Tobacco* 34 (1920).
54 *About Tobacco* 8-9 (1920).
55 Tobacco Merchants Association of the U.S., Memorandum in re “What Is the Duty of the State in Regard to Cigarettes?” (Dec. 29, 1922), Bates No. 501870638.
56 To be sure, this possibility is not strengthened by the fact that in October 1920, when F. W. Galbraith, a TMA vice president, raised the question as to whether the Executive Committee of the Tobacco Committee of the TMA—whose members were the general counsel of the largest tobacco companies—“should contribute to an effort to repeal the Anti-Cigarette Law of Kansas,” the committee, after a “thorough discussion...unanimously determined” that its policy was “not to contribute to efforts of this character.” [TMA], Minutes of the Executive Committee of the Tobacco Committee (Oct. 15, 1920), Bates No. 502359454. Unfortunately, the minutes did not disclose the reasons underlying this decision. Since the committee also decided that it would be contrary to its policy to take
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example, tracking Findlay’s cigarette sales nuisance bills. After all, in February 1917 Dushkind, acting on TMA’s behalf, urged the Oregon tobacco trade to mount a protest against a universal cigarette sales ban bill, and within six days the cigarette industry prevailed against the WCTU.

As TMA’s first president, Jacob Wertheim, formerly president of the United Cigar Manufacturing Company (the largest independent cigar producer) and a General Motors director, who came out of philanthropic retirement to assume the post, already underscored at its first convention in January 1916, its Legislative Bureau was “[p]erhaps the most vital feature of the active service” it provided, since a “single step” in any legislature “may cost the tobacco trade—not of a town, or of a city, but of a State, or of the Nation—very dearly.” Consequently, it was “absolutely essential” for the members to be informed of all part in congressional deliberations on a bill permitting price regulation by manufacturers, the policy presumably had nothing to do with prohibitory laws per se, especially since Galbraith reported to the committee on the satisfactory outcome of his discussion with a bus company on prohibiting smoking except in the rear seats. The four committee members present were Frank L. Fuller (Liggett & Myers Tobacco Co.), Harry H. Shelton (R. J. Reynolds Tobacco Co.), William A. Ferguson (Philip Morris or United Cigar Stores), and William B. Bell (P. Lorillard). Junius Parker (American Tobacco Co.) did not enter the meeting until after the decision on Kansas had been made. One possible reason for non-involvement was raised by Fuller, Parker, and other general counsel four years later—“the danger of resentment of outside influence thrown into a state....” S. Clay Williams, Memorandum (Nov. 5, 1924), reprinted in American Tobacco Co. v. United States, 328 US 781 (1946), Transcript of Trial, 5:*2611-13 at *2611 (Exhibit No. 771) (1945). This possibility is strengthened by a letter from the Reynolds law department to a lawyer in Oregon in 1930 who had apparently suggested some company involvement in opposition to a referendum banning cigarettes in that state. Reynolds stated that it had “consistently refused to take any active part either for or against legislation in the various states.... feeling that it would not be proper for it,” but forwarded the letter to the TMA. It also added that: “We refuse to believe that the people of the State of Oregon will cast their vote for the anti-tobacco measure.” R. J. Reynolds Tobacco Co. to R.W. Hagood (July 22, 1930), Bates No. 501994447. Its belief was vindicated as Oregonians voted three to one against the constitutional amendment. http://bluebook.state.or.us/state/elections/elections15.htm (visited Feb. 15, 2006); John D. Diman and Jac Heckelman, “The Anti-Tobacco Movement in the Progressive Era: A Case Study of Direct Democracy in Oregon,” Explorations in Economic History 42:529-46 (2005).


58See above ch. 16.

59J. Wertheim Dies in His 62d Year,” NYT, Nov. 5, 1920 (14).
relevant legislation. To that end, Wertheim boasted,

we have already perfected our legislative-reporting facilities to so great an extent that, in ordinary cases, never more than a day elapses between the introduction of a bill and our notification of the fact. In all cases of primary importance our correspondents are rigorously instructed to wire the facts immediately. This service has been brought to a point where copies of bills introduced in the National Congress reach our offices in less than twenty-four hours after they are printed, while from more distant capitals our advices are as rapid as the United States mail.

Wertheim then illustrated TMA’s legislative intelligence system by reference to examples awaiting the membership’s recommendation: an “excellent opportunity to secure a repeal of the anti-cigarette law in Tennessee at the next session of the legislature”; a cigarette law rejected by the Nebraska legislature would probably be put to a popular vote, “and now is the logical time to take preventive steps, if possible”; and finally, TMA “should hold itself in readiness to inaugurate a lively campaign against” a prohibitory bill pending in Massachusetts.

By 1920, the Atlantic Monthly—in an article by a journalist who later became president of an advertising agency working for the American Tobacco Company—was celebrating TMA as the “powerfully financed” tobacco industry agent for scrutinizing the WCTU’s “newly energized” anti-tobacco movement: “It has selected trained investigators to study the situation and to guide its policy, and has raised ample funds for such counter-propaganda as may be decided upon.”

The results of this scrutiny, which was by no means confined to the WCTU, appeared (and were presumably circulated to TMA’s membership) in the form of a hefty “Resume of Anti-Tobacco Activities,” the first of which included month-by-month reports for 1919 and 1920 on the activities of numerous organizations ranging from Lucy Page Gaston’s Anti-Cigarette League of America (“A smokeless America by 1925 is to be the slogan of the League”), the Non Smokers

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Protective League of America, the WCTU (which had branches in more than 20,000 cities, whose papers in 45 states supplied thousands of columns to other newspapers, and which boasts doing more petition work than any other organization in the world), and the No-Tobacco League (whose Indiana branch favored abolishing smoking in public places), to the Methodist Quadrennial Conference (“‘Many of those who use tobacco in this form [cigarettes] are regardless of the comfort of those who do not use tobacco and impose this nuisance upon them in various public places’”), the Mormon church, and even the Boy Scouts (whose National Council recommended that “all leaders refrain from using the weed while in uniform and in the presence of their boys”).

In mid-1921 TMA issued a “Summary of Anti-Tobacco Educational Activities,” bemoaning that “anti-tobacco propaganda...gets its start in the very first grade of school and is carried through to the high school....” The extent to which TMA’s investigators kept tabs on even the most localized anti-smoking developments was illustrated by its sweeping into its intelligence maw information that may have had nothing to do with the anti-tobacco movement, but that did reveal what an impressively thick network of informants TMA apparently had at its disposal: “Prof. Basset of Reed College (Portland, Ore.) in a lecture delivered before his psychology class called attention to the danger of misinterpreting statistics quoting some he collected in study of children in Pittsburgh slums which proved that smoking children were brighter than others—‘a manifestly absurd conclusion.’”

That the only features of a repeal bill that TMA was willing to countenance were a legal age of 18 and “reasonable license fees” is crucial to an evaluation of the industry’s attitude toward the 1921 Iowa law. Additional light is shed on this question by a supplement that Dushkind issued two weeks later suggesting various activities in which the cigarette companies could engage in order to hasten repeal such as hiring advertising agencies to gain the cooperation of the press and instructing “their retail sales forces or missionary men to endeavor to get retailers to write their respective legislators, urging the passage of repeal acts....” Both the cigarette manufacturers and TMA would activate jobbers on whose behalf lawyers might make public appearances. Dushkind’s proposals arose out of his “firm conviction” that the majority of legislators “in all cases

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66 Tobacco Merchants Association of the U.S., “Summary of Anti-Tobacco Educational Activities” at 6 (June 1, 1921), Bates No. 503259512/8.

67 Tobacco Merchants Association of the U.S., “Summary of Anti-Tobacco Educational Activities” at 7 (June 1, 1921), Bates No. 503259512/9.
would unhesitatingly vote for the repeal of such statutes, and that it is only because of their erroneous impression that public opinion and their constituencies are in favor of prohibitory laws that they may be prompted to vote against repeal.”

The “essential” task of bringing legislators to “a realization that public opinion is really against such obnoxious statutes” was manifestly subserved by the manufacture of such opinion by the press and advertising. Dushkind was aware of the risk that “too much publicity may arouse and stir the fanatics into more intensive activity than otherwise,” but he questioned whether it was possible to make the requisite impact on public opinion “without attracting attention of the intolerants.” Of greatest relevance in the present context is Dushkind’s seemingly non-optional suggestion that, with regard to post-repeal substitute restrictive legislation, although no opposition to restrictions on sales to minors should be interposed, “the Iowa Cigarette Tax Law should not be followed in other States.”

It is this strong and unambiguous opposition to the cigarette tax—which was a component of the Dodd bill as filed and perhaps even as a trial balloon ten days earlier—that raises doubt as to whether the tobacco trust could plausibly have been the author of H.F. 678.

**Fragmentary Information on the Cigarette Oligopolists’ and TMA’s Tactical Differences Concerning Their War on Anti-Tobacco Propaganda (1919-20)**

Tobacco legislation is falling of its own weight as a reflex of a more liberal prohibition sentiment. [T]obacco is still on top because of the industry’s opposition to bills that would curb its sales or make its use illegal, but more particularly because of an aroused public sentiment against these measures. ... It need not stand it. The public is rapidly becoming cognizant of the injustice being done the industry and if the industry will appreciate this fact and utilize its value to the fullest extent legislators will find other lines of business better able to provide needed revenue.

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68Charles Dushkind, Tobacco Merchants Association of the U.S., Memorandum in re: Existing Anti-Cigarette Statutes in Kansas, North Dakota, and Utah (Dec. 4, 1922), Bates No. 501870676-7. The self-doubting fear of the danger of “stirring up such legislation at points where but for such activity on our part it might not be stirred up” continued to beset the TMA. The cigarette manufacturers’ general counsel all specifically raised this objection to Dushkind’s proposal to circularize the whole trade on state taxation of tobacco products. S. Clay Williams, Memorandum (Nov. 5, 1924), reprinted in American Tobacco Co. v. United States, 328 US 781 (1946), Transcript of Trial, 5:*2611-13 at *2611 (quote), *2612 (Exhibit No. 771) (1945).

The WCTU’s protestations that it was not preparing a “Tobacco Next” movement to prohibit tobacco nationally by constitutional amendment⁷⁰ must be situated in the context of a tobacco propaganda campaign that the cigarette manufacturing companies were preparing through their instrument, TMA, in the fall of 1919. On October 6, the American Tobacco Company’s general counsel, Junius Parker, wrote to his counterpart at the R. J. Reynolds Tobacco Company, Harry H. Shelton, that he was sending him a pamphlet dealing with the need for tobacco propaganda. Issued by The Erickson Company over the signature of Francis Bellamy, it was titled, “A New Policy of Propaganda for Tobacco.”⁷¹ Unfortunately, the text of the letter does not, because of a successfully asserted claim of attorney-client privilege by the R. J. Reynolds Tobacco Company in the Minnesota cigarette litigation,⁷² appear on the Legacy website, and the pamphlet appears to be no longer extant. The aforementioned information from the letter stems from Shelton’s response; the brief summary of the unavailable document reveals that the letter concerned a “tobacco trade association meeting prepared by tobacco company in-house legal counsel requesting legal advice from and transmitted to RJR in-house legal counsel.”⁷³ A few days after the Parker-Shelton exchange, TMA’s counsel, Dushkind, sent Shelton a copy of his own “proposed program” that he had prepared some time earlier “on the same proposition” as Bellamy’s, asking Shelton to consider both at the same time.⁷⁴ Although Shelton, who regarded tobacco as a “harmless luxury,”⁷⁵ soon replied that he found Bellamy’s “proposed propaganda to be fathered by some of the larger tobacco manufacturers...in a sense, unique and presented the case interestingly,” he was unable to bring himself to believe it either “wise or practicable” to adopt Bellamy’s suggestion. He referred to an apparently no longer extant letter to

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⁷¹HHS to Junius Parker (Oct. 10, 1919), Bates No. 502359509.
⁷²When asked on what grounds a letter involving people all of whom died decades ago and firms that no longer existed could still be privileged, one of the plaintiffs’ lawyers uninformatively and nonresponsively stated that “the court found that it fell among the categories protected by the attorney-client privilege.” Email from Gary Wilson (Robins, Kaplan, Miller & Ceresi) to Marc Linder (Oct. 13, 2007). Another lawyer in the same firm who was even more centrally involved in the Minnesota litigation (which resulted in the disgorgement of a huge volume of internal tobacco company documents) could not recall that plaintiffs had sought any documents prior to the 1950s. Telephone interview with Roberta Walburn, Minneapolis (Nov. 5, 2007).
⁷³Junius Parker to H. H. Shelton (Oct. 6, 1919), Bates No. 502359510.
⁷⁴CD to H. H. Shelton (Oct. 16, 1919), Bates No. 502359504.
⁷⁵HHS to Junius Parker (Feb. 19, 1918), Bates No. 502404267.
Parker, to whom he had explained that his “current opinion” had been “well expressed” in an editorial in *The New York Times* just a few days earlier. Under the title, “Preparing to Save Tobacco,” the *Times* observed that having become “alarmed” over reports of the WCTU’s coming campaign for constitutional prohibition, growers, manufacturers, and dealers were “organizing for defensive action.” The newspaper was not bashful about offering its unambiguous counsel to the tobacco industry’s leaders, whom it doubtless knew to be careful readers of its columns:

[T]he people for whom tobacco is a means of making money, not a gentle joy and a soother of strained nerves, will refrain, if they are wise or well advised, from making themselves too prominent in the “movement” they hope to start. If they trust more to the fact that against tobacco would-be prohibitionists have a case not a hundredth part as good as they had against alcohol. Indeed, while the possibility of injury from excessive use of tobacco exists, there is the same possibility with regard to a thousand other things that nobody dreams—as yet—of abolishing, and the assumption is fairly safe that the general population will take care that intemperance and fanaticism do not imperil a blessing that has innumerable appreciators and only a handful of depreciators.

To call tobacco a “demon” would be such an obvious and wild exaggeration it simply would be laughed at. ... But it is safest when least is said and done about it, and its mercenary friends, as distinguished from the vastly greater number with no pecuniary interest in it, will only excite needless antagonism if they make themselves too prominent and too audible.

Although R.J. Reynolds Tobacco Company’s general counsel agreed with the *Times*’s advice that the industry’s owners would be far better off using consumer proxies to fight the former’s battles for them—indeed, Shelton had “not been an advocate of any kind of publicity”—TMA did not ultimately adopt that course. Shelton went on to appraise Dushkind’s approach, which contemplated cooperation by all of the industry’s branches, as superior to Bellamy’s, suggesting that “a matter of this magnitude should be passed upon” by TMA’s membership.

That R. J. Reynolds Tobacco Company’s asserted privileged confidences have thwarted the attempt to discover what exactly Parker told Shelton and what Bellamy and Erickson suggested to the industry more than 90 years ago, is

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77 “Preparing to Save Tobacco,” *NYT*, Oct. 11, 1919 (8).
78 HHS to Paul Bagley (Oct. 20, 1919), Bates No. 502359499. Bagley was a TMA director.
especially frustrating since, ironically, Francis Bellamy (1855-1931), cousin of Edward Bellamy, author of the socialist-utopian best-selling *Looking Backward*, had himself been a leading Christian socialist in the late nineteenth century, albeit a racist and xenophobic one. During this period he also gained fame as the author of the Pledge of Allegiance. From 1904 to 1915, as the advertising manager of the muckraking *Everybody’s Magazine*, he solicited national advertisers and worked with their advertising agencies. It was therefore not a discontinuous career leap for Bellamy in 1915 to join a leading New York ad agency, Erickson Advertising Agency, where, until he retired in 1921, he was an account executive and copy writer, dealing with such large national corporate advertisers as Westinghouse and Allied Chemical.\(^81\) What someone with Bellamy’s unique political experience devised in order to guide the tobacco industry’s counterattack against an allegedly burgeoning prohibition movement and why TMA rejected it would be fascinating to learn.

Gaps in the available documents—in particular, correspondence and minutes of the Executive Committee of the Tobacco Committee—make it impossible to reconstruct the evolution of TMA and of the cigarette manufacturers’ propaganda plans between October 1919 and about April 1920. It is known that at its meeting on February 6, 1920, the Executive Committee had an “extended discussion of anti-tobacco activities” followed by “detailed information” from Frederick William Galbraith, Jr., the TMA’s point man on such matters, whom the committee had invited to attend. The four company lawyers present then requested Galbraith to have “suitable persons” prepare a statement of the tobacco manufacturers’ attitude toward minors’ use of cigarettes\(^82\)—a Potemkin village of a subject for the cigarette companies from nineteenth into the twenty-first century.

\(^{81}\)John Baer, *The Pledge of Allegiance: A Revised History and Analysis* ch. 2-3 (2007), on http://history.vineyard.net/pdgech3.htm and http://history.vineyard.net/pdgech4.htm. Some sense of Bellamy’s approach to advertising can be gleaned from Francis Bellamy, “On the Science of Advertising Copy,” in *Effective Magazine Advertising: 508 Essays About 111 Advertisements* 1-17 (Francis Bellamy ed. 1909), though none of these ads, which had all appeared in *Everybody’s Magazine*, was for tobacco.

\(^{82}\)[TMA], Minutes of the Executive Committee of the Tobacco Committee (Feb. 6, 1920), Bates No. 502359456. It is not clear exactly when Galbraith became a TMA vice president. TMA letterhead that Dushkind used for correspondence did not list Galbraith as a vice president on May 24, 1920 but did by Nov. 26, 1920. CD to H. H. Shelton (May, 24, 1920), Bates No. 501870737; CD to E. Eiche (Nov. 26, 1920), Bates No. 501870726. At the TMA annual convention in May 1920 Galbraith was appointed to the board of directors. “New Board of Directors of the Tobacco Merchants Association of the United States,” *Tobacco* 70(3):4 (May 20, 1920).
Unlike the *Times*, the cigarette manufacturers took accusations of health problems caused by their commodity deadly seriously. For example, in 1922 R. J. Reynolds Tobacco’s lawyers circuitously requested Dushkind to take a small cigarette manufacturer to the woodshed for stating in an advertisement that some other firm’s cigarette was “‘too strong for your throat.’” S. Clay Williams (later president and chairman of R. J. Reynolds) told Shelton (whom he had replaced and who in private practice in Washington continued to represent cigarette companies and act as a TMA vice president) that the statement was “detrimental to the industry generally.” Shelton, in turn, reminded Dushkind that such a “dangerous” idea could be very easily capitalized by anti-cigarette organizations.

All of TMA’s feverish and centrally coordinated legislative repeal activity during the 1920s stood in startling contrast to the industry’s braggadocio in 1918 in the wake of the War Department’s adoption of the tobacco firms’ suggestion that the government furnish soldiers with tobacco free as a war necessity like food and clothing. The *United States Tobacco Journal*, for example, boasted that this “official inclusion of tobacco products as an obligatory army ration...must convince even those reactionary minds and prejudiced fanatics who ranked tobacco as one of the poisonous substances like spirituous liquors that they should be ostracised for their stupendous misjudgment and should be condemned to humiliating retraction.” Tobacco’s new status became “one of the most cheering benefits that could ever fall due to” the manufacturing companies—“not only a tremendous expansion” of production, but “an assurance of stability of their business such as they never before could have hoped to obtain.” The industry’s swaggering self-confidence culminated in the declaration that: “Once placed as a necessity for the consumption of our manhood, no attacks on its destruction [?] by any individuals or set of fanatics, whether inside or outside of legislative halls can prevail again.”

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83 SCW to H. H. Shelton (July 28, 1922), Bates No. 507875514. Shelton (1874-1937) was still listed as practicing in Winston-Salem in 1921; by 1922 he was listed as having a general practice in Washington, D.C. *Martindale’s American Law Directory* 596 (Jan. 1921); *Martindale’s American Law Directory* 1213 (Jan. 1922).

84 H. H. Shelton to Charles Dushkind (July 31, 1922), Bates No. 507875512.

85 “Tobacco Now a Military Ration,” *USTJ* 89(21):4 (May 25, 1918) (edit.). The word “destruction” appears to make no sense in this sentence.
Frederick W. Galbraith, Jr.: A Tobacco Trust Undercover Propaganda Organizer in an American Legion Uniform

In 1941, two decades after the events in question, Dushkind, still TMA’s general counsel and managing director, testified at the trial of the federal government’s prosecution of the four major successors to the Tobacco Trust on charges of conspiracy and monopolization. One of the numerous dimensions of these firms’ conspiracy was the operation of TMA as a nodal point of communication among them. In questioning Dushkind about those present at the board of directors’ annual meeting on June 3, 1920, the prosecutor asked about Galbraith’s business connections at that time. Whether time had dimmed his memory or he was less than forthcoming, Dushkind replied that Galbraith had been “employed...by a tobacco committee to look particularly after tobacco prohibition agitation that was then going on.” Asked what the tobacco committee was, Dushkind was unable to recall its members, but did still know that “Col. Galbraith cooperated with the Tobacco Merchants Association in the activities to counteract anti-tobacco agitation” and that the committee had functioned until 1922.

Dushkind omitted mention of Galbraith’s “business connections” that had brought him into the TMA before he began directing its propaganda activities. Ironically, Galbraith (1874-1921), who played a key role in TMA’s anti-anti-tobacco campaign in 1920, was more famous—a ship was even named for him during World War II—than any of the well-heeled cigarette company general counsel on the Executive Committee of the Tobacco Committee to whom he was unmistakably subordinate. His obituary in The New York Times and a brief biography that appeared a year earlier in a state historical journal were both sketchy for important periods of his life. After grammar school in Massachusetts, he went with his father to San Diego where at age 10 he became a track walker, returning to Massachusetts at 13. Already at age 16 he became a factory foreman before spending six years as an ocean-going sailor. On his return to Springfield, Massachusetts, he worked at a meat packing plant, of which he became

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87 American Tobacco Co. v. United States, 147 F.2d 93, 119 (6th Cir. 1944).
superintendent and which he saved from receivership.\textsuperscript{90} At this point (which must have been about 1900, a year in which he does not appear in the Census of Population) the aforementioned gap emerges: according to the brief biography, in 1908 he settled in Cincinnati, becoming treasurer of the Western Paper Goods Company,\textsuperscript{91} which had been incorporated in 1905.\textsuperscript{92} According to the sanitized account in the \textit{Times} in 1921, he had gone to Cincinnati about 11 years earlier "to take charge of a tobacco plant, but gave that up to enter the paper bag business," eventually becoming president.\textsuperscript{93} A much longer but even hazier article in \textit{Tobacco} in 1920 had him "[f]or awhile identified with the old Commonwealth Tobacco Co., he stepped up later to a responsible position with the American Tobacco Co. From the big company he went to the Western Paper Goods Co. and now is the president of that prosperous, progressive and important corporation."\textsuperscript{94}

In fact, however, Galbraith had gotten an earlier start in the tobacco industry—one that would prove relevant to his TMA mission. In 1902 he became the secretary-treasurer of Universal Tobacco Company\textsuperscript{95} (incorporated in New Jersey and headquartered in New York), which was caught up in a very convoluted financial and legal struggle over control involving an antagonistic and/or friendly relationship to the Tobacco Trust.\textsuperscript{96} By the end of 1903 Galbraith, who lived in East Orange, New Jersey, testified at a receivership hearing that he was also a company director, but had never bought or paid for the ten shares that

\textsuperscript{90}Col. F. W. Galbraith Dies in Auto Crash,” \textit{NYT}, June 10, 1921 (4); “Colonel Frederick W. Galbraith, Jr.,” \textit{Ohio History} 29:469-72 at 469 (1920). Galbraith’s entry in a standard national biography omitted mention of track walking, added that he had worked as a bank clerk, and identified the meat packing plant as John P. Squire & Co. \textit{The National Cyclopaedia of American Biography} 19:170 (1967 [1926]).

\textsuperscript{91}Col. Frederick W. Galbraith, Jr.,” \textit{Ohio History} 29:469-72 at 469 (1920).

\textsuperscript{92}Articles of Incorporation of the Western Paper Goods Company (July 26, 1905) (registration no. 21357) (copy furnished by Ohio Secretary of State).

\textsuperscript{93}Col. F. W. Galbraith Dies in Auto Crash,” \textit{NYT}, June 10, 1921 (4).

\textsuperscript{94}The New Commander of the American Legion: Col. Fred W. Galbraith, Vice President of the T. M. A.,” in \textit{Tobacco} 70(23):5 (Oct. 7, 1920). In fact, Galbraith was, according to two corporate documents from 1920 that he signed, the secretary of the company. Western Paper Goods Company, Amendment (May 26, 1920); Western Paper Goods Company, Reduction of Capital Stock (Apr. 30, 1920) (copies furnished by Ohio Secretary of State). The president was Fred H. Berold, who held that position from the time of incorporation in 1905 until long after Galbraith’s death. The 1920 Census of Population also returned Berold as president of a paper manufacturing company.

\textsuperscript{95}\textit{The National Cyclopaedia of American Biography} 19:170 (1967 [1926]).

\textsuperscript{96}Universal Tobacco Row,” \textit{NYT}, July 16, 1903 (3); McAlpin v. Universal Tobacco Co., 57 A. 418 (NJ Chancery Ct. 1904).
the president had placed in his name only long enough for him to endorse.\textsuperscript{97} The following year saw the American Tobacco Company take over the Universal Tobacco Company\textsuperscript{98} and Galbraith incorporate the Queen City Tobacco Company in New Jersey.\textsuperscript{99} In fact, however, ATC “sent” him to Cincinnati “to organize the Queen City Tobacco Co., a supposedly independent concern but in control of the American.” When the Trust openly took over Queen City Tobacco, Galbraith “returned to the New York office of the American Tobacco Co.” In 1906, according to the entry for Galbraith in the \textit{National Cyclopaedia of American Biography}, he moved to Cincinnati, where he became treasurer and vice president of the Western Paper Goods Company, which manufactured paper bags, and some of whose stock he had bought during his first stay in that city.\textsuperscript{100}

Several of these biographical facts are contradicted by other, more credible sources. For example, at the federal antitrust suit proceedings against the Tobacco Trust in December 1907, special government attorney and future Supreme Court Justice James McReynolds, in questioning ATC Vice President Caleb Dula, brought out that at that time Galbraith was a salesman for ATC.\textsuperscript{101} Moreover, his will, drafted at the end of January 1908, indicated that he was residing in New York City at the time.\textsuperscript{102}

More importantly, McReynolds’ direct examination of Dula revealed that ATC had secretly furnished the money for organizing the Queen City Tobacco Company of Cincinnati—one of many firms that the Trust acquired in this manner. Many labor union-minded consumers shunned trusts in general and the Tobacco Trust in particular because of its decidedly anti-union practices.\textsuperscript{103} In order to undermine the market share that independent companies had been able to gain through the use of the union label, ATC secretly bought up and controlled numerous businesses that catered to such union-label consumers as a “powerful engine of warfare.”\textsuperscript{104} Dula testified that Galbraith had been connected with the

\textsuperscript{97}“Universal Tobacco Hearing,” \textit{NYT}, Dec. 8, 1903 (3).

\textsuperscript{98}\textit{The National Cyclopaedia of American Biography} 19:170 (1967 [1926]).

\textsuperscript{99}“Incorporated in New Jersey,” \textit{NYT}, May 1, 1904 (FS4:2).


\textsuperscript{101}United States v American Tobacco Company, 211 US 106 (1911), Record: 2: Testimony of Witnesses at 603 (Dec. 9, 1907).

\textsuperscript{102}“Will of F. W. Galbraith, Jr. Leaves Income to Widow,” \textit{Cincinnati Commercial}, July 12, 1921 (10:3).

\textsuperscript{103}Meyer Jacobstein, \textit{The Tobacco Industry in the United States} 144-45 (1907).

\textsuperscript{104}Report of the Commissioner of Corporations on the Tobacco Industry, Part I:
sales department of the Universal Tobacco Company, which had used a Union label, in the efficacy of which Galbraith had been a "great believer...." Dula, regarding him as a "bright, smart fellow capable of running and building up a business," decided to start up a scrap tobacco business in Cincinnati "with Mr. Galbraith in charge" and having a stock option, but the Tobacco Trust secretly furnishing all the money for the business.105 McReynolds then introduced a letter that Galbraith had written to Dula on June 22, 1904, stating that: "'There is only one fear I have and that is that in some way the connection may leak out.'" Galbraith then requested that he and Dula conduct future correspondence—including telegrams—under assumed names so that "'I can feel safe should anyone pump the telegraph people.'"106

Galbraith’s fear was rooted in the fact that, as he had informed Dula in a letter of July 11, 1904, he had lied to the local union, which had suspected that the company was connected with the trust, by telling its officers that there was "'absolutely no connection....'"107 Galbraith confessed to Dula that the "'strain has been heavy'" because "'[t]he union is out for blood and they are getting wise'"108 since "'they suspect they are being used by the trust. ... We will have to be very careful or the connection will be exposed.'"109 The stress that Galbraith felt was compounded by his regarding this business opportunity as the foundation of his future economic prosperity. He therefore begged Dula to appreciate his situation: "'I am not weakhearted and never will be, but I am so anxious to make this go that I do not want to take any chance, at least none that are not necessary. This venture means as much to me as to you and more, for it is my future against your money; I have so much at stake that there can be no failure from any fault of mine.'"110 The reason that Galbraith saw the deal as his big chance was clear: not being a "m[a]n of means," he did not pay, as Dula explained to Junius Parker,
ATC’s associate counsel, the next day on cross-examination, for the “substantial interest” in the form of a stock option that ATC had given him. Galbraith had in part earned his elevation into the longed-for circle of unearned income recipients by having shared with Dula his conviction, as Parker put it interrogatorily to Dula, “that the Union label might be of particular value in that particular product he was about to manufacture?” And Dula confirmed that: “There was a good big part of the scrap tobacco business that was put out under the Union label; of course, the various manufacturers had worked up considerable sentiment on that line in various ways, particularly by condemning us.”  

The kind of duplicity and deception in which Galbraith engaged both for his own and the Tobacco Trust’s economic benefit would stand Galbraith in good stead as TMA’s behind-the-scenes manipulator of tobacco propaganda. And the fact that Junius Parker—who represented ATC in the antitrust case, and would be one of the cigarette firm general counsel members of the TMA Executive Committee 13 years later giving him directives—had heard ATC vice president Dula testify that “Galbraith was a smart fellow” who had helped pull the wool over the eyes of the public regarding the Trust’s ownership of Queen City Tobacco presumably contributed to his having been selected for his new confidential role in 1920.

Until his death Galbraith remained at the head of the Western Paper Goods Company in Cincinnati, making a “handsome fortune,” but he never left the tobacco trade inasmuch as his firm, which specialized in the manufacture of single and paraffin-lined tobacco bags and pouches, sold paper bags to the

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111United States v American Tobacco Company, 211 US 106 (1911), Record: 2: Testimony of Witnesses at 683 (Dec. 10, 1907).

112United States v American Tobacco Co., 164 F. 700 (CC SDNY 1908).

113United States v American Tobacco Company, 211 US 106 (1911), Record: 2: Testimony of Witnesses at 682-83 (Dec. 10, 1907).

114Harold Littledale, “Legion’s Leader Has Record as Hard Fighter,” Syracuse Herald, Oct. 24, 1920 (11:1-4 at 1). At the 1920 census he was returned as a proprietor of a paper bag company, employing a cook and a nurse at his residence. Fourteenth Census of Population (1920) (Heritage Quest). Ten years earlier he had been returned as a paper manufacturer-employer. Thirteenth Census of Population (1910) (HeritageQuest). The filing of his will in 1921 shed no light on the size of his wealth because it was “merely a formality, as Colonel Galbraith turned all his property over to his wife when he entered the army.” “Will of F. W. Galbraith, Jr. Leaves Income to Widow,” Cincinnati Commercial, July 12, 1921 (10:3).

115Moody’s Manual of Investments and Securities Rating Service: Industrial Securities 1913 (1926). It is not clear why, but Moody’s did not begin to report on the company until 1926, 21 years after its incorporation. In 1920 Western Paper Goods Co. reported net
Tobacco merchants association of the United States

profits after federal tax of $69,747 on net sales of $1,033,395. In the mid-1920s, Galbraith’s wife, Esther G. Galbraith, was a director. E.g., Western Paper Goods Co. had contracts with P. Lorillard Co. beginning at the latest in 1915; one was signed four days before Armistice Day and ran through and beyond Galbraith’s activity as the TMA’s special tobacco propagandist. P. Lorillard Co., Board of Directors Meeting at 261 (June 14, 1916), Bates No. 88111672; P. Lorillard Co., Board of Directors Meeting at 278, 280 (Dec. 4, 1918), Bates No. 88111371/3. For dealings with the American Tobacco Company, see “The American Tobacco Co. Fiscal Statement Dec. 31, 1921, Bates No. ATX010250527.

116 E.g., Western Paper Goods Co. had contracts with P. Lorillard Co. beginning at the latest in 1915; one was signed four days before Armistice Day and ran through and beyond Galbraith’s activity as the TMA’s special tobacco propagandist. P. Lorillard Co., Board of Directors Meeting at 261 (June 14, 1916), Bates No. 88111672; P. Lorillard Co., Board of Directors Meeting at 278, 280 (Dec. 4, 1918), Bates No. 88111371/3. For dealings with the American Tobacco Company, see “The American Tobacco Co. Fiscal Statement Dec. 31, 1921, Bates No. ATX010250527.


120 “Galbraith of the Legion,” NYT, June 10, 1921 (8) (edit.).
He apparently saw no contradiction between this position and the Legion’s support for a pending anti-sedition law that “will enable us to get rid of the enemy within. ‘It is the boast of Lenin and Trotsky that their agents are high in the councils of the legion and it is the advice of Mr. Haywood of the I.W.W. that his men should join the legion and become bores from within, but we will find them out and then they will bore no more.’” Galbraith apparently also made an exception to the Legion’s alleged neutrality for “the extremely radical”—the only one of “all classes” that it did not embrace within its membership.

His fame reached its highest point just nine months later when at age 47 he was killed in an automobile crash, prompting sympathy messages from the likes of President Harding and Marshal Foch. Newspaper obituaries faithfully noted that he had been active in Cincinnati “civic affairs,” mentioning the Business Men’s Club and Rotary Club, and Cincinnati mourned, in the words of its mayor, “one of the greatest men our city has produced for many years,” who since the war had “devoted his time and his energies to the soldiers and the whole country as well as our city,” but just as his earlier, less glorious employment for the Tobacco Trust was conveniently forgotten or suppressed, so, too, neither his publicly known vice presidency of TMA nor his invisible position as the cigarette companies’ director of propaganda sullied his posthumous reputation. (A special meeting of the TMA Executive Committee commemorating Galbraith mentioned his vice presidency, but not his confidential activities.)

To be sure, if for the Times an “American to be proud of was FREDERICK W. GALBRAITH,” who “despised the slacker” and “had contempt for labor.”

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123 Col. F. W. Galbraith, Jr., “Galbraith’s Last Message a Plea to Prevent War,” Muscatine Journal, July 4, 1921 (1:4-5) (Galbraith’s last, posthumous message).
124 “American Legion Leader Dead in Auto Smashup,” WEC, June 9, 1921 (1:8).
125 “Col. F. W. Galbraith Dies in Auto Crash,” NYT, June 10, 1921 (4).
126 “Galbraith Funeral Plans,” NYT, June 11, 1921 (13); “Thousands Mourn at Galbraith Bier,” NYT, June 12, 1921 (26).
127 “Col. F. W. Galbraith Dies in Auto Crash,” NYT, June 10, 1921 (4).
128 “Cincinnati in Mourning Today for Galbraith,” CFDR, June 9, 1921 (1:5).
129 “Col. Fred’k W. Galbraith,” Tobacco 72(6):1 (June 9, 1921), did mention his TMA vice presidency.
130 “Col. Fred W. Galbraith, Jr.,” Tobacco 72(7):3 (June 16, 1921) (Executive Committee of the whole TMA, not the Executive Committee of the Tobacco Committee).
the hyphenated,”131 then perhaps more than conventional de mortuis nil nisi bonum was operating, and the paper would have perceived his dirty tricks on behalf of the cigarette oligopolists as yet further noble service for the relief of ex-soldiers, who needed unimpeded access to their nicotine. After all, just a few months before Galbraith’s death, the Times had editorially embraced the attack by the Topeka post of the Legion on Kansas’s cigarette sales ban. The newspaper mocked the law’s drafter, University of Kansas Professor William McKeever, accusing him of practicing “applied altruism...the simplest of sciences,” defined as “[f]ind[ing] out something that you don’t like and millions of people do, and tak[ing] it away from them.”132

Though undocumented, the speculation seems plausible that Galbraith would have been seeking to coordinate the many local American Legion posts’ influential opposition to anti-cigarette legislation during the 1921 state legislative sessions in Iowa and elsewhere.

**The Surgeon General’s Earliest Counter-Blaste to Cigarettes**

“[Health Commissioner] Dr. Robertson says he is against restoring smoking on the elevated, because he desires to promote the health conditions of the city of Chicago. ... Let me ask the Doctor and his supporters this question: who are the predominant nations of the world, is it the non-tobacco using Chinaman or Hindu, who controls the destinies of mankind, or is it the tobacco using nations, such as ours, the English, the French and the Italians.”133

One supervening event that occupied the attention of those at TMA centrally concerned with anti-cigarette propaganda in the early part of 1920134 was a statement made on April 3, just days after he had assumed his new post, by the Surgeon General, Dr. Hugh S. Cumming, proposing an “intensive campaign to knock ‘the deadly cigarette’ out.” Reacting, according to one United Press account, to government reports of a 47-percent increase in tuberculosis the previous year, which he attributed to increased smoking, Cumming declared the number of women who had become “slaves to the cigarette smoking

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131“Galbraith of the Legion,” *NYT*, June 10, 1921 (8) (edit.).
132“Professor and Legion,” *NYT*, Jan. 5, 1921 (11) (edit.). See also above ch. 16.
133“Order May Be Rescinded,” *Tobacco* 68(9):5 (June 12, 1919) (remarks of attorney Henry S. Blum).
134Another was a South Carolina Senate bill to prohibit tobacco smoking during meal hours in public eating rooms. See above ch. 16.
habit...amazing....” He saw the nation’s “physical tone” as “seriously threatened” by the insomnia and nervousness, which he deemed the chief ill effects of this smoking. Reacting, according to a different version, instead to a 47-percent increase in cigarette consumption, Cumming appealed to women, whose complexion was ruined by the habit, not to smoke lest “the entire American nation...suffer.” Calling women’s increased smoking “one of the most evil influences in American life today,” he explained that smoking harmed women more than men because the former’s nervous system was more highly organized and thus more easily exposed to such negative impacts. On cue, two well-known New York physicians advised women “to go ahead and light another one.” A drug specialist and the head of the psychopathic ward at Bellevue Hospital opined that drinking tea and coffee was as bad as cigarette smoking. The New York World wondered whether, if women were “compelled by law to stop smoking,” men could “expect exemption at the hands of a feminine electorate....”

Although later medical historians of the anti-smoking movement pooh-


pooched Cumming’s condemnation of smoking as weak because it applied only to women, he himself smoked, and his intervention appeared to generate no practical consequences. TMA at the time—with the huge gap in smoking prevalence rates between men and women making the latter a market-expanding factor of enormous import—did not regard it as inconsequential. In mid-April, Frederick Galbraith suggested to Shelton that TMA write Cumming asking whether the statement reported in the press was “a correct statement as issued by him.” If it turned out that the newspapers had reported the surgeon general’s remarks accurately, then—in keeping with the systematic tendentiousness and distortion that would become a hallmark of the industry’s public relations—the matter could be “referred to a list of eminent specialists whom we can select for their opinion.” Such shenanigans were kept sufficiently invisible to the non-investigative press that The New York Times instinctively “turned to the Tobacco Merchants’ Association” “as the most reliable commercial source of information on the subject” of anti-cigarette legislation. (TMA’s manufacture of pseudo-opinion should be contrasted with the TMA’s current self-description as having been “founded in 1915 to manage information of vital interest to the worldwide tobacco industry. ... Today the TMA...remains dedicated to supplying factual information to a variety of companies, associations, and other organizations, whose livelihoods depend upon timely, comprehensive and accurate data about the global tobacco business.”) Manifestly, the important functions that Galbraith was performing for the tobacco industry were not paired with equivalent autonomy: R.J. Reynolds Tobacco Company’s general counsel


141F. W. Galbraith, Jr. to H. H. Shelton (Apr. 15, 1920), Bates No. 502359664. The TMA’s vigilance was reflected in Galbraith’s also informing Shelton that he was investigating the Chicago Board of Education’s permitting Lucy Page Gaston “to start a campaign in the schools against cigarettes to help her campaign.”

142Charles Cushing, “Prohibition as ‘Big Brother’ Fails to Win for Blue Laws,” NYT, May 20, 1923 (sect. XX at 5).

kept him on a short enough leash that all he could do was suggest that TMA write such an innocuous letter to Cumming. A few days later Shelton, who was about to meet with N. W. Ayer & Co., Reynolds’ longtime advertising agency, for a general survey of the editorial positions of papers throughout the United States, informed Galbraith that he saw no objection to TMA’s asking Cumming for verification of the story.144

**Bribing and Intimidating the Press**

Anti-tobacco is a thing of the past.145

Galbraith reported to Shelton that during the two weeks following the April 7, 1920 meeting of the TMA Executive Committee of the Tobacco Committee (the minutes of which are lacking in the released cigarette company documents) there had been a “decided increase in newspaper articles concerning the attack being made upon tobacco,—most of them friendly to tobacco, which articles tend to create in the mind of the reader a sentiment unfavorable to the Anti....” The downside was that, with these pieces’ appearing only in “metropolitan dailies...the education of the rural communities is not being accomplished largely because,” as Galbraith saw it, “the editors do not realize the situation.” In a related vein, he mentioned that 10 weeks earlier he had submitted a recommendation that TMA appropriate a sum of money to be spent on trade papers that Dushkind deemed “necessary if he is to receive the whole-hearted cooperation of the trade press....” Finally, recurring to the tactic of cherry-picking medical collaborators, Galbraith expressed his conviction to Shelton that “as a foundation upon which many things can be built in the future, articles in medical journals of the same commonsense type—not too technical—will be of the greatest value, and...if the matter is judiciously handled, many articles favorable to tobacco will be published.***146

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144HHS to F. W. Galbraith, Jr. (Apr. 19, 1920), Bates No. 502359663 (much of the letter is unreadable). Whether the TMA then wrote to Cumming is unknown.


146F. W. Galbraith Jr. to H. H. Shelton (Apr. 22, 1920), Bates No. 502359661-2. Unfortunately, the sum of money requested is unreadable but might be $1,000 or some other four-figure sum ending in 000. In a letter to the Executive Committee of the Tobacco Committee 10 weeks later Galbraith again urged it to approve the proposal. This time he added that at some point Dushkind would meet with the trade journal editors to
Tobacco Merchants Association of the United States

In a long letter a week later to the Executive Committee of the Tobacco Committee—which appears to have functioned analogously to the infamous Tobacco Institute Committee of Counsel in “circling the wagons” and was composed of five lawyers representing the four major cigarette manufacturers, ATC, Lorillard, Reynolds, and Liggett, and James M. Dixon, president of the multi-product Tobacco Products Corporation and a longtime protégé of James B. Duke—Galbraith returned to the issue of bribing the trade press because he had failed to make the matter “entirely clear” earlier. The bombshell that he dropped belied TMA’s rhetoric of a tobacco industry unified in its branches by the common struggle against the threat of universal prohibition:

Mr Dushkind, Secretary of the TMA is of the firm belief that there is a decided division of opinion within the trade itself; that a substantial number of retailers throughout the nation see no objection to cigarettes being put out of business, due to the fact that the margin on cigarettes has, in their opinion, been consistently low; that many cigar and tobacco manufacturers feel the same way because of the belief that if cigarettes were put out of business it would largely add to the use of their products; that these groups do not understand that this is not a fight against cigarettes, but a fight to prohibit tobacco in all its forms. Consequently Mr Dushkind is of the belief that it is necessary to subsidize the trade press to get their unanimous support to impress the trade with this idea. It seems unbelievable, though it may be true, and if it is, the appropriation is certainly desirable.

On May 11, the Newell-Emmett Company, a newly founded advertising agency, sent Galbraith a 10-page memorandum on “Counteracting the Anti-


150The firm, founded in 1919, at some point had the advertising account for Liggett & Myers’ Chesterfield. “Clarence D. Newell, 91, Is Dead; Co-Founder of Ad Agency Here,” NYT, Nov. 28, 1967 (51). Burton Emmett, who cofounded the firm in 1919, had previously been a newspaper reporter and editor. “Burton Emmett, Art Patron, Dies,” NYT, May 7, 1935 (23). As late as 1939 Newell-Emmett paid membership dues ($50) to the TMA. American Tobacco Co. v. United States, 328 US 781 (1946), Transcript of
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Tobacco Propaganda,” which it regarded as so “widespread” that “prompt and whole-hearted action” by the entire industry was called for; if the latter were forthcoming, then, since the situation was neither “desperate” nor even “immediately alarming,” it would be “possible to swing public opinion to our side in a relatively short time.” Although Newell-Emmett deemed it unnecessary to discuss the underlying causes of the objections to cigarettes, remarkably it conceded that: “We know that the objection is deep-rooted—that at least nine out of ten men ‘half-believe’ cigarettes to be harmful and that the prejudice is strongest in country districts....” The entering wedge for industry counter-propaganda was furnished by the alleged fact that this prejudice was “largely based on ignorance” inasmuch as “according to the best medical opinion cigarette smoking by adults is not harmful—that there is no justification for objection on moral grounds—that the industry is a very large factor in the economic well-being of the country.”

The advertising agency failed to raise the question of how the quasi-universal personal physical experience of millions of users over decades could be based on ignorance, but it seemed supremely confident that advertising could dispel this arguably unique mass perception of the harmfulness of a lawful consumer product by the addicted consumers themselves. Newell-Emmett’s plan was to secure and educate an audience in order to change popular sentiment “to avoid any likelihood of unfavorable legislative action, even if the old prejudice is not stamped out.” Increased consumption of cigarettes, Emmett-Newell assured its client, would be a merely incidental by-product of the successful implementation of this educational program. With almost all state legislatures meeting already by the beginning of 1921 and the introduction of anti-cigarette measures reasonably to be expected in a number of them, time and speed were of the essence. A focus exclusively on legislatures would, however, not suffice since most legislators either sought to represent their constituents’ sentiments or (absent “certain knowledge” of the latter) “to play safe by voting on what they believe to be the side of morality.” Given this view of legislative voting as purely derivative, the tobacco industry’s story had to be taken directly to the people and especially to country districts where anti-tobacco sentiment was strongest.

The advertising agency broke its proposals down into defensive and offensive activities. Among the former were four of special interest. First, systematizing a tactic in which cigarette companies had engaged for decades and would

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151Newell-Emmett Company to Col. F. W. Galbraith: Re: Counteracting the Anti-Tobacco Propaganda at 1-2 (May 11, 1920), Bates No. 502359644/5.

152Newell-Emmett Company to Col. F. W. Galbraith: Re: Counteracting the Anti-Tobacco Propaganda at 2 (May 11, 1920), Bates No. 502359644/5.
continue to push into the twenty-first century, Newell-Emmett urged the industry to initiate and support movements to enforce laws prohibiting minors from smoking chiefly through editorials in newspapers, personal work in the trade itself, and circulars to legislators. Since the cigarette firms knew then, as they do now, that a successful program would decimate the replacement market for adults who died from or stopped smoking, such ploys have always been shams. Second, the industry should appeal to newspaper publishers for “fair play in the editorial handling of news items reflecting on cigarettes—in other words, seek to secure, without any hint of pressure, such cooperation between the advertising and editorial departments of the newspapers, as will effectively close many columns against misleading ‘anti’ propaganda.” It may be difficult to discern how this proposal boiled down to anything other than bribery or threats to withdraw bribery, but Newell-Emmett presumably looked with special favor on it because the firm recommended that it be carried out by tobacco advertising agencies, thus insuring additional business for itself. The same advantage accrued to it from the third proposal, which involved writing to all newspapers that at the time were refusing to print cigarette advertisements. In Iowa, to be sure, such an approach would be senseless until the cigarette companies succeeded in securing repeal of the sales ban, which had brought in its wake a ban on advertising as well. Finally, the industry was to keep tabs on all the anti-cigarette organizations’ activities with the ultimate objective of being in a position to “anticipate their moves....”  

The offensive activities were, in turn, subdivided into direct and indirect ones, both of which were subject to the same caveat: wherever possible avoid being forced into a controversial attitude, which would boomerang by stimulating still more activities by the antis. About the direct approach by the manufacturers themselves Newell-Emmett had little to say other than that it would “lay all cards on the table” to special groups such as legislators, editors, and doctors. In contrast, the indirect approach, which was preferable for addressing the general public, would not be operated by the “allied manufacturers,” but nevertheless “in an entirely honorable and legitimate manner....” The principal issue here was “whether or not we can safely keep away from open, aggressive work against the attack.”

Oddly, the “indirect offensive” also included the very groups such as editors that were to be approached directly and openly, apparently because the “personal...
work” of one man talking or writing to another or a group on behalf of an individual manufacturer rather than an association left “no published indication...of a concerted offensive.” Here Newell-Emmett placed special emphasis on work with organizations because the “‘antis’ have the benefit of one of the most influential of all organizations, the church.” Abandoning all hope of invading these precincts on behalf of cigarettes, the agency proposed outflanking them through “at least a partial offset”: hedging, it opined that “it would seem reasonable to believe that the tobacco industry, by using sufficient effort, can secure the influence of most of the secular organizations of the country which are composed of men, most of them being smokers.” Prime examples were the American Legion, fraternal orders, and labor unions, one of whose great virtues was their many thousands of local organizations in virtually every town and country village from which the influence that the cigarette manufacturers desired could “radiate.” Conveniently, their support could be obtained “indirectly” by means of “competitive cigarette advertising” in their membership publications, “thus enlisting the active editorial cooperation of these papers against the ‘antis.’” In addition, Newell-Emmett claimed that resolutions from such organizational locals “would have great weight with legislators.” Revealing its peculiar conception of the “honorable and legitimate,” the advertising agency did not even shrink from proposing—though it surmised that it was too late for 1921—that nationally prominent lecturers be secured to enter the Chautauqua circuits. And although even Newell-Emmett was forced to recognize “that it would obviously be impossible to talk directly” about cigarettes in an adult education forum associated with churches and populism, it prefigured the cigarette companies’ late-twentieth-century techniques of rhetorical displacement by conceiving of an “effective speech on the evils of provincial intolerance, the limits of personal liberty....” Similarly indirect—that is, “[n]eeding no signature” but subject to the caveat of avoiding “evident attempts to make converts”—was the proposed “industrial educational film” showing the whole process of cigarette manufacture from the southern tobacco plantation to the cleanliness of factories to the “genuine enjoyment men find in smoking them.” As far as literature was concerned, Newell-Emmett suggested that a de luxe edition of the booklet “About Cigarettes” (which TMA was about to print) be distributed to legislators with a very large cheaper edition for nationwide distribution. It also envisioned this booklet as a vehicle for educating thousands of dealers and clerks who, having become aware of “their own importance in the chain,” could “exert a powerful influence” by understanding how to “advance a defense for cigarettes....” As the catalysts of a kind of elite chain-letter adult education program, the “better class of dealers can be...entrusted [sic] to place copies of this booklet in the hands of
their more intelligent customers.”155

If taken up “whole-hearted” by the cigarette manufacturers, a step that Newell-Emmett predicted “would be even more powerful than any effort which the opposition can hope to use” was lining up “the hearty support of almost the entire American press, both magazines and newspapers.” To be sure, it might be imagined that this proposal would run into the insuperable problem that the “typical request for free publicity is today exceedingly unpopular with every type of publisher” because of the large number of requests and shortage of paper. Newell-Emmett, however, sought to persuade its client that this aversion would not “apply to a request relative to the welfare of the tobacco industry.” The alleged reason was commercially straightforward: “in volume of advertising given to publishers, the tobacco industry stands very near, if not at, the top of the list. This means, first, that tobacco interests have a right to, and can be sure of, favorable consideration and, second, that this request for editorial support can be based, not alone on the welfare of the tobacco industry, but on the welfare of the publishers themselves.”156 Making this pitch to newspaper owners, at least in Iowa, would have been a carrying-coals-to-Newcastle deal: many of them could hardly wait for the state ban on cigarette sales to be repealed so that the linked ban on advertising would fall with it; indeed, some even admitted (privately to Governor Kendall) that they were disinterested in the former per se, but supported it only for the revenue that would derive from the resumption of national cigarette advertising in Iowa.157

Relevant in this connection was Newell-Emmett’s view—based on the aforementioned observation that opposition to cigarettes was even more widespread in the rural areas—that the country newspapers were even more important than the city papers and would “fall in line...if given a reasonable amount of competitive advertising from the different manufacturers.” With regard to the efficacy of bribing publishers with advertising, the agency was able to console its client with its belief that “most of the country editors who now refuse cigarette advertising do so, not on moral grounds, but, being ignorant of the real defense of the cigarette, they are afraid of the bad will of their fellow townsmen.” If company men in the field could visit such editors personally and give them “a clean, honest defense” (as, for example, presented in the aforementioned “About Cigarettes”), “nearly all of them will be glad to accept the

155Newell-Emmett Company to Col. F. W. Galbraith: Re: Counteracting the Anti-Tobacco Propaganda at 4-6 (May 11, 1920), Bates No. 502359644/7-9.

156Newell-Emmett Company to Col. F. W. Galbraith: Re: Counteracting the Anti-Tobacco Propaganda at 6 (May 11, 1920), Bates No. 502359644/9.

157See above ch. 15.
advertising and support the movement against ‘anti’ legislation.”

Newell-Emmett, in any event, once again perceived an opportunity for an additional stream of revenue to itself: it confided to Galbraith that the key to securing press support lay with the advertising agencies handling the competitive tobacco ad campaigns, which “individually enjoy the marked respect of publishers,” a feeling that would “automatically multiply” when the agencies were associated on this project. This self-touting reached a new high point when Newell-Emmett proposed that to insure success the ad agencies approach the press “by speaking, not primarily for the tobacco interests, but in behalf of the business welfare of the publishers and agents themselves.” If that tactic were deployed, “it would seem strange if the editorial and press support of almost the whole American press could not be definitely lined up to expose the weakness and falsity of the ‘antis’ [sic] position and oppose ‘anti’ legislation.”

Following up on Newell-Emmett’s proposal, on July 2, 1920, Galbraith submitted to the same five lawyers and Dixon of the Executive Committee of the Tobacco Committee the specific suggestion to form an advertising agencies committee; Newell-Emmett would then be asked to prepare a plan for approval by the Committee; then the main agencies handling tobacco advertising would confer and decide whether to cooperate actively.

Galbraith then presented for adoption a plan submitted by N. W. Ayer & Son, which boasted that thirty years earlier it had “induced the leading tobacco men of that day...to advertise their products in the newspapers,” and which had handled Reynolds’ Camel advertising; by 1921, 22.5 percent of Ayer’s advertising involved tobacco. The company proposed a survey questionnaire of the editors...
of all newspapers in all towns with a population of fewer than 100,000, where “the anti-tobacco propaganda is especially rife.” It commended the survey as giving “as clear an indication of the extent of the feeling against tobacco as it would be possible to secure”—provided that the questionnaire was geared toward capturing not the editors’ views, but their views of their communities. (Ayer purported to know that the editors had “intimate knowledge of the feeling” in their communities, but it did not disclose how it knew that the editors’ “opinion of the opinion prevalent” in the communities on anything, let alone tobacco, was expert.)

Remarkably, the agency recommended that the tobacco question not be posed in isolation, but, rather, be included among other then-prevalent movements of public opinion, “such as Bolshevism, explained as the rule of the majority, trade unions, the right to strike, and other similar items.” The reason that Ayer deemed it “impolitic” to ask only about tobacco was the risk of giving great publicity to tobacco, to which all public attention would be directed. Without stopping to reflect on how the WCTU might react to seeing the anti-cigarette movement classified as similar to Bolshevism or whether informants’ views might be biased by fear of association, Ayer proposed distributing the questionnaire through an “important review magazine.” The point of the exercise was to determine whether the publicity received by the anti-tobacco movement was “out of all proportion to the extent of its activity, and therefore could be dismissed from further consideration” or, alternatively, whether anti-tobacco propaganda and feeling were spreading; in the latter case, the publicity that the magazine carrying out the survey “might give to this important social movement undoubtedly [would] arouse the editorial opinions of newspapers

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163F. W. Galbraith, Jr. to W. B. Bell et al. at 3 (July 2, 1920), Bates No. 502359605/7.
165F. W. Galbraith, Jr. to W. B. Bell et al. at 3 (July 2, 1920), Bates No. 502359605/7.
166Recommendations of N W Ayer & Son: N. W. Ayer & Son to Col. Galbraith Jr. at 1 (July 28, 1920), Bates No. 502359590/1. This new outline of recommendations dropped the reference to Bolshevism from the questionnaire, substituting for it one about effecting moral reform through legislation, and adding another about government ownership of industries.
167F. W. Galbraith, Jr. to W. B. Bell et al. at 3 (July 2, 1920), Bates No. 502359605/7. Ayer preferred using the Literary Digest as the distributor, inter alia, because it was widely known that it had been conducting a questionnaire about presidential possibilities and an additional questionnaire “would not strike the average editor as unusual.” The TMA would defray the cost incurred by the Digest. Recommendations of N W Ayer & Son: N. W. Ayer & Son to Col. Galbraith Jr. at 1-2 (July 28, 1920), Bates No. 502359590/1-2.
generally and so counteract its further appeal.”

In the event, the survey results turned out just as Ayer and its client desired.

At the end of August, Richard Strobridge, one of the co-founders of Newell-Emmett and the author of the aforementioned TMA booklet “About Cigarettes,” submitted a further plan to Galbraith, which revealed that the editorial survey had objectives beyond indirectly ascertaining the opinions on tobacco of the population in nonmetropolitan areas. Now the survey was also designed to uncover the “[e]ditorial and advertising policies of newspapers toward cigarettes [and] other tobacco products....” This information, in turn, “will enable us to immediately classify newspapers as (1) friendly, (2) neutral, and (3) hostile—hence will enable us to estimate the immediate cooperation we can expect from them...and the amount of personal work which may be required.”

The plan was then for an executive committee of tobacco advertising agents to send letters to the papers that accepted tobacco but refused cigarette advertising as well as to those that refused all tobacco advertising in order to determine which editors were candidates for personal talks with the object of “swing[ing]” as many as possible from the “hostile” to the “neutral” or even “friendly” camp by means of presenting “the business side—mutual interests, etc.” (Shelton and Galbraith ultimately rejected separating out, especially in the questionnaire, the various forms of tobacco.)

Newell-Emmett’s proposal for the neutral papers was to “ask for fair play in editorial treatment of tobacco and cigarettes” and to try to “counteract ‘press agent’ methods of antis.” Imparting a Pickwickian meaning to “ethics,”

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168 F. W. Galbraith, Jr. to W. B. Bell et al. at 3 (July 2, 1920), Bates No. 502359605/7.
171 Strobridge’s plan provided for the creation of an organization of tobacco advertising agents from whom money contributions for the project might later be solicited; Galbraith was to send them a letter expressing his belief that their proposed work would not only be “good insurance” for them, but, “by improving tobacco sentiment,” might “actually increase business....” Nevertheless, Strobridge opined that this “scheme...will give them no cause to feel ‘steam-rolled’....” Bizarrely, they were to be asked to treat the letter “as highly confidential even” vis-a-vis the agents’ own organizations (whose clients the TMA members were), even though ultimately “most of the [work] burden will fall on them.” Suggested Plan of Newell-Emmett Company at 1-3 (August 30, 1920), Bates No. 502359585/6-8.
Strobridge then urged this procedure for bringing the neutral editors round: “Put this on basis of straight business ethics—volume of tobacco advertising, etc.” His suggested approach for the “friendly” press was unvarnished economic pressure: “ask for support in view of volume of advertising, as insurance for its continuance. Ask if they will give occasional space for material we can supply....” Galbraith later confided to Shelton that it would be very desirable for this committee of advertising agents to be sending to the newspapers “correct information” about the tobacco industry such as news items, interviews, and editorials that, “because of the standing of the members of the Committee would receive the consideration they deserve,—which if sent out by the TMA or other organizations would not receive the slightest consideration.” Why Galbraith found it self-explanatory that tobacco ad agents would have any more credibility with publishers or editors than their cigarette company-customers is difficult to discern.

Despite the obvious efforts to make publishers an offer they dared not refuse, TMA put on a charade with the publishers themselves. Although the correspondence itself appears no longer to be extant (or at least available), it is known that TMA on July 26, 1920, made a mailing to publishers, a number of whom replied that they regarded the offer “as another attempt to get free space....” To dispel this insight, TMA did a second mailing to the disbelievers admitting that it had apparently failed to get across its intention in offering to send “‘from time to time authoritative data upon the tobacco industry.’” TMA manifestly assumed that even a rural editor would believe the tale that it was “‘not seeking free publicity in your newspaper. We were not and are not trying to get something for nothing. We were merely anxious to have you personally know the real truth about the tobacco industry.’” TMA apparently found nothing incongruous or self-contradictory in immediately thereafter slipping in that there were “‘few industries in America today that spend as many dollars for country newspaper space as the tobacco industry (and unless all signs fail, tobacco advertising in country newspapers will continue steadily to increase). We have no desire to secure undue advantage as an industry because we are advertisers.’” Instead, its purpose in “‘acquainting you, as one of the leaders of thought in your community,...has no relation to advertising.’” Rather than space, free or paid, all it wanted—“‘[t]o be perfectly frank’”—was “‘your intelligent understanding of the facts in relation to an important industry.’”

175F. W. Galbraith Jr. to H. H. Shelton (Sept. 20, 1920), Bates No. 502359577.
Galbraith informed the TMA Executive Committee of the Tobacco Committee that a “substantial number of country newspapers” had, based on a misunderstanding of what TMA was trying to accomplish, “resented the attempt to use their publications for tobacco propaganda (as they called it).” Interestingly, the American Press Association—an advertising representative that specialized in placing national advertising in country weeklies and small dailies—had fallen victim to the same misunderstanding, prompting its vice president to seek an interview with Galbraith in order to present a plan. The American Press Association, which published the aforementioned passages from the TMA mailings in an article on the first page of its members-only “Confidential Bulletin” sent to 6,000 country newspapers in August, was obviously carrying water for TMA in repeating TMA’s disingenuous claim that it did not intend to spread propaganda or obtain free publicity. Its manifest purpose was to reinforce the message that lucrative advertising hung in the balance. Noting that it had been bringing the “value of country newspaper advertising space” to tobacco firms’ attention for more than three years, the American Press Association boasted that it had increased tobacco advertising in country papers from zero in 1917 to several hundred thousand dollars in 1920. It then subtly intimated the potential economic consequences of a failure to cooperate with “this big industry”: “We are happy to say that, once having interested these manufacturers in country newspaper space, your newspapers have delivered eminently satisfactory results and consequently we have now established this industry as a permanent client for your newspapers.”

Galbraith, who was satisfied that the article would enhance publishers’ understanding, informed the TMA Executive Committee that he was confident that as TMA’s “campaign progresses,” the American Press Association would “use its influence amongst its members to cooperate with us to the fullest extent.” Ironically, the American Press Association was engaged in a bitter feud with TMA’s consultant N. W. Ayer & Sons over the placement of cigarette advertising in Iowa weeklies. After the Association had written to the papers several times “claiming credit for business which...Ayer...had forwarded,” Ayer

This form letter to country publishers quoted the TMA letters.

177 F. W. Galbraith, Jr. to W. B. Bell et al. (Sept. 10, 1920), Bates No. 502359581.
178 “Rural Titan,” Time, July 18, 1938, on http://www.time.com/magazine/article/0,9171,760031,00.htm
179 F. W. Galbraith, Jr. to W. B. Bell et al. (Sept. 10, 1920), Bates No. 502359581.
180 F. W. Galbraith, Jr. to W. B. Bell et al. (Sept. 10, 1920), Bates No. 502359581.
181 [American Press Association], [untitled] (August 1920), Bates No. 502359582.
182 F. W. Galbraith, Jr. to W. B. Bell et al. (Sept. 10, 1920), Bates No. 502359581.
wrote directly to the Iowa weeklies, informing them that whereas “‘the A.P.A. is telling the publishers of Iowa that it hopes to get some Camel Cigarette advertising for them, if they will all sign up special with the aforesaid A.P.A.,’” Ayer had actually been persuading tobacco companies to advertise in newspapers for three decades.\textsuperscript{183}

By mid-May 1921, about a month after the Iowa legislature had adjourned, TMA was able to publish the results of the editorial survey, of which Dushkind risibly said that it “may be properly called a census of public opinion...to ascertain in the most practicable way how the American public views the anti-tobacco agitation.”\textsuperscript{184} Although TMA apparently never succeeded in persuading the Literary Digest to associate itself with this charade of a poll, Leslie’s illustrated weekly newspaper, which was not wholly bereft of cigarette advertising,\textsuperscript{185} not only opened its pages to the tobacco industry, but even published an accompanying editorial characterizing the outcome as “the unmistakable verdict of the people in a referendum of editors representing the entire country.”\textsuperscript{186} Many newspapers, including ones in Iowa, ran a somewhat compressed version of the article.\textsuperscript{187}

The ostensible author of the brief article was Garret Smith, a journalist who appears to have been fully occupied at the time on behalf of the tobacco industry: at the same time he published another piece that ran in numerous newspapers (including the very country papers that TMA was targeting) stressing how great the financial loss would be to industries producing inputs for the tobacco industry if prohibition were enacted.\textsuperscript{188} In at least one paper it appeared next to a large ad


\textsuperscript{184}Charles Dushkind, Tobacco Manual 37 (1923).

\textsuperscript{185}Leslie’s, 132(3412):333 (Mar. 19, 1921) (large American Tobacco Co. ad).

\textsuperscript{186}“Tobacco Verdict,” Leslie’s 132(3420):488 (May 14, 1921) (edit).


\textsuperscript{188}“Garret Smith,” NYT, Oct. 14, 1954 (29) (died age 78).

\textsuperscript{189}Garret Smith, “Many Industries Tied to Tobacco,” Deep River Record (IA), June 10, 1921 (1:6). Under the same title it appeared, inter alia, in: Ada Evening News (OK), July 18, 1921 (4:4); Englewood Times (IL), July 1, 1921 (6:4).
for Camel cigarettes, while in another next to one for Chesterfield. Numerous Iowa weeklies published both of Smith’s articles during the brief period in late June and early July when city and town councils and county boards of supervisors were deciding whether to issue cigarette sales permits as repeal of prohibition was about to go into effect. For example, the Newton Daily News, which had illegally begun running cigarette advertisements at the beginning of May and ran its first legal ad on July 5, published both articles on facing pages on the day that the city council voted on the question of issuing permits. Smith’s piece, “Is Tobacco Doomed?,” like TMA, was facially focused on the anti-tobacco drive for total prohibition of tobacco, yet when it discussed actual legislative efforts in 1921, it misleadingly cited bills or laws that merely banned sales (in the case of Idaho even falsely claiming that the law banned the use of cigarettes). Since bans on use obviously dwarfed sales bans in terms of intrusiveness, Smith’s contention that “analysis of legislation on the subject [in 1921], checked up with the returns of the questionnaire, indicates the accuracy of this test of sentiment” was illogical.

Interestingly, Smith revealed that TMA (whose general objectives he failed to mention) stood behind the survey—an actual though indirect poll of popular opinion—which it had had the Press Service Company of New York conduct “in order to determine more accurately the sentiment of the general public on the...
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Although Smith failed to explain what the Press Service Company was, Dushkind in his later and more extensive presentation of the data, called it “an entirely disinterested concern.”

In fact, the Press Service Company was a New York advertising (or, perhaps more accurately, publicity) firm with a sleazy reputation specializing in precisely the kind of operation it pulled off for the cigarette companies—and not for the first time teamed up with Smith. In 1917, for example, despite a Federal Trade Commission report indicating that no coal shortage was imminent and that “false scares” had created earlier shortages in order to drive prices up, a Lincoln, Nebraska newspaper reported that “a New York advertising concern is sending out full-page illustrated announcements forecasting a coal famine and high prices. The double-led story is written by one Garret Smith. Nowhere does there appear any indication that the story is sent out by coal companies. And the press service company sending it out has the immaculate gall to offer it free, with the illustrations, to such publishers as may be suckers enough to print it.”

In the winter of 1921, when coal profiteering had prompted calls for government control of mines and railroads, the Press Service Company conducted a questionnaire to “find out how the people feel about government ownership. And who,” asked one editor, “did they send the questionnaire to? To the editors of NEWSPAPERS, most of them CONTROLLED by the railroads, the coal mining interests, and similar beneficiaries of privilege. But suppose the questionnaire had been sent out to 5,000 representative farmers, or to 5,000 representative wage-workers, what would have been the answer?”

In 1913, congressional testimony brought out that for $2,500 a month the Press Service Company guaranteed publication of 50,000 lines a month pertaining to the sugar industry. Amusingly, on at least

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199 Charles Dushkind, Tobacco Manual 37 (1923). Although the book bore the date 1923, Dushkind was already sending out copies to cigarette manufacturers in mid-November 1922. TMA, Special to Cigarette Manufacturers (Nov. 16, 1922), Bates No. 501870686.
201 “Coal Profiteering,” Capital Times (Madison, WI), Feb. 9, 1921 (8:1).
202 “Sugar Trust ‘Educating Lawmakers,” Iowa City Daily Press, June 18, 1913 (1:5). The sugar industry was of special interest to the Press Service Company because one of its incorporators, corporate lawyer Herbert Lakin, was also heavily involved in sugar investments in Cuba as president of the Cuba Company. “New York Incorporations,” NYT, Mar. 4, 1906 (22); “Cuba Near Normal, Says Big Investor,” NYT, Aug. 2, 1922.
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one occasion even *The New York Times*—possibly inadvertently—pierced the veil of one of the Press Service Company’s corporate pseudo-public opinion polls. In 1919, the Association of Railway Executives “sent” questions to over 13,000 newspapers “through the Press Service Company” concerning government ownership of the railroads. Although the questions were framed in terms of “public opinion” and “sentiment in your community,” the article’s subhead and text unambiguously revealed what the poll really showed: “Newspapers Vote Overwhelmingly Against Government Ownership.”

The survey was conducted for TMA by Edward A. Moree, the treasurer of the Press Service Company. Before devoting himself surreptitiously to the health of the cigarette corporations, Moree had worked for several newspapers, entered social work with the Russell Sage Foundation, the New York State Charities Aid Association—helping organize the anti-tuberculosis movement and becoming an advisory expert in public health education for the New York State Health Department—and the Red Cross. (A quarter-century later, in 1946, after a stint representing automobile sellers, Moree, in his capacity as vice president of the Transportation Association of America, specialized in jeremiads about “the growing threat of nationalization, in the belief that if transportation goes over the dam into a Marxian scheme of nationalization the death-knell of private enterprise will be sounded.”)

Some time in 1920 the Press Service Company sent the tobacco questionnaire to 12,518 editors of whom 7,847 or five-eighths replied;

(30); “Herbert C. Lakin, 80,” *NYT*, Dec. 30, 1952 (19). Smith also wrote an article promoting these very interests. Garret Smith, “How We Satisfy Our Sweet Tooth,” *Frederick Post* (MD), Dec. 7, 1921 (7).


“Camp Trip Ends in Divorce,” *NYT*, Apr. 8, 1922 (13). At the 1910 population census Moree, who was 28 at the time, was returned as an office secretary living in the Bronx.


“Port Authority Criticized,” *NYT*, May 13, 1946 (18) (letter to editor).
the circulation of the newspapers edited by the respondents totaled 21,870,046. The questions that TMA wanted answered were:

Do you favor the enactment of laws prohibiting the personal use of tobacco by adults?
In your judgment does the general sentiment in your community favor such legislation?
Is the use of tobacco personally objectionable to you?

Threadbarely ludicrous was Smith’s assertion that from the absence of any accompanying arguments or from the form of the questions “it was entirely impossible for any editor to determine the attitude of the Press Service Co. toward tobacco.” Given editors’ abundant experience with questionnaires distributed by the Press Service Company in order to generate a pro-industry-client outcome, it transcends plausibility to imagine that editors might have wondered whether the Press Service Company’s customer this time round might perchance have been the WCTU. Moreover, editors, as developed above, were well aware from repeated and massive contacts by TMA and its intermediaries that continued or new cigarette advertising revenue was contingent on adopting pro-tobacco editorial positions and making their newspapers otherwise mouthpieces of the cigarette companies' messages.

Of the 7,847 responding editors 7,393 or 95 percent “represented public sentiment in their communities as opposed to anti-tobacco legislation,” while only 260 or three percent represented it as favorable. To be sure, this claim was a vast overstatement since the question asked not about just any kind of “anti-tobacco legislation,” but specifically and exclusively about the most extreme kind—namely, a prohibition of the “personal use of tobacco by adults”—a ban even more drastic than the recently enacted intoxicating liquor prohibition, which banned manufacture, transportation, and sale, but not personal drinking at home, which even prohibitionists deemed too severe. The hypothetical ban was discontinuous with any enacted laws, the most radical of which banned neither the personal use of cigarettes by adults nor the sale of any other kind of

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tobacco to adults.216 That under these circumstances any editor, let alone 260, judged that the “general sentiment” of his community favored a universal use ban was noteworthy. Apart from assuming without any discernible basis that these thousands of editors could possibly know what their communities thought about the issue, the survey was methodologically flawed by the failure to ask what proportion of the community opposed prohibition of tobacco use. Even if the aforementioned percentages had been correct, the result would have been much less clear-cut if, for example, a 25-, 35-, or 45-percent minority in numerous communities had favored a ban. The example of Iowa, however, strongly suggests that even in the unlikely event that the editors gave their “unprejudiced and unbiased opinions,”217 they did not have their fingers on their communities’ tobacco pulse. Smith insisted that the Iowa legislature’s repeal of the anti-cigarette law (in connection with the judgment of 95 percent of the editors in Iowa that the general sentiment of their communities did not favor the hypothetical adult use ban) confirmed his claim that “analysis of legislation on the subject [in 1921], checked up with the returns of the questionnaire....”218 In fact, however, legislative repeal and editorial judgment bore no such confirmatory relationship to each other; more plausibly they were incommensurable with each other. As the House and Senate votes on the bill impressively revealed, almost half of the members opposed repeal of the universal ban on cigarette sales,219 and no proponent charged that the alignment failed to reflect—in Smith’s words—“an overwhelming opposition by the public to anti-tobacco legislation.”220 On the contrary, participants in the debate generally agreed that opinion was closely divided, albeit most sharply along big city/small town-rural areas lines. Indeed, the very fact that so many people had commented that the old law was still being enforced in many small towns where it enjoyed wide support either made it implausible that only 17 editors believed that they lived in communities whose

216 One exception to the latter was North Dakota’s ban on the sale of snuff in 1913, which was upheld by the state supreme court. 1913 ND Laws ch. 271 at 425; State of North Dakota v Olson, 26 ND 304 (1913). The legislature did not repeal the ban until 1927, when it amended the statute to prohibit the sale to persons under 21. 1927 ND Laws ch. 253, § 1 at 418.


218 Garret Smith, “Is Tobacco Doomed”? Leslie’s 132(3420):485, 493 (May 14, 1921). Smith mistakenly asserted that Arkansas’s law, repealed that year, had been in effect for over 20 years; he correctly stated that Tennessee’s had been too, but by implication suggested that Iowa’s had not.

219 See above ch. 15.

general sentiment favored the total tobacco use ban or showed a large-scale disconnect between attitudes toward the hypothetical ban and the real cigarette sales ban.

It may very well have been the case that only a small proportion of the population in the United States wanted to prohibit adult men from smoking cigars or pipes or chewing tobacco, though many more may have supported various kinds of bans on cigarettes. But, as the cigarette companies were well aware, it was also very unlikely that the WCTU and other groups would waste their political capital on the highly implausible cause of universal tobacco bans just at the moment when the industry was inflicting the coup de grace on the last of their old-style cigarette sales bans. It was therefore tactically clever of the cigarette manufacturers to project tobacco as a homogeneous target in order to protect the only even marginally plausible object of attack—cigarettes, especially as smoked by women and children.

TMA’s counterattack had become so intense by 1920 that its president felt compelled to warn the members of the need to guard against “uncalled for, unnecessary and ill-advised aggressiveness in defense of our industry.” Nevertheless, at the annual convention in May, Charles Eisenlohr urged, now that “famous chemists, physicians, toxicologists, physiologists, soldiers and experts of every nation and clime...ha[d] given tobacco a clean bill of health and pronounced it a great God-given boon to mankind,” that everyone in the industry “constitute himself a guardian of the personal liberty involved in this issue”—otherwise “[t]he very objects for which this great republic was founded...would...be subverted....” The tobacco industry’s self-portrayal as the target of a global prohibitory target was very convenient at a time when manufactured tobacco, snuff, and cigar production were just beginning their long decline, eclipsed by what had all the makings of an inexorably and indefinitely

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221 In Iowa 415 editors responded that the general sentiment in their communities did not favor the ban, while only 17 responded that it did. Charles Dushkind, Tobacco Manual 39 (1923). In an article on the macroeconomic impact of a tobacco ban that Smith wrote for the TMA and that was published in many newspapers at the same time he mentioned that: “In their remarks accompanying their replies many of the editors expressed it as their opinion that the opposition of their communities to the aboliton of tobacco was based to some extent on the damage that such a change would do to the business interests of the community. This was particularly true in the tobacco growing states and centers where there were large tobacco plants.” Garret Smith, “Many Industries Tied to Tobacco,” Hopewell Herald (NJ), June 1, 1921 (2:2). Neither Smith’s article in Leslie’s nor Dushkind’s chapter mentioned such qualitative responses.

222 “Eloquent and Well Considered Address of President Eisenlohr,” Tobacco 70(3):5, 7 (May 20, 1920).
widening market for cigarettes. Why branches that were losing market share and profits to the cigarette manufacturers should have been concerned about laws that restricted only their competitors’ sales may not have been intuitively clear. At TMA’s 1920 convention Eisenlohr sought to give substance to the organization’s founding message that its purpose was to “look out for its [i.e., the industry’s] general welfare” by declaring:

[A]s to whether or not the cigarette is the only object of these intolerant reformers is entirely immaterial. The cigarette business is an inseparable branch of the tobacco industry and it is incumbent upon the entire industry and upon each and every branch of it to stand solidly behind every division of the trade. ONE FOR ALL and ALL FOR ONE is the principle that we must follow when any member of the tobacco family is under fire.

Coopting and Degrading Physicians: The Curious Case of Dr. Oliver Victor Limerick

The court held that Limerick was the sewer pipe through which the filth was to flow....

In laying the groundwork for a pseudo-scientific campaign bearing remarkable similarities to more sophisticated ones developed by the cigarette companies and the Tobacco Institute many decades later, Galbraith informed the Committee that, based on having talked to many doctors, he believed that “the opinion of the great majority of the medical profession can be crystallized into a common sense opinion as to the moderate use of tobacco.” To be sure, he then disingenuously added that it was “extremely desirable in advance of securing the opinion of the medical profession to do some education work in crystallizing the same....” To that end he recommended that: a “committee of eminent scientists and doctors be formed by and acting under the direction of one man who will be responsible to your Committee”; this group would “make a [sic] thorough research and submit a report favorable to the use of tobacco,” which would be

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224 “Tobacco Men Form $1,500,000,000 Union,” NYT, Nov. 9, 1915 (18).
225 “Eloquent and Well Considered Address of President Eisenlohr,” Tobacco 70(3):5, 7 (May 20, 1920). Eisenlohr was himself a cigar manufacturer.
226 “Sensational Grounds,” CT-S, June 3, 1897 (1:1). See also “One Ohio Blackmailer Convicted,” PE 17(22):665 (June 3, 1897).
submitted to and published by a leading medical journal—“preferably” by the Journal of the American Medical Association or the Medical Record. Reprints of the article could then be mailed to the 125,000 doctors listed in the American Medical Directory. Having been duly subjected to the desired “education work,” all these doctors were to be sent, “preferably” by the journal, a questionnaire, which, like that for newspaper editors, would contain several important questions being widely discussed by physicians and one on tobacco. To prepare this project, Galbraith had “carefully investigated” and then conferred with Dr. Oliver Victor Limerick, who then submitted a proposal, which, “owing to the confidential relation which he bears to the medical profession and to his clients,” Galbraith urged the Committee members to guard carefully. Unfortunately, the copy that Galbraith appended to his communication to the Committee appears no longer to be extant. He expressed his excitement about the value of the “tremendous amount of favorable opinions” generated by the results of the questionnaire poll for “any future activity”—that is, “if” the results themselves were “favorable”; if not, they would not be published. In case the Committee was not able to see its way to adopting the plan on a national scale, Galbraith suggested possible implementation in Oregon and “a few middle western Anti or near-Anti states which will need some attention later.”

The tobacco industry documents made available through recent litigation do not definitively reveal whether this plan was adopted, the article published, or the survey conducted. However, Limerick himself did publish an article in 1921 in the New York Medical Journal—which, notably, merged with the aforementioned Medical Record the next year—that appears to be just what the doctor ordered for TMA. Moreover, the Journal of the American Medical Association published in its Current Medical Literature department an abstract of the article (consisting of the authors’ conclusions) twice within two weeks just a few weeks after the article’s appearance.

Before analyzing Limerick’s article, it is well worth delving into its author’s biography in order to highlight the bizarre personality to which Galbraith and the cigarette companies were willing to entrust this highly important propaganda campaign. Limerick (1872-1926) was born and grew up in Mississippi, where his

227F. W. Galbraith, Jr. to W. B. Bell et al. at 3-5 (July 2, 1920), Bates No. 502359605/7-9.
228A search of all articles listed in Index Medicus for 1920-22 on tobacco, smoking, or cigarettes found no publication that plausibly fit the TMA’s requirements other than Limerick’s discussed below.
229“Current Medical Literature,” JAMA 76(126):1859 (June 25, 1921); “Current Medical Literature,” JAMA 77(2):154 (July 9, 1921).
father, John Aldridge Limerick, was a pharmacist (in the drug business) and analytic chemist,\(^\text{230}\) whatever those occupational designations may have encompassed in nineteenth-century Rodney, a small Mississippi River town south of Vicksburg, which eventually died after the river changed its course.\(^\text{231}\) By the age of 19, in 1891, Oliver Victor Limerick was himself working as a “pharmaceutical chemist” in Vicksburg,\(^\text{232}\) but was not listed in any late nineteenth- or early twentieth-century Vicksburg city directory,\(^\text{233}\) although his obituaries in the local newspapers stated that “[y]ears ago deceased was engaged in business\(^\text{234}\) in that city and specifically in the “drug business....”\(^\text{235}\) He had been preceded in Vicksburg by his older brother, a physician, who had attended Bellevue Hospital Medical College in New York.\(^\text{236}\) While still in his teens O. Victor Limerick went to Baltimore to study chemistry, after completing which studies he took up medicine\(^\text{237}\) and in 1893 was graduated from the College of Physicians and Surgeons in Baltimore.\(^\text{238}\)

What Limerick did directly after graduation or where he went is not known,\(^\text{239}\)


\(^{232}\) Biographical and Historical Memoirs of Mississippi 1:1133 (1891). According to William E. S. Fales, “Introduction,” in Billy Burgundy, Toothsome Tales Told in Slang 13-15 at 14 (1901), Limerick was “a collegian by education....” Where and when he attended college is unknown.

\(^{233}\) Telephone interview with Jeff Coleman, Old Court House Museum, Vicksburg, (Nov. 15, 2007).

\(^{234}\) “Dr. O. V. Limerick Dies in New York City Last Night,” Vicksburg Evening Post, May 11, 1926 (8:5).

\(^{235}\) “Dr. Victor Limerick, Former Vicksburger, Dead in New York,” Vicksburg Herald, May 12, 1926 (3:7).

\(^{236}\) Dr. G. S. Limerick Died Early This Morning,”, Vicksburg Evening Post, July 8, 1904 (6) (copy furnished by Warren County-Vicksburg Public Library).


\(^{238}\) “Physicians and Surgeons: A Graduating Class of 170 Members,” Sun (Maryland), Apr. 20, 1893, on www.genealogybank.com. The college later merged with the University of Maryland medical school.

\(^{239}\) If one of his obituaries was not in error in stating that he had gone from Vicksburg to New York, he must have returned to Vicksburg after medical school. “Dr. O. V.
but in November 1895, when in Louisville, Kentucky, he applied for a trademark for Antipyrexine, a “medicinal powder for certain named diseases,” stating that that name had been used since November 1, 1892.\textsuperscript{240} In 1895 he was living in Cincinnati, where he was listed in the city directory as a physician boarding at the Palace Hotel.\textsuperscript{241} Absent from the 1896 directory, he reappeared in 1897 with the same occupational designation boarding at the St. Clair Hotel.\textsuperscript{242} Despite the listing, he was apparently not practicing medicine since, according to family lore, illness had prevented him from ever practicing.\textsuperscript{243} Nor was he licensed to practice.\textsuperscript{244} In fact, Limerick was in Cincinnati as the “local agent” of the Fraser Tablet Triturate Manufacturing Company of New York,\textsuperscript{245} which, among the 300 million tablets it produced annually,\textsuperscript{246} manufactured opium tablets for bronchitis and heroin tablets for asthma.\textsuperscript{247} Limerick, then, “traveled for the Fraser Drug

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\textsuperscript{241} Williams’ Cincinnati Directory 1005 (1895). He was not listed in 1894. Information provided by Genealogy and History Department, Cincinnati Public Library (Dec. 1, 2007).

\textsuperscript{242} Williams’ Cincinnati Directory 946 (1897). He was not listed in 1898 or 1899. Information provided by Genealogy and History Department, Cincinnati Public Library (Dec. 1, 2007).

\textsuperscript{243} Limerick’s grandniece stated that her mother, who had met him once, had told her that he had been a researcher and not a practicing physician and had worked for a pharmaceutical company in New York. Telephone interview with Annette Bowen, Webster, TX (Nov. 15, 2007); email from Annette Bowen to Marc Linder (Dec. 10, 2007).

\textsuperscript{244} Limerick was not listed in the American Medical Directory (3rd, 4th, 6th, 8th ed., 1912, 1914, 1918, 1923) as a licensed physician in New York or anywhere else in the U.S. The data field for “places and dates of practices” in Limerick’s entry in an American Medical Association publication is “New York, NY, Dec. 18, 1925” and he is listed as an allopath, although the data field for “states and years of licenses” is blank. Directory of Deceased American Physicians: 1804-1929, 1:930 (Arthur Hafner ed. 1993).

\textsuperscript{245} “Mr. Fraser in Cincinnati,” ADPR 31(8):266 (Oct. 25, 1897).

\textsuperscript{246} “The Fraser Tablet Triturate Manufacturing Co.,” PE 16(27):932-34 (Dec. 31, 1896). In addition to a large factory in Brooklyn, Fraser owned “the highest class retail drug store on New York’s most aristocratic thoroughfare”—Fifth Avenue. Id. at 932.

\textsuperscript{247} http://www.scripophily.net/frastabcom19.html; http://wings.buffalo.edu/aru/preprohibition.htm

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Company” — he was, in other words, some kind of drummer for Fraser. Limerick, whom Fraser had employed as an agent “for some time,” had been “at one time a trusted and faithful employe of the Fraser Tablet company, but... was discharged because his sales for the past year were not satisfactory.”

These facts became widely known as far off as Oregon and Limerick himself was stripped of his obscurity when, on April 10, 1897, he was arrested in Cincinnati in his capacity as a “discharged employe of the Fraser Tablet Company of New York,” who “evidently tried to get even with his old employer by threatening to have the latter’s goods held up by the Food Commission.” The charge, as readers as far away as San Antonio, Texas learned, was attempted blackmail — a conspiracy to “shake down” Fraser. According to the company’s sole owner, the wealthy and socially prominent Dr. Horatio N. Fraser, in March Dr. J. W. Prendergast, the Cincinnati Health Officer, and Dr. Limerick originally asked for $10,000, but then for $2,000 agreed to “fix things” so that Fraser’s company would not have any trouble with

248 “Ohio,” ADPR 30(9):278 (May 10, 1897).
249 At the same time, according to the city directory entry for Fraser Tablet and Triturate Manufacturing Company, Samuel A. Crocker & Co. was Fraser’s general agent. Williams’ Cincinnati Directory 514 (1896); Williams’ Cincinnati Directory 538 (1897); Williams’ Cincinnati Directory 556 (1898). Information provided by Genealogy and History Department, Cincinnati Public Library (Dec. 1, 2007). Crocker, who was Fraser’s “manager” in Cincinnati, testified at the trial discussed below that he had been afraid that he would be arrested because of Fraser’s substandard tablets. “Ohio Blackmailers in Court,” PE 17(15):455 (Apr. 15, 1897) (quote); Limerick v. Ohio, 14 Ohio C.C. 207, 212-13 (1897).
250 “Justice,” CE, Apr. 15, 1897 (12:1-5 at 2).
251 “Overruled,” CT-S, Apr. 17, 1897 (1:4). Alternatively, Fraser testified that Limerick had been discharged because there was “a difference between Limerick and the tablet house.” “Justice,” CE, Apr. 15, 1897 (12:1-5 at 3).
252 “Charges Against City Health Officer,” MO, Apr. 13, 1897 (6:6).
253 “Health Officer Arrested,” CT-S, Apr. 12, 1897 (2:1).
254 [No Title]. NYT, June 3, 1897 (2) (erroneously referred to as “A. V. Limerick”).
256 “Blackmailing Officer,” San Antonio Daily Light, Apr. 12, 1897 (1:3).
257 “Limerick,” CE, May 26, 1897 (7:1).
258 “Prendergast’s Trial Begins,” CT-S, Apr. 14, 1897 (1:7).
259 “Dr. Horatio N. Fraser,” NYT, Nov. 9, 1942 (23).
260 The statement in “Prendergast Back,” PE 18(24):886 (Dec. 9, 1897), that Limerick was an Assistant Health Officer appears to have been erroneous.
the Ohio pure food department. Until then Prendergast had been using Fraser’s pills “‘at all of the city stations in his official practice—that is, having them used by police surgeons and others.’” Prendergast had been furnishing Fraser’s tablets to “the out-door poor”; the active ingredient that had allegedly been deficient in at least one kind was caffeine.) Their conversation in a Cincinnati hotel room was allegedly overheard by a Pinkerton agent, whom Fraser had stationed in an adjoining room, while Limerick was on duty standing guard outside the door.

When “the celebrated case,” which attained “unprecedented prominence” because of Prendergast’s prominence, “the brilliant array of legal talent and the disclosures promised,” came on for an evidentiary hearing, “crowded to suffocation,” before a magistrate on April 14 and 15, Fraser testified that Prendergast had told him that part of the money they demanded was for George Cox, “a well-known Cincinnati politician” otherwise known as Boss Cox, who ran the city for a quarter-century. The 25-year-old Limerick, whom the prosecution called the “Mephistopheles of the conspiracy,” had approached Fraser before the hearing, apparently with the desire of unburdening himself to the prosecuting witness, but he left Fraser’s hotel before doing so. A grand jury quickly indicted Limerick and Prendergast, and, in order to avoid being outsmarted by the defendants at trial, the prosecution allegedly had respectable local chemists analyze Fraser’s tablets to prove that they were not substandard, thus demonstrating that the basis of the attempted blackmail—namely, that the

261 “Under Arrest,” Daily Times (Portsmouth), Apr. 12, 1897 (3:2).
262 “Ohio Blackmailers in Court,” PE 17(15):455 (Apr. 15, 1897) (quoting letter by Fraser).
264 “Under Arrest,” Daily Times (Portsmouth), Apr. 12, 1897 (3:2). See also “Telegraphic Brevities,” NYT, Apr. 18, 1897 (2).
265 “Trial and Conviction of Dr. C. [sic] V. Limerick,” ADPR 30(11):323, 324 (June 10, 1897).
266 “Justice,” CE, Apr. 15, 1897 (12:1-5 at 1).
268 “Justice,” CE, Apr. 15, 1897 (12:1-5 at 2).
271 “Gauzy,” CE, Apr. 16, 1897 (10:1-5 at 5).
272 “Limerick,” CE, Apr. 18, 1897 (8:2).
273 “Big Men,” Daily Times (Portsmouth), Apr. 24, 1897 (1:5).
274 “Ohio,” ADPR 30(9):278 (May 10, 1897).
State Dairy and Food Department chemist’s analysis of some of the medicinal tablets that Fraser’s firm had furnished to the Cincinnati Health Department for use by district physicians had found them to be impure—was a mere pretext.\textsuperscript{275}

On June 1, after Prendergast had jumped bail\textsuperscript{276} and following a five-day trial, the jury, never in doubt about Limerick’s guilt\textsuperscript{277} and not crediting his claim that he had “simply carried messages between Mr. Fraser, his employer, and Dr. Prendergast,”\textsuperscript{278} and had been ignorant of Prendergast’s motives and really been working in the interest of the company, which in the meantime had re-employed him,\textsuperscript{279} found Limerick guilty of attempted blackmail.\textsuperscript{280}

When the jury announced its guilty verdict at 10 p.m., “Limerick took his sentence coolly and when informed he would have to go to jail, lit a cigarette and smoked it.”\textsuperscript{281} Overruling Limerick’s motion for a new trial, Judge Murphy conceded that: “I don’t know whether you are the victim of another designing person or whether you yourself put the whole thing in motion.” He mentioned that Fraser and (unnamed) personal friends had appealed to him on Limerick’s behalf, but, despite feeling sorry for Limerick, he had to do his duty.\textsuperscript{282} The judge then sentenced him, as even residents of Denver read, to “Two Years in the Pen.”\textsuperscript{283} While still in court, “Limerick took the sentence more coolly than his

\textsuperscript{275}“Trial and Conviction of Dr. C. [sic] V. Limerick,” \textit{ADPR} 30(11):323 (June 10, 1897).

\textsuperscript{276}“Prendergast Has Fled,” \textit{CT-S}, May 24, 1897 (1:1).

\textsuperscript{277}“One Ohio Blackmailer Convicted,” \textit{PE} 17(22):665 (June 3, 1897).

\textsuperscript{278}“Limerick on Trial,” \textit{CT-S}, May 25, 1897 (1:3).

\textsuperscript{279}“Trial and Conviction of Dr. C. [sic] V. Limerick,” \textit{ADPR} 30(11):323 (June 10, 1897). Fraser Tablet Company had reemployed Limerick on March 11 (directly before Limerick’s participation in the alleged conspiracy to blackmail Fraser began). \textit{CE}, June 2, 1897 (12:1). However, Fraser testified on April 14 that “Limerick was not in his employ when the proposition was made by Dr. Prendergast. Limerick was discharged some time before that. ... Limerick claimed that there was certain salary due him after his dismissal. It had not been paid him because he failed to return his sample case. But it was subsequently sent to him. The defense endeavored to show that the telegrams sent by Limerick to Fraser were for the purpose of obtaining the salary due him, and not to urge the payment of the money demanded for blackmail.” “Justice,” \textit{CE}, Apr. 15, 1897 (12:1-5 at 3).

\textsuperscript{280}[No Title], \textit{NYT}, June 3, 1897 (2).


\textsuperscript{282}“Two Years,” \textit{CT-S}, June 8, 1897 (1:1).

\textsuperscript{283}“Two Years in the Pen,” \textit{RMN}, June 9, 1897 (6:7). See also “Two Years in the Pen,” \textit{Portsmouth Times}, June 12, 1897 (2:7); \textit{Daily Public Ledger} (Maysville, KY), June 25, 1897 (3:7).
aged father, who...could not repress the tears that flowed down his cheeks.”

But once the judge had remanded him to the sheriff’s custody, he exhibited the “first signs of breaking down” and when he saw the “preparations being made to take him to the bastile he refrained from weeping with the greatest difficulty.” Scarcely able to speak, Limerick, accompanied by his father—who had been “more affected by the sentence than his son”—asked the prosecutor whether he could get out on bond, but, being rebuffed, was taken to jail. Having previously given bond for his appearance, he had not been in jail so that when the basement door to the jail opened, according to the bathetic account of a Cincinnati Enquirer reporter, “a perceptible shudder went over his frame.” He then “asked if he could smoke,” and when the jailer said yes, Limerick “dispatched a deputy for a package of cigarettes. ... The doctor looked at the iron stairs which lead up to the cells. He could hardly keep from sobbing as he said: ‘Will I have to go up there?’” Hearing from the jailer that “there was no alternative, [t]he slight, almost girlish form of the doctor quivered as he swallowed the lump in his throat....”

Before returning to New York, Fraser had presented a strong appeal for mercy for his ex-employee, to which was appended a “touchingly pathetic” personal request from Limerick’s mother. The letter to Fraser from “the aged mother of the prisoner” pleaded that her son “was easily led into doing things, which, if he had a stronger individuality, he would not do,” and that “if he had done wrong in this instance he was led into it by others.” Fraser had become “decidedly adverse to continuing the prosecution” once he felt that Limerick and Prendergast had been sufficiently punished by the “public degradation that their disgraceful conduct brought upon them.” Fraser even made the “kindly offer” to withdraw the prosecution if Prendergast and Limerick signed a written acknowledgment of their guilt and the authorities agreed to it, but Prendergast refused and in any event the prosecutor intended to “go to the full limit in the performance of his official duty.” In the letter he sent to Judge Murphy before Limerick was convicted, Fraser asked him to be lenient to Limerick as a first

10, 1897 (1:6) (untitled).

284“Two Years,” CE, June 9, 1897 (12:5).


286“Two Years,” CT-S, June 8, 1897 (1:1).

287“Guilty,” CE, June 2, 1897 (12:1).

288“Guilty,” CE, June 2, 1897 (12:1).


offender, adding that he felt no ill will toward him “and would like to see him start life again without the stigma of the penitentiary against his chances.” Fraser had contact with Limerick’s parents since he mentioned that the trial expense “will cost his parents about all they are worth” and enclosed to the judge a copy of a letter he had received from Limerick’s mother showing that “any punishment he gets will hit her and his father harder than the boy himself.”

While Limerick remained in jail, on June 17 his lawyers filed a bill of exceptions with the First Circuit Court in Hamilton County, which was “based on the alleged partiality of Judge Murphy and the jury under the influence of public clamor” and quoted the judge’s characterization of Limerick as “the sewer pipe through which the filth would flow.” It took the appeals court less than a week to reverse the judgment and remand the cause to the Court of Common Pleas for further proceedings. Although Limerick was granted a new trial, the pharmaceutical trade press reported that this turn of events had not “given general satisfaction” in Cincinnati, where “public feeling against” the defendants was strong and the view was held that another conviction would result. Fraser, for his part, disavowed any personal interest in Limerick’s prosecution or conviction as an individual other than regarding its impact on his firm: “If guilty, these men are representatives of a class that is dangerous alike to society and the interest of all manufacturers who market their products in the State of Ohio.” In the meantime, the notoriety had not made it impossible for Limerick, who was released on a $1,500 bail bond, to return to the same occupation, “acting as a

291“Limerick Sentenced to the Penitentiary,” PE 17(23):695 (June 10, 1897) (quoting from letter from Horato Fraser to Judge John P. Murphy ((May 27, 1897).

292Docket No. 2638, Entry for June 17, 1897, Circuit Court Record Book; telephone interview with Anna Haas, Microfilm Department, Hamilton County Court of Appeals, First Appellate District of Ohio (Dec. 3, 2007).

293“Limerick’s Last Chance,” PE 17(25):756 (June 24, 1897).

294Docket No. 2638, Entry for June 24, 1897, Circuit Court Record Book; telephone interview with Anna Hoff, Microfilm Department, Hamilton County Court of Appeals, First Appellate District of Ohio (Dec. 3, 2007).

295Limerick v. Ohio, 14 Ohio C.C. 669 (1897). The reversal was based on errors made by the trial judge concerning a juror’s partiality and admissibility of evidence. See also “Reversed,” CE, June 24, 1897 (12:5); “New Trial in the Latest Ohio Case,” ADPR 31(1):18 (July 10, 1897).

296“The Cincinnati Boodlers,” Denver Evening Post, June 23, 1897 (5:2); “Another Chance for Limerick,” Daily Times (Portsmouth), June 25, 1897 (1:6). See also “Miscellany,” JAMA 29(2):93 (July 10, 1897) (“Dr O. V. Limerick...was granted a new trial”).
representative of an Eastern drug house.” Rumor had it that Limerick was in fact “quietly working” for Fraser again, but when Fraser visited Cincinnati in October 1897 he denied that his firm would restore Limerick to his former position as its local agent if the prosecution were dropped. The date for Limerick’s new trial was not scheduled even after Prendergast returned to Cincinnati, and finally in December 1898 the prosecution agreed not to pursue the matter any further because it had proved impossible to insure the attendance of its witnesses from New York “doubtless” as a result of Fraser’s unwillingness to spend more than the $6,000 that Limerick’s trial had already cost the firm.

Where Limerick went and what he did immediately after the blackmail charges were dropped are not clear, but it was presumably at this time that “he was called to New York to edit a medical journal”; by 1900, however, he “deserted the field of medical literature to devote himself to fiction.” From 1901 to 1904 he published five small books of purportedly humorous short stories pseudonymously under the name of Billy Burgundy. The likelihood of his

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297“A New Trial for Dr. Limerick,” PE 18(2):50 (July 8, 1897).
298“Mr. Fraser in Cincinnati,” ADPR 31(8):266, 267 (Oct. 25, 1897).
299“Prendergast Back,” PE 18(24):886 (Dec. 9, 1897); “Dr. Prendergast Returns to Stand Trial,” ADPR 31(11):357 (Dec. 10, 1897).
301“Attractive Feature for Sunday Times-Dispatch,” Times-Dispatch (Richmond, VA), Aug. 30, 1903 (13:6-7). The biographical information for this article announcing that the newspaper would be publishing a Billy Burgundy story every Sunday presumably derived from Limerick himself.
302Billy Burgundy, Toothsome Tales Told in Slang (1901); Billy Burgundy’s Letters (1902); Billy Burgundy, Billy Burgundy’s Opinions (1902); Billy Burgundy, The Villagers: Comprising Humorous Sketches (1904); Billy Burgundy, A Feast of Fun: Twelve New Stories Picked from the Fun Tree (1904). Although the books all use the same pseudonym, the author was identified on the dedication page of the first book: “to my dear friend Harry Kent Holmes Billy Burgundy (nee [sic] O. Victor Limerick).” Billy Burgundy, Toothsome Tales Told in Slang n.p. (1901). Henry Kent Holmes was some kind of Wall Street financier. “Harrison Gets Injunction,” NYT, Sept. 18, 1910 (10). The introduction to this first volume by William E. S. Fales (1852-1906), a magazine writer and lawyer who lived in Brooklyn, stated of “Billy Burgundy” that “[f]or several years his skits and sketches have made the country laugh, and have brightened dull hours for myriads of readers.” William E. S. Fales, “Introduction,” in Billy Burgundy, Toothsome Tales Told in Slang 13-15 at 15 (1901). The Oxford English Dictionary 16:503 col. 2 (2d ed. 1989), erroneously states that Billy Burgundy’s Opinions at 57 contains the first published use of “stand up” as in snub someone by not showing up for an appointment.
having lived in New York at this time is strengthened by these books’ factual focus on New York City as well as by his having testified in 1902 at a friend’s divorce proceedings in New York, the press account of which characterized Limerick as a “book and magazine writer,” without mentioning any connection to medicine or pharmaceutics. The Chicago Tribune opined that the best thing about Billy Burgundy’s Letters was that it was less than a hundred pages, but other critics were considerably less critical. In 1905, there appeared under the name Robert Louis Sanderson, who in his nearly two decades as a French teacher at Yale never advanced beyond assistant professor, a ten-page brochure, “Billy Burgundy: An Appreciation,” which bore all the marks of literary hucksterism. Revealing Limerick’s authorship and including biographical details that presumably only Limerick would have known, the brochure was replete with the fulsome praise that only a press agent eager to sell “Billy Burgundy’s stuff in slang [a]s undeniably the greatest circulation multiplier ever placed at the disposal of newspapers” could utter. Praising the “universality of his attainments” but skipping over Limerick’s fortnight in the Cincinnati slammer, Sanderson, offering no sources, called him “a chemist of no mean grade,” a physician, “an authority upon therapeutics,” and “without any doubt the greatest inventor of slang words and phrases we have ever had...” Moreover, Limerick allegedly “had earned a celebrity as a writer upon medical subjects, especially therapeutics, before he devoted himself to fiction writing.” For Sanderson

In fact, it is Billy Burgundy’s Letters at 57 that contains the phrase.

303“Absolute Divorce Given to Mrs. William E. S. Fales,” Brooklyn Eagle, July 31, 1902 (6). Fales had written the introduction to the first of Limerick’s Billy Burgundy books. What articles Limerick had written in which magazines is unknown. Searches of numerous periodical indexes for these years found no references to him.

304“Gossip of the Theatrical and Operatic Stage,” CT, Aug. 23, 1902 (16:1-3 at 3).

305Sanderson, who was born in France in 1851 and did not come to the United States until he was 21, appears to have published only translations and textbooks in his field. “Prof. Robert Louis Sanderson,” NYT, Nov. 7, 1922 (16).

306Robert Louis Sanderson, “Billy Burgundy: An Appreciation” n.p. [8] (1905). It is unclear how the brochure, which only one library (Wisconsin Historical Society) in the world appears to have cataloged, was distributed. The copyright-holding Cosmopolitan Press Association of New York was presumably the agent, whose purpose was to drum up business for “Mr. Next,” Limerick’s “latest creation,” which does not appear to have made it into book form. Id. at [5-7].

“genius” was a “trite and inadequate” description of Limerick aka Billy Burgundy because he was “without question, one of the most talented writers of the day,” “held in the highest esteem by literary folk,” and had “perhaps done more to enlarge our vocabulary than any other writer of the day.”

What else he may have been doing from the turn of the century until World War I is also largely unknown. He was missing not only from the 1900 and 1910 Census of Population—but perhaps because he lived in a hotel in New York City—but also from the world: in 1902 his friends in New York, “mystified and worried over his prolonged and unexplained absence” and “fearing foul play” with regard to the unmarried and temperate writer known to have had a “considerable sum of money with him,” reported him missing to the police.

Two of Limerick’s judicial entanglements there in 1904 indicate that New York was his place of residence during these years: a summons to his “former literary partner, ‘Steve’ Floyd,” to appear before a magistrate in the Tombs Court to “explain why he laid claim to checks, which Limerick said wehe [sic] his, although made out to Floyd’s order” and a judgment filed in court against O.

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309 In addition to not having been returned as living anywhere in the United States at the time of the 1900 or 1910 population census, Limerick was also not listed in the 1900, 1901, 1904, 1910 or 1915 city directory for Manhattan/Bronx. Trow’s General Directory of the Boroughs of Manhattan and Bronx City of New York for the Year Ending July 1, 1900 (Vol. 113); Trow’s General Directory of the Boroughs of Manhattan and Bronx City of New York for the Year Ending July 1, 1901 (Vol. 114); Trow’s General Directory of the Boroughs of Manhattan and Bronx City of New York for the Year 1904 Ending July 1, 1905; Trow’s General Directory of the Boroughs of Manhattan and Bronx City of New York for the Year Ending August 1, 1910 (Vol. 123, 1909); R. L. Polk’s 1915 Trow General Directory of New York City Embracing the Boroughs of Manhattan and the Bronx (Vol. 128, 1915). He also did not appear in the 1899, 1902, 1903, 1904, 1906, 1907, 1908, or 1909 city directory for Brooklyn, according to a search done by the staff of the Brooklyn Collection of the Brooklyn Public Library. Email from Joy Holland to Marc Linder (Dec. 13, 2007).
310 In 1902, for example, he “made his home” in the Criterion Hotel in New York City. “‘Billy Burgundy’ Has Disappeared,” Evening World (New York), Aug. 22, 1902 (4:4).
312 “Checks for Early Riser,” Evening World (New York), Jan. 15, 1904 (9:3). Limerick and Floyd had written syndicate letters to newspapers under the name “‘Steve Floyd,’ the business man.” The magistrate dismissed the summons. At least some Billy Burgundy stories published in newspapers appeared under copyright by Steve Floyd. E.g.,
Victor Limerick “or Billy Burgundy” for $27.313 His father’s obituary in 1908 also stated that he was living in New York.314 At the 1920 Census of Population the 47-year-old Limerick did not tell the enumerator that he was a physician, but rather an author of books,315 though he appears not to have published one since 1904. The remainder of what is known about Limerick is best interwoven into the account of his aforementioned article of 1921.

Limerick, who at the time was the director of the pharmacology department at the Brooklyn Diagnostic Institute—founded in 191016 as an early example of a new type of clinic established for the purpose of diagnosis17—co-authored the piece, “The Effect of Tobacco on Man,” with two academics, who were much better known. William John Gies—whose lengthy entry in that year’s Who’s Who eloquently testified to his research and administrative eminence18—was a very prominent professor of biochemistry at Columbia University, where he had been a founder of the School of Dental and Oral Surgery. Later he wrote a landmark report on revamping dental school education for the Carnegie Foundation.19 Max D. Kahn, a physician with a doctorate in biochemistry, was also an associate professor in biochemistry at the College of Physicians and Surgeons at Columbia and an expert on metabolism. Two years later Kahn became famous for his discovery of intarvin, an alternative to insulin for diabetes treatment.20 Since

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Billy Burgundy, “Tale of Book-Worm Who Found Change of Diet,” Times-Dispatch (Richmond), Nov. 15, 1903 (sect. 3, 4:5-7).

313“Judgments,” NYT, July 21, 1904 (9).


315Census of Population, 14th Census (1920) (HeritageQuest) (residing on Riverside Drive in Manhattan).

316“Dr. Jacob Gutman, Physician 44 Years,” NYT, May 9, 1944 (19).

317The clinic’s aim was “declared to be ‘to hold at the command of the general practitioner the highest type of skill and to be scrupulously observant of the loftiest standards of professional ethics.’” With each of its 17 departments “under the direction of a well-known specialist in the given field,” Limerick was presumably one in pharmacology. “News of the Week,” New York Medical Record 97(2):73 (Jan. 10, 1920).


320“Dr. Kahn Reveals Diabetes Treatment,” NYT, Aug. 3, 1923 (17). Kahn died even younger (at 39) than and only a few weeks before Limerick. “Dr. Kahn, Noted Physician, Dead,” NYT, Apr. 10, 1926 (17); “2,500 Mourn Dr. Kahn,” NYT, Apr. 12, 1926 (21).
neither of Limerick’s coauthors appears to have studied or published on tobacco or smoking, Limerick was the only one to respond to a critique of the article, and the article’s argumentative anti-anti-tobacco style resembled that of an article on tobaccophobia published by Limerick a few years later, it seems plausible that Limerick was the real author, whose colleagues for reasons unknown merely permitted their illustrious names to be used,\textsuperscript{321} which preceded his alphabetically in the publication.\textsuperscript{322}

In addition to their formal institutional connection, Gies and Kahn had collaborated on a study of caries as early as 1912.\textsuperscript{323} In 1920 Kahn published a book dedicated to Gies, who in turn wrote the foreword.\textsuperscript{324} How they knew Limerick is less obvious. One link went back to the beginning of 1915, when Gies and Limerick were both members of a “committee of prominent New York physicians and surgeons” petitioning Congress to rescind the war tax on toothpaste on the grounds that it severely undermined governmental work on behalf of oral hygiene.\textsuperscript{325} Intriguingly, since Limerick, according to an obituary, “had been residing in New York City for many years, being connected with

\textsuperscript{321}Dr. Allan Formicola, former longtime dean of the Columbia University School of Dental and Oral Surgery and honorary trustee of the William J. Gies Foundation for the Advancement of Dentistry of the American Dental Education Association, when told about the article and its background, responded that the “whole thing seems out of context of what I know about Gies as a careful researcher and individual.” Email from Allan Formicola to Marc Linder (Nov. 14, 2007).

\textsuperscript{322}Whether the TMA paid any of the authors is unknown. Interestingly, Gies was a nonsmoker. Frank Orland, \textit{William John Gies: His Contribution to the Advancement of Dentistry} 308 (1992).


\textsuperscript{324}Max Kahn et al., \textit{Functional Diagnosis} n.p. [v], vii-viii (1920).

\textsuperscript{325}“Tooth Wash Tax Opposed,” \textit{NYT}, Jan. 11, 1915 (16); \textit{JAMA} 64(4):351 (Jan. 23, 1915); \textit{American Journal of Tropical Diseases and Preventive Medicine} 2(8):538 (Feb. 1915). Gies’s participation in this petition was ironic since a year and a half earlier he had caused a stir when he announced his finding that toothpastes promoted rather than prevented dental caries, which could be more effectively prevented by brushing with food acid such as orange juice. “‘Food Acids’ for the Teeth” \textit{NYT}, July 28, 1913 (6) (edit.); “Acid Bad for the Teeth? Not at All, Says Chemist,” \textit{NYT}, Aug. 10, 1913 (Sunday Magazine at 6).
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Colgate and Company," perhaps Limerick was pursuing some commercial (self-)interest. Another link was forged in 1919 when Limerick, together with seven other doctors and dentists, published an article in the *Journal of Dental Research*, a new dental journal edited by Gies. Titled, “Highfalutin Dupery: Comment on the Falsity of Various Published Claims for Certain Dentifrices,” the article complemented work that Gies himself published in the immediately following pages of the journal attacking the claims made by the manufacturer of Pepsodent. Since all four toothpastes attacked by Limerick et al. were competitors of Colgate, suspicion arises, again, that Limerick’s critical efforts may have been driven by some non-science-based interest, although Gies appended a note to the article by Limerick et al. praising it as “the verdict of trustworthy sources of specialized enlightenment” whose “respectable authority” it had become expedient to enlist in the “uproot” of certain “popular fallacies.” Ironically, the vitriol—such as “A dog will return to his vomit”—that Limerick and his co-authors (doubtless justifiably) poured over manufacturers’ efforts to “enrich themselves” by means of “a mass of scientific imbecilities” as well as the responsibility that they placed at the door of magazine and newspaper publishers and editors for giving publicity to such “prevarication” would have applied with greater force then and even more decades thereafter to cigarette manufacturers and the press. Much more profoundly ironic, however, was that the barbs hurled by Limerick and his dental and medical associates at “certain grades of intellect in the medical and dental professions” in whom “bombastically propounded fallacies sometimes take root” and who then become “phrase-juggler[s]” with a “tremendous power for...evil” by virtue of being able to “make black appear to be white” while disseminating the “utterly

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326“Dr. O. V. Limerick Dies in New York City Last Night,” *Vicksburg Evening Post*, May 11, 1926 (8:5). Another obituary stated that Limerick “was connected with Colgate and Co., at the time of his death.” “Dr. Victor Limerick, Former Vicksburger, Dead in New York,” *Vicksburg Herald*, May 12, 1926 (3:7).

327There appears to be no scholarly history of the Colgate Company that might shed light on the firm’s use of scientists in its toothpaste production in the early part of the twentieth century. Shields Hardin, *The Colgate Story* (1959), is a vapid hagiography. The company itself asserted that it had no relevant archival records. Email from Tom Paolella to Marc Linder (Nov. 28, 2007).


preposterous” should have been cast at their own article on tobacco, which was a prime illustration of the “testimony of experience” in medicine and dentistry as “the testimony of erratic speculations—a succession of phrase-embellished fads that do not survive intelligent deliberation.”

What at its core distinguished Gies’s and Limerick et al.’s toothpaste debunking from Gies, Kahn, and Limerick’s tobacco bunk was that the latter was supported by absolutely no theoretical or empirical-experimental science conducted by others or themselves. The tobacco article thus conformed admirably to the model constructed for toothpaste, permitting cigarette manufacturers also “to adjust their methods of dupery to”

the growing tendency on the part of the average individual to require explanations that appear to him to have scientific basis or the support of high authority. ... In order to invest this fiction with an appearance of having due corroboration, lavish use is made of quotations from the writings of such members of the medical and dental professions as can be made prey to dialectic trickery. The wickedness of this use of dazzling language, supported by what is falsely represented as reputable authority, lies in the fact that it at once deceives the unsophisticated and casts discredit on the respectable members of the medical and dental professions.

Gies, Kahn, and Limerick’s barely three-page article cast aspersion on the “emotionalist,” who was unable to reason from cause to effect or distinguish between fact and fallacy, and whose testimony on “the so-called tobacco question” was not deserving of as much consideration as the conclusions derived by “those specially trained in scientific investigation....” To be sure, the authors nowhere alluded even to a single investigation to support any of their numerous assertions masquerading as “conclusions.” Nowhere, for example, did they even mention in passing how they as scientists had “taken recourse to the most rigid methods of verification” to discover that the “development of tolerance to tobacco...explain[ed] the absence of deleterious effects in the many who habitually use tobacco in excess,” or that such tolerance was “partly inherited” and that it was therefore “certain that the tobacco habit is preserved, in some


degree, through [natural] selection,” or, that “excessive tobacco smoking is rare in the servile” (as opposed to those “engaged in intellectual pursuits”), or, finally, that what “persistently tends to exist presumptively has a valid basis”—meaning specifically the “smoking impulse, or craving for tobacco,” in the form of which “[w]e invariably find on investigation that Nature is justified in what it repeatedly expresses....” In the event, their “conclusions” delivered with all imaginable clarity the message for which Galbraith and TMA had contracted:

The habitual moderate use of tobacco is not harmful to adults.
The moderate use of tobacco proves distinctly helpful to certain adult types.
The habitually excessive use of tobacco may prove harmful to certain individuals.
But the same holds equally true of all foods.
The excessive use of tobacco may prove harmful in certain neurovascular disorders.
The habitual use of tobacco by juveniles is harmful.334

Oddly, the last “conclusion” was based on absolutely nothing since juveniles were nowhere mentioned in the article (except with regard to their manufacturing “makebelieve cigarettes”).335 Nevertheless, it fit in well with the cigarette companies’ public relations strategy of pretending to discourage use by minors. The speculative concession that “excessive use” by adults might cause neurovascular disorders was also odd since in the text the authors pooh-poohed the claim that “immoderate use...bears a causal relation to arteriosclerosis”: not only did they call the (unmentioned) underlying theory “implausible,” but asserted that what was commonly termed “smoker’s heart” was often “due to endocarditis associated with gonorrhea, syphilis,...tonsilitis,...dental abscesses....”336 In the same vein, Gies et al. declared that the “moderate but

334 William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on Man,” NYMJ 113(15): 809-11 at 811 (June 1, 1921). For some criticism of the article four decades later, see Tobacco: Experimental and Clinical Studies: A Comprehensive Account of the World Literature 521, 532 (S. Larson et al. 1961). Two years later a British tobacco manufacturers organization referred to the article (along with several others) as offering “medical or other scientific reporting...on the basis of impression or experiment, of the tranquilising effects attributed to smoking.” Tobacco Research Council, “Review of Past and Current Activities” at 13 (1963), Bates No. 500051463/78.
335 William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on Man,” NYMJ 113(15): 809-11 at 810 (June 1, 1921).
336 William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on
temporary rise in blood pressure” that was “the immediate effect” of tobacco—along with “an increase in the power of concentration, in consequence of a better adjustment of the ego to its environment”—that “laymen” stressed who condemned tobacco use did “not exceed in degree or duration that which ordinarily follows a cold bath or sponge” and “rarely ever equals that caused by such wholesome pastimes as dancing.” In purported refutation of the “possible contention” that tobacco had to be an “economic menace” because its excessive use “occasionally affect[ed] the vascular system and neuromuscular coordination” the three co-authors offered the “quite simple” answer that only the total net effect of a thing could determine whether it was an economic asset or liability. To carry out the necessary calculation, they left it to their readers to reason analogically back to tobacco from their tale that no right-minded person would advocate closing the schools just because the eye strain caused by the reading that is essential to education required some to wear glasses.

Unsurprisingly, nowhere in the article was to be found any trace of the finding published in Gies’s own *Journal of Dental Research* in 1919 that leucoplakia, a precancerous oral lesion, was “invariably caused by excessive use of tobacco,” and that unless the cause was removed, “we invariably have carcinomatous degeneration.”

Omitted from Gies et al’s formal conclusions was the unmediated assertion that the “sequence of the potency of the different forms in which tobacco is generally used runs as follows, in the order of greatest degree to least: Chewing, smoking pipe, smoking cigar, smoking cigarette.” From this pure assertion allegedly followed: “It can thus be seen that, contrary to the prevailing belief among laymen, the cigarette is in fact the least harmful form in which it is possible to use tobacco,” whereas “in fact” the only thing that could be “seen” was that the authors had made that assertion in the previous sentence (and just in case the reader or a popularizing publicist had overlooked it, they justified their “emphasis on the relative innocuousness of the cigarette” by reference to the “persistence with which the misinformed strive to convey a contrary impression”).

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Man,” *NYMJ* 113(15): 809-11 at 811 (June 1, 1921).

337William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on Man,” *NYMJ* 113(15): 809-11 at 811 (June 1, 1921).

338William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on Man,” *NYMJ* 113(15): 809-11 at 811 (June 1, 1921).


340William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on
Also absent from the final conclusions was the claim—odd given the proliferation of cigarette smoking by women at the time—that tobacco had “no special attractiveness for the female of the species” but was merely a passing fad: “The same impulse that caused some women of yesteryear to wear the deforming corset and others of today to expose their legs to wintry winds will prompt a few to affect a fondness for tobacco until another and more fetching stratagem of sex attraction has been thought of.”

Limerick’s dogmatism was vividly on display in a reply to an objection raised by a Pennsylvania physician several weeks later in the New York Medical Journal. Dr. D. W. Collins had had a mine inspector do tests to determine the volume of carbon monoxide in the gases drawn through a cigarette and the amount of carbon monoxide absorbed by the tissues of the mouth. The result was that between 0.6 and 0.7 percent of the carbon monoxide in the gases given off during smoking were absorbed in the upper air passages; crucially, the physician added, “[i]nhaling the smoke would materially increase the amount of carbon monoxide absorption, and the continued absorption of carbon monoxide certainly would have a deleterious effect on the human organism.” Collins’ conclusion harkened back to a health-related aspect of smoking peculiar to cigarettes that physicians and scientists had emphasized for decades: “As the cigarette smoker is, as a rule, an inhaler, I cannot understand why assertion is made that the cigarette is the least harmful form of tobacco, especially when the smoker absorbs a larger amount of carbon monoxide.”

Limerick’s very brief response continued in the purely apodictic mode of his original article by asserting that the cigarette was the least harmful form of tobacco use because “it yields the smallest amount of toxic materials.” He then made two additional uncorroborated empirical assertions: “Carbon monoxide is not the most toxic constituent of tobacco smoke. The inhalation of tobacco smoke is not confined to cigarette smokers.” Limerick did not specify the other more toxic compounds, but the Gies et al. article had mentioned nicotine, pyridine, collidine, and aldehydes as producing, together with carbon monoxide, tobacco’s vascular effects. But why cigarette smokers would not inhale more...

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Man,” NYMJ 113(15): 809-11 at 810 (June 1, 1921). As late as 1963 an internal cigarette industry document took comfort from quoting the “It can thus be seen” sentence. “Cigarette Paper” at 1 (1963), Bates No. MNAT00733025, on tobaccodocuments.org.


344 William J. Gies, Max Kahn, and O. Victor Limerick, “The Effect of Tobacco on
of these toxic compounds as well he explained nowhere. Thus his entire defense boiled down to the implication that cigar and pipe smokers inhaled too. Although no one denied that some of them did inhale, it had been uncontradicted common knowledge and the central scientific basis of attacks on cigarettes for decades that a much higher proportion of cigarette smokers inhaled. Limerick’s reply was thus pathetically irrelevant.

Presumably also as part of the TMA’s anti-anti-tobacco propaganda and publicity strategy a summary of the article, correctly stating its alleged conclusions, appeared a few weeks later on the “Things You Ought to Know” page of the Sunday World Magazine of the New York World. Titled, “Tobacco Injurious Only When Abused,” the piece, which was pitched as of interest to “those now engaged in the anti-tobacco crusade,” absurdly and grotesquely characterized Gies, Cahn [sic], and Limerick’s “study of the effects of tobacco on man” as “exhaustive.” And the editor of the Cigar Makers’ Official Journal, which was published in Chicago, may not have read the New York Medical Journal, but he quickly brought the conclusions of the article—which he called “lengthy” and highly technical”—to members’ attention.

Definitely not planned by Galbraith was a brief but sharply critical contemporaneous review of the article by Friedrich Wohlwill (1881-1958), a well-known German-Jewish neuropathologist and teacher on the Medical Faculty at the University of Hamburg (who was later forced to leave Germany by the Nazis, emigrated to Portugal, and, after World War II, emigrated to the United

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345 “Tobacco Injurious Only When Abused,” World Magazine Section, July 10, 1921 (11:1). This article was one of 26 (including the Gies et al. article itself) listed in an “Index” in American Tobacco Co. documents produced in litigation. Index (n.d.), Bates No. 950297792/3 (erroneously dated 1915 but could not have been compiled before 1921). The World at this time appears to have opened its pages to pro-tobacco propaganda. The ATC files also included an article published there a few weeks earlier stating that Dr. William Golston had opined at a New Jersey State Dental Society annual convention that if reformers succeeded in banning tobacco along with liquor, the result would be an increase in diseases of gums and teeth because chewing tobacco was “one of the best disinfectants known to dental science” by virtue of promoting saliva formation around the teeth and thus preventing bacteria from gaining a foothold. “Tobacco the Teeth’s Finest Quid Pro Quo,” World, June 2, 1921, Bates No. 950297937.

States where he worked at Boston University and Harvard Medical School)\textsuperscript{348} in the \textit{Zentralblatt für die gesamte Neurologie und Psychiatrie}, which accurately and dismissively treated the article as “a kind of apology for tobacco.”\textsuperscript{349}

Whether the article was produced with this purpose in mind is unknown, but at least on one occasion the American Tobacco Company’s chief chemist trotted it out more than ten years after its publication in response to a letter to the company asking whether tobacco smoked in a pipe was safer than the same amount in a cigarette. A. L. Chesley of the research department found it “impossible for me to answer the question” because its underlying premise that smoking was injurious “seems to be wrong.” His basis for this refutation was none other than the article by Geis [sic] “in collaboration with” Kahn and Limerick, whose five “conclusions” he conveniently quoted. The only comparison between pipes and cigarettes he was willing to offer was to “foods which are very highly seasoned and foods which are but little seasoned.”\textsuperscript{350} As late as 1936, TMA listed Gies, Kahn, and Limerick in the supplement to its \textit{Tobacco Manual} as “[a]mong the distinguished scientific and medical authorities who have found the moderate use of tobacco harmless....”\textsuperscript{351}

Although, as noted earlier, in 1920 TMA did not realize its plan to use the \textit{Literary Digest} as a vehicle for its bogus editor/publisher survey, five years later it may have achieved success. Less than a year before his death, Limerick published in a medical journal a diatribe against the “tobaccophobe,” in which he, inter alia, attacked the false belief that inhaling smoke could cause lung disease on the grounds that very little smoke ever entered the smoker’s lungs when he “‘inhaled’” because the smoke was not conveyed further than the larynx. Such false beliefs and the prejudice against tobacco in general were based largely on “popular opinion,” which was “the scum of mass reaction.” In fact, Limerick asserted, the “habit of inhaling tobacco smoke was every whit as pure and undefiled in origin as is the habit of kissing.”\textsuperscript{352} (According to researchers at the


\textsuperscript{349}Fr. Wohlwill, [Review], \textit{Zentralblatt für die gesamte Neurologie und Psychiatrie} 26:274 (1921).

\textsuperscript{350}A. L. Chesley to Charles A. Mack (Nov. 11, 1931), on tobaccodocuments.org/atc/60322323.


Swedish National Institute of Hygiene, 96 percent of particulate matter, ranging from 86 percent of acetone to 99 percent of acetyldehyde and isoprene, and 54 percent of carbon monoxide in cigarette smoke was retained in the lungs.) 353 Was it sheer coincidence that of the thousands of medical articles the Literary Digest could have digested for its readers, it had no better use for three magazine pages than spreading across them these and other excerpts from Limerick’s piece? 354 Or did the invisible hand of the cigarette oligopolists grease the decisionmaking process? Because TMA documents from the period in question were by and large too old to be relevant for late-twentieth-century litigation, not enough of them have been required to be produced to answer this question. It is nevertheless astonishing that almost a quarter-century later a semi-scholarly book adduced Limerick’s tobaccophobe article as an example of doctors’ having presented a “mild defense of the weed” in the 1920s. 355

Ironically, in the 1950s, when the president of Philip Morris (for reasons unknown) wanted to find a statement by the biostatistician Raymond Pearl about cigarettes and tuberculosis and tasked his company’s public relations firm with the chore, the closest its “comprehensive research” came to turning up such a statement was a quote in the Nov. 14, 1925 issue of Literary Digest by “a Dr. Victor Limerick”: following the aforementioned assertion about smoke’s not entering the lungs, Limerick had claimed that more non-smokers than smokers had been discharged on account of tuberculosis during the World War I draft. 356 Manifestly by the mid-1950s the cigarette manufacturers had lost their institutional memory of the services that Limerick had once performed for them and had to reinvent that wheel. 357

Less amusingly ironic is that at the end of the twentieth century one of the leading tobacco addiction researchers in the United States, writing in a National Cancer Institute/National Institutes of Health publication, actually cited Gies et al. as a source for the proposition that “[m]easures of physiological response (e.g. Gies, 1921...)...demonstrate that humans can be exposed to high levels of nicotine

353 Tore Dalhamn, Marie-Louise Edsors, and Ragnar Rylander, “Retention of Cigarette Smoke Components in Human Lungs,” Archives of Environmental Health 17:746-48 at 747 (Nov. 1968). Ironically, Rylander was Philip Morris’s paid agent. See below ch. 23.
356 John Scott Fones to [O. Parker] McComas (July 8, 1955), Bates No. 1005039633.
through their consumption of cigars\textsuperscript{359}—despite the fact that they had measured nothing at all.

Limerick had a far darker side than even his ludicrous articles in the cigarette oligopolists’ service revealed. In his family’s papers at the Vicksburg Old Court House Museum is preserved a seemingly completed typescript in a cardboard binder tied with string on which (presumably) his sister handwrote in pencil: “This is what Victor was working on at time of his death.” Titled, “The Inside of the Melting Pot: An Epochal Picturization of the Laws of Heredity,”\textsuperscript{359} the typescript appears to have been the prospectus for a motion picture, which was so profoundly racist and anti-semitic, so thick with ignorant and obsessively stereotypical eugenicist hogwash, and so thoroughly suffused with delusions of grandeur that it is difficult to imagine that its author could have possessed the self-reflective distance or social skills to prevent his pathetically xenophobic and trivial Ku Klux Klanish psyche from communicating itself to multicultural society at large in New York City, let alone to associates such as Galbraith and Gies. Stringing quotations together renders commentary unnecessary while doing complete contextual justice to Limerick’s nonsensical prejudices.

In subhead form Limerick’s quasi-title page boasted that the script was (in upper case): “The most stupendous and entrancing treatment of momentous facts in all the history of mankind” and followed up with self-certification of the project’s “Absolute Accuracy” and “Scrupulous Fidelity to Scientific and Historical Fact.” Limerick then declared that saving the American family from “extinction through promiscuous bastardization” would “confer an endless blessing on all humanity” by insuring that “its blood shall not be lost to the world in the veins of a mongrelized herd.” Limerick’s film would “open our eyes to the hideous fact that we have been contaminating the blood of a truly wonderful race with that of the dregs from all parts of the world” and, by exposing this “ghastly

\textsuperscript{359}Reginald Fant and Jack Henningfield, “Pharmacology and Abuse Potential of Cigars,” in \textit{Cigars: Health Effects and Trends} 181-93 at 186 (1998). In addition, they found it “interesting[ ]” that Gies et al. had “listed cigars before cigarettes in order of greatest to least degree of psychoactive and toxic potency,” \textit{id.} at 181, although, the rank-ordering was based on absolutely nothing. Even though Henningfield could not fairly be expected to have known that the cigarette companies had stood behind the writing and publication of this article, it is astonishing that he apparently read the text in such a slipshod manner that he remained unaware that the authors neither cited nor conducted any empirical investigations on which their then facially either plausible or implausible allegations could have been based.

\textsuperscript{359}[Oliver Victor Limerick], “The Inside of the Melting Pot: An Epochal Picturization of the Laws of Heredity” (n.d. [ca.1926]), in Limerick/McRae file, Old Court House Museum, Vicksburg, MS.
truth...in photographic fidelity,” prompt the surviving American family members to “think soberly of their own unborn.” The film would “be refreshingly free from the low-appealing touch of men just come from the Cloak and Suit factory....” Despite or perhaps precisely because of the scores of millions in America who were unable to read a book, the film was designed to “present within the brief space of a single afternoon or an evening a complete exposition and a simple explanation of facts that could not possibly be ascertained in a whole year of intensive reading of the literature dealing with the laws of heredity and their all-powerful effect on the lives of individuals and the destiny of human races.” As such it would “completely outstrip ‘Uncle Tom’s Cabin’ and ‘The Birth of a Nation’ in its appeal to human emotions. It will go down in history as the most gripping, convincing admonition of all times.” Among the scenes that would “surpass in magnitude and nicety of detail anything of the kind hitherto cast upon the screen” would be: contrasting Ancient Greece’s grandeur with today’s “boothblack and banana-monger”; the “Ghetto of New York; filth; disease; ignorance; poverty; crime; push-cart peddlers; Bolshevism. Lower Fifth Avenue at noon; a gesticulating swarm of alien faces; foreign language newspapers screaming class hatred and demanding more and more tolerance. Ellis Island: a ‘close-up’ of the source of our racial ruin. Sing Sing; the conspicuously small number of Anglo-Saxon faces”; “Marriage of an Anglo-Saxon girl of distinguished ancestry to a Jew. Offspring flat-footed, twisted-nosed, swarthy boy, who later in life burns store to collect insurance.” The film would also show that “when a white crosses with a negro, the offspring is a negro; a Nordic with a Jew is a Jew; an Alpine with a Hindu is a Hindu.” The script ends with the sequence of scenes, which culminates in “[o]pening our gates to the world’s unfit,” followed by the start of the “historical romance that will hold interest” in the film. “End.”

Limerick had apparently moved on since his Billy Burgundy days, when his writings were “always free from animosity” and he found “food only for harmless fun in the imperfections of life,” but was “never brutal” and “always sweet in

360[Oliver Victor Limerick], “The Inside of the Melting Pot: An Epochal Picturization of the Laws of Heredity” [unpaginated] (n.d. [ca.1926]), in Limerick/McRae file, Old Court House Museum, Vicksburg, MS. Limerick’s obsession with heredity was reflected in an article on acid dentifrice he co-authored with two periodontia instructors at Columbia University that gratuitously asserted that “intelligence is chiefly a matter of native endowment” and that in “the higher spheres of intellectual pursuit...we find proof that the transmission of mental abilities is subject to the laws of heredity....” Paul Stillman, John McCall, and O. Victor Limerick, “The Acid Dentifrice as an Intelligence Test,” Dental Items of Interest 45:303-305 (April 1923).
temper, playful and tender; even sympathetic.”361 It is unknown whether Limerick carved out an exception from his blanket condemnation of ethnic and racial otherness for his Russian-Jewish immigrant co-author Dr. Max D. Kahn or his boss, Dr. Jacob Gutman, the Latvian-born founder and director of the Brooklyn Diagnostic Institute362 or, alternatively, whether Kahn, Gutman, and their ilk formed part of his experience with the world that prompted him to end his days ranting and raving about New York’s non-Anglo-Saxon population, countless thousands of whom, sharing Limerick’s anti-tobaccophobic position, were helping to expand the cigarette market to unprecedented levels. When Limerick died of angina pectoris at the age of 54 in 1926,363 The New York Times did not even dignify his death or life with an obituary.364

TMA’s Campaign to Habituate the Whole World to “smoking second hand smoke”

Frank Walden Pettigrew, son of United States Senator Pettigrew, of South Dakota, was assaulted and seriously injured by an usher in the theatre here [Kansas City] tonight. Young Pettigrew lighted a cigarette in the lobby and became involved in a controversy with the usher as to the rule forbidding smoking. He was struck a vicious blow on the right cheek bone, fracturing it, also dislocating the jaw. He was removed to a hospital.365

A bitter and long fought squabble over smoking marked the opening of the socialist national convention...yesterday.

362 “Dr. Jacob Gutman, Physician 44 Years,” NYT, May 9, 1944 (19).
363 JAMA 87(23):1933 (Dec. 4, 1926).
364 The news that he had died in Harlem Hospital on May 11 after a brief illness appeared in a column of death announcements. “Died,” NYT, May 12, 1926 (27); “Died,” NYT, May 13, 1926 (25). Five years after his death, his name appeared on a list of unclaimed deposits at the Manufacturers Trust Company; oddly, the date of the original deposit was the day he died. “Unclaimed Deposits,” NYT, Sept. 9, 1931 (45). Limerick must have been sufficiently well-known for the author of a book on smoking in 1939 to have been aware that he had died. Referring to, without citing, Limerick’s article on tobaccophobes, the non-medical author correctly pointed out that contrary to Limerick’s claim that heavy smokers, unlike (other) drug addicts, reached a plateau of dosing, more recent (also uncited) research had discovered that “instead of increasing the number of cigarettes smoked daily, the inhaling cigarette addict is always increasing the depth and duration of his inhale...” J. Furnas, So You’re Going to Stop Smoking! 76-77 (1939).
365 “Young Pettigrew Hurt,” DDR, Dec. 29, 1900 (1:3).
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When the motion to prohibit it was introduced nearly every delegate jumped to his feet and demanded to be heard. The chairman, after considerable pounding for order, recognized John Kerrigan of Texas, who declared that “to prohibit smoking in this convention is destructive of that comradeship for which we socialists stand.” Mrs. J. Smith, a delegate from Oregon, demanded the passage of the motion on the ground that “we who do not smoke protest against smoking second hand smoke.”

After a futile appeal from the decision of the chair the motion was declared passed amid confusion.366

[T]he only persons who will receive the proposition [to provide a smoking car on the New York City subway] without shuddering will be cigar manufacturers so prosperous that their automobiles take the place of public conveyances. No! air is what we need in the subway, not smoke. The atmosphere of the subway would be an insult to a decent cigar.”367

During the years of cigarettes’ inexorable ascendancy to domination of the tobacco industry TMA sought to propitiate the other branches by suggesting that cigarettes, far from diminishing consumption of the other forms, actually increased it. Thus in praising cigarettes (as what later would be called a gateway drug) at the 1923 annual convention President Jesse Bloch offered his sincere conviction that the Cigarette Industry is the fountain source that constantly supplies the cigar trade, as well as the pipe tobacco business, with new consumers. As smoking is becoming more popular from year to year, and as there is probably a yearly addition to the great army of tobacco users of approximately a million young men who attain maturity, the cigarette is the form of tobacco that gets the first call in the great majority of cases, for usually the new tobacco consumer begins with the cigarette, but eventually he adds also the other forms of tobacco....

Thus, with the multitude of new consumers that the cigarette industry is apparently creating from year to year, cigar smoking, as well as pipe smoking, should secure their proportional shares of increased business.368

For those whose cash registers told a different story369 what better way to

366“Socialist Have a Row over Rule ‘No Smoking,’” CT, May 2, 1904 (4).
368“President Bloch’s Address a Thorough Survey of Industry’s Progress,” USTJ 99(20):12 (May 19, 1923).
369Production of large cigars had peaked at 8.1 billion in 1920 and declined to 6.95 billion by 1923; peak production of small cigars was 1.2 billion in 1911 and fell to 633 million by 1923; smoking tobacco production peaked at 258 million pounds in 1918 before dropping to 235 million by 1923. In contrast, whereas large cigar production had less than doubled from 1890 to its 1920 peak and smoking tobacco production had less than
foster solidarity of firms facing a shrinking market with their expanding rivals than by conjuring up the specter of a movement dedicated to achieving a “Tobaccoless World by 1925.”370 A less speculative and more tangible tactic was to focus on regulatory restrictions that in fact already did affect all branches of the smoking tobacco industry—namely, the “[l]ack of accommodation for smokers on surface cars and rapid transit lines,” which, according to TMA, reduced tobacco merchants’ sales by more than a million dollars alone in New York City in 1916 and prompted the TMA to appeal to the Public Service Commission and railroads for “more liberal arrangements.”371

This battle over secondhand smoke exposure was in fact one of the first public manifestations of the new organization: already at its founding meeting in 1915 TMA used the regulation of smoking on public transportation in New York City as an example of the consequences of the fact that “no trade organization has ever taken any action in that regard”—namely, the loss of millions of dollars of business there and in other big cities such as Philadelphia and St. Louis, where similar regulatory action took place also in the absence of any representation of tobacco interests. Nor were these disputes confined to means of transport: TMA groused that: “In New York we see people arrested daily and fined as high as $50 for smoking in their own offices, and according to present indications it will not be long before smoking will be prohibited in every building and in every shop building in New York.” When a hearing had been held, the TMA recounted, on whether the Public Service Commission should eliminate the smoking cars from the Coney Island trains, the most militant anti-smoking figure in New York City, doubled from 1902 to its peak in 1918, cigarette production had increased 27-fold from 1890. U.S. Department of Agriculture, First Annual Report on Tobacco Statistics (with Basic Date), tab. 14 at 90 (Statistical Bull. No. 58 (May 1937). Similarly, whereas peak per capita consumption of large cigars (86) was recorded in 1907 and of smoking tobacco (2.37 pounds) in 1916, that of cigarettes continued to rise from 35 in 1900 to 578 in 1923 (and far beyond in later years). Id. tab. 16 at 100.


371See “No Smoking’ Costs Millions to Trade,” NYT, Feb. 21, 1916 (12). After cigar companies had persuaded the Public Service Commission in St. Louis to permit smoking in the three rear seats of street-cars when the weather permitted the windows to be open and at all times on all open rear platforms, it was “estimated that means an increased consumption of 20,000 cigars daily.” “Permit Smoking on St. Louis Cars,” USTJ, vol. 83, Apr. 24, 1915 (4:4). In Chicago cigar sellers estimated that the prohibition of smoking on surface and elevated cars reduced consumption of cigars by 12 to 15 million dollars annually. “Chicago Cigar Dealers Resent Interdiction Upon Smoking in Cars,” USTJ 91(20):82 (May 17, 1919).
Dr. Charles Pease, the president of the Non-Smokers’ Protective League of America, had been there with “all his forces,” but “not a single organization to represent the tobacco industry that is now losing a million dollars worth of business every year.”372 (At its founding in 1911 the tobacco trade press denounced the League for seeking to “crib, cabin and confine smokers” so that its sympathizers “may not have their dyspeptic systems deranged by a puff of good tobacco smoke.”)373 To be sure, in 1916 Dushkind and TMA fared no better when they requested that the Commission rescind its 1913 order—not even when firms were supported by the Joint Advisory Board of the Cigar Makers Organization, which requested “greater liberties” for smokers because the existing rule was “prejudicial” to many union workers and “discriminatory and unjust to the ‘large majority of the people who indulge themselves in the pleasurable habit of smoking’.”374

In the welter of the public health, cultural, political, moral, and economic wars to reduce and end secondhand smoke exposure that have been raging since the 1970s, historical memory has been blotted out of the reverse contentious and contested process, forced by profit-hungry producers rallying their addicted customers, that began in the nineteenth century and led to the nearly ubiquitous de jure and de facto acceptability of tobacco smoking by the 1960s. (Even when users of the Kansas City, Missouri street-railway in 1912 voted three to one to retain the company’s prohibition, “[a] rule of that kind couldn’t be enforced, it

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372 “Jacob Wertheim First President of Tobacco Merchants’ Association,” WTJ 42(46):2 (Oct. 15, 1915). Presumably the bans in offices were fire related. On Pease and his group, see “Form Non-Smokers’ League,” NYT, May 10, 1910 (18); Arden Christen and Joan Christen, “Charles G. Pease, DDS, MD: Anti-Tobacco Crusader and Clean Life Advocate,” Journal of the History of Dentistry 49(2):81-86 (July 2001). Pease, noting that “we have allowed custom to ride roughshod over us,” urged the right to breathe air uncontaminated by tobacco smoke, which produced headache, dizziness, nausea, and fainting in addition to injuring eyes and lungs. Chas. Pease, “The Non-Smokers’ League,” NYT, Nov. 10, 1911 (10) (letter to editor).

373 “Crank Combine,” USTJ, vol. 76, July 8, 1911 (7:2).

374 “Only 4 Seats for Smokers,” NYT, May 23, 1916 (22). Back in 1913, too, the Central Federated Union of Greater New York, representing 300,000 workers, attacked Pease for trying to abridge the personal liberty of many thousands of workers who found “in the pipe or cigar a solace and harmless pleasure after their day’s toil.” “Workers Assail Dr. Pease,” NYT, Aug. 10, 1913 (11). In connection with a street-car anti-smoking ordinance in St. Louis one alderman argued that since “many workingmen were not permitted to smoke during working hours...they should not be denied the pleasure of smoking going to and from their work.” “The Anti-Smoking Ordinance in St. Louis,” Tobacco 69(16):19 (Feb. 19, 1920).
was said. The right to smoke was too well entrenched [sic].” Both conflicts over the externalities caused by smoking on modern means of mass transportation—especially as commuting distances to and from urban workplaces increased and smokers spent more time traveling on them daily—and tobacco products firms’ complaints of lost business resulting from restrictions and prohibitions long antedated the formation of TMA and even preceded the creation of the Tobacco Trust. As early as 1887, the United States Tobacco Journal bemoaned the intransigence of officials of the elevated trains in New York City, who failed to appreciate the need to accommodate nicotine addiction and the tobacco industry’s profitability:

New York is the largest producer of cigars in the world; but it is relatively and comparatively not the largest consumer of them. As a very considerable part of the time of a New Yorker is spent on the cars, and mostly on the elevated roads, where even the use of the platform for an occasional puff is denied him, he is restricted to the consumption of the fragrant weed more by the lack of opportunity than of his own volition. He may be craving for a smoke; but then he remembers he has to take the cars either up-town or down-town; it won’t do just now to light a cigar to throw it away the next minute, and he has to forego his appetite. Millions of cigars have thus lost their chance of being consumed, and our manufacturers lose their best and most profitable opportunity of enlarging their trade in home consumption.376

Without speculating about the possible market niche that might be opened up for the as yet infant cigarette, which could be smoked much more quickly than a cigar, the cigar-centered Journal, which preferred to impute reified quasi-agency to its favored commodity, spun out its market-widening dream:

But fancy the result if smoking cars should be attached to the elevated trains! Most people like to light a cigar right after breakfast. At present they have to stifle their liking till they reach their downtown offices. Urgent business may await them there, and they forget their cigars till after luncheon. The trade’s opportunity is lost. But if the smoker knew he could

375 F. J. Munagle, “Voting Out the Street-car Smoker,” Harper’s Weekly, 56:23 (July 20, 1912). The company held the referendum after the “[t]he cigar men” had induced the city council to pass an ordinance authorizing limited smoking on the street-cars because the company did not acknowledge the city’s right to permit smoking on the company’s cars. Despite having been “[d]eprived of the moral influence of official support,” the company continued to enforce the ban for “sanitary” reasons. When rare wilful violators persisted, “the car was stopped to wait until they got off or threw away their cigars, a result which was always aided by the manifestations of outraged and indignant sentiment on the car.”

enjoy his cigar on his ride down-town he would light it after breakfast and keep on smoking all the forenoon. For appetite begets appetite. Likewise in the evening.... At least several hundred thousand more cigars would be consumed daily, and the bulk of the benefit our home manufacturers would reap.377

The management of the elevated train in New York, much to the Journal’s consternation, characterized anyone who would want to smoke a cigar on it as “belonging to that class of people whose bump of selfishness overtops their numerous other bumps.... They are always looking after their own enjoyment and comfort, regardless of the annoyance and discomfort they may occasion others, so long as their own wants are satisfied.” Management was primarily concerned about the additional employment costs associated with hiring workers to clean the smoking cars, but it also rejected the proposal because inevitably smokers—including boys carrying their “odorous cigarettes”—would walk through the entire train to get to the smoking car. The Journal, though chagrined by management’s opting to “inconvenience the gentlemen” to save a “trifle” in cleaning expenses, realized that its hope for a smoking car could be “pushed into reality” only by “our manufacturers, to whose advantage and profit it will turn out ultimately.”378

The battle over smoking on New York’s elevated trains raged on. Two years later, even Russell Sage, robber baron and elevated railroad owner, rejected smoking outright on the grounds of odor alone, but assigned as an additional “clincher” that the provision of smoking cars would necessarily also confer on smokers the privilege of lighting their cigars wherever they pleased because one important reason for wanting to smoke on the elevated was the wish to finish a cigar that they had been smoking when they reached the stairs: “Consequently while women and children and men who do not smoke are standing on the platform waiting for the train they are subject to the annoyance of smoke.”379

Two decades later, public revulsion at smoking on elevated trains was reflected in the view of the Frank Hedley, the vice president and traffic manager of the Interborough Rapid Transit Company about the state of smoking cars on the “L”: “The car cannot be kept clean. Windows are clouded, the straps and seats saturated by tobacco juice secretions; passengers none too clean in their habits expectorate everywhere and anywhere; and the car comes to justify the name it bears wherever it is employed—the Hog’s car.”380 In its push to

380“Hedley Against Smoking Car,” USTJ, vol. 71, May 8, 1909 (7:3-4). Four years
eliminate all space-and-time limitations on smoking in order to increase both smoking prevalence and per capita consumption, the tobacco trade in 1909 did not even shy away from accusing the New York City Board of Health of “‘obtuse and reactionary paternalism,’” for suppressing smoking on subways. Johannes M. Dempsey, superintendent of the Brooklyn Manhattan Transit “L,” testified to the same effect on the unsanitary conditions of the smoking cars. “Final Hearing on Smokers’ Petition,” USTJ, vol. 80, Nov. 8, 1913 (1:1).

“A Rebuke to Paternalism,” NYT, Mar. 20, 1909 (8) (edit.).

“No Smoking in the Subway,” NYT, May 12, 1910 (8). The Board of Health received encouragement from “Smoking in the Subway,” NYT, Mar. 2, 1909 (8) (edit.); “Cigar Butts in the Subway,” NYT, Mar. 5, 1909 (8) (edit.); “Subway Smoking,” NYT, Mar. 7, 1909 (10) (letter to editor); “The Subway a ‘Sub-Street,’” NYT, Mar. 12, 1909 (6) (letter to editor). According to the Times, smoking had been forbidden when the subway was new, “but for some unexplainable reason the prohibitory signs have disappeared.”


“Industry Should Encourage Smoking in Conveyances When Proper Facilities Are Provided,” USTJ 104(1):12 (July 4, 1925). By 1934, during a two-week anti-smoking campaign, more than 2,600 people appeared in city magistrates’ courts, 1989 of whom paid $2,631 in fines for having carried lighted cigarettes, cigars, or pipes into subway stations or trains. “2,600 Appear in Court for Smoking in Subways,” NYT, May 3, 1934 (2). By 1950, transit police served court summonses on 9,167 for smoking. “10,175 Arrested in Subways,” NYT, Jan. 9, 1951 (39). Whether these figures, against the background of billions of passengers annually, indicate widespread compliance and strict enforcement, is unclear.

“Won’t Stop Park Smoking,” NYT, July 19, 1913 (6).

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smokers as nuisances be prohibited from smoking, he was requesting that they be prohibited from discharging tobacco smoke into the air that nonsmokers had to breathe. The trade journal’s response was curiously at variance with its touted medical findings that smoking did not vitiate the air people breathed because it was carbonic acid gas exhaled during ordinary breathing that did so and the condition of smokers’ mouths was, according to leading dentists, “far better” than nonsmokers. Accusing Pease of “unchecked idiocy,” the Tobacco Journal rhetorically asked what the smoker was supposed to do with his cigar, pipe, or cigarette smoke: “Absorb it into his lungs, swallow it and eat it? Is a smoking man to be converted into a kind of coal smoke consuming furnace?”

Having achieved a partial success at open-air concerts, the tobacco industry went after movie theaters: if only a “material percentage” of them “could be induced to permit smoking in the whole or a portion of their auditoriums”—many theaters in New York City permitted smoking in balconies and loges—“another tremendous influence would be at work for an increased consumption of tobacco products.” The Journal urged the trade to tell smokers to make their wishes known because smoking would be permitted if enough people asked for it. After all: “There is no doubt that smokers and wives, sisters and sweethearts of smokers, are in the majority.”

A turning point in this particular locus of the secondhand smoke conflict was marked by the decision of the Public Service Commission in 1913 not to permit smoking on New York City’s mass transit except in the four rear rows of open cars. Contrary to TMA’s later account, the tobacco industry was represented

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385 “Seek Smoking Privilege on ‘Low-Level’ Cars and ‘L’ Trains in New York,” USTJ, vol. 83, May 29, 1915 (8:2-3). The medical authority was Dr. J. Gardner Smith, who at an earlier Public Service Commission hearing had pointed out the scientific value of tobacco as a disinfectant.... “Hearing Before the Public Service Commission Attaching Smoking Cars,” USTJ, 80, Oct. 25, 1913 (1:1-4 at 4). Smith claimed that 75 percent of men smoked and 75 percent of women liked it, whereas he was asking for only 20 percent of space for 75 percent of the population—otherwise 5 to 10 percent of people would crowd all the rest out of their personal comforts. “Seek Smoking Privilege on ‘Low-Level’ Cars and ‘L’ Trains in New York,” USTJ, vol. 83, May 29, 1915 (8:2-3).

386 “Who’s the Nuisance?” USTJ, vol. 80, July 26, 1913 (4:1-2) (edit.).

387 “Smoking Permitted,” USTJ, vol. 83, Mar. 20, 1915 (24:3-4). The Journal later bemoaned the drop in consumption that would result if even only one-thirteenth of the 13 million people attending movies daily were men prohibited from smoking one to two hours a day, regardless of how much they smoked the rest of the day. “For Smoking Privileges in Picture Shows,” USTJ, 83, June 5, 1915 (24:3-4).

388 “Lays Down Smoking Rule,” NYT, Aug. 2, 1913 (1). Making a virtue of a necessity, the United States Tobacco Journal tried to depict the retention of this exemption
in the regulatory process—if not initially, then in a second round, when C. A. Whelan, president of the United Cigar Stores Company, resubmitted the question to the Commission in the form of a petition signed by 72,000 smokers—who were his customers but (allegedly) in no way pressured to sign—requesting that street railway and elevated companies be required to provide smoking cars or compartments on all their lines.\textsuperscript{389} \textit{The New York Times}, which speculated that if every local stockholder in United Cigar Stores or American Tobacco appeared in person in favor of overruling the Commission’s ruling, the result might be a “larger surplus for dividends,”\textsuperscript{390} opposed the initiative editorially on the grounds that the only reason for special smoking cars was “to induce men to smoke more, and from the point of view of all except those who sell the weed, that is no necessity at all.” Ranging much further, the newspaper argued that the “relaxed regulations which allow smoking in almost all public places, such as hotel dining rooms and theatres, inconvenience sufficiently those to whom smoking is generally offensive.”\textsuperscript{391} In this particularly consequential location, the United Cigar Stores’ consumer petition campaign was unavailing.\textsuperscript{392}

\textsuperscript{389}“72,000 Smokers Petition,” \textit{NYT}, Oct. 12, 1913 (6).

\textsuperscript{390}“Topics in Wall Street,” \textit{NYT}, Oct. 15, 1913 (14:).

\textsuperscript{391}“To Smoke or Not to Smoke,” \textit{NYT}, Aug. 21, 1913 (8).

\textsuperscript{392}“Smokers Demand a Place on Cars,” \textit{NYT}, Oct. 24, 1913 (12); “Officials Oppose Cars for Smokers,” \textit{NYT}, Nov. 7, 1913 (7).
The Prohibition of Smoking Inside the Iowa House and Senate (1839-1933), Other State Legislatures (from 1816), and Congress (from 1822):

Statehouses Themselves as the Sites of the First Struggles Against Secondhand Tobacco Smoke Exposure at the Workplace

There is nothing goofier than legislators banning smoking here, there and everywhere around the state—EXCEPT where they gather to work. ¹

For more than three and a half centuries legislators in the New World have been resisting exposure to their colleagues’ tobacco smoke at their workplaces and prohibiting smoking in legislative chambers. As early as 1646 the House of Deputies in Massachusetts Bay “ordered, y’ if any psone shall take any tobacco within the roome where the Courte is sitting, he shall forfeite, for euy pipe so taken, 6; & if they shall offend againe, in contemning this wholesome order, he shallbe [sic] called to y’ barr for his delinquency, & pay double his fyne. Voted.” ² (This ban was hardly surprising considering that 14 years earlier a court in Boston had “ordered that noe psone shall take any tobacco publiquely vnder paine of punishm' also that ewy one shall pay j$ for every time hee is convicted for takeing tobacco in any place....” ³) ⁴ Ironically, the House of Burgesses of Virginia, the epicenter of tobacco growing, in 1663 included among its “Orders to be observed in the house” (governing such behavior as absences, irreverence, drunkenness, and interrupting): “That every member that shall pipe it after the house is begun to be called over, until adjournment or publick licence by consent of the major part of the house in the vacancy from any business, shall be fined twenty pounds of tobacco.” ⁵ The New Hampshire Assembly followed suit in 1699, providing as the fifth of the Orders of the House that “none smoak tobacco in the house after calling over, on Penalty of 3 d for the Clerk.” ⁶ And the lower house of yet

³A Court holden att Boston Nov Octob’ 3, 1632, in Records of the Court of Assistants of the Colony of Massachusetts Bay: 1630-1692, 2:28 (1904).
⁴Journals of the House of Burgesses of Virginia 1659/60-1693, at 26 (Sept. 19, 1663) (H. R. McIlwaine ed. 1914); William Hening, The Statutes at Large; Being A Collection of All The Laws of Virginia, from the First Session of the Legislature, in the Year 1619, 2:207 (Sept. 19, 1663).
⁵Provincial Papers: Documents and Records Relating to the Province of New
another New England colony, Connecticut, in 1726 adopted a resolution that “if any of the members thereof shall presume to smoak tobacco in the chamber wherein they commonly sit, at any time whatsoever, [they] shall pay a fine of 6d. for each offence, to be to the use of the House.”

By 1924, when Robert Luce, a former decade-long member of the Massachusetts House and at the time in the midst of his 20-year tenure in Congress, devoted two pages of what eventually became a four-volume, 2,800-page treatise on *The Science of Legislation* to smoking, he opined that “[f]ormal prohibition” of smoking was then “to be found in the rules of nearly all the Legislatures.” He nevertheless added that: “Probably there are few rooms of standing committees where smoking is forbidden.” In fact, not only had quasi-universality of formal bans been attained far earlier, but, as the case of Iowa demonstrates, by the 1920s the rise of the seeming quasi-ubiquity of smoking was leading to the dismantling of that solid front.

**An Overview of the History of State Legislative Self-Regulation of Smoking**

*Whereas,* A large number of the Senators and employees of the Senate, as well as the visitors to the Senate Chamber, are not addicted to the habit of smoking, therefore, be it

Resolved, That the file room and cloak room be designated as the smoking rooms, and that those desiring to smoke be allowed the use of said rooms for that purpose; and that smoking in the Senate chamber and in the committee rooms be prohibited, and the sergeant-at-arms and other officers are instructed to see that this resolution is enforced.  

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Robert Luce, *Legislative Assemblies: Their Framework, Make-Up, Character, Characteristics, Habits, and Manners* 637 (1924). Luce mentioned two limitations: The California rule made a “generous exception that at evening sessions it may be suspended by majority vote without notice or reference to a committee,” while the Michigan Senate did not extend the ban to the committee of the whole. *Id.*

*Journal of the Senate of the Thirtieth Session of the Legislature of the State of Minnesota* 203 (Feb. 11, 1897), Bates No. BYL-000002 (Republican Senator William Yale). Because a senator gave notice of debate, “the resolution went over, under the rules.” *Id.*
The Prohibition of Smoking Inside Legislatures

The various rules that the Iowa House and Senate have created over the years to prohibit smoking at the state capitol have reflected changing attitudes among the public at large towards smoking, but they also constitute material for a unique look at the first workplace-based struggles against secondhand smoke. As the Iowa legislature began requiring schools to educate children about the dangers of tobacco in the 1880s," the House and Senate, like their counterparts in some other states, 10 codified in their standing rules bans on smoking in their chambers that for decades had been formulated in less formal resolutions. To be sure, as early as 1816, the Pennsylvania House, following vigorous debate, incorporated this ban in its rules: "It is not permitted to any person to smoke tobacco, at any time, within the chamber of the House." 11

Unsurprisingly, these bans remained in force during the period (1896-1921) in which the Iowa General Assembly prohibited the sale of cigarettes in Iowa, though legislatures in some states banned internal smoking that had never enacted sales bans (e.g., Ohio, North Carolina, and South Carolina). Soon after the Iowa legislature had repealed its statewide sales ban, the two houses began deregulating smoking at the capitol. During the heyday of virtually unimpeded smoking in the United States, no rules interfered with smoking in the Iowa legislature. (To be sure, even at the zenith of smoking laissez-faire, some restrictions were enforced at the local level in Iowa. For example, still in force during World War II was a 1916 Des Moines ordinance prohibiting smoking, snuffing, or chewing tobacco in any bakery. 12 In 1936 the Des Moines police and health departments joined in a “drive for more rigid enforcement of the city ordinance against smoking and spitting on street cars.... The ordinance was enforcible "regardless of whether women are aboard the cars." 13 And even during

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9See above ch. 9.

10For example, in 1887 Rule 64 of the Kansas Senate provided that: “No person shall be allowed to smoke tobacco in the Senate chamber or the galleries.” Senate Journal: Proceedings of the Senate of the State of Kansas 77 (Jan. 13) (1887).

11Journal of the Twenty Seventh House of Representatives of the Commonwealth of Pennsylvania 61, 64, 91-92 (Dec. 13 and 18, 1816) (1816-17). For detailed discussion, see above ch. 3


13Press ‘No Smoking’ Rule in Street Cars,” DMT, Jan. 8, 1936 (1A:6-7). For the original 1886 ordinance, see above ch. (on 1921). A somewhat later ordinance read: “It shall be unlawful for any person to smoke on any streetcar, bus or other vehicle operated for the carriage of passengers as a common carrier except in a place provided for smoking therein by the owner thereof.” Ord. 4273, § 6, Municipal Code of Des Moines 1942, ch. 104-11 at 474. In 1942, the City of Des Moines still prohibited smoking in opera houses,
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World War II the police in Iowa’s capital were detailed to remove from street cars any passengers who refused to stop smoking.14

Not until the mid-1970s, when the Iowa and other state legislatures began debating and enacting statewide (but limited) public smoking bans did the House initiate a process of incremental restrictions on internal smoking.15 The Senate did not follow suit until the early 1990s—in large part because of the power exercised by smokers who held leadership positions—having fallen behind the laws that it had helped enact for the rest of the public buildings in the state. By 2007, the situation had been reversed: both houses had banned smoking virtually everywhere in the state capitol, thus affording legislators more rigorous protection from exposure to secondhand smoke at their workplace than they did for (almost) the rest of Iowa’s working people until 2008.16

In order to put the Iowa experience in the national context, the (non-exhaustive) overview of nineteenth- and early-twentieth-century smoking bans in state legislatures displayed in Table 6 impressively underscores how early on and broadly legislators throughout the country successfully protested against being forced to endure the tobacco fumes during interminable sessions. The salient point of this review is not merely that, with the possible exception of several New England legislatures (which had, ironically, already in the colonial period formally penalized smoking and in which in the nineteenth and early-twentieth century custom may have formed the basis for the absence of smoking), virtually all legislatures (and many state constitutional conventions) at some point imposed such bans.17 Rather, at least as significant were the strong, sharp, and

moving picture show rooms, airport hangars, cemetery buildings, and the city market by anyone working or selling there. Id. ch. 62-7, 71-5.2, 72-55, 98-11, at 381, 395, 402, 451.

15See below ch. 25.
16See below ch. 32.
17See below at end of this ch.
18Identifying which state legislative chambers established, by rule or resolution, internal no-smoking bans between the beginning of the nineteenth century and World War I would be excruciatingly burdensome enough if it could done by looking up “smoking” or “smoke” in the indexes of nearly 10,000 House and Senate journals (accessing which, since no single library has all of them, would impose a tremendous burden on an interlibrary loan department), if they all had indexes and those indexes were relatively comprehensive. In fact, however, most journals fail to index “smoking” even when the word appears in the volume; in such instances, eyeballing a large volume of as many as 2,000 pages, with undiminished vigilance, for a single word mentioned once or twice is scarcely an optimal use of limited research time, especially when a large proportion of the journals do not contain the word. (That smoking was banned during one session does not

1786
mean that it was necessarily banned the next session; it is also more likely that a smoking ban formulated by resolution than by rule will be found in a journal.) Moreover, the fact that “smoking” is not used may be ambiguous because it may not mean that the chamber did not deal with the issue, but that the rules (which were often adopted from the previous session’s) are not printed in the volume, though they may have been printed in a much more ephemeral and inaccessible publication; on the other hand, in some states, especially from the late nineteenth century on, they were included in legislative manuals, yet all of the following manuals contain House and Senate rules, but none mentions smoking.

Register and Manual of the State of Connecticut: 1889 (1889); Register and Manual of the State of Connecticut: 1893 (1893); State of Connecticut: Register and Manual 1908 (1908); Maine Legislative Manual: 1867 (1867); Maine State Year-Book, Annual Register, For the Year 1871; and Legislative Manual for 1870 (Edmund Hoyt comp.); Edmund Hoyt, Maine State Year-Book, and Legislative Manual, for the Year 1885-86; Maine Register or State Year-Book and Legislative Manual: From April 1, 1891 to April 1, 1892 (G. Donham comp. 1891); Maine Register, State Year-Book, and Legislative Manual No. 31—June 1900 (1900); Maine Register, State Year-Book, and Legislative Manual No. 36—June 1905 (1905); Maine Register, State Year-Book, and Legislative Manual No. 40—June 1909 (1909); Maine Register, State Year-Book, and Legislative Manual No. 45—July 1914 (1914); Commonwealth of Massachusetts, Manual for the Use of the General Court (1859, 1863, 1878); Manual for the Use of the General Court of New Hampshire for 1895 (1895); Manual for the Use of the General Court of New Hampshire for 1917 (1917); Manual for the Use of the General Court of New Hampshire for 1931 (1931); Manual for the Use of the General Court of New Hampshire for 1941 (1941); Manual for the Use of the General Court of New Hampshire for 1951 (1951); Manual for the Use of the General Court of New Hampshire for 1961 (1961); Manual, with Rules and Orders, for the Use of the General Assembly of the State of Rhode Island, 1889 (1889); Manual, with Rules and Orders, for the Use of the General Assembly of the State of Rhode Island, 1895-96 (1896); Manual, with Rules and Orders, for the Use of the General Assembly of the State of Rhode Island, 1912 (1912); Manual, with Rules and Orders, for the Use of the General Assembly of the State of Rhode Island: 1916 (1916); Manual of the State of West Virginia: Legislative, Executive and Judicial Departments: Corrected to January 1, 1899 (1899); Manual of the State of West Virginia for the Years 1907-1908 (1907); West Virginia Legislative Handbook and Manual and Official Register: 1917 (John Harris ed.); West Virginia Legislative Handbook and Manual and Official Register: 1920 (John Harris ed.); West Virginia Legislative Handbook and Manual and Official Register: 1922 (John Harris ed.). In recent years, many hundreds—but thus far only a small proportion—of state legislative journals have been digitized and can be word-searched on the websites www.hathitrust.org, www.archive.org, and books.google.com; even with less than perfect performance of its optical character recognition software—Google Books, in particular, fails to retrieve many journals when searched by title that can, however, be found by a textual word search—this enormously powerful labor-saving technology still awaits its application to thousands of others journals. (At least one library organization is considering digitizing all of the journals, some of which
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salty rhetoric and the type of arguments that legislators deployed to justify bans, which predominantly focused on non-smoking legislators’ own health and physical comfort. Moreover, ahistorically deformed imagination buckles at the notion that in the mid- and later-nineteenth century legislative majorities existed to “suppress smoking”19 and thus deprive arch-rugged individualist colleagues, even in such preserves of personal freedom as Texas, Nevada, and (Territorial) Montana and Wyoming, of their god-given right to smoke tobacco wherever and whenever they felt like it. Of overriding cultural importance here is that this massive and pervasive rejection of exposure to secondhand smoke both ante-dated the cigarette era—during the last two decades of the nineteenth century cigars accounted for about 25 percent of all tobacco consumed compared to only about 18 percent for all other forms of smoking tobacco (including cigarettes) combined20—and did not implicate race, ethnicity, nationality, religion, or party since the state legislators were a relatively homogeneous group.

To be sure, the existence of non-smoking rules did not mean that all smokers complied with them all the time. Evidence of mass violation was impressively on display even in Mormon Utah just four days after achieving statehood, when the House Speaker invited the janitor to offer prayer at the opening of the session on January 8, 1896:

the members dutifully arose and bowed reverently their heads. In deference to the invocation, some of the members who had been smoking ceased temporarily their puffing,

are available on a Library of Congress-initiated, 1940s microfilm project, the reels of which only few libraries hold.) The upshot of this overview of the available sources and research methods, all of which have been used here, is that the impressively overwhelming proportion of all state legislative chambers identified as having voted for internal smoking bans is, with virtual certainty, understated, but by how far is uncertain; not only may additional states have in fact created such bans, but in other instances chambers may have done so (much) earlier than the years mentioned in the text and table.

19House Journal of the Thirteenth Session of the Legislative Assembly of the Territory of Montana...1883, at 283 (Mar. 3) (1883).

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only to resume it with “Amen” pronounced.

This aroused the ire of Mr. Gibson of Uintah county, who inquired sarcastically if it would not be well for the members to learn the rules, which prohibited smoking. “As for me,” he said, “I hate smoking worse than—” but comparisons failed, and he sank back into his seat. The smokers kept on puffing.21

Determined, stolid, and open resistance to a rule created by a majority of suffering white male colleagues, fellow party members, and co-religionists suggests just how contentious the battle for control of (breathing) space could become even in the nineteenth century. And that smokers and libertarians, especially when they constituted a legislative minority, sought to construct as many procedural barriers as possible to the imposition of anti-smoking rules in their workplace was humorously illustrated by this debate in 1855 in the House of Representatives of Missouri, which was at the time the seventh largest producer of tobacco, which enjoyed special state protection and aid:22

Mr. Acock offered the following resolution:

Resolved, That smoking shall be prohibited in the Hall of the House of Representatives during sessions thereof.

Mr. Brown of St. L., offered the following amendment:

That no more apples be eaten in this Hall.

Mr. Clippard moved to lay the resolution and amendment on the table;

Which was decided in the negative.

On motion of Mr. Morrow, the amendment was laid on the table.

Mr. Heryford offered the following amendment:

Amend by instructing the door-keeper to furnish member [sic] with a twist of pig-tail tobacco each day, and pay for the same out of the contingent fund of the House, which was,

On motion of Mr. Williams, of D., laid on the table.

Mr. Barrett offered the following amendment:

If gentlemen will chew tobacco, they shall not be allowed to spit, which was,

On motion of Mr. Ritchey, laid on the table.

Mr. Lightner offered the following amendment:

After the word “smoking” add “and chewing of tobacco,” which was,

On motion of Mr. Smith, of P., laid on the table.


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The resolution was then adopted.²³

Iowa

Like legislatures in many other states, the Iowa House and Senate began banning smoking long before the rise, let alone mass proliferation, of cigarettes, thus underscoring the non-empirical basis of deconstructive claims that anti-smoking movements were driven by ethnic, religious, and gendered antipathy to cigarette smokers. The persistent majorities that voted for protecting nonsmoking legislators from secondhand smoke undermine the empirically unsupported claim that in the late nineteenth century “few respectable Iowans would condemn the enjoyment of cigars by bankers, lawyers, and other solid middle-class males....”²⁴

Beginning with Iowa’s very first territorial legislature, the House of Representatives on January 7, 1839, on the motion of Andrew Bankson (1787-1853), a Tennessean who had been an Illinois state senator from 1822 to 1826, resolved that “no person shall be allowed to smoke a pipe or cigar in this hall during the sittings of the House of Representatives.”²⁵²⁶ Perhaps Bankson was moved to propose this prohibition by his experience as a member of the Illinois

²³Journal of the House of Representatives of the State of Missouri, at the First Session of the Eighteenth General Assembly...one thousand eight hundred and fifty-four 271 (Feb. 12, 1855) (1855).
²⁶Official Directory of the Fortieth General Assembly of Illinois: Session of 1897, Appendix 22-23 (1897). As a senator, Bankson was one of 15 Illinois legislators who joined in an appeal to the people of Illinois, “‘in the name of the injured sons of Africa, whose claims to equal rights with their fellow men will plead their own cause against their usurpers before the tribunal of eternal justice,’” to oppose the calling of another constitutional convention designed to make Illinois a slave state. E. B. Washburne, Sketch of Edward Coles, Second Governor of Illinois, and of the Slavery Struggle of 1823-4, at 102 (quote), 107-108 (1882).
²⁷Journal of the House of Representatives of the First Legislative Assembly of the Territory of Iowa, Begun and Held at the City of Burlington, on the Twelfth Day of November, One Thousand Eight Hundred and Thirty-Eight 188 (n.d.).
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Constitutional Convention of 1818, which had operated under the rule that: “No person shall be permitted to smoke tobacco in the convention while in session.” At Iowa’s second territorial legislative session, on the motion of Democrat Thomas Cox (1787-1844), a Kentuckyan who had been a senator in the first Illinois state legislature and became Iowa House speaker during the third session, the House “Ordered, That no gentleman be allowed to smoke within this House.” The Territorial Council—the forerunner of the Senate—followed suit at the third session when, on the motion of Whig Jesse B. Browne, another Kentuckyan, who had been president of the first Council and later became the House speaker of the first legislature after statehood, it resolved that “smoking


31Journal of the House of Representatives of the Second Legislative Assembly of the Territory of Iowa, Begun and Held at the City of Burlington, in the County of Des Moines, on the Fourth Day of November, One Thousand Eight Hundred and Thirty-Nine 137 (Dec. 23) (n.d.).

32Benjamin Gue, History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century 4:31-32 (1903).
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in the hall of the Council, during session hours, be prohibited.”

Successful interdiction of smoking was initiated already at the first special session of the General Assembly of the State of Iowa in 1848 when John F. Sanford (1824-74), a noted physician who two years later became “the inspiring genius” and “the father” of the Iowa State Medical Society, offered a resolution that “no person be permitted to smoke in the Senate Chamber during the time the Senate is in session.” Whether in jest or in support of suppression of noxious organic fumes, Senator Evan Jay moved to amend the motion by adding after “person” the phrase “or the stove in the lobby.” The Senate then adopted the resolution as amended. However, because this resolution, like all Iowa no-smoking resolutions until 1884, was not incorporated into the chamber’s standing rules (which were adopted each session from the previous session’s, sometimes with amendments), each session a member had to take the initiative to offer a new resolution. No legislator did so until 1856 (after the elections that brought the new Republican Party to quasi-permanent control of the legislature), when the House adopted the motion of Democrat and farmer Daniel Cort that it “dispense with smoking when the House is in session.”

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33Journal of the Council of the Third Legislative Assembly of the Territory of Iowa, Begun and Held at the City of Burlington, on the Second Day of November, One Thousand Eight Hundred and Forty 231 (Nov. 5) (n.d.).

34Walter Bierring, “Iowa State Medical and Chirurgical Society,” in One Hundred Years of Iowa Medicine: Commemorating the Centenary of the Iowa State Medical Society 1850-1950, at 21-109 at 21 (1950). Sanford, who became an “excellent teacher” at various medical schools and “one of the leading surgeons of his period,” had attended medical lectures at the Medical College of Cincinnati and Philadelphia College of Medicine, practiced surgery in Keokuk until 1869 when he retired to New York City to become associated with a life insurance company.” Everett George, “Presidents of the Iowa State Medical Society 1850-1950,” in One Hundred Years of Iowa Medicine: Commemorating the Centenary of the Iowa State Medical Society 1850-1950, at 110-11 (1950). See also David Fairchild, “The Medical Profession in Iowa,” in John Brigham, Iowa: Its History and Its Foremost Citizens 2:694-700 at 694 (1918); History of Lee County, Iowa 1:311-12 (Nelson Roberts and S. Moorhead eds. 1914). The Iowa Medical Society still confers an annual John F. Sanford Award on non-physicians who have contributed to health, although it is unaware that Sanford was a legislator, let alone that he successfully led a battle against secondhand smoke exposure. Telephone interview with Lucinda Stephenson, vice president for communications, Iowa Medical Society, Des Moines (May 19, 2010).

35Journal of the Senate of the Extra Session of the First General Assembly of the State of Iowa 55 (Jan. 14) (1848). Jay was returned at the 1860 census as a farmer.

36Journal of the House of Representatives of the Sixth General Assembly of the State
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In 1857 opponents of secondhand tobacco smoke exposure achieved a major victory when the state constitutional convention in Iowa City agreed to the resolution offered by lawyer Lewis Todhunter that “there shall be no smoking allowed in this Chamber during the sittings of the Convention, and that the Sergeant-at-Arms be required to strictly enforce this resolution.” Remarkably, a brief one-paragraph obituary 45 years later observed that his “most distinguished service” had occurred at the convention, in the early days of which “he introduced a resolution to prevent smoking in the hall, which was unanimously adopted.” In 1856, Todhunter (1817-1902) had been one of the founders of the state Republican Party, which secured control of the legislature at the 1856 elections (retaining it until the Great Depression) and used it to implement the priority of Republicans qua “ambitious capitalists” of calling the convention “to eliminate the hated constitutional restriction on banks and other corporations....” A “most aggressive and uncompromising prohibitionist of

_of Iowa_ 111 (Dec. 15, 1856) (1857).


38_AI 5(5):396 (Apr. 1902) (untitled). The source of the claim that the resolution was adopted unanimously is unclear since the official verbatim proceedings lacked such information as did surviving newspaper accounts. E.g., “Constitutional Convention,” _Daily Hawk-Eye & Telegraph_ (Burlington), Jan. 31, 1857 (2:3). Because the general assembly was still in session in the same building (the state capitol), the convention initially met in “a narrow, ill ventilated and dirty apartment, called by courtesy, a Supreme Court Room,” which one newspaper regarded as “so derogatory to the dignity of the State, that one almost dislikes to record the fact.” “Constitutional Convention,” _Davenport Daily Gazette_, Feb. 3, 1857 (2:2). However, Todhunter offered his resolution at the end of the first day on which the convention had begun meeting in the roomier Senate chamber. _The Debates of the Constitutional Convention; of the State of Iowa, Assembled at Iowa City, Monday, January 19, 1857: Official_ 1:87 (Jan. 30) (1857). The floor space of the Senate chamber was about 2.3 times larger than that of the Supreme Court room, whose ceiling was also lower. Measured at the Old Capitol preserved at the State University of Iowa (May 28, 2010).

39_Benjamin Gue, History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century_ 4:265 (1903). Although Todhunter was not present at the founding convention of the Iowa Republican Party in Iowa City on February 22, 1856, since Gue was a delegate, presumably he knew whereof he spoke. For the proceedings, see “Republican State Convention,” _Des Moines Valley Whig_ (Keokuk), Feb. 27, 1856 (3:1-2).


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more than state reputation,”42 Todhunter had “joined the great army of teetotalers in 1840” and later became president of the State Temperance Association.43 Todhunter was a Methodist who settled in Indianola in 1854 and in 1860 became the president of the organizing trustees of Methodist Simpson College,44 whose historian remarked: “If one is to understand the breathtaking sobriety of Indianola and Simpson College during the late nineteenth and early twentieth centuries, one has but to understand the dedication of men like Lewis Todhunter to the cause of temperance.”45 In Indianola he became prosecuting attorney, treasurer, city solicitor, and mayor,46 but was “widest known” as a temperance man,47 who was lauded as having “doubtless prosecuted a greater number of men who were charged with violating the [liquor] law than any other attorney in the state.”48 Together with his wife, he became a member of the Woman’s Christian Temperance Union and the Iowa State Temperance Alliance, being a delegate of

42W. Schooley, “Governing a Municipality,” Pella Chronicle, Mar. 18, 1903 (3:3). Numerous non-Iowa papers published a filler calling Todhunter “one of the most zealous and effective attorneys employed in enforcing the prohibitory law in Iowa.” E.g., DIO, Sept. 12, 1887 (4:6). Two years later he barged into an anti-prohibitionist Republican convention, which “was at first disposed to throw him out,” but then, since prohibitionists at another Republican convention had gagged those who disagreed with them, decided to teach them what “free speech” meant. He then “spoke from an extreme prohibition standpoint.” “Anti-Prohibition Convention,” BH-E, Apr. 3, 1890 (1:4-5 at 5). A delegate who had known him all his life called him a “crank of the first water.” “Some Speeches,” CREG, Apr. 4, 1890 (2:2-4 at 4). As a hotel owner and bank director, he was able to retire from the law with a “competency.” The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men: Iowa Volume 778 (1878); “Lewis Todhunter,” Proceedings of the Eighth Annual Meeting of the Iowa State Bar Association 50 (1902) (obituary) (quote).


45Joseph Walt, Beneath Whispering Maples: The History of Simpson College 9-10 (1995). On Indianola as the last city in Iowa to issue cigarette sales licenses, see below ch. 20.


48The History of Warren County, Iowa 426 (1876).
both organizations to the World’s Temperance Congress in 1893.49 The other 35
Constitutional Convention members may or may not have shared his views on
alcohol, but manifestly a majority sympathized with (or at least acquiesced in) his
antipathy to tobacco smoke.50

Once Republicans gained control of the legislature—a caesura that coincided
with the removal of the state capital from Iowa City to Des Moines and the
occupation of a new (temporary) brick capitol in 1858—non-smoking resolutions
were offered and adopted with greater frequency from the late 1850s to the early
1880s, the House going through this process in 1858, 1864, 1866, 1872, 1874,
1878, 1880, and 1884, and the Senate in 1860, 1864, 1872, 1874, 1876, 1880,
1882, and 1884.51 Alone the fact that the smoking ban was neither instituted in
every session nor incorporated into the permanent rules strongly suggests that its
rationale was not fire hazard. This variability also points to the contested nature
of such initiatives as well as the need for especially committed advocates.

A sense of the controversies can be gained by examining passage of the
resolutions. In 1858, when Republican Representative W.B. Davis, a physician
and a Methodist,52 offered a resolution that “no smoking shall be allowed in this
House during the session hours,” the chamber rejected a narrowing amendment
(“except during a call of the House”) by Republican lawyer Ezekiel Cooley and
adopted the resolution.53 Two years later the Senate followed suit in adopting the
resolution offered by Democrat William Pusey, a banker and former lawyer from
Council Bluffs, that “during the sittings of the Senate, smoking shall be


50Without any evidence or argument, an early twentieth-century scholar hinted that some religious motive had underlain adoption of the smoking ban: he asserted that in connection with the fact that in contrast with the constitutional conventions of 1844 and
1846, each session in 1857 opened with a prayer, “an incident [namely, the ban] should
be mentioned which affords further insight into the character of the delegates.” Erik

51Smoking ban resolutions were identified by examining all the indexed resolutions
in the legislative journals or word searching digitized texts.

52Rules for the Government of the House of Representatives (n.d. [1857]) (in the
unpaginated List of Members and Officers of the House of Representatives of the State of
Iowa).

53Journal of the House of Representatives of the Seventeenth General Assembly of the
State of Iowa 456 (Mar. 2) (1858). For Cooley’s biographical data, see Charles Tuttle, An
Illustrated History of Iowa 716-18 (1876); The United States Biographical Dictionary of
Eminent and Self-Made Men: Iowa Volume 63-64 (1878).
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prohibited within the Senate Chamber and Gallery,” after rejecting motions by Democrat and lawyer John Johnson to ban chewing tobacco and by Democrat and physician Gideon Bailey to table the proposed resolution. In 1864 Republican Coker F. Clarkson, a farmer, newspaper editor-owner, “staunch” Methodist, abolitionist, and prohibitionist, pushed the Senate even further toward clean air with his resolution that “members, officers and visitors be prohibited from smoking in the Hall of the Senate during business hours, and for thirty minutes previous to the meeting of the Senate.” The same year, the House adopted the resolution offered by Republican Azro Hildreth, a newspaper editor and prohibitionist, to forbid smoking (and ticket selling) in the Hall and to instruct the sergeant-at-arms to see to it that the resolution was “properly enforced.”

Not until 1866 did the first effort to attach moral opprobrium to workplace smoking by fellow legislators take place when 34-year-old Samuel Flanders, a New Hampshire-born Republican farmer from Des Moines County who was also a Baptist deacon, offered the following provocative resolution cum preamble:

WHEREAS, the practice of smoking in this hall is indecent and ungentlemanly; therefore be it

Resolved by the House of Representatives, That any member of this House who shall hereafter smoke within this Hall, either before, during, or after the daily sessions of the House, shall be deemed guilty of a breach of decorum and be liable to be reprimanded by

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54 Journal of the Senate of the Eighth General Assembly of the State of Iowa 75 (Jan. 12) (1860). The biographical data are taken from List of Members of the Eighth General Assembly of the State of Iowa 6 (1860).
55 Rules and Statistics of the Senate and House of Representatives, Adopted by the Tenth General Assembly, January 1864 (1864); Leland Sage, William Boyd Allison: A Study in Practical Politics 106 (1956) (quote); Benjamin Gue, History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century, 4: Iowa Biography 53-54 (1903). In 1870 Clarkson and his two sons bought what became Iowa’s most important newspaper, the Des Moines Iowa State Register.
56 Journal of the Senate of the Tenth General Assembly 334 (Feb. 25) (1864).
57 Rules and Statistics of the Senate and House of Representatives, Adopted by the Tenth General Assembly, January 1864 (1864); The Life and Times of Azro B. F. Hildreth iii, 176 (Charles Aldrich ed. 1891).
58 Journal of the House of Representatives of the Tenth General Assembly of the State of Iowa 402 (Mar. 3) (1864). A motion by the aforementioned W. B. Davis to strike ticket selling lost.
59 1870 Census of Population (HeritageQuest); Biographical Review of Des Moines County, Iowa 250, 255-56 (1905).
However, shortest shrift was immediately made of this innovative approach by the successful motion of fellow Republican John Garber, a Virginia-born county judge, sheriff, and farmer, to table the resolution. After this rebuff six years passed before the next attempt to suppress smoking in the House—albeit an especially capacious one proposed by Republican Michael Leahy, a lawyer who had once taught school—which prohibited smoking tobacco on the House floor and in the gallery, “both during the sittings of the House and the intervening time of adjournment,” and directed the sergeant-at-arms to effectuate the resolution. The scope of the prohibition was enlarged when the House adopted an amendment by John P. Irish, the publisher-editor of the Iowa City Daily Press and one of the state’s leading Democrats, to include chewing as well. After defeating motions to table and to strike the enforcement clause, the House adopted the resolution. That Irish may have intended his amendment to kill rather than strengthen the resolution and that it boomeranged on him seems probable in light of the article on the legislature that his paper published that likened the double ban to a resolution of the Pennsylvania legislature prohibiting its members from “eating bread and cheese on the front steps of the capitol and coming in to the House or Senate bare footed.”

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60 Journal of the House of Representatives of the Eleventh General Assembly of the State of Iowa 95 (Jan. 17) (1866).
63 History of Franklin and Cerro Gordo Counties Iowa 180-81 (1883). Leahy, who was a graduate of the University of Wisconsin and the University of Michigan Law School, later became the acknowledged leader of the Greenback Party in his county.
64 Journal of the House of Representatives of the Fourteenth General Assembly of the State of Iowa 86 (Jan. 16) (1872). The movant of the two defeated resolutions was West Liberty farmer (and bank shareholder) William Evans, a Republican. He was a school board member with a special interest in public schools. Portrait and Biographical Album of Muscatine County, Iowa 547-48 (1889). The next day the House also defeated a motion to reconsider by Democrat Edward Campbell, Jr., a farmer. Id. at 95 (Jan. 17). On Irish, see History of Iowa: From the Earliest Times to the Beginning of the Twentieth Century, 4: Iowa Biography 142-43 (1903). Minimal biographical information on the members was provided by Rules of the Fourteenth General Assembly of the State of Iowa 25 (1872).
That contemporaries might have had some justification for suppressing tobacco chewing as well was graphically documented a few years later in Waterloo:

Several months since we were requested by a lady that had an elegant suit ruined by falling on the sidewalk in tobacco spittle, to send a card to the City Council asking that body to prohibit smoking in the streets and spitting tobacco juice on the sidewalks. Believing our City Fathers had the legal right to do as much as to keep the sidewalks clear of snow-drifts, and hearing that Oberlin, Ohio, and Boston, Mass., have such regulations, and believing tobacco is the stepping-stone to intoxication, and having been nauseated and choked on the streets so frequently by the fumes of the weed, we complied, the editor of the Courier giving our manuscript a place in his columns. Then came a reply from Barclay Township, saying men had a right to smoke, etc., and that “when tobacco spittle was piled up high as snow-drifts on the sidewalks, then it should be removed.”

Three days after the House action, Senator Albert Boomer, a physician who 16 years earlier had been a co-founder of his county medical society, injected a qualitatively new health dimension into the rationale for smoking bans by securing Senate agreement to a resolution that “the practice of smoking in the Senate Chamber is offensive to many, and positively injurious to others, and the Sergeant-at-Arms be required to suppress it.” Boomer, a Methodist and a “strong prohibitionist,” took, while a senator, “a very decided stand on the temperance question....”

Despite the comprehensive scope of the 1872 House resolution, since it had not been incorporated into the standing rules, once the next session in 1874 opened, the ban was no longer in effect, and, consequently, as the Burlington Hawk-Eye reported, smoking was being “carried on indiscriminately in the Hall and postoffice.” Consequently, at the end of January, Cornelius T. Peet, a delegate to the founding convention of the Iowa Republican Party in 1856 and

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66 Citizen, “Reply to Barclay Township,” Iowa State Reporter (Waterloo), Nov. 28, 1877 (3:4).
67 Delaware County Medical Society,” North-Western Medical and Surgical Journal n.s. 5(5):241 (May 1856).
70 “From the Capital,” BH-E, Feb. 1, 1874 (1:2).
71 Republican State Convention,” Des Moines Valley Whig (Keokuk), Feb. 27, 1856 (3:1-2).
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a farmer-lawyer and former sheriff of Delaware County, offered a resolution to prohibit smoking in those two areas between 6 a.m. and 9 p.m. and to require the sergeant-at-arms to “enforce a strict compliance with this resolution during the rest of the session.” The House adopted the resolution after a Democrat’s motion to amend to add tobacco chewing to the ban had lost by a vote of 19 to 68 and a motion to table the resolution had been defeated. That Peet himself voted against the amendment strongly suggests that it was designed to kill the resolution. The House was able to come to an understanding about a smoking ban just after it had finally resolved the titanic struggle over organizing the chamber that the Anti-Monopoly Party had succeeded in thwarting through more than 140 50-50 deadlocked votes over the speakership. The Journal of the House of Representatives of the Fifteenth General Assembly of the State of Iowa predicted that the Senate would “probably follow suit,” and the very next day it did. After Banker Elisha Smith had offered a resolution with virtually the same language as the House version, Republican John Chambers then offered this much more expansive substitute: “That the Sergeant-at-Arms be instructed to prevent all smoking in the Senate Chamber and post-office.” Merchant Elisha Howland’s killer amendment adding “chewing tobacco and gum” and his motion to postpone both failed, but Republican lawyer John Shane’s to strike “post-office” prevailed; Republican John Rumple’s narrowing amendment to add “while in session” failed as did merchant George Maxwell’s killer amendment to add “tobacco chewing.” In the end, then, the Senate adopted the substitute as amended.

At the next session the Senate acted again, but this time at the suggestion of one of the Republican Party’s major figures, long-time senator and future governor William Larrabee, “probably the largest landholder in the state” as well as “one of the state’s wealthiest men.” His resolution prohibited smoking in the Senate chamber or the post office while the Senate was in session and ordered

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72Biographical Souvenir of the Counties of Delaware and Buchanan, Iowa 489-91 (1890), on http://users.rootsweb.ancestry.com/~iadelawa/bios/1890/peetcorneliusbio.htm; John Merry, History of Delaware County Iowa and Its People 1:75 (1914).

73Journal of the House of Representatives of the Fifteenth General Assembly of the State of Iowa 104 (Jan. 30) (1874). Nine of the 19 voting for what was presumably a killed amendment had voted for the Republican (and future governor) John Gear for speaker. Id. at 9.

74Fred Haynes, Third Party Movements Since the Civil War With Special Reference to Iowa: A Study in Social Politics 73 (1916).

75From the Capital,” BH-E, Feb. 1, 1874 (1:2).

76Journal of the Senate of the Fifteenth General Assembly of the State of Iowa 59 (Jan. 31 (1874).

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the sergeant-at-arms to enforce the order. The resolution immediately ran into determined resistance when Dubuque Senator Dennis Cooley, a lawyer, bank president, and Republican of some national prominence—having been secretary of the National Republican Committee for Lincoln’s second campaign and Commissioner of Indian Affairs in 1865-66—moved to postpone the resolution until a date beyond adjournment. The yeas and nays demanded on the motion did not reveal strict party-line positions, but with only nine Democrats in the 50-seat Senate, five of them were among the 16 casting Yes votes for killing the resolution, while only three appeared among the 28 opponents of postponement. The Senate rejected three further motions to kill the resolution before adopting it as amended by Cooley’s motion to strike coverage of the post office.

In 1878 the House adopted the resolution offered by Republican Gamaliel Jaqua, a farmer who had once taught school, that “smoking be prohibited in the Hall of this House, and in the Post office; the Sergeant-at-Arms is hereby requested to enforce strict compliance with this resolution during the rest of this session.” During the 1880 session both the Senate and the House sought to ban smoking by resolutions. Senate action was prompted by Republican Lafayette Young, the founder and publisher of the Atlantic Telegraph (who attained greater prominence in state party affairs after buying the Des Moines Daily Iowa Capitol in 1890 and briefly serving as U.S. Senator in 1910-11), whose straightforward resolution read “That no smoking be allowed in the Senate Chamber.” As narrowed by the amendment (“during the session of the Senate”) offered by

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78 Journal of the Senate of the Sixteenth General Assembly of the State of Iowa 274 (Feb. 28) (1876).
80 The proposed postponement time was 12:30 p.m. on March 20; the legislature adjourned on March 16.
81 Journal of the Senate of the Sixteenth General Assembly of the State of Iowa 274 (Feb. 28) (1876). Identification of party affiliation is in part based on data in Rules of the Seventeenth General Assembly of the State of Iowa, and a List of Standing Committees and Members 26-27 (1878), which resumed inclusion of such information. The three killer motions (to refer to the Committee on Constitutional Amendments, to table, and to adjourn) were offered by Democrat Nathaniel Merrell and Republican Henry Rothert).
84 “Young Succeeds Dolliver,” NYT, Nov. 13, 1910 (5); Johnson Brigham, Iowa: Its History and Its Foremost Citizens 2:477 (Home and School ed. 1918).
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Democrat Nathaniel Merrell, a lawyer and “one of the prominent capitalists of eastern Iowa,” who had unsuccessfully sought to kill the resolution in 1876, the chamber adopted it. In the House, however, anti-smoking forces were defeated when Republican lawyer (and later judge) Lorin Hayes succeeded in moving to table the resolution (“That no smoking be allowed in the Representative chamber, and that the Sergeant-at-Arms and Janitor be required to see that this resolution is enforced”) offered by fellow Republican farmer Abner Lewis. In 1882, the Senate adopted the resolution offered by Republican Lott Abraham, a farmer who in “the temperance cause” was “quite active” and “never afraid to express his opinion freely upon that question,” that “it shall be the duty of the Sergeant-at-Arms to enforce the order in regard to smoking in the Senate Chamber during the sessions of the Senate.” To be sure, although the press explained that the resolution dealt with “the order on the west wall of the Senate,” the Journal of the Senate mentioned no such pre-existing order. The Republican Cedar Rapids Times editorially saluted the initiative as “a step toward public decency, and consequently toward reform. In fact, there should be a law prohibiting smoking in all legislative halls and government buildings where large bodies of men assemble.”

Almost a half-century of serially successful skirmishes against smoking in the

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85 Journal of the Senate of the Eighteenth General Assembly of the State of Iowa 113 (Feb. 13) (1880).
88 Journal of the Senate of the Eighteenth General Assembly of the State of Iowa 113 (Feb. 13) (1880).
89 On Hayes (also spelled Hays), see The History of Marion County, Iowa 580 (1881).
90 Journal of the House of Representatives of the Eighteenth General Assembly of the State of Iowa 525 (Mar. 17) (1880); Rules of the Eighteenth General Assembly of the State of Iowa, and a List of Standing Committees and Members 28-29 (1880).
91 Portrait and Biographical Album of Henry County, Iowa 483 (1888).
92 Journal of the Senate of the Nineteenth General Assembly of the State of Iowa 107 (Feb. 8) (1882).
93 “Iowa Legislature,” ISR, Feb. 9, 1882 (3:1).
94 Since the resolution that the Senate had adopted during the Eighteenth General Assembly in 1880 would have had no force during the Nineteenth General Assembly in 1882, the source of this order is unclear.
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House and Senate was boosted to a new plane of intensity by the dedication and occupation of the new and permanent Capitol on January 17, 1884. Barely a few minutes after the Senate had returned to its chamber at 4:10 p.m. from the joint dedication convention, and with the Senate just having received the previous day’s communication from the Board of Capitol Commissioners that at 2 p.m. on January 17 various spaces, including “smoking rooms,” would be ready for occupancy, Senator Larrabee, in the last of his 17 years in the Senate before being elected governor, offered another resolution that “smoking shall not be permitted in this Chamber or the galleries, and the Sergeant-at-Arms is hereby required to strictly enforce this order.” Two amendments broadening the ban to include “chewing” and “tobacco” were accepted and the Senate adopted the expanded resolution.96 Larrabee’s opposition to being exposed to tobacco smoke at his workplace was part and parcel of his more generalized anti-smoking position. As soon as he became governor in 1886, he, as the press ironically observed, “gently hint[ed] by placards that ‘no smoking is allowed’ in the executive offices”—the letters on those cards in every room being six inches high.97 Not only did he not smoke tobacco, but he did not permit smoking in his 1874 mansion “Montauk,” near Clermont, and on at least one occasion told a visiting politician who was about to light a cigar to go outside with it and enjoy nature.98

Following a weekend adjournment, virtually the first matter that the House took up on Monday, January 21 was a resolution that soon led the Iowa General Assembly finally to incorporate a smoking ban in its own brand new building into its formal rules. Republican Representative John A. Storey, a 33-year-old lawyer from Adair County,100 offered this motion on January 21: “Resolved, That

96Journal of the Senate of the Twentieth General Assembly of the State of Iowa 33 (Jan. 17) (1884); “Iowa Legislature,” ISR, Jan. 18, 1888 (3:7). The amendments were offered by two lawyers, Republican John Kamrar and Democrat Benton Hall (who later became a one-term congressman).

97Malvern Leader, Feb. 4, 1886 (1:2) (untitled).


99Telephone interview with Nadine West, director of the SHSI-owned Montauk (May 25, 2010). West, a week shy of retirement after a quarter-century’s work there, was unable on the spur of the moment to identify the document describing the incident, but stressed that mention of Larrabee’s anti-smoking position was a staple of the guided tour of the house. Larrabee’s attitude may have been continuous with or related to the energetic anti-saloon and liquor stance he adopted as governor from 1886 to 1890. See above ch. 9.

100A List of Executive and Judicial Officers of the State of Iowa, Also Trustees of State
smoking on the floor of the House and in the galleries thereof be absolutely prohibited, and that the Sergeant-at-Arms and the doorkeeper be and they are hereby instructed to strictly enforce this resolution.”

This initiative prompted the *Iowa State Register* to predict that: “Probably no smoking will be allowed in Representative Hall. Spittoons are provided, however, for the tobacco chewers.” Three days after Storey’s motion had been referred to the Rules Committee, the committee appointed to report rules for the self-government of the House in the transaction of its business recommended adding as Rule No. 66: “No member or officer of the House shall be permitted to read newspapers within the bar of the House while the journal is being read, nor shall any person be permitted to smoke on the floor of the House or in the galleries at any time.” The House then adopted the recommendation, and thus from 1884 on smoking was banned in those areas. Notably, “[t]he most important legislation passed” that year, “in terms of immediate political consequences, was...a [liquor] prohibition law” on which Republicans had campaigned.

The Senate followed suit at the next legislative session in 1886. Republican Senator John S. Woolson, a lawyer who was a member of the state senate for ten years before becoming a federal judge during the 1890s, offered a resolution to add as Rule 32 to the Senate Rules: “Smoking by Senate employes, while in the discharge of their duties in connection with the Senate chamber or doors leading thereto, is hereby forbidden. Violations of this rule shall subject the employe to liability for discharge by vote of the Senate.” Republican Senator Preston

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101 *Journal of the House of Representatives of the Twentieth General Assembly of the State of Iowa* 33 (Jan. 21) (1884).


103 *Journal of the House of Representatives of the Twentieth General Assembly of the State of Iowa* 33 (1884).

104 *Journal of the House of Representatives of the Twentieth General Assembly of the State of Iowa* 55 (1884) (Jan. 24). “Iowa Legislature,” *Iowa State Leader* (Des Moines), Jan. 25, 1884 (1:3), discussed other rules changes at some length, but ignored the adoption of no-smoking rule.

105 *Rules of the Twentieth General Assembly of the State of Iowa* 21 (1884).


107 *A List of Executive and Judicial Officers of the State of Iowa, Also Trustees of State Institutions, Etc., January 1, 1886*, at 14 (n.d.); http://www.fjc.gov/public/home.nsf/hisj

108 *Journal of the Senate of the Twenty-First General Assembly of the State of Iowa* 12 (1886) (Jan. 13).
Sutton, a lawyer from Marshalltown, then offered this amendment: “And smoking of tobacco is hereby prohibited in the hall of the Senate.” The Senate adopted the proposed rule as amended. The new Rule 31 as it appeared for the first time in that year’s compilation of rules read: “Smoking in the Senate Chamber is hereby prohibited. And any officer or employe who shall indulge in smoking while on duty in the Senate Chamber or doorways leading thereto, shall thereby subject himself to liability of discharge.” Reinforcing the seriousness of the commitment to a smokefree workspace, when the Senate that same year added a new rule specifying the duties of its officers and employees, it expressly included among those of the sergeant-at-arms that he “shall see that the rule prohibiting smoking in the Senate Chamber is strictly enforced....”

Another Senate proceeding in 1890 created an especially interesting and perhaps unique gauge of legislators’ attitudes toward smoking, which were hardly homogeneous and appear to have been in flux. On January 23, Madison County Republican Senator Richard Price, a 41-year-old lumber dealer, “provoked considerable merriment by calling for the enforcement of the smoking rule in the senate chamber”—or repeal of the disregarded ban. The “chief objection” that Price, who according to another press account, had called attention to the rule

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110Journal of the Senate of the Twenty-First General Assembly of the State of Iowa 12 (1886) (Jan. 13); “The Legislature,” ISR, Jan. 14, 1886 (8:2).

111Rules and Standing Committees of the Twenty-First General Assembly with List of Executive and Judicial Officers of the State of Iowa 19 (1886). See also Rules and Standing Committees of the Twenty-Second General Assembly with List of Executive and Judicial Officers of the State of Iowa 6 (1888). It is unclear whether there was any sanction for members of the Senate who violated the rule.

112Rules and Standing Committees of the Twenty-First General Assembly with List of Executive and Judicial Officers of the State of Iowa 20-21 (1886) (Sen. Rule 38). Unchanged, the language remained in the Senate rules as long as the ban itself was in effect. Rule 46, in State of Iowa: 1925-26: Official Register 241 (31st No.).

113Senators’ occupations are taken from Rules and Standing Committees of the Twenty-Third General Assembly with Official Register: 1890, at 12-13 (1890). For short biographies of Price, see History of Madison County, Iowa 548-49 (1879); The Longstreth Family Records 302-303 (Agnes Longstreth Taylor rev. 1909).

114“In the Senate,” BH-E, Jan. 24, 1890 (1:2). The Journal of the Senate did not record any discussion concerning smoking during the very abbreviated proceedings on January 23. Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa 26 (1890) (Jan. 23).

prohibiting smoking in the chamber by employees, raised was “the fact that so many poor cigars were smoked.” More specifically, Price “did not object to the aroma of a fragrant havana, but he was sorry to say that many cigars...the fragrance from which would raise the hair on a wooden Indian were smoked in the room.” The chair then “ruled that any employee caught in the act would subject himself to discharge, and any senator who desired to smoke in session or out would have to go to the cloak room,” conducted by the sergeant-at-arms. After the Senate had adjourned for the day, the *Burlington Hawk-Eye* reported, Republican Senator Frank Bayless “lit a cigar and the sergeant-at-arms was at his side at once to conduct him out. The cigar went instead, and henceforth smoking will be abolished in the senate chamber.”

A month later, during a debate on the Senate rules, Republican Edward Seeds, a lawyer who would soon vote with Dr. Perry Engle on referring (and thus keeping alive) the latter’s no-sales-to-minors bill, moved to amend the rule by striking out “smoking in the Senate Chamber is hereby prohibited.” After it had lost on a voice vote, Democrat Michael J. Kelly, moved to amend the rule by adding after “prohibited” the words “while the Senate is in session.” This significant relaxation, which permitted smoking in the chamber during the hours

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118“In the Senate,” *BH-E*, Jan. 24, 1890 (1:2).
120“In the Senate,” *BH-E*, Jan. 24, 1890 (1:2). Much less dramatically, “The Senate,” *ISR*, Jan. 24, 1890 (8:4), reported that Price’s request for the rule’s enforcement “led to a little discussion, and the chair ordered the rule to be enforced.” The report a week later in the *Hawarden Independent*, which may have been garbled because it referred to a nonexistent Senator Woodman who wanted to amend the rule to include senators (when they were already covered), stated that Adolph Meservey, a Republican lawyer, had, with an unlit cigar in his hand, asked whether dry smoking was permitted. In response, Lieutenant-Governor John Hull declared: “‘No; only smoking as is smoking.’ It was his opinion that if the senator refrained from smoking the example would become contagious and there would be no further cause for complaint.” “Iowa Legislature,” *Hawarden Independent*, Jan. 30, 1890 (2:3). See also “The Senate,” *SCJ*, Jan. 24, 1890 (1:1).
121In 1890 Seeds was appointed a justice on the New Mexico Supreme Court; after returning to Iowa he became a law professor at the State University of Iowa. B. Gue, *Biographies and Portraits of the Progressive Men of Iowa: Leaders in Business, Politics and the Professions* 363-64 (1899).
122See above ch. 9.
123*Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa* 64 (1890) (Feb. 21).
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the Senate was not in session—since legislators had (and still have) no offices, their desks functioned as quasi-offices before and after daily sessions—and thus enabled smokers to “make the hall blue at other hours regardless of feminine presence,” was adopted by a vote of 28 to 9. Joining Engle in opposition were 6 Republicans (including Price), only one Democrat, and the only Independent; the majority was composed of 15 Republicans and 13 Democrats. The overlap between the voting pattern on the no-smoking rule and that on referring Engle’s bill was not straightforward. Of the eight senators who had voted with Engle, a month later seven (including Engle) voted to refer his bill and only one voted against referral, whereas of the 28 who had voted to relax the no-smoking rule, 12 later voted not to refer Engle’s bill, but 10 voted to refer it. The final motion, by Senator Price, “to strike out section 31 entire,” was defeated by a vote of 26 to 9, with 16 Republicans and nine Democrats joining Engle; in contrast, five Republicans, three Democrats, and the only Independent voted to delete the no-smoking rule. The motion that Price, an activist in the temperance movement at least since the 1870s, offered is difficult to interpret since the press reported that he (and fellow Republican Thomas Weidman, a farmer, who voted with Price on the latter’s and Kelly’s motions) “are radically opposed to tobacco smoking and...presented a resolution prohibiting smoking in the hall, but the smokers outvoted them, agreeing not to smoke during sessions.”

124 “Boies’ Inauguration,” Sioux County Herald (Orange City), Feb. 27, 1890 (3:5).
125 Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa 64 (1890) (Feb. 21). The Journal totaled the number of yeas at 29, but in fact it listed only 28 legislators who had voted Yea. For the rule’s new wording, see Rules and Standing Committees of the Twenty-Third General Assembly with List of Executive and Judicial Officers of the State of Iowa 8 (1890).
126 Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa 256 (1890) (Mar. 17).
127 Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa 65 (1890) (Feb. 21).
128 Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa 65 (1890) (Feb. 21).
129 At the Temperance Convention in Winterset on May 17, 1879, Price was appointed to the resolutions drafting committee. The History of Madison County, Iowa 413 (1879). See also Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa 590 (Apr. 8) (1890) (Price’s motion to prohibit licensure of liquor sales within three miles of any public school building or state institution of learning).
130 “Boies’ Inauguration,” Sioux County Herald (Orange City), Feb. 27, 1890 (3:5). According to “Lively Tariff Talk,” DML, Feb. 22, 1890 (5:1-3 at 2), and “The End at
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motion who voted for Price’s motion) were expressing the ultra view that exposure to the lingering smoke produced by smoking before and after sessions was not a superior outcome to no limits on smoking at all seems implausible, but the press failed to formulate, let alone, solve this puzzle. (Instead, the Des Moines Leader mocked: “It will be entirely proper for Senators Price and Weidman to appear in the senate chamber with sponges adorning their very sensitive olfactory nerves since the passage of the senate rule permitting the smokers to revel in the luxury of a havana in the chamber at any time except when the senate is in session.”) The actual outcome was variously described in the press as a “compromise” and as one the result of which was that the “smokers gained a victory by amending the rules so that smoking in the senate chamber is prohibited only when the senate is in session.” Although almost three-fourths of the voting senators chose to retain limits on exposure to secondhand smoke, here, too, the overlap with the vote on referring Engle’s no-sales-to-minors bill was far from perfect. Of the nine who had voted to eliminate the no-smoking rule, five (including Price and Weidman) voted to refer, while three voted not to refer; of the 26 who voted to retain the no-smoking rule, 15 later voted to refer the bill, while 7 voted not to refer.

Although the no-smoking rules remained formally unchanged until 1923—in 1894 the House adopted a resolution instructing the sergeant-at-arms to “eject all reporters smoking in the press gallery during the sessions of the House”—by the time of World War I and of the more concerted legislative initiatives to repeal the cigarette sales ban, they began, at least in the Senate, to be observed increasingly, if not in the breach, then in any event in the suspension. On March 8, 1917, a motion by Senator James Wilson (who supported Senate efforts to

Last,” *DML* (Weekly), Feb. 27, 1890 (1:1-7 at 7), “Senator Price attempted to have smoking in the entire senate chamber prohibited at all times, but was unsuccessful.” Although this aim seems in character for Price—who was, after all, merely advocating the status quo—his motion would have achieved its opposite; by the same token, it is puzzling that more senators opposed to any limits on smoking did not vote for his motion.


132“To Visit the Institutions,” *ISR*, Feb. 22, 1890 (5:3-6 at 5) (stating that in the entire discussion of Senate rules “there was nothing brought out of general interest”).

133“The Trusts in Iowa,” *SCJ*, Feb. 22, 1890 (1:3).

134*Journal of the Senate of the Twenty-Third General Assembly of the State of Iowa* 256 (1890) (Mar. 17).

135*Journal of the House of Representatives of the Twenty-Fifth General Assembly of the State of Iowa* 545 (Mar. 2) (1894) (resolution offered by Republican Charles Coonley).

136Based on spot checks of the *Journal*, no suspensions appear to have been sought in
repeal the ban on cigarette sales in 1917 and 1919) to suspend the no-smoking rule for the afternoon session carried. A week later he successfully moved for suspension near the start of the day, and by March 29, the rule had been suspended on a total of seven days on the motion of five different senators (four of whom were Republicans), including Senator Arthur Rule, who was the chamber’s leading advocate of repealing the anti-smoking statute in 1917 and 1919.137 (Efforts at this time to suspend non-smoking rules were not confined to Iowa; for the example of Nevada, see below.) Although no earlier suspension was found in the Senate Journal, March 8, 1917 may not have been the first instance. Not only did the Des Moines newspapers not report on it, but, by serendipity, the Register published an article the next day on a joint Senate-House Constitutional Amendments Committee equal suffrage amendment hearing, chaired by Wilson, which had taken place in the Senate chamber on the afternoon of March 8. In describing the lack of interest that most senators who happened to be at their desks had displayed in the proceedings, the article noted that outspoken anti-suffragist Senator John Price—who by 1921 would become the Senate’s premier movant of suspension—“sat back with his feet cocked up on his desk, enjoying a smoke and the speeches.” Although the fact that a hearing was going on may have meant that the Senate was not in session and that therefore the rule was not implicated, the mention of Price’s smoking suggests that the press would also have highlighted Wilson’s successful motion if it had produced a precedent-setting rule-suspension. Presumably, then, nothing new under the Senate sun occurred that day, which also witnessed a “pickaninny ragtime concert” in the lobby.138

In 1919 the drive for suspensions began already on January 14, the second day of the session, when, on the motion of Republican Senator Ben Edwards, the no-smoking rule was suspended right after the day’s introduction of bills. A succession of Republican senators replicated his success on five more days in January and February, including the two days before the Senate passed Rule’s new licensure bill, on which all the moving suspenders voted Aye. On March 24, four days after Thomas Kingland, a Republican lawyer, who was also the only

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137 *Journal of the Senate of the Thirty-Seventh General Assembly of the State of Iowa: 1917*, at 747, 867, 1107, 1134, 1219, 1259, 1294 (Mar. 8, 14, 23, 24, 27, 28, and 29) (1917). The other senators were Thomas Kingland, William Evans, and Nicholas Schrup. On the legislative debates in 1917, see above ch. 14.

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senator to move to suspend in 1917 and 1919, had made his third successful motion to suspend the rule that year, bank president Walter Anderson secured a majority for his motion to suspend the rule for the remainder of the session (which ended on April 19). 139

The press took note of some of these suspensions. For example, on February 18, 1919, the Des Moines News, which would observe on March 24 that the Senate Rule No. 33 had gone “up in smoke,”140 published this small article (among 50) on its front page under the title: “A ‘Reg’lar Feller’”:

Senator Stoddard of Woodbury co. is the most accommodating member of the upper house.

Observing Tuesday morning that one-half of the senators were chewing on long black cigars, he arose and stated that altho he did not smoke himself he would ask the suspension of rule 33 which prohibits smoking during Senate sessions.141

That farmer and grain elevator operator Bertel Stoddard was a nonsmoker not only sheds important light on politicians’ readiness to go along to get along, but also highlights the need not to jump to the conclusion that everyone who voted to suspend the rule smoked.

By 1921 a majority of the Iowa Senate was prepared not only to repeal the general ban on cigarette sales,142 but also to make smoking the norm in the chamber despite the continued existence of the rule prohibiting it. On the very first day of the session, as soon as the old Senate rules had been adopted, Senator John Price, a Welsh-born lawyer who had worked in coal mining in Iowa as a child,143 successfully moved to suspend Rule 33. No such motion was offered on the following four legislative days (on one of which the senators met in joint session in the House chamber to listen to the governor’s message and several of which were largely devoted to procedural-organizational matters) or during two very short sessions later in January. Then on January 28, anti-smokers fought back, defeating Senator Walter Anderson’s motion to suspend the rule—the only

140 “Smoke Lid Is Off,” DMN, Mar. 24, 1919 (1:8).
141 “A ‘Reg’lar Feller,’” DMN, Feb. 18, 1919 (1:1). Virtually identical text was run as part of “Doings of the Iowa General Assembly,” Maurice Times, Mar. 6, 1919 (4:3-4 at 4) and in many other papers.
142 See above ch. 15.
143 State of Iowa: 1921-22: Official Register 329 (29th No.).
such loss that smokers suffered that year. Why no one moved to suspend the rule on February 5 is unclear, but thereafter the Senate voted to suspend the no-smoking rule every day for the rest of the session—ironically including April 4, when it defeated the House bill to repeal the statewide sales prohibition, but not on April 6, the day on which the chamber reconsidered and passed it. Overall, on 58 of the session’s 67 days senators were free to pollute the air. Twenty-five—exactly one half of all—senators acted as movants, though Price alone performed the task 11 times. Oddly, there was very little correlation between moving for suspension of the no-smoking rule and voting on the bill to repeal the cigarette sales ban. On the first Senate vote on April 4, when the bill was defeated 22 to 26, 12 of the movants voted for and 12 against the bill—including Price and Henry Adams, who was that day’s movant. Even two days later, when the bill finally passed 27 to 22, nine of the 25 movants opposed the bill. Possibly this seeming inconsistency may in large part be accounted for by accommodationist nonsmokers like Stoddard (who was a movant five times) and by cigar and (to a lesser extent) pipe smokers, who looked down on cigarettes.

Smoking senators were even more energetic and successful in suspending the no-smoking rule during the 1923 session. Beginning, once again, on the first day of the session, they moved for suspension every day except two (on one of which a very brief meeting was held); anti-smokers succeeded three times (including on the session’s opening day) in defeating the motion. After refraining from moving for suspension on the opening day of the 1925 session, smokers moved to suspend the rule every single day. This unbroken skein was facilitated by the fact that the governor delivered his message and Helen Keller and her teacher Ann Sullivan spoke at joint sessions that were held in the House


145 See above ch. 15.

146 During the 1923-24 special session the rule was also suspended daily. State of Iowa: 1924: Journal of the Senate of the Fortieth General Assembly: Extra Session 9, 1609 (Dec. 4, 1923 and July 30, 1924).

147 The days without motions were January 16 and February 12; the days on which the motions were defeated were January 8, and February 2 and 22. State of Iowa: 1923: Journal of the Senate of the Fortieth General Assembly 5, 351, 609. Senators John Ethell and John Price were the movants 11 times and eight times, respectively.
chamber over which the senators had no control. Finally, in 1927, smokers (and non-smokers acquiescing in secondhand smoke exposure) in the Senate (which was composed of 49 Republicans and one Democrat), after the opening day of the session, succeeded in suspending the rule every day through January 27, when they secured the rule’s outright repeal. Newspapers featured reports of the denouement on their front pages. The Iowa City Press-Citizen, for example, under the headline, “Senators Will Enjoy ‘Smokes,” recounted that:

No longer will the smokers of the senate be forced to gain permission of the majority each day before they may indulge in a cigar, cigaret or light up their pipes. They were in such force this morning that when an effort [was made] to make it possible for one third of the membership to bar smoking instead of a majority, they put through a substitute rule which strikes the anti-smoking rule from the book and removes all restrictions.

Senator Skromme of Story county, who does not smoke, proposed the amendment which would have made it possible for one third of the senators to clear the senatorial air. He figured that it cost the state $7,000 a session, at the rate of $10 a minute, for the senate to consume one minute each day suspending the anti-smoking rule. Elimination of the rule, with the provision that it might be reinstated by the one-third vote, would save this sum, he pointed out. Senator Haskell of Linn wanted to add to this saving the cost of a “dozen cases of matches furnished the assembly by the state each session.”

Then Senator Benson of Clayton observed that there was little prospect of ending the daily contention over the smoking privilege unless the rule was thrown out all together and this was done.

The action, at the rate Senator Skromme figures the senate’s time, cost the state about $150.

What Republican Senator Lars Skromme, a Norwegian-born farmer, had sought to do was to reverse the rule’s procedural order by amending Rule 37 to read: “Smoking in the Senate chamber is hereby permitted while the Senate is in session. And any officer or employee may indulge in smoking in the Senate chamber or doorways, while on duty. Provided, this rule may be suspended by

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150 “Senators Will Enjoy ‘Smokes,’” ICP-C, Jan. 27, 1927 (1:7).

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a vote of one-third of the members present.”152 Thus Skromme’s seeming abolition of the no-smoking rule was merely a bone he threw to his smoking colleagues: instead of placing the burden on them to seize the initiative daily and seek to suspend the rule, his amendment made smoking the default position, but only a one-third minority would have to be mobilized, although these anti-smoking senators would have to act on a daily basis to preserve their right to clean air. Interestingly, C. A. Benson, another Republican farmer,153 who took up the cudgels for smokers, “also d[id] not use the weed.”154 Equally indicative of the fluid alliances despite the intensity of preferences was that at least six senators (Darting, Haskell, McLeland, Shane, Shinn, and Stoddard) voting against abolition of the no-smoking rule had moved to suspend it over the previous 10 years. Indeed, McLeland had been the movant the very day he voted against ending the rule.155 The close 23 to 20 roll call vote in favor of Benson’s substitute amendment156 and for “Freedom for Smokers”157 demonstrated that anti-smokers in the 50-member chamber presumptively constituted more than a one-third minority—at least in 1927. In the event, more than four decades of de jure protection of senators from exposure to “[s]econd hand tobacco smoke,” which was “objectionable to the majority of men and repulsive to the majority of women,”158 had come to an end.

Guerrilla warfare against the smoking ban developed later and more sporadically in the House. No attempt to suspend the no-smoking rule appears to have been made before the afternoon session of February 18, 1921, when Representative Frank Lake, the newsman who had staked out a high-profile anti-

155State of Iowa: 1927: Journal of the Senate of the Forty-Second General Assembly: Regular Session 183 (Jan. 27). During the few days of the session leading up to repeal McLeland had been the movant three times, while Shinn and Stoddard had made the motion twice each.
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prohibitionist position in 1917, successfully moved to do so. The House permitted smoking on a total of 12 days in 1921. Horace Dodd, who filed H. F. 678, the bill that became the statute that repealed the statewide cigarette sales ban, was the movant two days before the House passed his bill; ominously, the House suspended the no-smoking rule on March 30, the day of passage, and, with great symbolism, by unanimous consent suspended the rule again the day after passage.

On January 26, 1923 the House adopted the recommendation of its Rules Committee, on the one hand, to expand the ban by prohibiting using rather than merely smoking tobacco, and, on the other hand, in principle to repeal it by adding the sentence: “This rule may be suspended by a majority vote of the members present.” Smokers presumably made this change to facilitate suspensions, which would otherwise be subject to House Rule 54, pursuant to which standing rules had to be approved by a two-thirds majority of those present. The non-party-line vote of 57 to 37 saw nine Democrats and one Independent join 47 Republicans in the majority, while 32 Republicans and five Democrats opposed the changes. Perhaps reflecting the ambiguity of the rule change, of the 46 representatives holding over from 1921 who voted on both the Dodd bill to repeal the statewide prohibition on cigarette sales in 1921 and the House smoking rule change in 1923, only 7 voted Nay both times and 10 Aye both times, while 12 who had voted against repeal in 1921 voted for the rule change in 1923 and 17 who had voted for repeal in 1921 opposed the rule change. Emblematic of the sea change in attitudes was the fact that one of the Republican supporters of the reintroduction of smoking was John A. Storey, who 39 years earlier had initiated the entire rule-based no-smoking campaign in the legislature. Moreover, when he returned to the House in 1921, Storey lived in

159See above ch. 14.
163State of Iowa: 1921: Journal of the House of the Thirty-Ninth General Assembly 1659-60 (Mar. 30); State of Iowa: 1923: Journal of the House of the Fortieth General Assembly iv-vi, 329-30 (Jan. 29). Notably, Toleff Moen, who had been the most militant anti-repealer in 1921, voted against the rule change.
Indianola and represented Warren County, one of the driest communities in Iowa, which did not permit the sale of cigarettes until 1933, 12 years after the legislature legalized it. The potential suspension immediately became reality when, directly after the vote, a motion (proposed by a representative who had voted against the changes) prevailed to suspend the rule for the rest of the day.

Pro-smoking forces waited two weeks to move to suspend the new rule: following a successful motion on February 10 by William Children, a Republican farmer from Council Bluffs who had voted against the Dodd bill in 1921, they initiated a spasm of suspensions that began on Valentine’s day, lasted until recess on February 23, and then resumed for two days on March 8-9, only to vanish again. Anti-smokers’ varying degrees of successful resistance were on display on three of these 10 days. On February 15, the anti-smokers defeated the motion to suspend the no-smoking rule; on February 20, an objection subverted the request by Representative John Rankin (who in 1921 had filed a bill to repeal the cigarette sales ban) for unanimous consent to suspend the rule, forcing him to achieve his goal by means of a motion; and, finally, on March 9, opponents defeated Samuel Fackler’s motion to suspend the rule for 30 minutes, but were unable shortly thereafter to prevent hog-breeder James McClune’s motion to suspend for the rest of the day from prevailing.

The battle almost immediately after the start of the first day of the 1923-24 special session (to complete the revision of the Iowa Code), when anti-smokers defeated Rankin’s motion to suspend for the rest of the forenoon, but in the afternoon McClune’s motion to suspend for the rest of the day carried. A fortnight later a motion to suspend the rule for the remainder of the forenoon prevailed, but then considerably later in the session, when Children moved to

164 On Storey’s generally conservative legislative record in 1921, see “Judge Storey’s Work in the Legislature,” Indianola Herald, Apr. 14, 1921 (4:2).
165 On Indianola, see below ch. 20.
166 The representative was R. O. Garber, a Republican lawyer from Adair.
171 State of Iowa: 1924: Journal of the House of the Fortieth General Assembly: Extra
suspend, a roll call was demanded, which makes possible a comparison with the voting pattern on Dodd’s bill in 1921. Although the close 29 to 24 vote in favor of suspension was ultimately moot because it was immediately thereafter determined that a quorum was absent, of the 11 members who both had voted on the Dodd bill and voted Nay on Rule 63, nine had (consistently) also voted against repealing the cigarette sales ban, while only two had voted Aye. Somewhat less consistently, 12 of the 17 representatives who voted to suspend the rule had also voted for Dodd’s bill, while five had voted against it.\footnote{State of Iowa: 1924: Journal of the House of the Fortieth General Assembly: Extra Session 1352-54 (Apr. 5, 1924) (n.d.); State of Iowa: 1921: Journal of the House of the Thirty-Ninth General Assembly 1659-60 (Mar. 30). Once again, Moen voted against the suspension; one of the two members who had supported Dodd’s bill but voted against the suspension was House Speaker J. H. Anderson.} Although three weeks later the House suspended the rule for the remainder of the session,\footnote{State of Iowa: 1924: Journal of the House of the Fortieth General Assembly: Extra Session 1683 (Apr. 25, 1924) (n.d.). George Venard, who had been the other member to vote against suspension on April 5 who had voted for the Dodd bill, made the motion.} presumably because the House then recessed for three months, on the day it resumed proceeding, it suspended the rule for that day and again the next day, but not for the last days of the session.\footnote{State of Iowa: 1924: Journal of the House of the Fortieth General Assembly: Extra Session 1712, 1731 (July 22 and 23, 1924) (n.d.) (Rankin and Hansen, respectively, the movants).}

At the end of 1923 the State University of Iowa student newspaper published a brief article even the title of which (“Anti-Smoking Rule in Iowa Legislature Is Always Suspended”) forcefully underscored how quickly the tide had turned against protection from secondhand tobacco smoke exposure, ushering in a decades-long socioeconomically pressured acquiescence:

> One of the first house and senate rules the newcomer to the general assembly learns by number is the rule forbidding smoking during the sessions—63 in the house and 33 in the senate. The senate generally suspends the rule a few moments after convening, while the representatives seldom wait more than an hour to let down the anti-smoking bar.

> On the usual aye and nay vote the nays are frequently louder than the ayes, but the chair nearly always declares the ayes have it and there is no protest.

> The few non-smokers make up in volume for the lack in numbers, but always good naturedly submit.\footnote{“Anti-Smoking Rule in Iowa Legislature Is Always Suspended,” DI, Dec. 23, 1923 (1:4).}
Only a few attempts were made in the House to suspend the rule in 1925, beginning with a success on the opening day of the session for the remainder of that day and again during the forenoon of January 28. No initiative was made on February 3, when Helen Keller and Ann Sullivan addressed a joint legislative session in the House chamber, but the next day, Volney Diltz, who played a prominent role on behalf of the American Legion in repealing the sales ban in 1921, sought to have the rule suspended for the remainder of the forenoon; anti-smokers defeated his motion only to see Representative L. Forsling’s to suspend it for the forenoon prevail shortly thereafter. After another suspension a few days later, smokers appear to have relented until March 16, when Representative David Brittain, a Farm Bureau official from Madison county, unsuccessfully moved to hollow out the rule by amending A. G. Rassler’s motion to suspend for the remainder of the day by extending it to the rest of the session. After the amendment’s defeat, smokers had to make do with the freedom to smoke just for the rest of that day, which appears to have been the last suspension of the session.

In 1927, the resistance of the anti-smoking legislators was again on display when, on January 26, the House rejected the motion of Representative Irving Knudson, a Republican auctioneer-banker, to suspend the rule for the forenoon. Later that morning, however, George Edge, a Republican farmer from Newton, offered another motion to suspend the no-smoking rule for the forenoon, triggering a demand for a roll call vote, which laid the basis for the second record of the comparative strength of pro- and anti-smoking forces in the Iowa House on the issue of smoking in the legislature itself prior to the 1970s. That almost two-fifths of House members—the vote was 61 to 38—objected to being exposed to secondhand smoke as late as 1927 indicates that the antagonism was widespread and in no way the preserve of a fringe group of WCTU-affiliates. The intense contentiousness of smoking and nonsmokers’ tenacity were impressively underscored for a third time that day during the afternoon session on January 26.

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\[176\] See above ch. 15.


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when the chamber defeated a motion by Republican lawyer Leonard Simmer to suspend the rule. Thereafter, the pro-smoking contingent managed to prevail on 16 additional occasions, while their opponents defeated the motion to suspend only once more (on February 4), though smokers ceased offering such motions after February 19.

No attempt appears to have been made in 1929 to suspend the House no-smoking rule, but in 1931 the House Rules Committee proposed amending the rule by not permitting smoking “prior to ten o’clock a.m. on any legislative day.” Floor amendments were proposed to push the smoking time back to 10:30 a.m. and twelve o’clock as well as to strike the committee amendment altogether, thus leaving the old rule in place. Ultimately the House adopted 10:30 a.m. as the end of daily smoke-and tobacco-freedom. Thus the new rule read: “[N]or shall any person be permitted to use tobacco on the floor of the house during its session, prior to 10:30 o’clock a.m. on any legislative day, or in the galleries at any time. This rule may be suspended by a majority vote of the members present.”

Finally, at the next session, in 1933, the House proceeded to abolish even this tenuous regulation. The elimination of the last vestige of regulation took place without any debate or even express declaration that the no-smoking rule was at stake. The Rules Committee merely submitted a report recommending that “Rule 63 be stricken”—without any mention of that rule’s content—and that a rule of totally unrelated content (relating to rules suspension) be inserted in its stead. On February 6 the House, without discussion, adopted the “committee

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amendment to Rule 63,"187 thus ending almost a century of codified prohibition of smoking in the Iowa legislature and ushering in more than four decades of laissez-faire.188

The Advent of Women State Legislators Produces a Surprising Impact on Smoking Rules: Examples of the “shepherdess of the male members”

[E]vidently Madame Nicotine appeals to them more strongly than Madame Rachael [sic] Berry.... 189

How many ever saw a real woman legislator, the kind able to withstand the haze of tobacco smoke and other “wickedness” in the legislative halls at Salem?190

Yet a decent regard for the rights of others should preclude it [smoking] if women are in attendance [as members of legislatures]. This truism would be both superfluous and smug were it not for the astonishing fact that some men with brains enough to be preferred for public office by their fellows, do fail to use them in this particular. When none but men are in the room, question of propriety is not so fairly raised, for most men who take part in public affairs are quite accustomed to tobacco smoke, and it is expected that the unlucky exceptions to the rule will submit in silence rather than interfere with the satisfactions of their neighbors.191

Some legislators’ willingness to put up with secondhand smoke exposure was not confined to Iowa192 and may, surprisingly, even have been reinforced by the advent of women as members of state legislatures beginning in the mid-1890s in the West, where, purportedly, “no such asceticism prevailed” as to ban smoking.

188 See below ch. 25.
189 “Random Notes,” Bakersfield Californian, Mar. 5, 1915 (12:2) (edit.).
191 Robert Luce, Legislative Assemblies: Their Framework, Make-Up, Character, Characteristics, Habits, and Manners 637-38 (1924).
192 In 1889 the Kansas House adopted a resolution instructing the sergeant-at-arms to enforce House Rule 67—which prohibited smoking in the hall, rooms opening into the hall, or the galleries, while the House was in session—which was “constantly being violated, to the great discomfort of many members....” House Journal: Proceedings of the House of Representatives of the State of Kansas 268 (Jan. 23) (1889).
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Consequently: “When women lawmakers began to appear, it was wondered whether their presence would expel the cigar.”

Indeed, initially in Colorado in 1895, when the first (three) women elected to a state legislature sat in the House, they made it their “business to see that the rule against smoking on the floor was enforced strictly.” In particular of 32-year-old Brooklyn native Clara Cressingham the New York World contemptuously asserted: “Her delicate nostrils would invariably detect the most delicate smoke wreath ascending from behind any of the big oaken desks, whereupon she would immediately demand that the Sergeant-at-Arms enforce the House rule without delay.”

When “men members felt greatly annoyed because, as a result of the women legislators’ ‘sustained pertinacity,’ ‘they could not solace their brains with tobacco’ and ‘toward the end of the session no smoking was allowed for a minute in the house,’” the New York Sun commended the women “without stint” for having rendered “a most excellent service...to the cause of good manners in the Legislature.” In contrast, the Chicago Tribune (falsely) complained that they had intervened only to protest “venerable and accepted masculine privileges,” such as smoking, thus making themselves “disliked.” The paper editorially pounded on this theme as evidence that the “woman suffrage experiment in Colorado” was largely a “fad,” of which the women themselves were the first to “get tired....” Four years later, the press (misleadingly) reported that: “On appeal of the women members of Colorado house, smoking has been prohibited in the house chamber.”

And given the repeated references during congressional debates to the need to protect women in the galleries from members’ tobacco smoke on the floor, an expectation that legislatures would

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193 Robert Luce, Legislative Assemblies: Their Framework, Make-Up, Character, Characteristics, Habits, and Manners 637 (1924).
194 See above ch. 6.
196 Sun (New York), Apr. 16, 1895 (6:4) (untitled edit.).
197 “Tired of Their Fad,” CT, Apr. 12, 1895 (6) (edit.). For a similar (false) complaint about the female members’ failure to distinguish themselves, see “Those Women Legislators,” World (New York), Apr. 14, 1895 (7:7-8). For a more positive evaluation of their overall performance by the local press, see “Women as Legislators,” RMN, Apr. 8, 1895 (8:3).
198 Even before statehood Colorado’s territorial legislative chambers had banned smoking. See above ch. 6.
200 See below this ch.
intensify their anti-smoking bans would have been eminently plausible. In the event, new female legislators in a number of states enabled their male colleagues to smoke on the job and expose their non-smoking co-workers to the by-products.

**Arizona**

The first nationally newsworthy female facilitation of legislative smoking took place in Arizona in 1915, when for the first time a woman occupied a seat in the Senate (as well as in the House). Soon after Arizona had achieved statehood in 1912, women secured the right to vote through an initiative measure, in part as a result of the efforts of Frances Lillian Willard Munds (1866-1948), the president of the Arizona Equal Suffrage Association from 1909 to 1912, whose participation in that struggle had arisen out of her activity in the Arizona WCTU. In 1914 Munds won election to the Senate of the state’s second legislature, only the second woman ever to be elected to a state senate in the country.

At the same session, Rachel Berry (1859-1948), a Mormon emigrant from Utah and “ardent [liquor] prohibitionist,” who had been “a factor to be reckoned with in the suffrage campaign,” became the first woman elected to the Arizona House. On the day that they took their seats, January 11, 1915, smoking, as a headline put it the next day, became the “First Serious Issue in New Legislature.”

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primary legislative concerns were women, children, and education, introduced Resolution No. 1, which triggered the session’s “first clash.”

During the ensuing discussion, a member (of the entirely Democratic House) from Tempe, James Cooper Goodwin, a prominent rancher, was Berry’s most ardent supporter. Indeed, the fact that Goodwin during his only other term, in 1897, had successfully moved the adoption of an identically worded resolution in the Territorial House strongly suggests that he was cooperating very closely with Berry. On the second day of the 1897 session, Goodwin had introduced a simpler resolution that “no smoking be permitted during all sessions of the House,” which the official Journal reported as tabled. The carnival atmosphere in the chamber emerged in a press account: “The speaker, taking a cigar from his mouth, asked something about intermissions for refreshments and then, with an eagle swoop the house dropped on the resolution and it was no more.” Undaunted, the next day, “in a cloud of fragrant Havana smoke,” Goodwin offered a more expansive resolution (with precisely the same wording that Berry submitted 18 years later), which the House, “[m]uch to the astonishment of the lobby and possibly of the members,” adopted. The Assembly then promptly took a 20-minute recess, during which “everybody lit a fresh cigar.” Two

207 Journals of the Second Legislature of the State of Arizona: Regular Session...1915, at 24 (Jan. 11). The fact that Berry found it necessary to offer the resolution implied that the House rules embodied no such ban. The House rules for the First and Second Legislature (1912-13 and 1915), according to rare separate prints (Rules of the House of Representatives), contained no reference to smoking. Email from Barbara Howe, Arizona State Law Library, to Marc Linder (May 9, 2011).
208 “Women Shy on Teamwork,” LAT, Jan. 16, 1915 (II3).
209 Journals of the Nineteenth Legislative Assembly of the Territory of Arizona...1897, at 16 (Jan. 19) (1897).
210 Unidentified and undated newspaper clipping in James C. Goodwin Folder, Biographic Files Collection, Tempe History Museum Research Library (copy furnished by Joshua Roffler, Curator of Collections).
211 Journals of the Nineteenth Legislative Assembly of the Territory of Arizona...1897, at 20 (Jan. 20) (1897).
212 Unidentified and undated newspaper clippings in James C. Goodwin Folder, Biographic Files Collection, Tempe History Museum Research Library (copy furnished
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weeks later the struggle over smoking broke out again, when a motion to allow smoking during session hours lost, but in March smokers secured a partial victory by a motion that excepted Committee of the Whole proceedings from smoking ban. In 1915 Goodwin "warmly sustained the Hon. Mrs. Berry’s contention that tobacco is a nasty weed and that smoking is a wasteful and even injurious habit that should be abolished generally and that, therefore, should be shown disapproval in any body of representatives of the people." Their addicted antagonist protested that: "Tobacco gave him clarity of vision. He needed tobacco in order to do his best work for his constituents...." After Berry had yielded to a motion to strike out enforcement of the ban in the lobby, the House passed her resolution on a 25 to 10 roll call vote. The “many members” to whose “obvious distress,” the resolution, according to the Arizona Gazette, prevailed, presumably did not exceed 10. In a press interview, Berry explained her position: "‘If smoking were abolished it would be a benefit to mankind. It’s all nonsense about tobacco quieting the nerves. If the men did not use it they would not be nervous.’" The Arizona Republican was impressed that Berry had articulated this view “in a quiet, dignified way that stamped the speaker an earnest reformer yet not one seeking notoriety by freak legislation.” And the rival Arizona Gazette, while "still for Mrs. Berry," was "much disappointed in" her because the ban was "mighty tough on the press lads" and would "spoil what

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by Joshua Roffler, Curator of Collections).

213 The vote of 13 to 9 failed to achieve the requisite super-majority. Journals of the Nineteenth Legislative Assembly of the Territory of Arizona 110 (Feb. 4) (1897).

214 Journals of the Nineteenth Legislative Assembly of the Territory of Arizona 272 (Mar. 13) (1897).


216 The press made sarcastic comments suggesting that there was no such space as a lobby. E.g., “Second State Legislature Convenes at State House,” AR, Jan. 12, 1915 (1:1) (“the lobby, whatever or whe[re]ver that may be”).


looked like a nice cozy session with plenty of free smokes.”

In the Senate, Munds pursued the diametrically opposed tack. When the *Arizona Republican* noted that she had “said that she had no objection to indulgence by her colleagues in the weed,” what it really meant was, as Munds herself stated, “when the question of smoking came up in caucus I asked that it be continued” because she, a self-described “democrat, progressive but not radical,” had “fought for equality” and hoped she was “consistent.” In other words, whatever Munds said, she said it not on the Senate floor, but in the non-public caucus setting. The Arizona press reported that: “In the senate members can smoke all they please. Mrs. Frances Munds not only approved of smoking but insisted that male legislators continue to smoke during the session.”

Munds, to whom her colleagues’ smoke was “perfectly agreeable,” even disclosed her partly opportunistic motivation in an interview with the *Republican* that seemed to take direct exception to Berry’s aforementioned position: “Abolish smoking on my account? Not if I know it! I certainly hope the men will smoke. It will soothe their nerves and keep them in good humor. When my husband gets cross, I run for his tobacco and even fill his pipe.”

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220 “At the Capitol,” *Arizona Gazette*, Jan. 12, 1915 (4:3).
223 Consequently, the Senate Journal for Jan. 11, 1915 did not record any intervention by her with regard to smoking. *Journals of the Second Legislature of the State of Arizona: Regular Session...1915*, at 1-3 (Jan. 11). The Senate rules for the First and Second Legislature (1912-13 and 1915), according to rare separate prints (*Rules of the State Senate*) in the state library, contained no reference to smoking. Email from Barbara Howe, Arizona State Law Library, to Marc Linder (May 9, 2011). The 1917 Senate rules also did not address smoking. *Journals: Third Legislature of the State of Arizona 49-65* (Jan. 23) (1917) (Senate). Since the Senate rules included no smoking ban, Munds was merely signaling to fellow Democrats (who occupied all but one Senate seat and monopolized the House) that she would not be proposing one. To be sure, press coverage of the caucusing during the weekend before the legislature convened did not mention smoking. “Dr. W. P. Sims to Be President of the State Senate,” *Arizona Gazette*, Jan. 9, 1915 (1:1). “First House Caucus Today,” *AR*, Jan. 9, 1915 (5:3); “Sims, President; Brooks Speaker, Caucus Results,” *AR*, Jan. 10, 1915 (1:4-6); “Veterans Chase and Cook to Call Solons to Order Today,” *AR*, Jan. 11, 1915 (1:1);
224 “Doings in the State Legislature,” *Tombstone Epitaph*, Jan. 17, 1915 (4:1-2). The use of “continue” suggested that legislators’ smoking had already been unconstrained by Senate rules and that Munds merely announced that she was acquiescing in that regime.
the wisdom of her plan, the *Los Angeles Times* noted that Munds “got some sincere applause coming her way at the very outset of her career as a stateswoman.” The out-of-state press—wire-service blurbs appeared in many newspapers across the country, which were amused by the two women’s opposed approaches—invited a formal process that had never taken place by adding that: “She had little difficulty in securing the passage...of a motion to that effect.”

*Dunbar’s Weekly*, edited and published by J. O. Dunbar, “a prickly, independent and generally astute political observer with strong prohibitionist sentiments,” expressed a widely held (male pro-smoking) view in praising Munds’s and ridiculing Berry’s approach:

> We commend the tact and good judgment of Mrs. Senator Munds for her refusal to prohibit the senators from smoking. Mrs. Munds has had a heap of experience dealing with men politically and she realizes that they always respond to the just demands of women. Smoking is indulged in the houses of probably 90 percent of the people of the nation, and just why any person would seek to prevent their associates from this privilege is peculiar, to say the least. Senator Munds has certainly started her senatorial career along the right lines, and we predict she will be a valuable member of the second Arizona legislature.

The female of the species—in the person of Mrs. Berry of Apache—got herself in the limelight (and incidentally got herself disliked in many places) by butting in at the earliest possible moment with a “no-smoking” resolution. The resolution would have come with much better grace from some of the men, but Mrs. Berry, it seems, decided to take no chances. Many of the men voted for the resolution out of a mistaken sense of chivalry.... Out of revenge, it is said that a resolution will be offered demanding that Mrs. Berry lay aside the skypiece which adorns her crown of glory. One member said he favored the no-smoking resolution because cigar smoke contaminated the air the rest were forced to breathe [sic]. As long as this is to be a perfectly sanitary Legislature, and “safety first” is to be the watchword, why not make all visitors secure doctors’ certificates of health and purity...
before permitting them entrance to the gallery.\textsuperscript{232}

In contrast, boasting that it had “not been subsidized by the iniquitous tobacco trust whose practices were infinitely worse than its products,” the self-proclaimed independent progressive Republican judiciously declared that both Berry’s and Munds’ way of looking at the question had much to recommend them.\textsuperscript{233} While failing to mention that the all-male Arizona Territorial House and Council in 1897 and 1905, respectively, had prohibited smoking (and as early as 1887 the House printed large placards prohibiting smoking in the Assembly chamber or lobby while the House was in session),\textsuperscript{234} the editorialist traced Berry’s position all the way back to Sir Walter Raleigh:

To most women, before the suffrage movement had a start, smoking was repugnant. ... We may add that the repugnance to tobacco in any form is not confined to women. Many men share it, as we learn from the members of the house who supported Mrs. Berry’s resolution against smoking....

Mrs. Munds, we may presume, is no more favorable to smoking than her sister at the other end of the capitol. But she was inclined to accept it as one of the lesser evils of American politics into which she entered with the full knowledge that a majority of men are smokers. She doubtless had a hope, as well as the rest of us who favor participation by women in political affairs, that equal suffrage would work a purification of politics. But it is a question whether it should be begun with a purification of the physical, rather than the moral air of our legislative chambers.\textsuperscript{235}

Its Solomonic suggestion for dealing with “stubborn” male legislators, who reacted to their pipes and cigars’ being taken away from them like children whose toys had been snatched away, was to put ventilation fans into the chambers’ walls.\textsuperscript{236}

From the two pioneering legislators’ irreconcilable preferences the weekly Tombstone Epitaph male chauvinistically constructed commonality by detecting the unifying principle that they had “established the supremacy of a single female wish over a large number of male votes in the senate and house.”\textsuperscript{237} Unwritten

\textsuperscript{234}See below Table 6.
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was the contradictory logical implication that a large number of senators resented their uncollegial colleagues’ exposing them to secondhand smoke and that in both houses majority rule had been instantiated. The out-of-state press reveled in invidiously comparing the two legislators’ tactics. The Oakland Tribune, for example, knew that with regard to “securing legislation benefiting her particular district it is by no means difficult to determine which of the two ladies will have the most influence on the nicotine-loving membership, and it is safe to predict that the senator will have a decided advantage over her sister in the lower house.”

With Munds “wishing the men to smoke if they wanted to,” and Berry “determined to stop them, no matter what they wanted,” the Los Angeles Times could “imagine which one of the two had the most influence in the Legislature.” To be sure, in the most literalist factual sense, this claim was incorrect: despite her favor-currying acquiescence in being inundated with male senators’ tobacco smoke, Munds succeeded in securing enactment of only one of the 13 bills she had introduced—exactly the same number as Berry, who refused to prioritize winning friends and influencing people over her own personal health or establishing the principle of smoke-free public places.

Ironically, almost a century later, the leading historian of early Arizona women politicians, according no weight to Berry’s anti-public-smoking initiative and therefore perceiving no public policy trade-off in Munds’ acquiescence, replicated yesteryear’s male chauvinist press praise of Munds’ willingness to accept traditional male prerogatives. Apparently unaware that all-male legislatures throughout the United States, including Arizona’s, had been banning smoking in House and Senate chambers for decades before women’s advent as colleagues, Heidi Osselaer objectively associated herself with early-twentieth-century pro-tobacco politicians and journalists by charging that “Berry had no
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experience in the capitol before her election and made the mistake of introducing a smoking ban in the house, antagonizing her colleagues in the process.” She went on to claim that “Berry’s resolution to bar chewing tobacco and cigarettes was not approved and, by creating an uproar, proved to many observers that women threatened to destroy the traditional ebb and flow of the legislature.” In contrast, Osselaer extolled Munds, who, unlike Berry, had “had fifteen years of [suffrage] campaign experience sparring with male politicians by the time she entered the senate,” for having internalized the golden rule of compromise politics by going along to get along: “she knew that she was now part of mainstream politics, and her best strategy was to fit in with her fellow senators. ... Munds knew she had many battles ahead, and this one was not worth fighting.”

Indeed, she “knew this was a battle she could not win—she had spent too much time in the legislative halls lobbying for suffrage to think she could ever change the habits of the men who dominated there. Although a small issue, the traditional view of the legislature as a smoke-filled, male domain of political power was challenged by female legislators when they attempted to control the smoking habits of members.” Again, ignoring the fact that smoking in state legislative chambers and in Congress was not a gendered conflict—because for decades anti-smoking male legislators had been contending with smoking male legislators over what the former regarded as a physical annoyance/health and not a moral issue by imposing place and time restrictions on their co-workers’ abatement of their nicotine withdrawal symptoms—Munds was able to articulate only an opportunistic, not a principled, reason for refusing a Phoenix minister’s request on her first day as a senator to introduce a resolution banning smoking in the Senate chamber during sessions: it would, her daughter later related, “only cause them the inconvenience of going out of session to the lobby to smoke and

by stating that “[e]ven” one who had criticized Munds during her campaign “applauded her reluctance to ban smoking” as indicating that she would be a cooperative legislator. Heidi Osselaer, Winning Their Place: Arizona Women in Politics: 1883-1950, at 100 (2009).


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it would in no way improve their morals or their dispositions.” The minister may have “severely criticized” her, but her colleagues applauded her and “smoked as much as they pleased on the Senate floor and thanked Frances for it.”

Munds “request[ed] her colleagues to not consider her at all if they wanted to smoke. She wanted to be on an equality...and she had observed that mankind, and particularly her own husband, was much more pacific and manageable when under the influence of nicotine.”

Apart from the issue of human beings’ comparative tractability while under the influence of withdrawal symptoms, Munds’s aspiration to equal treatment brings into sharp focus the one circumstance in which her laissez-faire approach toward smoking would have attained its greatest plausibility: if—counterfactually—the sole or chief reason for the legislative smoking ban had been to comply with a prevalent male-chauvinist behavioral code, shared by some women, that it was disrespectful for men to smoke in women’s presence. But in fact many years before Munds and Berry’s election anti-smoking male legislators such as Goodwin had prevailed upon their all-male chambers to institute smoking bans and Berry herself did not urge prohibition based on gendered notions of courtesy. If, on the contrary, public smoking disputes are interpreted as public health policy questions and not as grounded in narrow-minded religious dogmatism propagated by puritanical WCTU WASP busybodies trying to stick their noses into everyone else’s personal rights and privileges, then Munds’s willingness to jettison debate in order to disarm men who might be won over as allies on some other substantive matters takes on a much different character, which would have to be evaluated according to traditional criteria probing the efficacy of legislative compromise and trade-offs wholly unrelated to the advent of female legislators, whose successes would have to be judged in relation to those of their anti-smoking male predecessors and contemporaries in the statehouse.

In the event, Berry’s victory was not definitive. Evidence that smoking representatives had failed fully to internalize the need for compliance surfaced at the House session on January 29, when Berry, detained by a big rain storm,

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245 Sally Munds Williams, History of Valuable Pioneers of the State of Arizona 78-79 (1987 [1979]). In quoting a version of this passage, an historically amnesiac late-twentieth-century reporter insisted that Munds had “sidestepped an issue which could have been as unpopular then as a suggestion to ban Monday night football might be now.”


246 “Women Shy on Teamwork,” LAT, Jan. 16, 1915 (II3).
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arrived a half-hour late.\(^{247}\) During her brief absence, the House rules were, on the motion—“greeted with enthusiastic applause”—of one of the representatives who had voted against her resolution, suspended, and “about two thirds of the members, with contented sighs, began puffing at cigars and pipes.” On Berry’s arrival, according to the *Arizona Gazette*, “the smoker came to an end, most of the members resembling boys caught with their fingers in the jam.”\(^{248}\) The *Republican* less plausibly reported that the House had passed a resolution rescinding Berry’s, which “went through with a whoop and the next instant the chamber began turning blue.”\(^{249}\) Why the members, who “smoke[d] pipes, cigars and cigarettes...for the first time since the legislature met three weeks ago,” would have bothered to try to “conceal the evidence of a broken rule”—especially with “the smoke...everywhere”\(^{250}\)—is unclear if they had properly suspended the rules, but an amused male-chauvinist press instinctively trivialized the anti-public smoking initiative by headlining the wire-service report: “Naughty Legislators! She Caught ’Em Smoking.”\(^{251}\)

Then, on March 1, with only 10 days left in the 60-day session, “[a]fter almost fifty smokeless days”\(^{252}\) during which male members had seemingly learned to control their addiction, the “Lure of Nicotine Proves Too Strong,” as the *Boston Globe* headlined the wire-service report that was picked up across the country.\(^{253}\) The day’s “most thrilling episode,” at least from the *Gazette’s*

\(^{247}\)Berry’s absence was brief: she was one of 10 members absent at 10:00 a.m. when the House convened, but by 10:30 a.m., when the House was in the Committee of the Whole, the sergeant-at-arms announced that she and seven other absentees had taken their seats. *Journals of the Second Legislature of the State of Arizona: Regular Session...1915*, at 98-99 (Jan. 29).

\(^{248}\)“Twice a Year Tax Collection Agitates House,” *Arizona Gazette*, Jan. 29, 1915 (1:1).

\(^{249}\)“Committee Work Occupies the Solons’ Time and But Little Business Is Done on the Floor,” *AR*, Jan. 30, 1915 (1:1, at 7:4-5 at 5). The *Journal* reflected neither the proposal nor the passage of such a resolution; though it also failed to mention such a motion, a resolution, possessing a greater degree of formality, would have been more likely to be included.

\(^{250}\)“When Woman’s Away Confreres Smoke,” *Bakersfield Californian*, Jan. 30, 1915 (2:5).

\(^{251}\)“Naughty Legislators! She Caught ’Em Smoking,” *Oakland Tribune*, Jan. 30, 1915 (2:1).


\(^{253}\)“Lure of Nicotine Proves Too Strong,” *BG*, Mar. 2, 1915 (8:8). See also “Smokeless Legislators Recant,” *NYT*, Mar. 2, 1915 (18); “Solons Vote to Smoke,” *WP*,
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perspective, was the rebellion by the “disciples of My Lady Nicotine” who had been “in more or less agony,” which was psychologically exacerbated by the Senate’s “wont to blow smoke in their faces and to remind them that the sovereign house of lords was not bound by blue laws.” That day, “[h]uman nature being so constituted that it can stand just so much,” Representative John B. Flanagan, who lived on the Colorado River Indian Reservation and had voted for Berry’s smoking ban, offered Resolution No. 7: “that smoking is hereby permitted on the floor of the House during all sessions of the House.” While Flanagan aimed at affording members freedom to “puff their souls into purgatory if they saw fit,” Berry’s ally “Goodwin complained that even the slight abatement of the nuisance” under her resolution “had not afforded him relief and, ‘what would be his state if all the bars were thrown down?’” Speaker Brooks allegedly feared “that the action would be considered a reflection that Mrs. Berry had lost her hold upon the legislature.” Member Joseph Lines—who in 1921 as a senator would introduce a bill to empower local governments to prohibit the sale of all tobacco—wondered whether the “age of chivalry had passed away....” Seconded by a representative who had voted against Resolution No. 1, it carried by a “rising vote”—which the Gazette

Mar. 2, 1915 (5:5). If it was already clear at this time that a special session would be necessary (to deal with appropriations and tax bills), then perhaps the smokers were signaling that they would not tolerate another ban.


255 1910 and 1920 Census of Population (HeritageQuest). In 1920 he was returned as a Ford auto dealer; his occupation was illegible in 1910.


260 See above ch. 15.


1830
confusingly characterized as “fifteen in favor of the smokes”—over Berry’s protest and vote.\footnote{End of Session Is Near with Little Work Finished, “Arizona Gazette, Mar. 1, 1915 (1:1-2 at 2).} Dunbar’s Weekly, which called “repeal of the no-smoking rule...the most important thing the House has done for a week,”\footnote{“Lure of Nicotine Proves Too Strong,” BG, Mar. 2, 1915 (8:8). “Stateswoman Gets Colleagues on Edge,” Lock Haven Express, Mar. 4, 1915 (3:2), appears to have invented quotations in attributing to Flanagan (“the member from Gila Bend,” which was located in Yuma County, which he represented) a motion, which allegedly carried unanimously, back in January “‘that we abstain from smoking during our deliberations, lest the smoke offend Representative Berry’s nostrils.’” Presumably similarly invented was his supposed statement in March that he was “‘confounded—that is I’m very weary—of dodging into a corner of a committee room or Jim Higley’s “Statesmen Rest” whenever I want a puff of a cig.’” Also fabricated presumably was Munds’s alleged remark to senators, by which she “made herself immensely popular,” that they should “‘smoke as much as you please....I like the odor of a fragrant cigar.’”}

Munds was scarcely the last female legislator in Arizona publicly to declare her refusal to stand in the way of male smoking. Prefiguring Chesterfield’s 1926 woman-centered “Blow Some My Way” advertisement,\footnote{http://tobaccodocuments.org/pollay_ads/Ches01.01.html} Democratic Representative Nellie Bush (1888-1963), a former teacher, principal, and justice of the peace,\footnote{http://www.lib.az.us/awhof/women/bush.aspx (Arizona Women’s Hall of Fame).} and future Southern Pacific Railroad and Santa Fe Railroad lawyer,\footnote{Heidi Osselaer, “Nellie Trent Bush: Arizona Politician, Lady Maverick,” on http://www.prescottcorral.org/TT3/V2NellieTrentBush.htm (visited May 7, 2011).} virtually solicited exposure to men’s tobacco smoke as part of her principle that women in politics “‘simply have to eliminate some of their old fashioned ideas regarding the difference in sexes.’” As she told a reporter in 1922: “‘I expect nothing more from a man in politics than life gives another man. If he wants to smoke, I say, “Go ahead and smoke.” And if he wants to swear, I’ll sit by and enjoy hearing him do it. If it doesn’t hurt him, it certainly isn’t going to hurt me.’”\footnote{http://www.lib.az.us/awhof/women/bush.aspx (Arizona Women’s Hall of Fame).} Practicing what she preached, in 1921, during the first of 16 years
in the legislature, Bush moved (seconded by Republican John Udall), that “members of the House be allowed the privilege of smoking during the session of the House.” The only other woman in the House, Democrat Miss C. Louise Boehringer, joined the majority in adopting the motion by a vote of 24 to 14.  When, as late as 1931, a female House member who was “personally opposed to the habit,” nevertheless “would not deny a man one of life’s few remaining pleasures,” Osselaer judged this “decision to tolerate spittoons and smoke-filled rooms [as] important to female success: women did not seek to radically alter the way business was conducted but rather tried to achieve their goals by quietly blending into the existing male power structure.”

Oregon

An account of the experience of Sylvia (Mrs. Alexander) Thompson, a Democratic minority member of the Oregon state legislature from 1917 to 1920, was provided by Carrie Chapman Catt, the president of the National American Woman Suffrage Association, who pointed out that architectural changes would be necessary to give women a “‘fair deal’” in statehouses because, while men were discussing politics during recess “‘wreathed in halos of smoke,’”

source was an unidentified newspaper article date Jan. 1, 1920.


273The press and Oregon legislative documents appear always to have identified her as Mrs. Alexander Thompson; according to the 1920 population census the 46-year-old’s first name was Sylvia. Catt erroneously referred to her as a member of the Senate, when in fact she was a member of the House in 1917, 1919, and during the special session of 1920. State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly Regular Session: 1917, at 5 (1917); State of Oregon: Journals of the Senate and House of the Thirtieth Legislative Assembly Regular Session: 1919, at 5 (1919); David Duniway, Members of the Legislature of Oregon, 1843-1967, at 40 (Oregon State Archives, Bull. No. 2, Rev., Publication No. 30 (1968)); Oregon Legislative Assembly: Legislators and Staff, 1841-2007, on http://arcweb.sos.state.or.us/legislative/histleg/statehood/1917reg.htm; http://arcweb.sos.state.or.us/legislative/histleg/statehood/1919reg.htm; http://arcweb.sos.state.or.us/legislative/histleg/statehood/1920spe.htm. Thompson was not the first woman legislator in Oregon: in 1915 one served in the House and the Senate. Elizabeth Cox, “The Three Who Came First,” State Legislatures 20(11):12-19 at 12 (Nov. 1994).
the woman member sat alone in some room "‘out of the atmosphere of the matters she is dealing with as well as of the tobacco smoke.””274  Catt then offered

“A story in connection with smoke, showing how well women fit into politics...from Oregon. When Senator [sic] Mrs. Alexander Thompson went to the state senate [sic] a committee of gentlemen from the house went to her and said, ‘Senator [sic], what are you going to do about rule 5?’

‘Well, I don’t know what rule 5 is,’ she replied.

‘It deals with the smoking in the senate [sic] chambers,’ she was told.

‘What are you in the habit of doing with it?’ she asked.

‘Overlooking it,’ was the reply.

‘Well, gentlemen, I’m in the habit of living up to laws and rules that are made; but if you are in the habit of overlooking rule 5, do as you have been doing.’

Shortly after the opening of the meeting one senator [sic] rose and addressed the speaker, asking what disposition was to be made concerning rule 5. Before an answer could be made Mrs. Thompson rose and made a move [sic] that rule 5 be suspended. It was seconded and passed. The room was filled with smoke as usual. Again later in the session the same incident occurred, and was again met by Mrs. Thompson with a motion to suspend the rule.

When the house closed the members had taken up a subscription to present the speaker with a gift. As the moment for the presentation neared the speaker, sensing the situation, called Mrs. Thompson to the chair while he received the gift and made a fitting speech. Immediately following the words of the speaker another gift was sent forward and presented to the woman senator [sic]. It was marked, “With appreciation from the smokers,” and it developed that no man, no matter how much he wanted to, was allowed to contribute to the gift unless he was a smoker.””275

Thompson’s acquiescence was especially noteworthy in light of the fact that during the House debate in February 1917 on a radical bill that would have not only banned the sale of cigarettes to anyone, but prohibited smoking cigarettes by anyone in any indoor or outdoor public place,276 she declared: “‘I blush with shame for my sex when I consider how women are taking up the cigarette, and I warn you men right now that if you turn down this bill the 30,000 women of Oregon who are behind it will put it on the ballot next election and put it through.””277

276House Bill No. 268, §§ 1 and 5 (Jan. 25, 1917).
277“House Vote Favors Ban on Cigarettes,” MO, Feb. 9, 1917 (6:4).  Thompson voted for the bill, which initially passed the House, against recalling it from the Senate, and against the watered down version, which applied only to minors. State of Oregon:
Thompson’s successors would have both an easier and harder time politicking in the context of smoking: as soon as she left the legislature, at the beginning of the 1921 session the House adopted its Rules Committee’s proposal to eliminate Rule 66, which had provided that: “No person shall be allowed to smoke in the hall or lobby thereof while the House is in session.”

The go-along-to-get-along moral that Chapman Catt derived from Thompson’s acquiescence in and facilitation of smoking was that “Oregon men appreciate the truth that women know how to handle their affairs, and needless to say, Oregon’s woman senator [sic] had little opposition in her work.” Presumably, Chapman Catt would not have approved of the gendered self-censorship in which Thompson’s colleagues had earlier engaged. Ironically, on January 24, 1917, soon after Thompson had become a member of the House, the speaker, complaining of throat trouble, turned the gavel over to her for the remainder of the morning session, making her the first woman to preside over that chamber. Representatives addressed her as “Mrs. Speaker” as they introduced their bills, “and not one of the fifty-nine men on the floor lit a cigar during her rule.” Less clear is how Chapman Catt would have evaluated the confrontational approach of Thompson’s colleague Walter Pierce, one of only three Democrats in the Oregon Senate in 1919, who offered the following resolution, which the Senate promptly adopted:

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279 The go-along-to-get-along moral that Chapman Catt derived from Thompson’s acquiescence in and facilitation of smoking was that “Oregon men appreciate the truth that women know how to handle their affairs, and needless to say, Oregon’s woman senator [sic] had little opposition in her work.”
280 Although only one of four Democrats in the House, Thompson seconded the motion to make a Republican speaker. State of Oregon: Journals of the Senate and House of the Twenty-Ninth Legislative Assembly Regular Session: 1917, at 304 (1917) (Jan. 8).
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Whereas there are many members of the senate to whom smoking on the part of other members is very obnoxious, and often causes sickness and headaches; therefore be it

Resolved, That there shall be no smoking allowed in the senate chamber during the time the senate is in session.\(^{283}\)

Nevada

The Nevada legislature had been prohibiting smoking in its chambers for more than half a century before a woman finally became a member in 1919. Indeed, not even the language of those bans had changed from the very first legislative session of 1864.\(^{284}\) As in Iowa, by the time of World War I conflicts over these rules were becoming more frequent as a number of legislators sought to suspend them in order to permit smoking on various days.

As far back as the second legislature of 1866, the Assembly suspended the rule temporarily during an evening session.\(^{285}\) During the following decades the confrontation of smokers’ withdrawal symptoms and non-smokers resistance to secondhand smoke exposure burst forth sporadically.\(^{286}\) In order to supplement its standing rule banning smoking during its sessions, the Senate in 1879 adopted a resolution “that the Sergeant-at-Arms be requested to prohibit smoking in the Senate Chamber prior to convening each day.”\(^{287}\) Just how contentious the


\(^{285}\)Journal of the Assembly During the Second Session of the Legislature of the State of Nevada, 1866, at 68 (Jan. 15) (1866).

\(^{286}\)Identification of references to smoking in the Nevada legislative journals was facilitated by Google’s word-searchable digitization of all House journals and almost all Senate journals through 1921. The search words were “smoking,” “smoke,” and the House or Senate rule number in effect in each year. It is possible that less formalized disputes and their resolutions were not captured in the journals, which were not stenographic reports of debates.

\(^{287}\)Journal of the Senate of the Ninth Session of the Legislature of the State of Nevada: 1879, at 51 (Jan. 20) (1879).
addiction vs. breathing battle became manifest nine days later when the Senate adopted another resolution “that smoking in the Senate Chamber shall be allowed up to within ten minutes of the convening of the Senate; and at that hour of each day the Sergeant-at-Arms is instructed to shut off smoking and open the windows.”

A dozen years later the Assembly suspended its rule for the evening of the penultimate day of the session, but then voted down the same member’s motion the next day to suspend the rule for the balance of the day.

By the second decade of the twentieth century these disputes erupted with ever greater frequency. In 1911, after the Assembly had voted down a motion in mid-February to suspend Rule 58 during evening sessions, a member “protested against” the Assembly’s “wasting fifteen minutes of time (which cost the people of the State of Nevada large sums of money) upon a frivolous question and one below the dignity of the Assembly....” On five days in March four different members successfully moved to suspend the rule during various hours.

In the Senate that year, however, the rule was suspended only once and even then only for the reading of a single bill. By 1913, the Assembly had become a hot house of rule suspensions. No fewer than nine members on 18 occasions on 16 days (including almost every day during the last two weeks of the session) moved to suspend Rule 58; three of those times the anti-smoking representatives succeeded in defeating the motion. The Senate, in contrast, was quiescent: no motions to suspend were offered. House suspensions were radically reduced in 1915: only two members moved for them, one motion losing and the other

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290 Journal of the Assembly of the Twenty-Fifth Session of the Legislature of the State of Nevada: 1911, at 130 (Feb. 17) (1911).

291 Journal of the Assembly of the Twenty-Fifth Session of the Legislature of the State of Nevada: 1911, at 204, 213, 223, 252, 263 (Mar. 3, 4, 6, 9, 10) (1911).

292 Journal of the Senate of the Twenty-Fifth Session of the Legislature of the State of Nevada: 1911, at 138 (Feb. 28) (1911).


294 Journal of the Senate of the Twenty-Sixth Session of the Legislature of the State of Nevada: 1913 (1913).
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carrying. A revealing event on the last night of the session suggested that compliance with the no-smoking rule may well have been strict: the governor sent a message “To the Honorable the Assembly. You are respectfully requested to suspend Rule 58 and to have a cigar with my compliments.” The motion to thank him for the cigars carried. That same session on three days a different senator successfully moved to suspend the other chamber’s no-smoking rule.

In 1917, the Senate suspended its Rule 50 only once, but smoking conflicts erupted often in the Assembly: on five separate days Rule 58 was suspended; on one occasion pro-smokers failed to muster the requisite super-majority; once a smoker was fined for smoking; and once the Assembly voted to fine a smoker for having succeeded in using the suspension procedure. On the third day of the session, the “first real debate” was “staged” after Harry C. Heidtmann, a 43-year-old, German-born, Reno beer bottler, had moved to suspend Rule 58 for the day. Then 68-year-old William Booher offered—presumably just in case the main motion carried—an amendment prohibiting cigarettes. That it lost by a vote of 13 to 19 was interpreted by the press as meaning that a majority of assemblymen were cigarette smokers. Heidtmann’s motion secured 20 of 35 votes but fell short of the required two-thirds majority. Thus, although the smoking ban remained in effect, the press cautioned that the situation might be different the next day because “smokers are seeking new recruits and may be able to muster the required two-thirds majority” the next time. No such motion was

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300 1910 Census of Population (HeritageQuest) (saloon employee); *Nevada State Journal*, Apr. 1, 1916 (8) (ad for Heidtmann’s bottling business).

301 “Assembly Places Ban on Smoking After First Real Debate of Session Is Staged,” *Nevada State Journal*, Jan. 18, 1917 (3:4-5). The press accounts are adopted here in preference to the seemingly confused procedure in the Journal, which had the amendment
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offered the next day, but a week later the rule was suspended for the day. On the last day of January, the rule was enforced when the Assembly voted unanimously in favor a motion to fine Isaac Alexander, a physician, a box of candy because he had “consciously or unconsciously, lig[h]ted a cigar and was serenely puffing away at the weed, much to the discomfort of his colleague Fulmer. Fulmer declared he had no objections to anyone smoking, but he did object to the weed that Alexander was using to perfume the assembly chamber.” Two days later an extended conflict unfolded, when smokers, controlling a majority but not two-thirds of the votes, were “Unable to Scent Up Assembly.” After the first motion lost on a standing vote, Heidtmann—anticipating the widespread but feckless designated smoking/no-smoking sections of the last quarter of the twentieth century—“moved that the suspension apply only to the east half of the chamber, where the greater number of smokers are seated,” but his motion “was not entertained when it was pointed [out] there could be no such division.” Unadverted, a Democrat asked whether chewing unlighted cigars was permitted; not only was no objection raised, but some frustrated addicts doubtless drew salace from the announcement that, since the rule did not ban it, the chewing of tobacco could also be indulged in. Nevertheless, in spite of these smokeless concessions, smoking remained “tabooed” and “the assemblymen were forced to go out in the hallway for their morning smoke.” Two days after another rule suspension on February 6, the Assembly voted to fine a senator (whose presence was not explained) a box of cigars for smoking, and on the same day the members voted 28 to 7 to suspend first losing and then carrying without a vote on the main motion. Journal of the Assembly of the Twenty-Eighth Session of the Legislature of the State of Nevada: 1917, at 9 (Jan. 17) (1917).


305 “Violation of Assembly Rules by Smoking Cigar Costs Alexander of White Pine One Box of Candy; Fair Attaches Given a Treat,” Nevada State Journal, Feb. 1, 1917 (3:6-7). At the 1910 census Fulmer was returned as a deputy sheriff.

306 “Smokers Unable to Scent Up Assembly,” Nevada State Journal, Feb. 3, 1917 (3:7). Oddly, none of these disputes was reflected in the Assembly Journal, which indicated that the day’s session lasted only about a half hour. Journal of the Assembly of the Twenty-Eighth Session of the Legislature of the State of Nevada: 1917, at 51-52 (Feb. 2) (1917).

307 Journal of the Assembly of the Twenty-Eighth Session of the Legislature of the State of Nevada: 1917, at 60 (Feb. 6) (1917).
Rule 58 for the rest of the day.\textsuperscript{308} On Valentine’s Day, after the House rule had been suspended for the rest of the morning, Democrat C. W. Renfro—“who always objects to suspending Rule 58...because smoke injures his throat”—\textsuperscript{309} successfully moved to amend the motion to require its movant, Speaker pro tem Roy Hardy, to furnish two dollars for candy for attachés.\textsuperscript{310} If Renfro was trying to discourage smokers from seeking to suspend the rule by imposing a financial penalty, Hardy revealed that two dollars was not a sufficiently severe deterrent when he stated that the privilege of smoking was worth the fine for making the motion.\textsuperscript{311} Finally, on March 2, on the motion of Danish-born farmer Christian Duborg\textsuperscript{312} pro-smokers succeeded for the last time during the session in suspending Rule 58.\textsuperscript{313}

The tension between want-to-be-smoking and anti-smoking Assemblymen was visibly on display on February 22, when the chamber “had considerable fun” over the introduction by “five of the leading smokers of the lower house” of a bill to ban the manufacture or sale of cigarettes. After one of the members who had successfully moved to suspend Rule 58 moved to refer the bill to “a select committee composed of Renfro,” the Assembly, by a standing vote, defeated Duborg’s motion to reject the bill, but the speaker nevertheless declared the motion carried and the bill rejected.\textsuperscript{314}

\textsuperscript{308} \textit{Journal of the Assembly of the Twenty-Eighth Session of the Legislature of the State of Nevada: 1917}, at 69 (Feb. 8) (1917).


\textsuperscript{310} \textit{Journal of the Assembly of the Twenty-Eighth Session of the Legislature of the State of Nevada: 1917}, at 89 (Feb. 14) (1917). Later that day Heidtmann successfully moved that another member be fined two boxes of candy for not knowing that Rule 58 had been suspended. \textit{id.} at 92. The candy-fine system was not limited to punishment for smoking violations. For example, it was imposed against a member for sitting with his feet on the table. \textit{id.} at 304 (Mar. 14). On another occasion a member was fined “a box of cigars for the exclusive use of the Speaker, Chief Clerk, and the Sergeant-at-Arms” for having made a mistake in a motion; the whole Printing Committee was fined a box of cigarettes for not having had the rules correctly printed. That the cigarettes were designated for the exclusive use of Renfro, one of the chamber’s leading opponents of suspending Rule 58, suggested the theatrical character of the fine system. \textit{id.} at 157 (Mar. 2).

\textsuperscript{311} “It Cost Hardy Two Dollars to Take Smoke,” \textit{REG}, Feb. 14, 1917 (8:3).

\textsuperscript{312} 1920 Census of Population (HeritageQuest).

\textsuperscript{313} \textit{Journal of the Assembly of the Twenty-Eighth Session of the Legislature of the State of Nevada: 1917}, at 157 (Mar. 2) (1917).

\textsuperscript{314} “Cigarette Bill Talk Gives Assembly Fun,” \textit{REG}, Feb. 22, 1917 (2:1). The Assembly Journal revealed neither by whose “request” the bill was introduced nor its subject matter. \textit{Journal of the Assembly of the Twenty-Eighth Session of the Legislature
In 1919, a motion was offered in the womanless Senate on February 7 to suspend the rule for the rest of the session, but it lost; such a motion did finally carry, but not until the last day of the session. That motion was offered by Dr. John V. Ducey, a well-known dentist and member of the Board of Dental Examiners, who a week earlier had successfully moved to suspend Rule 50 for the day. Earlier in the session his colleagues both punished him for violating the no-smoking rule and potentially expanded the universe of his dental patients by fining him a box of candy for the legislative attachés.

On February 13, 1919, Nevada’s first female legislator, Republican Mrs. Sadie D. Hurst, successfully moved to suspend Rule 58 until the noon recess. She offered no other such motions during the rest of the session, but ten different male representatives did on 19 separate occasions, all but one of their motions carrying. Smokers’ overwhelming string of victories was not uncontested: following anti-smokers’ defeat on March 14, they may have drawn some small solace from the Assembly’s vote to fine Elbert Stewart—who had successfully offered more (four) motions to suspend Rule 58 than anyone else that session—candy for the attachés because he had smoked before the rule’s suspension that day.
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Hurst made what was perhaps the most unoverlookable effort at going along to get along when, at the 1920 special session devoted to ratifying the congressional resolution proposing woman’s suffrage, she “moved that inasmuch as the women were so greatly indebted to the members of the Assembly for their cooperation, that [sic] Rule 58 be suspended for the remaining portion of the session.” The motion carried unanimously, though the very brief mini-session lasted only a few hours.323

During the 1921 session, 23-year-old Ruth Averill,324 the only woman in (and the youngest member of) the legislature, shortly before the end of the third day of the session, successfully moved to suspend Rule 58 for the remainder of the day.325 On two other days Averill also secured rule suspension late in the day,326 another day her motion carried unanimously,327 but her last motion was defeated.328 All 19 of male legislators’ we-wanna-smoke motions carried, five of them offered by lawyer James Lockhart,329 who in 1919 had offered the motion to fine that session’s leading smoking advocate for smoking before a suspension went into effect.

Shortly after the session had adjourned, Averill, in response to a request from

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324“Pioneers of 1921: Ruth Averill of Nevada,” Woman Citizen 6(3):11 (July 30, 1921). Averill was a first-grade teacher one year out of college who had been admitted to the bar but had never practiced law.


327Journal of the Assembly of the Thirtieth Session of the Legislature of the State of Nevada: 1921, at 175 (Feb. 28) (1921).

328Journal of the Assembly of the Thirtieth Session of the Legislature of the State of Nevada: 1921, at 195 (Mar. 2) (1921).

329Journal of the Assembly of the Thirtieth Session of the Legislature of the State of Nevada: 1921, at 61, 88, 105, 126, 132, 155, 185, 197, 216, 230, 242, 251, 168, 270, 277, 288, 299, 344, 366 (Feb. 2, 8, 11, 16, 17, 24, Mar. 1, 2, 4, 7, 8, 9, 10, 11, 12, 15, 16, 17) (1921). The Assembly also voted to require anyone violating Rule 58 to buy the attachés a box of candy, though the fine was not imposed. Id. at 141 (Feb. 21). In light of the fact that the overwhelming majority of motions to suspend were offered by male legislators, it is misleading to state that: “Assemblemen did not rely entirely on their new female colleagues—some men still made the motion....” Dana Bennett, “Smokin’ in the Boys’ Room: A Case Study of Women State Legislators in Nevada, 1919-1931,” Frontiers: A Journal of Women Studies 31(1): 89-122 at 93 (2010).

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a woman’s periodical to discuss her experience as a pioneering state legislator, chose to focus on her pro-smoking initiatives, which, in their avowedly manipulative purpose, mirrored Munds’s approach in Arizona six years earlier:

Luckily I am a true Nevadan and not a radical reformer, for I am afraid a radical would not last very long in the Nevada legislature. I have no sympathy with the “blue laws.” One of my first moves was to suspend the rule against smoking in the legislature. Although I never would smoke myself and hate to see a woman doing it, I feel that men are much easier to get along with when they have something sticking in their mouths to talk around and look wise over. The men seemed to appreciate my attitude and were certainly wonderful to me.\(^{330}\)

In 1921, pro-smokers in a Senate that would remain utterly bereft of women senators for many years\(^ {331}\) pursued suspension of Rule 50 just as energetically as their fellow addicts in the Assembly—without suffering a single defeat. On 20 days one of 10 senators succeeded in securing permission to smoke (including one motion that covered the last four days of the session).\(^ {332}\) Just how little male smokers needed women to make the motion to enable them to smoke became manifest in 1923 when the Senate simply amended Rule 50 to strike out the ban altogether and thus introduce smoking laissez-faire.\(^ {333}\)

During the remaining years until the Assembly followed suit and outright repealed its own no-smoking rule in 1931, battles continued to be fought over retention or suspension. After all four assemblywomen during the opening days


\(^{331}\)A woman was appointed to the Senate in 1935, but none was elected until 1966. Dana Barrett, \textit{Women in the Nevada Legislature} 13 (Background Paper 95-1, Research Div., [Nevada] Legislative Counsel Bureau, n.d. [1995], on http://www.leg.state.nv.us/Division/Research/Publications/Bkground/BP95-01.pdf.

\(^{332}\)\textit{Journal of the Senate of the Thirtieth Session of the Legislature of the State of Nevada: 1921}, at 25, 30, 39, 95, 101, 106, 110, 117, 124, 130, 145, 151, 169, 186, 195, 204, 213, 221, 229, 243 (Jan. 25, 26, 28, Feb. 15, 16, 17, 18, 21, 23, 24, 28, Mar. 1, 3, 7, 8, 9, 10, 11, 12, 14) (1921). Senator Albert L. Scott, a district attorney, alone offered the motion to suspend seven times.

\(^{333}\)\textit{Journal of the Senate of the Thirty-First Session of the Legislature of the State of Nevada: 1923}, at 7 (Jan. 16) (1924). The chairman of the Senate Rules Committee, which proposed the amendment, was Albert Scott, who in 1921 had been the leading champion of unimpeded senatorial smoking. Even while senators were free to smoke, the presiding officer was prohibited from smoking big black cigars—unless the rule was suspended. “Senate Gives Smoking Right to President,” \textit{REG}, Jan. 22, 1929 (3:2).
of the 1923 session had “courteously taken the initiative” in taking turns moving suspension of Rule 58 rather than declaring that “tobacco smoke [wa]s offensive” to them,\textsuperscript{334} on the eighth day Mrs. Louise Hays, contemplating “dispensing with the daily formality,”\textsuperscript{335} gave notice that on some future day she would offer an amendment to Rule 58.\textsuperscript{336} The next day the chamber adopted Hays’s Assembly Resolution No. 8, suspending the rule for the remainder of the Thirty-First Session.\textsuperscript{337} In 1925, the next contingent of four assemblywomen again took turns offering the motion virtually every day from February 5 to 25 before they “concluded that they have been wasting a lot of breath”;\textsuperscript{338} the next day’s motion to suspend the rule for the remainder of the session carried unanimously.\textsuperscript{339} On the second day of the short special session in December 1926, Mrs. Ethel McGuire was the movant.\textsuperscript{340} In 1927 the press reported that McGuire, that session’s only woman legislator, “has assumed the doubtful honor of asking each day that the rule forbidding smoking be suspended. Mrs. McGuire admits she doesn’t care much for the job but it seems to be expected of her so she willingly complies. Each day, a bouquet of flowers graces her desk, lending a dash of color to the drab assembly room.”\textsuperscript{341} To be sure, this article was published during the


\textsuperscript{335} “Legislative Doings Told in Summarized Form,” \textit{REG}, Jan. 23, 1923 (5:2).

\textsuperscript{336} \textit{Journal of the Assembly of the Thirty-First Session of the Legislature of the State of Nevada: 1923}, at 23 (Jan. 22) (1924).

\textsuperscript{337} \textit{Journal of the Assembly of the Thirty-First Session of the Legislature of the State of Nevada: 1923}, at 27 (Jan. 23) (1924).


\textsuperscript{339} \textit{Journal of the Assembly of the Thirty-Second Session of the Legislature of the State of Nevada: 1925}, at 3, 53, 57, 61, 66, 72, 74, 82, 88, 94, 100, 107, 111, 116, 122, 131 (Jan. 19, Feb. 5, 6, 9, 10, 11, 13, 16, 17, 18, 19, 20, 23, 24, 25 26) (1925).


\textsuperscript{341} Frank Helmick, “Repeal of Primary Law Not on Program of 1927 Session, Leaders
first days of the session, when in fact McGuire had been the only movant on two
days; over the entire session, however, while she offered the motion 18 times,
eight different male members were the movants on 19 days. That anti-smokers
succeeded in defeating suspension only twice was misleading inasmuch as it did
not mean either that smoking had become hegemonic in the Assembly or that non-
smokers had gone along to get along. On the contrary; as the press reported
midway through the session:

Smoking in the assembly chamber, coupled with the defeat of a bill to provide better
ventilation in the room, may cause a rupture in the lower house. Already there’s a break
in sight although it is in a more or less humorous stage at present. But some of the
members cherish the smoking privilege and when a motion to suspend the no smoking rule
was voted down yesterday, they resented it somewhat. Earlier in the week a bill was
introduced by Boak to provide ventilation in the assembly and senate chambers. ... There
weren’t enough votes to put it over when the roll call was taken but the non-smokers and
those persons who insist there’s too much tobacco smoke in the air most of the time had
their innings yesterday. They stuck tight to their refusal to permit fellow-members to
smoke and there was a real division among the members for the first time. A recess had
to be called during the afternoon because so many of the smokers walked out [for?] respite
from the smokeless room.

This standoff was replicated several days later when the House speaker broke a
tie vote to defeat yet another motion to suspend the smoking ban.

At the beginning of the special session in January 1928 the press reported that
it was “indicated” that assemblymen would be allowed to smoke during
consideration of a motion to “rescind the smoking rule.... Mrs. McGuire told the

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342Journal of the Assembly of the Thirty-Third Session of the Legislature of the State
of Nevada: 1927, at 6, 10, 19, 22, 25, 35, 40, 45, 51, 55, 61, 66, 74, 87, 92, 101, 106, 111,
130, 134, 144, 148, 154, 159, 175, 185, 196, 203, 208, 215, 225, 237, 246, 255, 265, 277,
289 (Jan. 18, 19, 24, 25, 26, 31, Feb. 1, 2, 3, 4, 7, 8, 9, 11, 14, 15, 16, 17, 21, 23, 24, 25,
26, 28, Mar. 2, 3, 4, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17) (1927). Men were the movants every
day from Feb. 28 to the penultimate day of the session; on the final day McGuire offered
the motion, triggering a unanimous vote of thanks.

19, 1927 (3:2-5 at 5). The Journal did not reflect any Rule 58 motion on Feb. 18 or
19, let alone a defeat.

344“House Lobbying Frowned upon Again by Tandy,” REG, Feb. 23, 1927 (2:5). The
Journal merely stated that the motion “lost” without specifying the vote. Journal of the
Assembly of the Thirty-Third Session of the Legislature of the State of Nevada: 1927, at
134 (Feb. 23) (1927).
assembly that she enjoyed holding the smoking club over their head but under the circumstances might relent.\textsuperscript{345} How McGuire with her one vote might have been able to wield power on this or any other issue over 36 other legislators the press did not reveal. In fact, while she did offer the first Rule 58 motion, the other seven motions during the 20-day session stemmed from three male legislators.\textsuperscript{346}

At the outset of the regular session in 1929, McGuire “tried hard to offer a resolution” to enabled smoking, but: “While assemblymen, badly in need of a smoke, looked wistfully at her she arose to make the motion but the presiding officer heeded her not and no smoke curled...over the assembly desks.”\textsuperscript{347} This proceeding raised a different aspect of McGuire’s mysteriously unique power: why were male smokers dependent on McGuire to act at all when in fact any one of them could have moved to suspend the rule himself? In the event, the following day one of the other two assemblywomen successfully moved to suspend Rule 58 for the balance of the session.\textsuperscript{348}

Whatever room female legislators had had at their disposal for accommodating or playing off male smokers and non-smokers against each other disappeared in 1931, when women themselves disappeared from the “unanimously masculine”\textsuperscript{349} Assembly, whose Rules Committee Resolution No. 5 recommended, inter alia, that Rule 58 be eliminated from the chamber’s permanent rules. Even now, with a sharply divided committee the House speaker had to cast the tie-breaking vote in the chamber at large so that the repeal carried by a vote of 19 to 18.\textsuperscript{350}

Repeal, according to Dana Bennett, a former longtime Nevada legislative

\textsuperscript{345}“House Smoke Rule May Be Rescinded,” \textit{REG}, Jan. 18, 1928 (2:1).

\textsuperscript{346}\textit{Journal of the Assembly of the Special Session of the Legislature of the State of Nevada: 1928}, at 16, 19, 28, 49, 70, 85, 93 98 (Jan. 17, 18, 20, 26, 31, Feb. 1, 3, 4) (1928).

\textsuperscript{347}“Senate Gives Smoking Right to President,” \textit{REG}, Jan. 22, 1929 (3:2). The article’s statement that McGuire succeeded the next day does not accord with the \textit{Journal}. See below.

\textsuperscript{348}\textit{Journal of the Assembly of the Thirty-Fourth Session of the Legislature of the State of Nevada: 1929}, at 7 (Jan. 22) (1929) (Mrs. Neva Waters).

\textsuperscript{349}“Women Gone; Assembly to Smoke Again,” \textit{Nevada State Journal}, Jan. 23, 1931 (2:7).

\textsuperscript{350}\textit{Journal of the Assembly of the Thirty-Fifth Session of the Legislature of the State of Nevada: 1931}, at 20 (Jan. 22) (1931); “Tie in Assembly Vote on Rules Broken by Speaker,” \textit{REG}, Jan. 22, 1931 (2:3). To be sure, the three Republican and two Democratic committee members, despite having submitted majority and minority reports, appear to have agreed on the smoking rule.
research analyst and lobbyist, “exposed men’s antagonism toward their new colleagues. ... Claiming that the nonexistence of women now permitted the legislators to smoke freely,” the all-male lawmakers “quickly moved to repeal the no-smoking rule and establish men’s right to smoke at will during floor sessions.” Bennett’s interconnected assertions lacked both an empirical foundation and logical coherence. Since all of the women legislators, as Bennett will shortly be seen to have argued, had purportedly been the smoking male legislators’ benefactors by virtue of their role as the monolithic and chief facilitators of rule suspension, it is unclear why their absence was a prerequisite for rule repeal; this causal-temporal link is especially puzzling since Bennett also contended that their support had been strategic and self-interested rather than charitable or altruistic; in other words, they were acting as calculating politicians who conferred on smoking legislators the right/opportunity to smoke (which cost the women nothing if they were indifferent to secondhand tobacco smoke exposure) in exchange for those legislators’ cooperation in passing the women’s bills. But if the male smokers would not otherwise have voted for those bills and were therefore forced to give up something for the giving free(r) rein to their nicotine addiction, their most rational action would have been to achieve the even superior outcome of total carte blanche (rather than mere hit-or-miss daily or periodic suspensions) without any trade-offs by repealing the no-smoking rule, which the women (who, between 1919 and 1929, occupied a minuscule 2.7 to 10.8 percent of the Assembly seats) would have been powerless to prevent—unless the women had entered into a (complicated and complicating) alliance with the non- and anti-smoking males, about whose existence Bennett mentioned (and may have known) absolutely nothing.

Ignoring or ignorance of those men made it possible to ignore the question as to why legislators had had no “right to smoke at will during floor sessions” during the 55 years preceding women’s advent as legislators. Presumably the principal reason for permanent repeal of the no-smoking rule in 1931 was not, as Bennett imagined, women’s (temporary) disappearance, let alone any shift in the “delicate balance” between the benefits and costs of women’s advocating suspension.

but, rather, the growing ubiquitization of (especially cigarette) smoking, which reduced directly the number of non-smoking male legislators and indirectly that of anti-smoking male legislators, the increasing implausibility of whose stance was a function of the solidifying acceptance of and acquiescence in cigarette smoking as a quasi-natural attribute of social life in the United States, which endured, virtually uncontested, into the 1970s. In this regard repeal in Nevada closely resembled its simultaneous counterpart in Iowa as well as the action by the Nevada Senate in 1923 and other legislatures in the 1920s and 1930s.

Bennett’s arguments (and their brittleness) were embedded in her analysis of Nevada’s early female legislators from 1919 to 1931, for whom she sought to carve out an exceptionalist niche by asserting that they “deliberately permitted smoking,” whereas in other states such as Arizona, “the new female legislators simply tolerated men smoking. In Nevada they actively encouraged it.” Apart from the fact that the minuscule number—ranging from one to four—and proportion of women in the Assembly made it impossible for them to permit or prohibit anything (unless they were able to furnish or withhold the crucial swing votes to reach or deny the requisite super-majority for rule suspension), the reference to Arizona was ironic since, as detailed earlier, Senator Munds had pursued a similarly opportunistic course (as did female legislators in New Hampshire discussed below). Bennett then imputed to the 13 assemblywomen who served between 1919 and 1929 a crafty strategic deployment of their motions to suspend the no-smoking rule, the empirical success of which she, however, never even attempted to document:

[T]he first female legislators maneuvered the antismoking rule to their benefit.... Through the rest of the 1920s, as each of Nevada’s female legislators rose to move the temporary suspension of Assembly Rule No. 58, they revealed their sophisticated political skills and nuanced understandings of group dynamics. They clearly recognized the legislature as a place where rules mattered, cooperation could be beneficial, and battles should be carefully chosen. They acted like politicians. ... Once elected, they played by the rules of the legislative game as it then existed, rather than try to change the game completely. This is particularly noticeable through the haze of cigar smoke. When the first women arrived in the Nevada assembly chamber, they discovered that smoking was a privilege granted by one’s colleagues, and they quickly adopted that strategy. Inviting the male legislators to

\[111\] (2010).


355 The press was, therefore, also incorrect in stating that “Women Legislators to Permit Men to Smoke,” Nevada State Journal, Jan. 23, 1923 (4:3).
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smoke, but not smoking themselves, female legislators demonstrated that they could work with men without altering men’s behavior or, especially, trying to be men. For ten years, the strategy worked well, and female legislators achieved some legislative successes. By the end of the decade, however, that delicate balance was tilting.356

These far-flung claims raise and ignore more questions than Bennett ever tried to answer. Ironically, the very fact that Bennett, to her credit, was aware of the Nevada legislature’s long pre-1919 tradition of smoking bans and suspensions made even more serious her failure to raise, let alone discuss, the question as to whether the dynamics between male anti-smokers and smokers before and during women’s representation differed from those between non-smoking female legislators and their smoking male colleagues. In other words, did male opponents of smoking deploy their (larger number of) votes in the same opportunistic fashion as all the women (allegedly) did or did they insist on breathing cleaner air regardless of whether that confrontation might have thwarted passage of some legislation they favored? By treating men as an undifferentiated mass, Bennett rendered incoherent her celebration of all the women as not “trying to be men.” Which men—the smoking or the anti-smoking ones, who had been protesting against their tormentors for decades? In other words, would “trying to be men” have entailed smoking or self-protectively “altering men’s behavior” by opposing smoking regardless of the impact on some legislative initiatives? This question, in turn, cannot be explored unless information were unearthed as to whether these anti-smoking male legislators themselves had acted strategically or principledly both before and after 1919.

Bennett’s overlooking the internal male struggles also rendered meaningless her assertion that the women played by the existing “rules of the legislative game”—instead of trying to “change the game completely”—which in this particular instance referred to collegial grants of smoking privileges, which “strategy” they then “quickly adopted.” But in fact the women, by the structural logic of Bennett’s account, did change the game (or the rules) completely: whereas anti-smoking men in the past both created the no-smoking rule and resisted smokers’ efforts to suspend it, the women (purportedly) immediately and persistently capitulated to the smokers even to the extreme of moving for suspensions on their behalf. Nowhere did Bennett explain how or why this invariant active intervention reflected “sophisticated political skills and nuanced understandings of group dynamics.” Indeed, Bennett did not reveal (and it is

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probably no longer possible to know) whether the (or any) women ever voted against suspension or whether their failure to move for suspension on various days constituted casting a kind of implied strategic Nay, and if it did, what the success rate of each strategy was. Although Bennett asserted that the women had been motivated by the recognition that such “cooperation could be beneficial,” she failed to come to grips with the fact that, since male legislators were not a monolithic bloc, but riven between smoking and non-smoking factions, women who sided with the former inevitably ran the risk of alienating the latter, who might well have expected their support in resisting exposure to secondhand smoke. Whatever those cooperative benefits might have been, she nowhere quantified them, merely claiming globally, without any documentation, that “the strategy worked well, and female legislators achieved some legislative successes.” Yet even she was forced to admit that “their success was mixed”—alone because three of them had introduced no bills whatsoever, while all the measures of three others failed.357 Much more intractable methodologically, however, was the lack of any effort by Bennett to correlate passage of certain (or any) bills and the women’s compliant motions for suspension. And even if she had perceived this problem and been able to assemble data to test what should have been an hypothesis, the lack of a control group would still have made it impossible to discover whether the women could have achieved roughly the same level of success even if they had not sought to ingratiate themselves with smokers by facilitating their addiction.

Kansas

The pattern of acquiescence soon spread east to Kansas, where it was replicated in the person of Lovonia Myrtle Donica (1881-1942), who during the 1925 session was the only female legislator.358 To be sure, that year’s “New Legislady”359 was not the first woman elected to the Kansas legislature. That precedent had been set by Minnie Grinstead, whose election in 1918 prompted male House members to wonder whether she would “‘nag’ them for smoking cigars.”360 And the longtime WCTU member did not disappoint: the first bill she

358http://www.kslib.info/legislators/membd.html
360Kansapedia, on http://www.kshs.org/kansapedia/minnie-j-grinstead/11734 (visited
introduced prohibited smoking in public eating places.361

In contrast, “Miss Donica,” a Republican, teacher, and county superintendent of public instruction, was engaged in a vast understatement when she confided to the press that she “will go to Topeka with no revolutionary ideas.” Not only did she “not intend to vote on legislative measures from a purely feminine viewpoint” or “to fight the men” or “want them to fight me,” she made it clear that, while she had not yet formed an opinion on whether to support the federal child labor amendment, “if she decided it was Russian soviet propaganda as had been stated by its opponents, she would vote against it despite the fact that it had been indorsed by various woman’s organizations.” In the event, Donica must have concluded that conferring power on Congress to limit, regulate, or prohibit labor by under-18-year-olds was a Bolshevik plot: her House floor speech 10 days later opposing it not only struck a blow against its supporters, but amounted to cozying up to her all-male colleagues by belittling her erstwhile female ones: “She warned the gentlemen of the house against the propaganda of the women’s organizations supporting the federal plan, organizations of which she is a member. She said they were accustomed to recommend measures they did not understand...and that their recommendations were not to be taken too seriously.”

Both houses of the Kansas legislature had banned smoking for decades and retained those rules through the 1923 session. But in 1925 the House and Senate both dropped the rules—“[t]he first day out they kicked the daylights out of the anti-smoking rule”—and, at least in the House, that change was linked to Donica. On the first day of the session “[f]oes of the ‘fag’ lost the first round...when members of the house rejected a temporary rule of the 1923 session.

Feb. 16, 2011).

361 See above ch. 16.
362 “Miss Donica in Capital,” IDR, Dec. 31, 1924 (2:3).
365 See below Table 6.
367 The 1925 Senate rules no longer included the smoking ban. Senate Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fourth Biennial Session...1925, at vii-xvi (Jan. 13) (1925). The Rules Committee report recommending amendments did not mention the smoking ban. Id. at 69 (Jan. 28).
which forbade smoking during regular meetings.” Republican ranchman W. V. Jackson, the leader of the “attack against tobacco users,” insisted that although “legislators should be the first to obey the anti-cigarette law,” in fact House Rule 70 “never is obeyed and ought to be stricken out.” In contrast, millionaire banker Orlando Jolliffe, who did not smoke and did not “like to breathe the smoke that others make,” urged the rule’s retention, adding that the sergeant-at-arms should be “instructed to enforce it rigidly. ‘Besides,...we have a lady member who doesn’t want to breathe a lot of tobacco smoke. We ought to think of her.’ The lady member, Miss Lovonia Donica...sat mute.” A “thundering majority” nevertheless voted to strike the rule. After the Rules Committee had recommended that the no-smoking rule be dropped from the permanent rules—its chairman expressing confidence that “all the members were perfect gentlemen and would not abuse their smoking privileges”—the House eliminated it. Donica “won the hearts of all the men” when, in response to a resolution that House members refrain from smoking “out of deference to the Lady Member,” she asked that “no special rule be enacted on her account, calling attention to the fact that the chamber was large and the ceiling high and declaring that the smoke would not be in the least offensive to her.” In general, she “oppose[d] any alteration in house rules ‘because there is a lone woman present,’” and although she “appreciate[d] the courtesy intended by sponsors of the [no-smoking] resolution who say my presence prompted it[,]...it would embarrass me to feel that I was interfering with the pleasure of the other 124 members—or as many of them who care to smoke.’” Donica’s acquiescence in smoking was consistent with, if not entailed by, her reflexive support for Republican Party measures: “‘I will not permit my woman’s viewpoint to reflect any prejudice in

369 “Won’t Forego Fags While in Session,” HN, Jan. 13, 1925 (2:3). Kansas law prohibited the sale but not the smoking of cigarettes. See above ch. 16.

370 “Members in House May Smoke If They Want to Without Violating Rules,” TDC, Jan. 14, 1925 (5:5). On Jolliffe’s role in repealing the statewide sales ban in 1927, see above ch. 16. Ranchman W. V. Jackson successfully moved to amend the motion to adopt the 1923 rules as the temporary rules in 1925 by striking out the no-smoking rule (Rule 70). House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Fourth Biennial Session...1925, at 4-5 (Jan. 13) (1925).

371 “Legislative Notes,” TDC, Jan. 20, 1925 (3:3).


373 IDR, Jan. 21, 1925 (6:1) (untitled editorial).
my voting.”  The (male-dominated) press appreciated Donica, ironically noting that when the smoking question arose in the House, “Lovonia didn’t assume that pure, holy, superior air of some of our new world creating feminine political reformers, nor when the boys voted to have their smokes did her nose go up in the air and she make biting comment about boorish, filthy males. ‘It’s all right with me, boys,’ she smiled. ‘Far be it from me to deprive you of the pleasure you get out of it.’”

While boasting that she could take a joke at her own expense, she nevertheless explained in a letter to the editor of her local newspaper that the press had not provided a completely accurate account, offering this corrective: “When approached by a number of members of the House who are non-smokers and asked by them whether they should make the stand to have no smoking in the session this year on account of a woman being present, I told them that if the rule were adopted I felt it should be because a majority of the House favored it and not because one woman demanded it.”  (On the other hand, Donica had no objection to receiving the privilege of first choice of seats after the speaker and speaker pro tem).

**New Hampshire**

Beginning in the late 1930s, over several decades several women in both chambers of the New Hampshire legislature systematically and programmatically facilitated smoking by their male colleagues (though by the 1970s other women led the struggle to ban it). The New Hampshire legislature appears to be one of the very few that neither by rule nor by resolution banned smoking. Nevertheless, the fact that in 1931 the House adopted a resolution that “smoking

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374“Only One Woman in Kansas Legislature Interested in School Activities,” *Lawrence Journal World*, Feb. 12, 1925 (4:3-4). There was no such resolution; procedurally, the question was whether the previous session’s rules, including the smoking ban, would be adopted.

375“But Look at the Newspaper She Has Been Reading All Her Life!” *IDR*, Jan. 23, 1925 (4:3) (reprinted from Chanute *Tribune*).


be permitted in the House for the 1931 session” presumably must have meant that (as was the case in the U. S. Senate before 1914) an unwritten custom prevailed that members would not smoke. Then at the outset of the 1939 session, the House by a viva voce vote adopted the resolution offered by Republican Mabel Thompson Cooper “that the members of the House of Representatives be permitted to smoke during sessions of the House.” Ironically, Cooper, a first-term representative and insurance agency owner who went on to serve 12 terms, until the end of her life may have been “an emancipated female of long standing, but that [does]n’t go as far as smoking or bending the elbow. Her two pet taboos for women would be smoking and drinking.” Such sexist-suicidal solicitude on behalf of the (male) smokers hardly went unnoticed: at the end of the session the House unanimously adopted this resolution: “Whereas, the lady members at the opening of the 1939 session, voluntarily, thoughtfully and courteously motioned and carried a rule that granted the men members the privilege to enjoy the universal weed tobacco to their heart’s content.... We, the men, wish to express our thanks and appreciation by a rising vote.” At the beginning of the 1941 session Cooper once again came to her addicted male colleagues’ rescue by offering a resolution that House members “be allowed the privilege of smoking during the time the House is in session.” On this occasion, however, after a male representative had spoken against resolution, it was, on a viva voce vote, not adopted. Then Hilda


380 The House rules contained no such prohibition. See above this ch. for references to the Manual for the Use of the General Court of New Hampshire for various years from 1895 to 1961. Press sketches of legislators in 1901 depict two smoking (one a cigarette and the other a cigar) “during the noon hour”; one of them appears to be sitting in his chair in the House chamber. “Thumbnail Sketches During the Noon Hour,” Manchester Union, Jan. 3, 1901 (1:4-6).


Constance Frederika Brungot, on her way to 19 terms and “an all-time world’s record as a woman legislator,” intervened. A “conservative Republican” who more than three decades later was “quite against women’s lib,” Brungot during the discussion on reconsideration of the first vote told the House that: “Men are better humored, yes, and much better to handle if they have not been denied their smoke.” After the chamber had on reconsideration voted viva voce to adopt Cooper’s resolution, at least one newspaper credited Brungot, “a mother of six children who doesn’t smoke herself,” with having made it possible for the 422 House members to “smoke during their sessions....” By now almost a ritual, the end-of-session resolution once again embodied the male members’ gratitude to the “lady members” for permission to smoke.

In 1943, however, the anti-smokers regained the upper hand when, after both the Republican majority leader (future U.S. Senator Norris Cotton) and the Democratic minority leader had spoken in favor of it, by a vote of 203 to 129, the House adopted a resolution that “in recognition of the dignity of our position as members of the state government, smoking during the time the House is in session shall not be allowed.” In 1945 virtually the same resolution banning smoking during its proceedings was offered by Republican majority floor leader J. Walker

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388 “N.H. Solons Vote Right to Smoke,” Portsmouth Herald, Jan. 9, 1941 (9:7). See also Gail Parker, More Than Petticoats: Remarkable New Hampshire Women 140 (2009): “Hilda later stated that her motives were not simply a maternal concern for the men’s comfort. Being practical, she knew that if they were more comfortable, they would be more likely to agree with her” (from the chapter “Hilda Brungot: 1886-1982: Legendary Legislator”).
Wiggin, who justified it on the grounds that the House “‘represents the people of New Hampshire and should maintain a certain amount of decency and decorum, and avoid having billows of smoke rising to the ceiling which would prove inconvenient to onlookers in the gallery.’” Interestingly, this time Brungot (and other female legislators), “were talked out of taking the issue to the floor for debate, as they wanted to go on record, they later explained, as not wanting special consideration from their male associates.” In the event, the House overwhelmingly adopted the resolution by voice vote. To be sure, the question of compliance was raised by a photograph of the full House in session from 1945 that clearly reveals two men with cigarettes in their mouths.

After the “dignity” resolution had once again been adopted, by voice vote, in 1947, Mabel Thompson Cooper in 1949 once again “assumed a leading part in” what the Nashua Telegraph called “the annual comedy in the House to decide whether or not there shall be smoking while the lawmakers are in session. Rep. Cooper was instrumental in getting a resolution to ban smoking killed.” The House defeated that resolution, which was identical with the text of the 1945 ban, by a vote of 126 to 180. In April, after having blocked the anti-smokers’ initiative, Cooper, who “declared she did not personally object to smoking,” succeeded in securing “overwhelming” support for adoption of a compromise pursuant to which “for the remainder of the session, the members of the House shall refrain from smoking until noon, out of courtesy to the visitors in the Gallery.” How precisely “it would be pleasanter and more dignified not to

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393“Solons Vote to Ban Smoking This Session,” Concord Monitor and Patriot, Jan. 10, 1945 (1, 6) (copy furnished by Jane Lyman, NH State Library). See also Journal of the House of Representatives [of the State of New Hampshire]: January Session, 1945, at 91 (Jan. 10) (1945); “N.H. House Votes to Ban Smoking,” Portsmouth Herald, Jan. 11, 1945 (10:3); “House Decides to Ban Smoking,” Manchester Union, Jan. 11, 1945 (1, 2:3) (copy furnished by Jane Lyman, NH State Library).

394Leon Anderson, To This Day: The 300 Years of the New Hampshire Legislature 166 (1981).


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smoke for the first hour of the session" but would have become less so if the ban lasted all day she did not explain. (The year 1949 also witnessed the intervention of a female colleague in the Senate, when, on July 19, on motion of Republican Sara Otis, “smoking was permitted in the Senate by its members during today’s session.”)\footnote{Journal of the Honorable Senate [of New Hampshire]: January Session of 1949, at 583 (July 19). Again, this need for permission logically suggests that there must have been a pre-existing prohibition, yet neither did the Senate rules contain such a ban nor did its Journal mention any, suggesting that the ban, as was the case in the U.S. Senate before 1914, rested on custom. Such an understanding may explain a press report in 1947 that the Senate had “for many years prohibited smoking while in session.” “Solons Vote to Ban Smoking This Session,” Concord Monitor and Patriot, Jan. 10, 1945 (1, 6) (copy furnished by Jane Lyman, NH State Library). The same consideration applies to a point of personal privilege raised by Senator Curtis Cummings during the 1950 special session when he asked that senators be permitted to smoke for the balance of the session and the Senate President Perkins Bass granted the privilege. Journal of the Honorable Senate [of New Hampshire]: Special Session of 1949, at 52 (May 18, 1950). Similarly, two years later, when the Senate on a viva voce vote rejected Republican Senator Katharine Jackson’s motion to grant the same privilege, presumably the default rule must have been no smoking. Journal of the Honorable Senate [of New Hampshire]: January Session of 1953, at 240 (May 5). Jackson was married to Bass.\footnote{Journal of the House of Representatives [of New Hampshire]: January Session 1951, at 58 (Jan. 10) (Mrs. Goodwin); Journal of the House of Representatives [of New Hampshire]: January Session 1953, at 68 (Jan. 15) (Mrs. Cooper); Journal of the House of Representatives [of New Hampshire]: January Session 1957, at 79-80 (Jan. 16) (adopted by a vote of 228 to 45); Journal of the House of Representatives [of New Hampshire]: January Session 1959, at 49 (Jan. 13) (Mrs. Brungot); Journal of the House of Representatives [of New Hampshire]: January Session 1961, at 73 (Jan. 11); Journal of the House of Representatives [of New Hampshire]: January Session 1965, at 22 (Jan. 6) (Miss Whipple); Journal of the House of Representatives [of New Hampshire]: January Session 1967, at 15 (Jan. 4) (Mrs. Brungot).}

This regime of one daily hour of smoke-freedom in the House became a standard of sorts into the early 1970s when the modern anti-secondhand smoke exposure movement arose. During the 1951, 1953, 1957, 1959, 1961, 1965, and 1967 sessions the House, often at the urging of female members, adopted Cooper’s 1949 no-smoking-before-noon practice.\footnote{Journal of the Honorable Senate [of New Hampshire]: January Session of 1949, at 583 (July 19).} An ahistorical view of this much diluted regulation was presented by a senator in 1961, who attributed it to the House’s having becoming “concerned with public relations. [T]he House voted, and has continued to vote, that there would be no smoking from 11-12 in order that school children and others in the gallery would not be in a smoke
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haze.” At least one attempt to reduce the no-smoking period failed—a motion in 1955 to suspend the rules to allow smoking during the call of the roll. In other years, the House Journal contains no reference to a resolution regulating smoking at all. At the end of this phase, the 1971 session, which also coincided with the golden anniversary of women’s membership in the legislature, the House paid tribute to Brungot for having, inter alia, “functioned through the years as shepherdess of the male members, sponsoring smoking privileges for them during dreary deliberations....”

In the event, women also led the battle to put an end to smoking in the House. On January 9, 1973, a House session most of which was devoted to a “smoking versus non-smoking debate,” Republican Alice Davis (in her ninth of 10 terms) offered a resolution that no smoking be permitted on the House floor. Her justification was thoroughly in line with that of the burgeoning national anti-smoking movement: “The people that have to sit in here during a long day’s session go out of here with sore eyes and sore throats.... When we have to inhale this second-hand smoke blown out by others, I think it’s an imposition on us as individuals.” Unsurprisingly, Brungot opposed the resolution, as did Republican Malcolm Stevenson, who complained that “a ban would impose hardship on him as a smoker.” He then continued in the jocularly irrelevant vein that still fit within the framework of early discourse on secondhand smoke: “I think I would take to chewing tobacco...and that would be a danger to all who are

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404 Journal of the House of Representatives [of New Hampshire]: January Session of 1955, at 79-80 (Jan. 12) (Mr. Spaulding). It is unclear which rule Spaulding was referring to.
409 See below Pt. IV.
sitting near me."412 Despite the quality of his argument, Stevenson succeeded in securing a 215 to 129 majority to table the resolution.413 Because the House, after defeating Davis’s no-smoking resolution, was “left...without any limitation,” the next day’s proceedings were also “confined mainly to deciding when to smoke and when not to....”414 In the last hurrah of female-facilitated smoking, the House adopted Brungot’s Cooper-era resolution.415 In opposing an amendment to prohibit smoking in the legislative hall while members were required to be in their seats,416 Democratic Minority Leader Ernest Coutermarsh deployed an argument that apparently did not strike a majority as based on a theretofore unknown type of logic: “[P]ointing out that tobacco revenue is important to the state [h]e said it would be inconsistent for the lawmakers to stop smoking in the chamber when ‘we have been trying our best to get everyone who is not a member to smoke the state into solvency.’”417 The anti-smokers’ weak position was underscored a week later when the House adopted a motion to postpone indefinitely as well Davis’s cri de coeur resolution that at least the “legislative lounge be reserved for non-smokers.”418

House anti-smokers finally achieved a major objective in 1975, when, in an inversion of the previous session’s voting arithmetic, the House, by a vote of 234 to 114, adopted Democrat Marian Woodruff’s resolution to prohibit smoking on the floor of the House while it was in session, but to permit smoking at all times in the Legislators’ Lounge and the Sergeant-at-Arms’ Room.419 Woodruff, a

413Journal of the House of Representatives [of New Hampshire]: January Session of 1973, at 72 (Jan. 9). Pending was also an amendment by Sara Townsend to water down the resolution by expanding the smoke-free period to the first two hours of the session.
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(second-term)\textsuperscript{420} nonsmoker who complained that more than once she had gone home with a headache caused by exposure to the smoke in the House, was reinforced by other members who underscored the unfairness to those with heart or lung problems.\textsuperscript{421} At this point, in New Hampshire, as elsewhere, attention shifted to protecting the non-legislative population from secondhand smoke.

No-Smoking Rules in the United States House of Representatives and Senate

For the past season I have heard no complaint as to the ventilation of either the Senate or the House of Representatives, and I have made frequent inquiries of the members of the House, who have said that there it is as good as it need be, or would be except for a novel habit of some novel members who indulge occasionally in smoking in spite of the majesty of the Speaker and the mace of the Sergeant-at-Arms.\textsuperscript{422}

Neither a dead letter nor universally complied with, the smoking ban in the House of Representatives dating from the early 1870s was sharply contested: from the periodic crescendos of frustration by representatives fed up with exposure to secondhand smoke that were recorded in the \textit{Congressional Record} as appeals to the speaker, who invariably called on smokers to comply, it is apparent that rule-backed social pressure was in constant demand to suppress an activity that was obnoxious to many adult power-holding men, but that had not yet transformed their smoking peers into pariahs who had internalized the majority’s loathing for the external effects of their addiction. Rather, a kind of equilibrium evolved in this pre-cigarette era, in which anti-smoking congressmen galvanized collective opinion against the acceptability of tobacco smoking in their very public workplace, but had not yet succeeded in prevailing on their own smoking colleagues consistently to conform their behavior to an explicit rule arrived at democratically and without any audible opposition.

In contrast, until well into the twentieth century the ban on smoking in the Senate chamber during public sessions was based on custom and, apparently, secured greater compliance than the formal House rule.


\textsuperscript{422}\textit{CR} 10:3312 (May 13, 1880) (Vermont Republican Justin Morrill).
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House of Representatives

The inception of a smoking ban in the United States House of Representatives was remarkably straightforward, albeit contextually mysterious. An unsuccessful effort was undertaken as early as 1822, when, in connection with a general discussion of House rules, Democratic Republican, Robert Wright, a former governor of Maryland, moved as a new rule that “no person shall be permitted to smoke a cigar in the hall nor in the outer lobby of the hall.” Without a division, the House negatived the motion.423 Although conventionally historians recite that “smoking was permitted on the floor until 1871,”424 in 1856 the press reported that: “Little printed cards have been hung up in the hall of the House of Representatives at Washington signed by Speaker [Nathaniel] Banks, direct[ing] the Doorkeeper to prevent smoking on the premises.”425

Nevertheless, a new regime did begin on February 28, 1871. In the middle of his three-term incumbency, Representative Ginery Twichell, a Massachusetts Republican who was the president of the Boston & Worcester Railway and the Atchison, Topeka & Santa Fe Railway,426 apropos of nothing being discussed that day, asked unanimous consent to offer a resolution amending House Rule 65 by adding: “Smoking is prohibited within the bar of the House or the galleries.” His proposal prompted an apparently bewildered Illinois Republican John Farnsworth to object: “This is not necessary. Is not that the rule already?” In clarification, Republican House Speaker James Blaine—a future unsuccessful presidential nominee and two-time secretary of state who was in the second of his three terms as speaker—set the record straight: “There is no rule upon the subject. The Chair has been appealed to by a great many gentlemen to prevent smoking in the House, but he has no power.” This intelligence, in turn, sparked bipartisan “[t]here

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423Annals of the Congress of the United States 39:1301 (Mar. 13, 1822) (comp. 1855). Previously, Wright had opposed an amendment—which was also negativ[ed]—prohibiting a member from reading newspapers or reading or writing a private letter in his seat during the session. Id. According to the House Journal Wright’s language was slightly different: “No person shall be permitted to smoke cigars in the lobby between the hall and the post office attached to the House.” Journal of the House of Representatives of the United States, Being the First Session of the Seventeenth Congress 353 (1821).


425South Carolinian (Columbia), Feb. 29, 1856 (2:1) (untitled). Republican Banks, who became a Civil War general, had just recently assumed the speakership.

ought to be a rule” enthusiasm by Indiana Democrat William Niblack (the Democratic Caucus chair) and California Republican Aaron Sargent.” Hearing no objection, Speaker Blaine announced that the rule was agreed to. The House then inserted the new prohibition into Rule 65 of its Standing Rules and Orders for Conducting Business, which The New York Times reported under the rubric, “Reforming Bad Habits.”

A brief overview of the conflicts that broke out in the immediately ensuing years offers a sense of the tenor and frequency of the struggles, which did not even always require member complaints. For example, in 1872 in the midst of a testy procedural dispute over motions to suspend the rules, adjourn, and recess at the time of a debate over building a marine hospital in San Francisco, on his own, Speaker Blaine, “though not connected with this subject,” directed the clerk to read the non-smoking rule aloud. During the final months of the Forty-Third Congress in January-February 1875 the contentious subject burst forth again, this time in connection with the fierce procedural battle that Democrats were mounting to thwart passage of the Civil Rights Bill: with a Democratic majority due to replace the Republican majority in the Forty-Fourth Congress at the beginning of March, Democrats sought to bring the proceedings to a halt by a neverending cascade of motions to adjourn. As yet another such motion was being launched, Radical Republican William Kelley’s request for unanimous consent to be excused from attending that day prompted Kentucky Democrat James Beck to declare: “We will excuse all you gentlemen on that side of the House.” After Kelley had explained that his throat was in such a condition that he was unable to “remain in this atmosphere with impunity,” Beck’s question as to whether any other Republicans wanted to be excused was matched by Indiana Republican Jeremiah Wilson’s request for unanimous consent to excuse “all the gentlemen on the other side of the House...from further attendance,” which the speaker pro tempore, Republican John Cessna, held not in order, “although the Chair would be very happy to entertain it.” At this point Tennessee Republican Horace Maynard, chairman of the Republican Conference, asked for the last clause of Rule 65 to be read. Following the clerk’s recital of the smoking ban,

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428 Journal of the House of Representatives of the United States 70:522 (Appendix, 1871). It is unclear why, when, or how the rule was changed to read “or gallery.”

429 Forty-First Congress,” NYT, Mar. 1, 1871 (5:2-4 at 4).

430 Congressional Globe 3389(42d Cong., 2d Sess., May 13, 1872). Remarkably, the two central actors in the debate were Farnsworth and Sargent; two other participants, Garfield and Speer, are mentioned below as involved in smoking disputes.
Maynard explained that: “I ask to have that rule enforced. I do it for the benefit of various persons within the House.” Rather incongruously, Democrat Robert Speer then asked Maynard: “Do the other side intend to smoke us out?” The speaker pro tempore then concluded this series of exchanges by declaring that “the officers of the House are requested to see that the rule is enforced.”

In March 1876, Republican Representative (and future President) James Garfield rose to a point of order: “The heat of this Hall is very great, and the discomfort under any circumstance. I respectfully ask for the reading of the last clause of the sixty-fifth rule of the House, and ask that it be enforced.” After the had clerk had read it aloud, the chairman declared that: “The Doorkeeper will see that this rule is enforced.” A year later, the new speaker, Pennsylvania Democrat Samuel Randall (who “never uses tobacco in any form,”), called to the attention of the House that he had received repeated complaints that Rule 65 was being violated on the House floor. The particular complaint that he had received that day stated that non-House members who were there by courtesy of the House were in the habit of smoking within the bar of the House. In addition, however, Randall, revealing both just how insistent he was on compliance with the letter of the rule and underscoring the health hazard linked to smoking, pointed out that he had himself noticed that members sometimes in the hurry of coming from the cloak-room to vote keep their cigars in their hands, but hereafter the Chair requests that members when they come into the Hall of the House from the cloak-room, where they have the privilege of smoking, will see that they do not smoke within the bar. The ventilation of the Hall is a subject of serious complaint and a source of injury to the health of members, and smoking inside the bar of the House increases and augments the difficulty in that respect. The Chair hope that, therefore, from now until the close of the session he will have no further complaints in this respect.

431 CR 3:793 (Jan. 27, 1875). A watered down version of the bill eventually passed the House. Id. at 1011 (Feb. 24).
432 CR 4:2056 (Mar. 29, 1876).
433 “The Use of Tobacco,” The Laws of Life: A Family Health Journal 28(6):229 (June 1885). Other congressional “total abstainers from the weed” included both senators from Massachusetts (Dawes and Hoar) and New Hampshire (Blair and Pike), and the Quaker senator from Rhode Island (Chase), as well as two House members New York (Cox and Hewitt). Id.
434 CR 5:1874 (Feb. 23, 1877). At this point, Massachusetts Republican Nathaniel Banks, himself a former House speaker, asked Randall why, if members did not have the privilege of smoking cigars there, half a dozen to a dozen cigar stands were located in that part of the Capitol. After Randall had explained that they were already there when he
Nine months later Speaker Randall felt compelled to intervene again as a result of repeated complaints “and again this morning...” After the clerk had once again read the prohibitory rule aloud, the speaker declared: “Gentlemen desiring to smoke during the pendency of public business will be kind enough to do so elsewhere than in the Hall of the House.” In the toothlessness of Randall’s admonitions, three months later Tennessee Democrat John Atkins, a Confederate lieutenant colonel, rose to a question of privilege, directing the chair’s attention to the rule. Reduced now seemingly to the role of a mere supplicant, the speaker intoned that: “This rule is known to members as well as to the Chair, and the Chair hopes that members will obey the injunction of the rule.” Once again in 1879 the speaker began the day’s proceedings on April 23 by having the clerk read the smoking ban rule aloud and then launched into yet another admonition: “The Chair has thus far refrained from directing the members of the House to this subject, in the hope that without being reminded of the rule they would see the necessity of abstaining from smoking in the Hall of the House; but to-day the Chair has been requested not to delay any longer to remind members of the existence of this rule. Those who do not smoke complain that members smoke in their seats on the floor. The Sergeant-at-Arms and his deputies will hereafter notify gentlemen who are smoking in the Hall that it is in violation of the rules.”

As a result of the initial revisions of the House Rules in 1880, Rule 65, transformed into Rule XIV (“Of Decorum”), provided, inter alia, that “during the session of the House no member...shall smoke upon the floor of the House; and the Sergeant-at-Arms is charged with the strict enforcement of this rule.” Then, as the debate on the rules proceeded, the Rules Committee proposed amending the provision by charging the Doorkeeper as well with strict enforcement of the smoking rule. After Randall, who was participating in debate while a speaker pro tempore was in the chair, had remarked that “[w]e want everybody we can called into the service to prevent smoking in the seats,” the chamber agreed to the

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became speaker and that he was opposed to them but had transferred the power to grant applications for such stands to a committee, Banks proposed a resolution instructing the committee to forbid the sale of cigars in the portion of the Capitol controlled by the House, but it failed. Id. at 1874-75.

435 CR 6:345 (Nov. 12, 1877).
436 CR 7:716 (Feb. 1, 1878).
438 CR 10:206, 830 (Jan. 6 and Feb. 11, 1880); Asher Hinds, Hinds’ Precedents of the House of Representatives of the United States 2:750, § 1136 (1907).
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Just three weeks later, when a procedural battle over a bill was raging that involved repeated motions to adjourn and mass unexcused absences, Tennessee Democrat Charles Simonton requested that the no-smoking rule be enforced because the “atmosphere becomes disagreeable when we have to stay here all night. Michigan Republican Omar Conger then denounced this request as a ruse: “This is an attempt to withdraw the Sergeant-at-Arms from his duty. He has been sent to arrest [absent] members and should not be recalled to arrest members for smoking. He is fulfilling the order of the House now.” However, the speaker pro tempore ordered the sergeant-at-arms and doorkeeper to enforce the rule. Strengthening the enforcement corps failed to deter congressional smokers: a month later Ohio Democrat Adoniram Warner felt compelled to request enforcement, not on his own account, “but on behalf of ladies in the gallery, from whom I understand complaint is made of the violation” of the smoking prohibition. With this prompt the chair requested the sergeant-at-arms to enforce the rule. Even if the pleas for enforcement recorded in the Congressional Record represented merely the no longer suppressible complaints about a minuscule fraction of infractions, just how frequent and massive those violations were is unclear, though even two interventions by the sergeant-at-arms within a short space of time on a single day were not unheard of. Transgressions resulted in part from the failure of representatives who had actually left the Hall to smoke to extinguish their burning tobacco when hurrying back in to participate in a debate that suddenly compelled their presence. For example, in 1881 Republican Conger wanted the question to be put on a motion he had made even though he did not want it “driven along, but I do not want, while I am back here smoking, to have matters going on without my knowledge.” When Randall, his speakership valedictory only three days off, one last time intoned that “[t]he rule prohibits smoking,” Conger replied: “I asked that the question be put, so that I might go back out of the place where the rules prohibit smoking. I was making

440 CR 10:1853 (Mar. 24, 1880). For an illustration of the huge gap in efficacy between the sergeant-at-arms’ mass arrests of absent members and his enforcement of the no-smoking rule, see CR 7:2944-48 (Apr. 29, 1878).
442 E.g., CR 11:1630 (Feb. 15, 1881).
443 CR 11:2040, 2044 (Feb. 24, 1881).
an unsuccessful effort to comply with the rules. [Laughter.]” Democrat Warner then made it clear that smoking and taking part in floor debate were mutually exclusive: “We have no objection to the gentleman’s retiring to the smoking-room, but we cannot consent that he shall retain while there the right to object.”

That compliance and enforcement left something to be desired was highlighted the following year, when the Cleveland Leader’s new Washington correspondent, Frank Carpenter, turned his attention in one of his regular columns to the question of smoking. Focusing on the House, he asked rhetorically:

Do Congressmen smoke during the session? Why, bless you, yes! I have seen ladies grow sick in the galleries from the vile odor of the tobacco that rises from the two-for-five-cents cigars in the mouths of the so-called gentlemen below. The Congressmen smoke in their very seats, and peer through wreaths of smoke to catch the eyes of members behind them.

As simple and straightforward as the rule was, even the House speakers at times failed to enforce it. These failings were revealed in 1884 in connection with a request for enforcement by Massachusetts Independent Republican Theodore Lyman, a marine biologist, who was, inter alia, a member of the National Academy of Sciences and American Academy of Arts and Sciences as well as a Harvard University overseer. After Lyman had conveyed complaints by women about air in the galleries so bad that they were often compelled to leave, Speaker John Carlisle, a Bourbon Democrat from the leading tobacco producer, Kentucky, “observed with regret” that members had frequently violated the rule and that he had more than once directed the sergeant-at-arms and doorkeeper to enforce the rule; he then directed those officers once again to enforce it rigidly on behalf of members on the floor as well. When Carlisle stressed that the no-smoking area encompassed the Hall of the House, the seats, and the lobby, his immediate predecessor, as speaker, Ohio Republican J. Warren Keifer, asked, whether it extended to the part of the Hall outside of the railing. Not only did it, but it also extended to the lobby in the rear of the speaker’s chair; however, Carlisle admitted that he had “never undertaken to enforce the rule strictly in the lobby,” the reason (perversely) being that it was “the most convenient place for members to meet, in order to avoid the disagreeable effect

444 CR 11:2312 (Mar. 1, 1881).
of smoking in the other parts of the Hall.”\footnote{CR 15:1759 (Mar. 10, 1884).}

In 1886 in connection with a row over allegations that non-members had been present on the floor of the House and the need to define that space, Indiana Republican Thomas Browne observed that many members thought that “they may smoke anywhere outside of the seats without being guilty of an infraction of the rules,” adding the he himself was “in the habit of violating this rule as much as anybody else.” Rejecting the contention of Georgia Democrat Nathaniel Hammond that the smoking issue was “ridiculous in comparison with” the “graver” issue of non-members, Pennsylvania Republican William Brown contended that it was “a matter of a great deal of concern,” particularly to non-smoking House members, and especially because smoking violations were, unlike non-member intrusions, anything but rare. Browne explained that the problem was not the failure to read the rule aloud repeatedly during the session, but the practice of members whose attention was called to the fact that they were smoking in their seats of “simply retir[ing] to the rear of the desks and continu[ing] to smoke at some point there, believing in good faith, I suppose, that they may do so without violating the rule.” Although Browne readily admitted that smoking was “offensive to many gentlemen,” that members should know that the smoking-prohibited space meant “anywhere this side of the cloak-rooms,” and that the smoking rule was “more frequently violated than any other,” the resolution to instruct the Rules Committee to investigate the entire matter was tabled.\footnote{CR 17:1905-1906 (Mar. 1, 1886).}

Despite this contretemps, the following year the press reported that during the closing session the atmosphere in the House was “well impregnated with tobacco smoke, notwithstanding the repeated appeals of the speaker to the members requesting them to observe the rule which prohibits smoking on the floor.”\footnote{“Congress,” N&O, Mar. 5, 1887 (1:3-5 at 4).}

Fortunately for history, in 1890 Robert Graves, a syndicated Washington correspondent\footnote{In this position Graves appears to have flourished between 1888 and 1895.} inventoried tobacco use in Congress, naming names. Taking a walk through its deserted halls, inhabited only by renovators and carpenters, on October 7, he noted that: “The only thing that reminded me of the absent statesmen was a smell of tobacco smoke in the cloak rooms.” Attendants confided to him that “the odor of tobacco could not be taken out of these apartments without consuming them literally and wholly by fire. Walls and ceilings and furniture have become so saturated with nicotine during the long session just ended, and the many sessions long and short which preceded it, that
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their woodwork is like an old pipe.” In the aggregate, he recorded that: “Fully two-thirds of the members of congress smoke. By coming over here and taking a look at our statesmen foreigners are able to see at a glance what a nation of nicotinists we are. Those of our legislative representatives who do not smoke use the weed in the other way. I doubt if there are two dozen men in both houses of congress who do not use tobacco in one way or another.” In addition to these two-thirds cigar smokers and one-third tobacco chewers, Graves was able to identify only one member of congress who “had the nerve to appear in the cloak room of the house with a pipe in his mouth” and only two senators who still used snuff, even though the Senate made an annual appropriation to provide it free of charge. Perhaps the most revealing sign of the times (as well as of the legislators’ age and wealth) was that as far as Graves had been able to see, “there is not one cigarette smoker in congress, even though 2.5 billion cigarettes were produced in 1890 compared to 4.2 billion cigars.

New Hampshire Republican Senator Henry William Blair, also a high-profile alcohol prohibitionist, was “the most conspicuous anti-tobacco champion we have in congress....” He would, in Graves’s estimation, “as soon think of throwing himself from the top of the Washington monument as of putting a cigar or a quid of tobacco in his mouth.” However, on the House side Massachusetts Republican Elijah Morse rivaled Blair for the honor of the foremost anti-

When Mr. Morse first came to congress [in 1889] he was very much annoyed by the smoking on the floor of the house. In vain did Mr. Morse endeavor to have the rule strictly enforced. The rule is that no member shall smoke on the floor, but members do smoke on the floor, the rule and Mr. Morse to the contrary notwithstanding. Mr. Morse has appealed to the sergeant-at-arms, to the speaker and to the members themselves, but without avail. Tobacco smoke is one of the fixed features of the American congress, and if Mr. Morse doesn’t want to inhale the odor of the tobacco plant he will have to stay out of congress, that’s all.


453H. W. Blair, *The Temperance Movement: or, the Conflict Between Man and Alcohol* (1888). For Blair’s hostile allusions to tobacco, see id. at 70, 145.


455Robert Graves, “The Virginian Weed,” *North American* (Philadelphia), Oct. 8, 1890 (5:2). As an example of violation of the no-smoking rule Graves adduced New York Democrat Amos Cummings, a former editor of the *New York Tribune*, who had “a trick of
Morse’s complaints in 1889-90 are significant because they occurred under the speakership of Thomas Reed, of whom another House member said that during his first term as speaker (1889-91) “smoking was not allowed, not in a single instance.”

During the 1890s, with “the smoke nuisance” having become “the question of the hour,” complaints about smoking in the House increasingly focused on its health consequences. For example, in 1892 the speaker pro tempore, Tennessee Democrat James Richardson, in causing the clerk to read the rule again, noted that several members had “complained that they are ill, and can not remain here if members persist in smoking.” He nevertheless sounded almost apologetic in “appeal[ing] to members not to violate the rule.”

The loopholes were tightened somewhat the following year at the initiative of Morse, a stove polish manufacturer who had been the unsuccessful Prohibition Party candidate for lieutenant governor in 1877. He proposed expanding the existing rule, which covered only members during the session on the House floor, to include “any other person...at any time” on the floor so that “Tom, Dick, and Harry should [not] be permitted before the meeting of the House to fill this Hall with vile cigar, cigarette and pipe smoke....” Morse’s motivation was his observation, during his three-term incumbency, that the “amount of sickness” among his colleagues was “great” and the death rate “appalling”—14 members had died alone during the 1889-90 session—which he attributed, “in no small measure to foul, vile, bad air that we are asked to breathe in this Hall.” Especially in the winter, when the windows were closed, the air was “blue with this vile
smoke to such an extent that you could scarcely see across the room, and this is especially offensive to our lady visitors in the galleries.” Without, unfortunately for the sake of a quantitatively curious posterity, providing any numerical estimates, Morse referred to the group on whose behalf he was seeking to regulate: “There are a good many members of this Congress, as well as its predecessors, who do not use tobacco in any form, and a smaller number to whom it is downright offensive and poisonous.” Willing to grant “all deference” to smokers, Morse nevertheless insisted that non-smokers did “have some rights in this matter, and that our convenience and health ought to be a subject of some little consideration as well as theirs.” Morse’s pleading climaxed with a religious analogy: “The children of Israel, under Divine direction, established what was known as ‘cities of refuge.’ The Committee on Rules have in their wisdom established in this vast building at this end one ‘city of refuge’ for nonsmokers by forbidding the members to smoke in this Hall.”

In the end, as The New York Times reported the next day, “[e]nough members agreed with” Morse that “this room of all others ought not to be turned into a bacterial machine for the propagation of disease” that the House adopted his amendment strengthening the rule prescribing spatial segregation of smokers. Two years later, in reporting that “Stove Polish Morse” was proposing to “banish tobacco smoking from the House of Representatives,” the Memphis Commercial Appeal treated him as a self-righteous officious intermeddler: “Because Mr. Morse is virtuous shall there be no more cakes and ale? ... The average statesman could not endure the good habits of Mr. Morse.”

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460 CR 25:1147-48 (Sept. 1, 1893). Morse went on to declare: “Every other part of this vast building, except the Senate chamber, the lobbies, the corridors, the Rotunda, the committee rooms, and every part of the building, except these Halls, are open to smokers.” Id. at 1148. Presumably the first “except” was a typographical error; its presence not only subverts Morse’s manifest meaning, but creates a grammatical error since “part” does not agree with “are.”


463 Commercial Appeal (Memphis), Nov. 26, 1895 (4:3) (untitled edit.). The editorial failed to mention the specifics of Morse’s new proposal, but Morse expressed the belief that there would be “enough gentlemen” in the next House to “enable him to get through his oft defeated measure for the prohibition of smoking in the house.” “Personal and General Notes,” DP, Nov. 22, 1895 (4:5-6 at 6). See also “To Abolish Smoking,” Lowell Daily Sun, Nov. 27, 1895 (4:1).
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Even after the innovation, in June 1894, in the midst of a floor discussion of ventilation in the Hall of the House, Tennessee Democrat Benjamin Enloe complained to his assembled colleagues that: “Despite that rule I have seen—particularly during the consideration of the tariff bill when we had long continuous sessions requiring the continued presence of members—I have seen the atmosphere of this Hall so dense with tobacco smoke that you could scarcely see persons in the galleries. Members of the House were violating the rules and smoking their cigars in this Hall, making the atmosphere impure, giving themselves and the visitors in the galleries headaches, and disgracing the American Congress.”

That conflicts over smoking continued to disrupt the House was manifested on March 2, 1895, the last day of the Fifty-Third Congress and of Democratic control of the chamber, when Indiana Democrat William Bynum rose to a point of order requesting that the no-smoking rule be enforced. Outgoing Speaker Charles Crisp, a Democrat from Georgia, transcended the traditional appeal for compliance by noting not only the pervasive noncompliance, but also the intensity of the nonsmokers’ demands for protection and the untoward political consequences of their continued exposure: “While we all know that this rule is very much disregarded, yet the Chair appeals to gentlemen, in view of the probably protracted character of the session, to observe this rule. There are many gentlemen on the floor who have privately said to the Speaker that if the smoking be persisted in they will be forced to absent themselves from the Hall.” Crisp then requested that smokers go to the Speaker’s lobby or the cloak room if they wanted to smoke.

The very same day the Joint Committee on Ventilation and Acoustics and Public Buildings and Grounds submitted its report, Sanitary Condition of the Capitol Building, Etc., which concluded that smoking was “largely accountable for the bad air complained of” in the House and that enforcement of the House smoking rules and abstention from tobacco use there would contribute to purifying the air from its “present unhealthy condition.”

A few days after Republican “Czar” Thomas Reed had begun his second term as House Speaker in December 1895, A. Maurice Low, a British-born journalist who was the Boston Globe’s Washington correspondent, described the smoking scene in the House:

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464 CR 26:5993 (June 8, 1894). Enloe also accused the smokers of “violating the proprieties of life by smoking in the presence of ladies....”


Mr. Reed has always been opposed to the practice of smoking on the floor while the house is in session, and although the rules prohibit it, the rule has been more honored in the breach than the observance.

When Mr. Reed was speaker in the 51st congress he drove the smokers off the floor, and this year he is more determined than ever that members who want to smoke must retire either to the cloak rooms or the corridors or else go outside.

Today on two separate occasions he sent pages to two members to tell them that smoking was in violation of the rules. Both of the members when they received the message looked somewhat surprised, but at once they threw their cigars away. Curiously enough both members were republicans.*

The congressional struggle for protection from secondhand tobacco smoke exposure and its grounding in health considerations reached a higher plateau in 1896 when Iowa Republican David Henderson, soon to become speaker himself, but for now chairman of the Judiciary Committee and, next to the speaker—Thomas Reed, who three decades later was still credited with not permitting smoking on the House floor**—the highest-ranking member of the Rules Committee,*** presented the latter’s proposed rules revisions to the House. Henderson’s role here was noteworthy since he opposed liquor prohibition and had a “legendary reputation as a heavy tippler,” though he also “crusaded against intemperance.” The change in question consisted simply in striking the word “other” from Morse’s amendment so that by now reading, “Neither shall any person be allowed to smoke upon the floor of the House at any time,” it prohibited members from smoking there as well. Prompted by Mississippi Democrat Thomas Catchings to explain this “amendment of very great importance” to the House so that members could grasp its “full significance,”**** Henderson limned its reach and basis:

Mr. HENDERSON. I suppose from the manifestation of applause on the part of the House that this provision is thoroughly appreciated. ... Under the present rule smoking is prohibited only during the sessions of the House and on the floor of the House—within this Hall. Under the amendment reported from the committee smoking is never to be allowed

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** Robert Luce, Legislative Assemblies: Their Framework, Make-Up, Character, Characteristics, Habits, and Manners 637 (1924).
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before or after the sessions in this Hall. It is absolutely prohibited here.

Many Members. That is right.

Mr. HENDERSON. The cloakroom is not a part of the House....

The theory of the committee in making this recommendation was briefly this: It is well known that many ladies are compelled to leave the galleries of this House because of the impure air resulting from the practice of smoking. This evil is not averted by discontinuing smoking during the sessions of the House if it goes on upon this floor one, two or three hours before the gavel falls for the commencement of business. The committee believe that at all times the air of this Legislative Hall should be exempt from the polluting influence of tobacco in this form, so that the American citizen desiring to look down upon Congress from our galleries may do so without suffering the contaminating influence of tobacco smoke. [Applause.]

In addition to that, Mr. Speaker, I believe that since I have had a seat in this body members have been killed not alone because of the polluting effects of tobacco, but generally because of the impure air in this Hall. I think this provision will be a great step toward the preservation of the health of this body. [Cries of “Vote!” “Vote!”]

The question being taken, the amendment proposed by the committee was agreed to. [Loud applause.]472

Both Henderson’s starkly aggressive and accusatory anti-smoking language, culminating in the charge that tobacco “killed,” and the wide, enthusiastic, and boisterous resonance that it elicited from congressmen suggest that even in the period before the breakthrough of mass cigarette smoking, a significant proportion of adult males not only did not smoke tobacco, but intensely resented the involuntarily inhalation of tobacco smoke and welcomed liberation from it.473 That Henderson himself had internalized the limits of the contest that smokers and nonsmokers were engaged in he revealed the very next day when he stated during debate that “since we have established a more strict rule against smoking, a larger latitude may be needed in that respect outside of this Hall, and gentlemen desiring to smoke who have hitherto indulged upon the floor may be driven into these corridors to enjoy their cigars.”474

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473 Press coverage focused on the new rules’ design to centralize power, control members, and stifle debate; the smoking ban was mentioned only perfunctorily. E.g., “Making the House Harness,” NYT, Jan. 11, 1896 (3). One important paper did report that the smoking ban was received with “general applause.” “New Rules for the House,” New-York Tribune, Jan. 11, 1896 (13:2-3).

Yet four months later Kentucky Republican Samuel Pugh rose to an ironic parliamentary inquiry: “While we are laboring here with closed doors in this dense atmosphere in the presence of this magnificent assemblage of ladies who grace with their presence this kindergarten performance of the national schoolhouse, I would like to know whether a call of the House suspends the rule against smoking in the Hall?” After the speaker pro tempore had informed him that anyone who smoked was infringing the rule, Pugh revealed that: “Not only one, but quite a number of those present have been infringing the rule, and while it may be fun for the boys on the floor, it must be very disagreeable to the ladies and other visitors in the galleries.”

Even when Henderson became speaker he was not only compelled to continue the ritual readings of the rule and admonitions—“and this [wa]s never more necessary than at the close of a session of Congress”—but, at least on one occasion, he had to point out that he had “learned that officers of the House, when calling attention to smoking, even during the session, have been very severely spoken to by members.” More pleading than leading, Henderson was “glad to say that he is not advised who any of these members are; but appreciating this rule and its object—the comfort of the persons in the Hall and galleries, as well as the health of members—the Chair trusts that every pains [sic] will be taken by members to observe this rule; and if, forgetting it for a moment, one of these subordinate officers should call attention to it, it is hoped that members will appreciate the fact that he is discharging a duty and not desiring to be offensive to any member.” The speaker’s plea to representatives to be nice to the sergeant-at-arms was a far cry from the latter’s rule-bound duty, which he was still performing in the late-nineteenth and early-twentieth century, to bear the mace vis-a-vis contumacious members and, if need be, arrest them. In 1901, five years after having closed the loophole, Speaker Henderson indirectly admitted that the nation’s lawmakers did not understand a brief, unambiguous rule: “Many members have been under the impression in the past, without having carefully examined the rule, that they could smoke in this Hall when the House is not in session. That is against the rule.” Rather than rebuking them for their sloth, negligence, or lack of comprehension, he cheerfully “trust[ed] that every member of the House will feel it to be a pleasure to aid in the enforcement of this most needed rule. [Applause.]”

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476 CR 33:6224 (May 29, 1900).
On February 1, 1915, when the Henderson’s 1896 rule was still in force, Speaker Champ Clark, according to the *Western Tobacco Journal*, “came down heavily...on one of the supposed immutable rights of the members of Congress.” Speaking in a “honeyed...tone which gave no portent of the ominous declaration he was about to make,” Clark stated that he desired to make a statement before taking up the next bill: “The rules of the House prohibit smoking inside of this Hall. Complaint has been made to the Chair more than once about Members smoking in the Hall. Now, there is plenty of space outside of this Hall for gentlemen to smoke. And while the Chair is at it, he will suggest it is a good thing for Members to keep their feet down from the tops of the seats.”

**Senate**

*The Chairman* [South Carolina Democrat Rep. George Shell, Committee on Ventilation and Acoustics]. Colonel Bright, is it the habit and practice of the members of the Senate to smoke in the Senate Chamber while it is in session?

Mr. [Richard] Bright [Senate Sergeant-at-Arms]. No, sir. The rule of the Senate would require if a Senator was smoking in the Senate Chamber for him to be notified promptly. ... The cloakroom is used for a smoking room, and I do not remember to have ever seen a Senator smoking a cigar in the Chamber. ... If it was my own grandfather, and he was a Senator, I would notify him. That is mandatory on the part of the rule of the Senate.

In contrast, not until 1914 did the U.S. Senate vote to protect its nonsmoking members from secondhand smoke exposure by amending its rules so that “no smoking shall be permitted at any time on the floor of the Senate, or lighted cigars be brought into the Chamber”—a rule that remains in effect today (as Rule 33),

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481 *CR* 52:2823 (Feb. 1, 1915).


483 S. Res. No. 42, 63d Cong., 2d Sess. (1914), amending Senate Rule 34. Similarly, at the turn of the century the U.S. Supreme Court held “cigarets as an abomination, though it gives a respectful place to the custom of smoking tobacco. In the clerk’s room there is displayed a large notice—‘Cigaret Smoking Prohibited’—but cigars may be freely used.” “Still Using Quill Pens,” *Davenport Republican*, May 18, 1901 (7:5).
strengthened by the ban in 1979 on lighted cigarettes and pipes. Until then, according to the Senate Historical Office, by unwritten custom, "senators never smoked in the chamber during public sessions," but "happily brought out their cigars whenever the Senate went into executive session to consider nominations and treaties." This regime, in fact, turns out to have been considerably more blurred than that global account suggests, but before filling in some of the gaps,
it is useful to examine the Senate’s regulation of smoking outside of the chamber.

As early as March 15, 1884, the Senate Rules Committee adopted Rules for the Regulation of the Senate Wing of the United States Capitol, under Rule XIII of which smoking in the elevator was “strictly forbidden.” By 1896 the prohibition was extended to elevators, corridors, and passageways. Possibly this expanded rule had its origins in 1890, when, according to a report in The New York Times, the sergeant-at-arms, “under instructions from” third-term Kansas Republican Senator John Ingalls, the president pro tempore, issued an “order” forbidding any person “(except Senators, of course)” from smoking in any corridor in the Senate wing of the capitol. Whereas, pursuant to this order, “[g]entlemen with lighted cigars in sight will be stopped by policemen or doorknobs when they attempt to cross the line between the central building at the north wing, and given an opportunity to put their cigars out or turn back[,] Senators...will continue to sit in the doorways of the cloak rooms and puff out little clouds of tobacco smoke, to float up for the benefit of the ladies and gentlemen occupying the visitors’ galleries.”

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487 Rules for the Regulation of the Senate Wing of the United States Capitol: Adopted by the Committee on Rules, March 15, 1884, at 8 (1884). See also Standing Rules for Conducting Business of the Senate of the United States 46 (1890).


489 “A Little Steal Stopped,” NYT, Aug. 9, 1890 (2). For further evidence of the difference between the House and Senate mentioning that police made visitors throw away their cigars when approaching the Senate wing, in which no smoking was allowed except in the cloak rooms, see “Plumb and Prohibition,” Galveston Daily News, Aug. 25, 1890 (6:1). The president pro tempore was empowered by the Senate rules to enforce the Rules Committee’s orders for the use of the Senate wing of the capitol. Since Ingalls frequented the smoking room (Willis Hawkins, “Nast in Washington,” LAT, June 22, 1890 (9:1-3)), his animus against tobacco smoke might be puzzling but for a newspaper article many years later that claimed that Ingalls had complained about smoke wafting into the chamber from the corridors or cloakrooms; in fact, the smoke had resulted from burning waste. “Smoked in Senate Chamber,” Washington Post, Feb. 3, 1907 (6). Ingalls was a reactionary, whom the Populists unseated in 1891. Scott McNall, The Road to Rebellion: Class Formation and Kansas Populism, 1865-1900, at 174, 274, 276 (1997). Ironically, several years later, the chief newspaper in his hometown in Kansas referred to the “queer rules” of the Senate under which “[s]omewhere some man is asked to stop smoking a cigar” as he walked from the House- to the Senate-controlled half of the capitol: “The American house of lords has shut down upon tobacco smoking in its half of the capitol, save in committee rooms and the senators’ lobbies. It is often comical to watch the
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The broader prohibition was prompted by Senator “Pitchfork” Ben Tillman, the white supremacist from South Carolina, who, being “very sensitive to the odor of tobacco,” in February 1913 complained about smoking during the Senate’s executive sessions, but, in the absence of a rule covering the matter, failed to have it banned. He then announced that he planned to introduce a resolution prohibiting smoking at all times in the Senate chamber on the grounds that there was no more reason to permit smoking in closed than in open sessions: “‘Many men object to tobacco smoke and just because they are members of the senate they should not be compelled to sit where they must submit to it.’”

Soon thereafter he introduced two identical resolutions to ban smoking in the Senate chamber. A year later, after the Rules Committee had reported the resolution without recommendation, Tillman was finally able to secure its consideration. He sought the ban because four years earlier he had been paralyzed and tobacco smoke began to nauseate him. He was well aware that “a large majority” of senators were smokers, whom, “unfortunately, a pernicious habit has so mastered...that they are nervous and miserable when they do not get the nicotine poison which soothes their nerves. Consequently, as soon as the doors are closed for executive session they light their cigars and puff away, and the Chamber soon has the appearance of a beer garden.” He complained that since the smoke forced him to leave the Chamber, it infringed on his rights as a senator, whereas the smokers could go to the cloakrooms to smoke; similar circumstances prevailed in the Democratic caucus, so that he was “beset with the danger of being driven out of the party and of the Senate itself....” (He nevertheless opined that tobacco was “in moderation....harmless....”) In response to a letter that Tillman wrote in May 1913 to all his colleagues seeking their opinion and urging them to adopt the ban he received replies from almost all; one of their most interesting features was that “the nonsmokers are far more anxious lest they have the appearance of selfishness than some of the smokers.” He had the Senate secretary read an outstanding exemplar of this genre, which not only

American citizen, the independent sovereign of this land of ours, as he is requested by a member of the capitol police to remove the cigar from his mouth.” “Senate Exclusive,” Atchison Daily Globe, June 3, 1896 (2:8).


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represented an extreme version of going along to get along in politics, but illustrated, several decades before the zenith of nearly ubiquitous cigarette smoking, the coercive power of social pressure to acquiesce in exposure to secondhand smoke even when the large minority of nonsmokers was keenly aware of negative physical consequences. In the letter non-smoking Vermont Republican Carroll Page replied that “I accept with best possible grace the discomforts that result from the gratification of their [his smoking colleagues’] appetites for tobacco. ... I enjoy making sacrifices for my friends, and regard this as one of the qualities of a gentleman.” Page would also have been pleased to make “any reasonable sacrifice” on Tillman’s behalf, but he wanted to act so that he did not seem to be what he really hoped he was not, “selfish, and I should seem selfish if, disliking the intense smoke of the Senate, which sometimes reaches a density that is quite offensive, I should act from a selfish standpoint and vote against smoking in the Senate.” Tillman also had read aloud the letter of a smoker, New York Republican Elihu Root, a wealthy Wall Street lawyer, who had been secretary of war and secretary of state, and was supremely centrally situated in the U.S. political economy. Root allowed as the informality and freedom of executive sessions, which prevented frictions and unnecessary delay, was “a good deal aided by the fact that the Members are at liberty to smoke.” Though personally willing to “forego [sic] the privilege” if it inconvenienced Tillman, Root—who had received the Nobel Peace Prize the previous year for his contribution to international arbitration—suggested “a general understanding as to the conduct to be observed when you are present without making a new rule.”

Amusingly, during the latter half of the first decade of the twentieth century, while he was secretary of state, Root was “Tobacco’s man in the higher circles of government”: when the Justice Department began considering antitrust prosecution of the American Tobacco Company, its general counsel, Williamson Fuller, “persuaded Root to defend the Tobacco position within the Administration and, if possible to prevent an antitrust suit.” In the event, the Senate agreed to Tillman’s resolution unanimously.

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494 CR 51:4531-32 (Mar. 9, 1914).
496 CR 51:4532 (Mar. 9, 1914). See also “Ends Smoking in Senate,” NYT, Mar. 10, 1914 (1); “Senate Smokers Heed Plea Made by Senator Tillman,” CT, Mar. 10, 1914 (5). Cassandra Tate, Cigarette Wars: The Triumph of “The Little White Slaver” 58 (1999), got this incident completely wrong, incorrectly stating that the Senate rejected Tillman’s resolution and that consequently “the victory went to the smokers.” Tate provided no
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The rule was apparently enforced: for example, in 1922, when senator-elect Burton Wheeler created the “unusual but brief spectacle” of smoking a cigar on the Senate floor, another senator sent a page to inform him of the rule. 497 This nationally widely reported incident prompted one newspaper to editorialize that the “rule is a never-ending source of joy to anti-tobacco crusaders.... It is creditable to the senate that the rule against smoking is maintained. [O]n the floor of the chamber there is greater dignity when the faces of the speakers are not hidden by clouds of tobacco smoke.” 498 And even when Huey Long a decade later walked up the aisle holding a lighted cigar, whose ashes he “flicked...all over the carpeted floor,” as he was being sworn in, everyone understood that his violation of the Senate rule was just one of his many intentional provocations. 499

Ironically, if Tillman’s account, according to which even prior to 1914 senators had in fact abstained from smoking in the chamber during public sessions (“[w]hen the executive session is not on they have to go to the cloak rooms to smoke”), 500 is credited, senatorial compliance with custom was much stricter than House compliance with a formal written rule. 501 Interesting light was shed on the purportedly reflexive conformity by an “unusual scene” 502 involving senior Republican Senator Joseph Hawley of Connecticut and Sergeant-at-Arms Richard Bright, who, during his own long Senate career, “had become an authority on the Senate’s rules, procedures, and customs.” 503 The incident, which was memorialized by the Chicago Tribune, took place during a public session on the Senate floor in 1897 when Hawley and Bright were seated near Hawley’s desk engaged in conversation:

Source for this erroneous assertion.

497 “Smokes Cigar in Senate,” NYT, Dec. 8, 1922 (3).

498 “Smoking Prohibited,” BT, Jan. 18, 1923 (4:3) (edit.) (reprinted from Pittsburgh Sun).


500 Congressional Record 51:4531 (Mar. 9, 1914).

501 In 1941 Michigan Republican Representative George Dondero, a stickler for rules, charged that the no-smoking rule was “honored more in its breach than in its observance,” albeit “in most instances behind the rail, nevertheless on the floor.” CR 87:4483 (May 27, 1941). Eight years later he stated that the rules was “grossly violated by many members....” CR 95:537 (Jan. 25, 1949).

502 “Jail for Rich Men,” CT, Apr. 21, 1897 (1).

503 http://www.senate.gov/artandhistory/history/common/generic/SAA_Richard_Bright.htm
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One of the most rigid rules of the Senate Chamber prohibits smoking on the floor at any time and no one is more punctillious [sic] about observing the rules of the Senate than Gen. Hawley.... Apparently oblivious of the sensation that his act was about to create Senator Hawley drew a cigar from his pocket and striking a match on his boot heel proceeded to light his fragrant weed and waft the smoke upwards into the gallery. There were few Senators on the floor at the time and those who were there paid no attention to the breach that was being committed by Senator Hawley, and he puffed away for quite a while with a zest that showed that he was enjoying his cigar. There came a pause in the conversation, however, during which the Connecticut Senator took the cigar from his mouth and for the first time seemed to realize the enormity of his offense in breaking through a strict Senate regulation. He looked at the cigar, then he looked at Sergeant-at-Arms Bright in a quizzical, hesitating way as if trying to see what effect this breach would have upon that functionary, and then both their faces were wreathed with smiles. Not a word passed, but Senator Hawley, rising from his seat, took Col. Bright by the arm, and both of them ambled off to a Senate cloak room where the...Senator probably finished his seed leaf cigar in comfort.504

That senators were also otherwise known to comply systematically with the custom was evident from a New York Times piece in 1882 that mentioned in passing that a speech that a senator was reading on the floor “most of the Senators could hear only from the cloak-rooms, to which they had retired to smoke their after-lunch cigars.”505 Nevertheless, scattered press mention of congressional smoking in the latter part of the nineteenth century suggests Senate violations may have been widespread. For example, in 1873, Grace Greenwood, the pen name of Sara Jane Lippincott, the first woman journalist to report from Washington, where she was a New York Times correspondent for years,506 complained about the “bad air” in the Senate and House galleries, which was “very much mixed with cigar-smoke from the ante-rooms and the breaths of seventy-five Senators.”507 And the next year the Times reported that: “Some members have been known to smoke in their seats in the Houses of Congress, and they would often do so if the rules against it were not enforced.”508

One of the most eloquent strands of evidence documenting senators’

504“Jail for Rich Men,” CT, Apr. 21, 1897 (1).
505“New Cabinet Officers,” NYT, Apr. 7, 1882 (1).
506Grace Greenwood Dead,” NYT, Apr. 21, 1904 (1).
508“Washington,” NYT, Apr. 21, 1874 (1). To be sure, it is unclear what Senate rule the newspaper had in mind. See also “Milwaukee,” CT, June 1, 1879 (3) (Sen. Matthew Carpenter smoked a cigar in his seat in the Senate chamber).
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willingness to refrain from smoking on the floor and to have recourse instead to the cloak room arose, ironically, in connection with the chamber’s rejection of a proposed ban on smoking in executive branch office buildings. This initiative emerged as an immediate response to the fire on January 10, 1921 that destroyed irreplaceable census manuscript schedules in the Commerce Department building.509 The very next morning Utah Republican Senator Reed Smoot, a right-wing businessman who was both a very high-ranking member of the Mormon church hierarchy and chairman of the Public Building Commission, which was in charge of housing federal government activities, stated on the floor of the Senate that, against the background of four other recent fires in government departments, which had been reportedly “started by employees carelessly throwing down a lighted cigarette stub,” he could “not conceive of a fire starting” in “what was supposed to be a fireproof vault...unless it came from carelessness on the part of an employee, and more than likely from a lighted cigarette stub.” He therefore concluded that “the time has arrived when there should be an order made in all the departments that while employees are at work smoking shall be prohibited.”510 Four days later he introduced a bill embodying this proposal511:

That any person who shall smoke, or carry a lighted cigar, cigarette, pipe or any form of tobacco for smoking purposes, in any building in the District of Columbia, which is owned by the Government of the United States and used by any executive department or independent establishment of the Government, including the respective field services of such departments or establishments, shall be guilty of a misdemeanor and when convicted thereof shall be fined not more than $50.512

Without spelling out the basis for such a construction (of “executive department or independent establishment”), The New York Times claimed that a

509“Fire Ruins Records,” WP, Jan. 11, 1921 (1): “Census Records Lost in Washington Fire,” NYT, Jan. 11, 1921 (1). To historians’ dismay, almost all of the 1890 census manuscript schedules were destroyed, but more by the tons of water that the fire fighters poured on to the fire than by the flames. The documents’ exact condition during the interim before the Commerce Department, with the approval, acquiescence, and authorization of the Census Bureau, Library of Congress, and Congress, physically destroyed them in 1934/35 is unclear. Kellee Blake, “‘First in the Path of the Firemen’: The Fate of the 1890 Population Census,” Prologue 28(1):64-81 (Spr. 1996), on http://www.archives.gov/publications/prologue/1996/spring/1890-census-1.html.

510CR 60:1238 (Jan. 11, 1921). See also “Proceedings of Congress and Committees in Brief,” WP, Jan. 12, 1921 (6).

511CR 60:1440 (Jan 15. 1921) (S. 4853).

“strict interpretation” would also make it unlawful for the president in the White House, senators and representatives in the cloakrooms, and Supreme Court justices in their chambers to smoke. To be sure, though Smoot was said to be intent on pressing for quick action on the bill, it was “certain to be opposed by many Senators of both parties.”  

In the event, instead of proceeding with S. 4853 as an independent bill, Smoot secured its adoption by the Appropriations Committee, of which he was the ranking majority member, as an amendment to the sundry civil appropriations bill (H.R. 15422), of which he was in charge. His anti-smoking proposal provoked a multidimensionally revelatory debate lasting almost two hours in the Committee of the Whole on February 5. Interpreting the amendment as not applying to the Congress, Arkansas Democrat Joseph Robinson—the soon-to-be Senate minority and later majority leader, who did not smoke and “suffers a good deal physically when others smoke about him”—wanted to know why the prohibition was confined to executive departments because: “I apprehend that it would work great inconvenience and discomfort to thousands of persons employed in the Government service, and it seems to me it ought to be made universally applicable if adopted rather than applied to certain classes.”

Smoot’s initial response was that the purpose was to protect not only buildings, but also government records, while the Capitol and Senate Office Building were excluded both because they were fireproof and because they housed few records. Robinson contested this latter point, but he was centrally concerned with the alleged unfairness and unreasonableness of senators’ prohibiting the secretary of state, attorney general, and other cabinet secretaries from smoking in their offices while exempting themselves from this ban. At this juncture Smoot shifted his own focus away from fire protection and toward a theme that would not begin to resonate for decades: “I do not think there has ever been anything suggested in the Senate that has met with such popular approval

513 “Would End Smoking in Capitol Offices,” NYT, Jan. 16, 1921 (14).
514 The account of the congressional debate provided by Smoot’s biographer is marred by his ignorance of Smoot’s high-profile bill and his false assumption that Smoot was concealing his authorship of the amendment. Milton Merrill, Reed Smoot: Apostle in Politics 162-63 (1990).
515 CR 60:2627-28 (Feb. 5, 1921); “Harding May Smoke in the White House,” NYT, Feb. 6, 1921 (3). The texts of the bill and the amendment were identical except that the latter extended coverage to buildings that the U.S. Government also rented or leased. According to one news report, the Government was renting the Commerce Department building. “Census Records Lost in Washington Fire,” NYT, Jan. 11, 1921 (1).
516 CR 60:2629 (Feb. 5, 1921).
by the employees of the Government as this very proposition. I have had thousands of letters giving a description of what takes place in the departments, and...there is an immense amount of time lost in all of the departments through the smoking that is going on in them."\(^{517}\) He then quoted from a letter from a chief clerk of a division who confided: "The smoking employee thinks more of his smoking than he does of his work. He will stand around with a cigar in his mouth, sometimes a cigarette or a pipe, and talk to others who do not smoke, blowing the smoke in their faces, and he will sit at his desk making the room blue with smoke, like an old-fashioned country tavern, regardless of women or others who may be compelled to work in the same room. ... Furthermore, the loss of time and labor on the part of this army of smokers—they all stick together—as they stand around in the toilet rooms and elsewhere taking their smoke, which occurs regularly several times a day, is far greater than all the losses by fire from smoking."\(^{518}\)

The theretofore unrepresented tobacco addicts’ paladin finally stepped forward in the figure of Arizona Democrat Marcus Aurelius Smith, a lame duck with less than a month’s incumbency. Having been defeated for reelection in 1920, in part because of his anti-labor stance,\(^{519}\) he was about to deliver his libertarian swan song—“my final protest in public life against the effort of...the Congress of the United States to reach out its hand under various pretenses of power, through the interstate commerce clause of the Constitution, or some other device, to go into the homes of the people...and regulate...them all in their conduct, where that conduct, even if it is not exactly the right thing, takes no right from anyone else, and leaves them at least in the possession of some of the natural liberties of man.”\(^{520}\) (In fact, because President Wilson appointed Smith to the International Joint Boundary Commission\(^{521}\) effective the day after his Senate term ended, Senate Democrat Henry Myers wondered whether the “outburst of oratory” by Smith might have something to do with his feeling that the proposed legislation “may encroach upon his personal fondness for the fragrant Habana or the pleasing cigarette” inasmuch as he was to “continue in the service of the Government, in a department of the Government not located in the Capitol....")\(^{522}\)

\(^{517}\)CR 60:2629 (Feb. 5, 1921).

\(^{518}\)CR 60:2631 (Feb. 5, 1921).


\(^{520}\)CR 60:2632 (Feb. 5, 1921).


\(^{522}\)CR 60:2633 (Feb. 5, 1921).
The Prohibition of Smoking Inside Legislatures

Denouncing the amendment “as the entering wedge of a most contemptible and restraining blue law backed by the Government of the United States to suit the particular tastes of different gentlemen who find great pleasure in looking over all parts of the human body to see if they can find a boil”—Smith audibly took comfort from relating the tale of a senator who, after having said that he did not smoke, never chewed, and had never taken a drink of whisky, was asked by another senator, “one of the most distinguished men in this country,” “‘What do you do to smell like a man?’”—he readily conceded his own addiction: “I have tried many a time to stop the use of tobacco. I have found, as far as my health or my happiness is concerned, that it was an impossibility with me.” Deeply empathizing with a secretary of labor or other cabinet official “who likes his cigar,” he rebuked his colleagues who would continue to be entitled to “go through the corridors and smoke” while saying to that executive department head that “he must carry on the multifarious and responsible duties of that great office without the consolation of a cigar,” with the result that they would “drive out of the departments for hours in the day every responsible head. The heads..., if not allowed to smoke in them, will find time, when they feel they have to smoke, outside of the department, with a result ten times worse than any possible condition could be now.” Certain that Smoot’s ban, like other “blue laws,” prohibited men from doing “things that are harmless to other people and harmless to themselves,” Smith floated on a rhetorical tide of bathos to “a final question as to whether the human family shall be deprived of tobacco.” But before his arrival at that destination, he tarried long enough to regale the senate with his impassioned plea not to block the rise of the next generation of tobacco addicts and inhalers of secondhand smoke:

I protest against an effort to raise the great American boy of the future under a glass globe, as you would protect the delicate tints of a frail flower, not letting the winds of heaven visit his damask cheek too roughly. You will thus raise a generation of dudes and nincompoops.

Man must be brought up in his environment. He must feel the touch with other men. [Y]ou can not isolate him..., you can not make him an earthly angel by taking from him those habits exercised among the men with whom he comes in contact, which raise his character as a man....

523CR 60:2631 (Feb. 5, 1921).
524CR 60:2631 (Feb. 5, 1921). Smith’s position was further developed three quarters of a century later by Brown & Williamson Tobacco Corporation’s chairman and CEO, Thomas Sandefur, who, after swearing that he believed that tobacco was not addictive, responded to Congressman Wyden’s other theatrically brilliantly scripted question as to what he would say to a seven-year-old asthmatic witness whose exposure to secondhand smoke: 1884
Smoot’s lapidary response to Smith’s wide-ranging complaints was that it would not hurt the secretary of state to refrain from smoking during business hours.525

Support for Smoot’s amendment came from only two senators. Florida Democrat Park Trammel, that state’s former attorney general and governor, expressed his astonishment that department heads had so little respect for their “women and girl employees...as to permit the men to sit all around among them smoking their cigarettes, their cigars, and their pipes. Many of the rooms in these Government departments may more properly be called smoking rooms than working rooms.” Smith may have been loath to condone disrespect for womanhood, but Trammell’s characterization of a female employee’s tormentor as a “cigarette or pipe fiend” precipitated a lengthy colloquy in the course of which Trammell, who himself smoked, settled on a definition that stamped a man as a “fiend” if he was “such a slave to the pipe or the cigarette” that, as a result of being deprived of the privilege of smoking in his office, he spent three of his seven work hours with his pipe or cigarette out of his office. In the end, rejecting the label “blue laws,” Trammell also denied that an office smoking ban would be unjust to or curtail the liberty of an employee. The senator framed the issue as one of managerial prerogatives: it was simply “the custom when employing people to tell them what it is proposed to do during office hours.” Otherwise, by an inverted logic, “[w]e might as well say it is a restraint of the freedom of speech because, forsooth, some concern that employs a large number of employees prohibits promiscuous conversation during office hours.”526

This same position stressing the need for employers to impose discipline in the interest of productivity underlay the support for Smoot’s amendment offered by Montana Democrat Henry Myers, a former and future state court judge who smoked “a great part of my life, and I like now to see those who are addicted to the habit enjoy a fragrant cigar or soothing pipe.”527 Going even further than Trammell he rigidly insisted that “people should have some recreation and

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525 CR 60:2632 (Feb. 5, 1921).
526 CR 60:2632 (Feb. 5, 1921).
527 CR 60:2633 (Feb. 5, 1921).
amusement, but Government employees should have it in their own time and not in the time of the Government. They only work between seven and eight hours a day, and during those hours I think the Government is entitled to their best efforts and all their time and attention. I think they should not mix pleasure and recreation with their work.”

Many decades would pass before empirical studies were conducted on the impact of smoking on workers’ productivity and non-smoking workers became antagonized over extra smoking breaks that employers granted smoking co-workers in workplaces in which smoking was prohibited. However, in 1921, the Senate resolved the controversy on the basis of a substitute for Smoot’s committee amendment offered by New York Republican James Wadsworth. Scion of one of the largest land-owning families in New York, Wadsworth, whose father had been a congressman and whose grandfather had been of one of the founders of the Republican Party, was very conservative and opposed liquor prohibition; his opposition to women’s suffrage contributed to loss of his Senate seat in 1926, and when, after a hiatus, he was elected to the House, he became an adamant opponent of the New Deal. The substitute provided that:

The heads of executive departments and independent establishments of the Government are hereby directed to issue and enforce such regulations as will prevent smoking in those portions of buildings owned or leased by the Government in which smoking endangers Government property or constitutes a hindrance to the efficient conduct of Government business.

This new version prompted Democrat Charles Thomas, a former Colorado governor and another lame duck, to get off his chest complaints that he had been storing up about federal civil servants “who are protected by governmental regulations and laws whereby their places are secured for life or during good behavior and whose length of daily service is limited in many instances by seven and in others by eight hours” and who were nevertheless engaged in “deplorable neglect of their duties” (regardless of whether they smoked tobacco) and employed in numbers exceeding those “necessary for the business which is

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528 CR 60:2634 (Feb. 5, 1921).
531 “James Wadsworth, Ex-Senator, 74, Dies,” *NYT*, June 22, 1952 (1).
532 CR 60:2634 (Feb. 5, 1921).
transacted.” Consequently, while regarding Wadsworth’s proposal as “much the best method of legislating upon this subject,” Thomas was unable to reconcile himself to what he deemed “[t]he fact that employees can do as they please with impunity under civil-service regulations, whether conformably to them or not, without running the risk of discharge,” which in his view “made the amendment...somewhat deficient unless it confers power upon the heads of departments to discharge summarily those who are guilty of the violation of these regulations.” He was disappointed to hear Wadsworth state that not only could this rule “not visit summary discharge upon” violators, but—divining Thomas’s real interest—especially that “I do not think we can repeal the civil-service law in this way....” Stymied, Thomas sputtered: “If these employees are so addicted to smoking that they can not quit it...regardless of the duties which their positions require them to discharge, then they should be made to quit....” The only backing that his cri de coeur engendered came from Smith, who proposed fining executive department employees who smoked in working rooms in the presence of others during working hours $10 for the first and second offenses and dismissing them for a third offense. Not even Smoot welcomed this last salvo: revealing that he had never imagined that the Senate would pass his bill, he explained that his real object had been that “publicly this abuse” would be called to the department heads’ attention. He harbored no objection to Wadsworth’s substitute, because it would “have the effect at least of checking for a month or two the outrageous abuses...in the different departments.”

Ironically, after the Senate had devoted two hours to debating the issue of smoking and adopted Wadsworth’s wording “by an overwhelming majority,...immediately two-thirds of the Senators in the chamber sauntered into the cloak room to enjoy their cigars or pipes, as the case might be.” In so doing, however, that large majority continued to comply with the Senate’s custom-based smoking ban in the chamber itself. In spite of the Senate vote, later that month Smoot’s initiative became moot; when the appropriations bill was returned to the House—some of whose smoking members were less punctilious about observing its formal no-smoking rule—the chamber, under the prodding of Iowa Republican and Appropriations Committee Chairman James Good, who opined that the provision “would be a farce” if a department, which already was able to prevent smoking “if it wants to,” did not want to prevent smoking, insisted on disagreeing to the amendment. The pro-tobacco scene on the House floor

533 CR 60:2634-35 (Feb. 5, 1921).
534 “Harding May Smoke in the White House,” NYT, Feb. 6, 1921 (3).

1887
was depicted by the national press: “The House, composed largely of smoking men, stood up last night for the man who smokes peacefully while working at a government desk. There was a shouting of ‘Noes’…. Less than a score of members supported” the Senate amendment. Under the compromise worked out by the conference committee, of which Smoot himself was a member, the Senate receded from the Smoot-Wadsworth amendment, thus ending this tentative federal government inroad against the ascendancy of smoking laissez-faire.

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536 “Smokers in House Protect Clerks from Tobacco Ban,” WP, Feb. 25, 1921 (4); “House Upholds Smokers,” NYT, Feb. 25, 1921 (15:5).
537 CR 60:4432, 4499-4500 (Mar. 3, 1921).
## The Prohibition of Smoking Inside Legislatures

### Appendix

Table 6: No-Smoking Rules Inside State/Territorial Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Body</th>
<th>Type of Prohibition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>1861</td>
<td>S</td>
<td>Rule introduced: “Smoking shall not be allowed in the Senate chamber during the time the Senate is in session.” Senate on January 18 “was principally occupied with a discussion of a new rule....’ One member thought the Senate should become accustomed to SMOKE, for in less than six months they would smell much smoke of a sulphurous character, and it was well to begin on tobacco smoke. The rule was finally withdrawn.”</td>
</tr>
<tr>
<td></td>
<td>1873</td>
<td>S</td>
<td>Resolution: “That it shall be considered as a standing rule of the Senate that no smoking shall be allowed in the Senate chamber.”</td>
</tr>
<tr>
<td></td>
<td>1896</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke within the house, lobby or gallery.”</td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>CC</td>
<td>Rule: “No person shall be allowed to smoke within the house, lobby or gallery.”</td>
</tr>
<tr>
<td>AK</td>
<td>1915</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall or lobby thereof during the session.”</td>
</tr>
<tr>
<td>AZ</td>
<td>1887</td>
<td>H</td>
<td>“On motion of Mr. Worres the Sergeant-at-Arms was instructed to have several large placards printed, prohibiting smoking in the Assembly chamber or lobby during the time the House is in session.”</td>
</tr>
<tr>
<td></td>
<td>1897</td>
<td>H</td>
<td>Resolution: “That no smoking be permitted on the floor of the House during all sessions of the House, and that the Sergeant-at-Arms be instructed to enforce the same in the lobby.” Adopted</td>
</tr>
<tr>
<td></td>
<td>1905</td>
<td>C</td>
<td>Resolution: “that smoking shall not be indulged in by members of the Council while in the Council Chamber, nor shall any other persons be permitted to smoke in the Council Chamber while the Council is in session...[a]nd...that the President of the Council instruct the Sergeant-at-Arms to strictly enforce this regulation.” Adopted 11 to 1.</td>
</tr>
<tr>
<td></td>
<td>1915</td>
<td>H</td>
<td>Resolution: “That no smoking be permitted on the floor of the House during all sessions of the House and that the Sergeant-at-Arms be instructed to enforce the same.” Carried 25 to 10.</td>
</tr>
<tr>
<td>AR</td>
<td>1871</td>
<td>S</td>
<td>Resolution passed to prohibit smoking in the Senate chamber. Rule: “[N]or shall smoking be allowed in the Senate Chamber, hall or gallery, during sessions of the Senate.”</td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>S</td>
<td>Rule: “Smoking in the House During session hours is strictly forbidden.”</td>
</tr>
<tr>
<td></td>
<td>1907</td>
<td>H</td>
<td></td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>Side</th>
<th>Resolution or Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1851</td>
<td>A</td>
<td>Resolution: “WHEREAS, this House has no rule prohibiting smoking in the Hall during business hours; and WHEREAS, this improper practice is indulged in to a disreputable extent, not only by members but by others having privileges within the Bar of this House: Therefore, Resolved, That it be made the duty of the Speaker of this House to forbid any person from smoking during the sessions of the House; also, the Speaker shall give his order to the Sergeant-at-Arms and Doorkeeper not to suffer a member or other person to come within the Bar in the act of smoking, or suffer any one to smoke within the Hall during business hours.” Substitute Resolution: “That smoking shall not be permitted within the Hall during the sessions of the Assembly.” Resolution and substitute both tabled 17-11.</td>
</tr>
<tr>
<td>1851</td>
<td>S</td>
<td>Ordered by Motion: “[N]either smoking nor chewing will be allowed within the bar of the Senate, during the remainder of the present session.”</td>
</tr>
<tr>
<td>1854</td>
<td>A</td>
<td>Rule: “No smoking shall be allowed within the Assembly Chamber during the session of the House.”</td>
</tr>
<tr>
<td>1854</td>
<td>S</td>
<td>“Mr Coffroth submitted the following as Rule 47. ‘Smoking shall not be allowed at any time in the Senate Chamber or lobby.’ Mr. Smith submitted as a substitute: ‘No smoking shall be allowed within the bar of the Senate during its sessions.’” “[T]hey were referred to the Committee on Vice and Immorality.” The committee reported that it “would recommend adoption of the Rule as originally introduced, in preference to the substitute.” “The report was accepted and laid on the table.”</td>
</tr>
<tr>
<td>1862</td>
<td>S</td>
<td>Senate Rules for trial of District Judge James Hardy: “No smoking shall be allowed within the bar of the Senate during said trial.” Adopted by roll-call vote 20 to 8.</td>
</tr>
<tr>
<td>1863</td>
<td>S</td>
<td>“Mr Perkins offered the following resolution: Resolved, That no smoking shall be allowed in the Senate Chamber.” Adopted by roll-call vote 31 to 5.</td>
</tr>
<tr>
<td>1878</td>
<td>S</td>
<td>“By Mr. Satterwhite: Resolved, That the Sergeant-at-Arms be instructed to allow no smoking in the Chamber at any time.” Adopted</td>
</tr>
<tr>
<td>1891</td>
<td>S</td>
<td>“By Senator Maher: WHEREAS, The rules of good breeding and health require that smoking be not allowed in the Chamber; therefore, be it Resolved, That the Sergeant-at-Arms be instructed to arrest all Senators smoking within the bar of the Senate.” Adopted</td>
</tr>
<tr>
<td>1905</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed within the Senate Chamber.”</td>
</tr>
<tr>
<td>1911</td>
<td>A</td>
<td>Rule: “No smoking shall be allowed within the Assembly Chamber during the session of the House; provided, that during night session, this rule may be suspended by a vote of the majority of the members present, without notice or reference to committee.”</td>
</tr>
<tr>
<td>1921</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed within the Senate Chamber when objected to by the presiding officer or by any five members.”</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Chambers</th>
<th>Action</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CO</td>
<td>1865</td>
<td>H</td>
<td>Rule: “no smoking shall be allowed in the House.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1875</td>
<td>CC</td>
<td>Rule: “no smoking shall be allowed in the hall of the Convention.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1876</td>
<td>C</td>
<td>Resolution: “That no smoking be permitted in the Council Chamber during the sessions of the Council.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1887</td>
<td>S</td>
<td>Motion carried “that the senators smoke, and they did, Chairman Christian smoking as much as any one.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>S</td>
<td>Rule: “During the sessions of the Senate, smoking within the Senate chamber shall not be allowed.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>H</td>
<td>Rule: “[N]o member or other person shall smoke in the lobbies or upon the floor of the House, and the Sergeant-at-Arms and the Doorkeeper are charged with the strict enforcement of this rule.”</td>
<td></td>
</tr>
<tr>
<td>CT</td>
<td>1918</td>
<td>H&amp;S</td>
<td>Rejected resolution to prohibit smoking in Hall of House or Senate chamber during session hours.</td>
<td></td>
</tr>
<tr>
<td>DE</td>
<td>1847</td>
<td>H</td>
<td>Amendment to resolution “That the Sergeant-at-Arms be directed to prevent smoking in the hall of the House” was lost.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>H</td>
<td>Resolution to prohibit smoking in the House chamber while the House in session and instructing the sergeant-at-arms to enforce rule adopted last day of session.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1907</td>
<td>H</td>
<td>Motion prevailed “that no smoking be allowed in the House while in session.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1909</td>
<td>H</td>
<td>Resolution: “That any member, attachee or visitor who indulges in smoking in the hall of the House of Representatives while in session, shall be arrested by the sergeant-at-arms.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1917</td>
<td>H</td>
<td>Resolution: “that from and after the passage of this resolution no person whether or not he shall be a member of the General Assembly shall smoke in the Hall of the House of Representatives while the House is in session.” Motion lost.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1919</td>
<td>S</td>
<td>Resolution: “that smoking within the Senate Chamber shall be and is hereby prohibited during such times as the Senate shall be in session.”</td>
<td></td>
</tr>
<tr>
<td>FL</td>
<td>1854</td>
<td>H</td>
<td>Motion “that Sergeant-at-Arms be instructed to inform persons within and without the bar that smoking is not permitted in the Representative Hall during the sitting of the House” was lost.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1893</td>
<td>H</td>
<td>“Resolved, That smoking shall not be allowed in the hall during the session of the Legislature.” Adopted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>H</td>
<td>Resolution No. 11: “That smoking is strictly prohibited in the House of Representatives while in session.” Adopted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1903</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall while the House is in session.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1913</td>
<td>S</td>
<td>Rule: “[D]uring the session of the Senate no Senator shall...smoke upon the floor of the Senate....”</td>
<td></td>
</tr>
<tr>
<td>GA</td>
<td>1857</td>
<td>H</td>
<td>Rule: “No member shall smoke in the House....”</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1915</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed in the Senate Chamber during the Sessions of the Senate....”</td>
<td></td>
</tr>
</tbody>
</table>

1891
<table>
<thead>
<tr>
<th>State</th>
<th>Year(s)</th>
<th>House/Council</th>
<th>Rule/Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>HI</td>
<td>1901</td>
<td>H</td>
<td>“No member or officer shall smoke within the Hall of the House during any of the sessions of the House.”</td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>S</td>
<td>Motion carried “that the rules be suspended in order to allow smoking during the Senate’s wait for the message from the governor.”</td>
</tr>
<tr>
<td></td>
<td>1911</td>
<td>S</td>
<td>“No member or other officer shall smoke within the Senate Chamber during any of the sessions of the Senate.”</td>
</tr>
<tr>
<td>ID</td>
<td>1867</td>
<td>H</td>
<td>“No smoking shall be allowed within the Assembly Chamber during the session of the House.”</td>
</tr>
<tr>
<td></td>
<td>1891</td>
<td>H</td>
<td>“No smoking shall be allowed in the house while in session.”</td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>H</td>
<td>“No smoking shall be allowed in the representative chamber, gallery or any committee room.”</td>
</tr>
<tr>
<td></td>
<td>1907</td>
<td>S</td>
<td>“During the session of the senate, smoking within the Senate Chamber shall not be allowed, nor in a committee room during a sitting without the consent of the committee.”</td>
</tr>
<tr>
<td></td>
<td>1917</td>
<td>H</td>
<td>“No smoking shall be allowed in the Representative chamber or gallery.”</td>
</tr>
<tr>
<td>IL</td>
<td>1818</td>
<td>CC</td>
<td>“No person shall be permitted to smoke tobacco in the convention while in session.”</td>
</tr>
<tr>
<td></td>
<td>1834</td>
<td>S</td>
<td>“No person shall be permitted to smoke tobacco in the Senate Chamber while in session.”</td>
</tr>
<tr>
<td></td>
<td>1840</td>
<td>H</td>
<td>“That no smoking be allowed in the Hall during the hours of the session.”</td>
</tr>
<tr>
<td>IN</td>
<td>1850</td>
<td>CC</td>
<td>“No person shall be allowed to smoke within the Hall, nor within the lobbies or galleries thereof.”</td>
</tr>
<tr>
<td></td>
<td>1858</td>
<td>S</td>
<td>“That the Door-keeper be directed to prevent smoking in the Senate Chamber during session hours.”</td>
</tr>
<tr>
<td></td>
<td>1861</td>
<td>S</td>
<td>“That the Doorkeeper is requested to prevent smoking in the lobbies while the Senate is in session.”</td>
</tr>
<tr>
<td></td>
<td>1879</td>
<td>S</td>
<td>“No smoking will be allowed in the Senate chamber before, during, or after the sittings thereof.”</td>
</tr>
<tr>
<td></td>
<td>1893</td>
<td>H</td>
<td>“It shall be the duty of the Doorkeeper...to prevent smoking in the halls and lobbies at all times....”</td>
</tr>
<tr>
<td>IA</td>
<td>1839</td>
<td>H</td>
<td>“That no person shall be allowed to smoke a pipe or cigar in this hall during the sittings of the House of Representatives.”</td>
</tr>
<tr>
<td></td>
<td>1840</td>
<td>C</td>
<td>“That smoking in the hall of the Council, during session hours, be prohibited.”</td>
</tr>
<tr>
<td></td>
<td>1884</td>
<td>H</td>
<td>“nor shall any person be permitted to smoke on the floor of the House or in the galleries at any time.”</td>
</tr>
<tr>
<td></td>
<td>1886</td>
<td>S</td>
<td>“Smoking in the Senate Chamber is hereby prohibited. And any officer or employe who shall indulge in smoking while on duty in the Senate Chamber or doorways leading thereto, shall thereby subject himself to liability of discharge.”</td>
</tr>
<tr>
<td></td>
<td>1927</td>
<td>S</td>
<td>Rule: Repealed</td>
</tr>
<tr>
<td></td>
<td>1933</td>
<td>H</td>
<td>Rule: Repealed</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>House</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1859</td>
<td>CC</td>
<td>Resolution: “That no smoking shall be allowed in this Hall, either within or without the bar, and that the Sergeant-at-Arms be instructed to strictly enforce this rule.”</td>
</tr>
<tr>
<td>1861</td>
<td>S</td>
<td>Resolution: “That the smoking of tobacco be prohibited in the Senate Chamber during the time of session.”</td>
</tr>
<tr>
<td>1862</td>
<td>H</td>
<td>Resolution: “That smoking shall not be allowed in this room while the House is in session.”</td>
</tr>
<tr>
<td>1874</td>
<td>H</td>
<td>“Resolved, That smoking in the Hall of Representatives be and hereby is strictly forbidden while the House is in session. Mr. Drenning moved to amend by substituting the words, ‘no smoking will be allowed in this hall at any time.’ The motion as amended revailed, and the resolution was adopted.”</td>
</tr>
<tr>
<td>1875</td>
<td>H</td>
<td>“Resolved, That smoking is entirely prohibited in the hall of the House of Representatives during the present session.” Adopted.</td>
</tr>
<tr>
<td>1876</td>
<td>S</td>
<td>Resolved, That smoking be absolutely prohibited in the Senate chamber, and the post office and cloak room connecting with said chamber, during the actual sessions of the Senate, and for half an hour previous to the meetings of the Senate; and that the sale or keeping for sale of cigars or tobacco within any of the rooms aforesaid be prohibited at all times; and that the Sergeant-at-Arms be instructed and required to enforce the requirements of this resolution strictly. Senator Crichton moved to amend so that spitting tobacco spit on the floor of the Senate chamber be also prohibited, which motion to amend did not prevail. The question recurring on the motion to adopt the resolution a vote being had, the motion to adopt prevailed.”</td>
</tr>
<tr>
<td>1881</td>
<td>H</td>
<td>“Mr. Snoddy moved that it be made a standing order, that no smoking be allowed in the building. The motion prevailed.”</td>
</tr>
<tr>
<td>1883</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall, or in the rooms opening into the hall, or the galleries, while the house is in session.”</td>
</tr>
<tr>
<td>1889</td>
<td>H</td>
<td>Resolution: “Whereas, Rule 67, of the rules governing this body, declares that ‘no person shall be allowed to smoke in the hall, or in the rooms opening into the hall, or the galleries, while the house is in session’; and Whereas, Said rule is being constantly violated, to the great discomfort of many members; therefore, be it Resolved, That the Sergeant-at-Arms be duly instructed to enforce said rule.” Adopted.</td>
</tr>
<tr>
<td>1889</td>
<td>S</td>
<td>Rule: “No person shall be permitted to smoke tobacco in the Senate chamber or the galleries.”</td>
</tr>
<tr>
<td>1891</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall, or in the rooms opening into the hall, or the galleries.”</td>
</tr>
<tr>
<td>1892</td>
<td>S</td>
<td>Rule: “No person shall be permitted to smoke in the Senate chamber or the galleries during the session of the Senate.”</td>
</tr>
<tr>
<td>1893</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall, or the galleries, while the House or committee of the whole is in session.”</td>
</tr>
</tbody>
</table>
The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>House/Court</th>
<th>Year</th>
<th>House/Court</th>
<th>Prohibitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1876</td>
<td>H</td>
<td>1892</td>
<td>H</td>
<td>Resolutions: “That members of the House be requested to abandon the habit of smoking during business hours in this Hall.” “That hereafter smoking within the Chamber or lobbies shall not be permitted.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1892</td>
<td>S</td>
<td>“WHEREAS, Tobacco smoke is offensive to many persons; therefore, be it Resolved by the House of Representatives of Kentucky, That the Sergeant-at-Arms is hereby instructed to prohibit smoking in the hall at all times during this session of the Legislature.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1906</td>
<td>S</td>
<td>Resolution: “That the Sergeant at Arms is hereby directed to prohibit smoking in the Senate chamber after 9:30 A.M. until the Senate adjourns.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1916</td>
<td>S</td>
<td>Resolution: “Whereas, tobacco smoke is offensive, obnoxious, and unbearable to many members of the Senate; and, Whereas, smoking in the presence of ladies is ill-mannerly and ungentlemanly; and, Whereas the presence of good women at our session is appreciated and desired by the members; and, Whereas, smoking is productive of foul, filthy and impure air, which is destructive of the health and comfort of the members. Therefore, be it resolved that smoking in this hall be prohibited, and the Sergeant-at-Arms of the Senate is hereby requested to rigidly enforce this rule, ‘No Smoking Allowed.’”</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Rule: “No smoking shall be allowed in the Senate Chamber, except under the galleries.”</td>
</tr>
<tr>
<td>1864</td>
<td>S</td>
<td></td>
<td></td>
<td>Resolution: “that hereafter no smoking be allowed in the Senate chamber while the Senate is in session.”</td>
</tr>
<tr>
<td>1879</td>
<td>CC</td>
<td></td>
<td></td>
<td>Rule: “No smoking shall be allowed in the hall of the Convention while it is in session.”</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>House</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1889</td>
<td>H</td>
<td>Presentation of order that “no smoking be allowed in this hall during the remainder of the session; any member violating this order shall be subject to a fine of five dollars” was postponed indefinitely despite presenter’s rhetorical question as to “how the young men in this house who don’t smoke can get down to work when they are half stifled by tobacco smoke.”</td>
</tr>
<tr>
<td>1889</td>
<td>S</td>
<td>Order adopted that “the House concurring, the Messenger of the Senate be directed to have printed in bold type and to post in conspicuous places, in both the Senate Chamber and the House of Representatives, placards requesting gentlemen not to smoke in the halls or galleries.”</td>
</tr>
<tr>
<td>1889</td>
<td>H</td>
<td>After concurring in the Senate order, the House adopted a motion for an order that “the clerk be directed to have the unsightly signs now posted upon the walls of this House removed forthwith.”</td>
</tr>
<tr>
<td>1917</td>
<td>H</td>
<td>Rule: “Smoking is not allowed in the hall of the House while the House is in session.”</td>
</tr>
<tr>
<td>1820</td>
<td>H</td>
<td>Rule: “Smoking is prohibited in the Hall of the House of Representatives while the House is in session.”</td>
</tr>
<tr>
<td>1921</td>
<td>H</td>
<td>House Speaker: “By your vote this morning, you adopted the rules of the preceding session. The Chair will call the attention of the House to a rule which prohibits smoking in the House of Representatives during business sessions. This rule will be implicitly obeyed by the members and no less by the guests of the House.”</td>
</tr>
<tr>
<td>1888</td>
<td>H</td>
<td>On motion it was ordered “that no smoking be permitted in this Hall during the session of this House.”</td>
</tr>
<tr>
<td>1906</td>
<td>H</td>
<td>“Ordered, That the use of cigars, cigarettes and pipes be prohibited in this chamber while the House is in session, and that the doorkeepers allow no one to enter if using either [sic] of them. That the Seargent [sic]-at-Arms and pages see that this order is enforced.”</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Chamber</th>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>MA</td>
<td>1877</td>
<td>H</td>
<td>Order</td>
<td>Offered: “That no smoking be allowed in the rooms and halls connected with the Representatives’ Chamber, and that the Sergeant-at-Arms be instructed to strictly enforce this order.” Indefinitely postponed.</td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>H</td>
<td>Rule</td>
<td>“No smoking shall be allowed in the writing room of the House or in the ladies’ parlor.”</td>
</tr>
<tr>
<td></td>
<td>1898</td>
<td>S</td>
<td>Rule</td>
<td>“Smoking shall not be permitted in the reception room.”</td>
</tr>
<tr>
<td>MI</td>
<td>1850</td>
<td>H</td>
<td>Resolution</td>
<td>“That the committee on education be instructed to inquire whether the practice of smoking in this hall be not detrimental to the health of members.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Committee Report</td>
<td>“If that which produces nausea of the most disagreeable kind, if that which pollutes the air so as to be unfit for the respiration demanded by nearly a hundred pair of lungs from six to eight hours a day...be detrimental to health, then there can be no doubt that the smokers and the smoked are all in the same category of danger, from which there is no escape for the latter, but in the forbearance and gentlemanly consideration of the former.”</td>
</tr>
<tr>
<td></td>
<td>1861</td>
<td>H</td>
<td>Resolution</td>
<td>(unanimously adopted): “That the practice of smoking in this Hall is ungentlemanly, prejudicial to the health of members, and disgusting to those who do not indulge in the filthy and disgusting habit.”</td>
</tr>
<tr>
<td></td>
<td>1863</td>
<td>H</td>
<td>Resolution</td>
<td>(unanimously adopted): “That the atmosphere of this Hall is sufficiently impure without the introduction of the poisonous fumes of tobacco smoke; and that the members of this House be requested to desist from that practice in this Hall and its ante-rooms, as a nuisance to the majority of the House.”</td>
</tr>
<tr>
<td></td>
<td>1869</td>
<td>H</td>
<td>Resolution</td>
<td>“That no smoking shall be hereafter allowed upon the floor of this House, by any members or employés of this House, during the session of this Legislature.”</td>
</tr>
<tr>
<td></td>
<td>1873</td>
<td>S</td>
<td>Resolution</td>
<td>“That no smoking be permitted in the Senate Chamber during the present session of the Legislature.”</td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>S</td>
<td>Rule</td>
<td>“Smoking shall not be allowed in the senate chamber during the time the senate is in session, and the presiding officer shall enforce the rule.”</td>
</tr>
<tr>
<td>MN</td>
<td>1859</td>
<td>H</td>
<td>Resolution</td>
<td>“That no smoking be allowed in the Hall of this House previous to adjournment on each day.”</td>
</tr>
<tr>
<td></td>
<td>1889</td>
<td>S</td>
<td>Rule</td>
<td>“No senator or officer of the Senate, or other person, shall be permitted to smoke in the Senate chamber during the session of the Senate.”</td>
</tr>
<tr>
<td></td>
<td>1889</td>
<td>H</td>
<td>Rule</td>
<td>“No person shall be permitted to smoke in the hall of the house while in session.”</td>
</tr>
<tr>
<td>MS</td>
<td>1870</td>
<td>H</td>
<td>Rule</td>
<td>“No smoking shall be allowed in the Hall during the hours of session.”</td>
</tr>
<tr>
<td></td>
<td>1890</td>
<td>CC</td>
<td>Rule</td>
<td>“nor shall any smoking be allowed in the hall of the Convention, during its session.”</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>Chamber</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1839</td>
<td>S</td>
<td>Resolution: “[T]hat no person be allowed to smoke cigars or tobacco in any manner in this Hall, or lobby, during the setting hours.”</td>
</tr>
<tr>
<td>1845</td>
<td>S</td>
<td>Resolution: “That smoking is not allowed during the remainder of the session, within the Senate Chamber, and the door-keeper is authorized to prevent the same.”</td>
</tr>
<tr>
<td>1851</td>
<td>H</td>
<td>Resolution: “That smoking tobacco shall not be allowed hereafter in the hall of the House of Representatives, and that the Speaker be instructed to notify the House of the tenor of this resolution.”</td>
</tr>
<tr>
<td>1852</td>
<td>H</td>
<td>“Resolved, by the House of Representatives, that there shall be no more smoking allowed in the House or about the door of said House, during the sitting of the present extra session.”</td>
</tr>
<tr>
<td>1853</td>
<td>H</td>
<td>Resolution: “That the smoking of cigars and pipes be prohibited in the Hall of Representatives, in session hours, during the present session of the General Assembly, nor shall members of this House, take grog during the sitting of the House.” Resolution instructing rules committee to incorporate this rule in the rules they report for government of the House rejected.</td>
</tr>
<tr>
<td>1855</td>
<td>S</td>
<td>“Resolved, That there shall be no smoking in the House, during the Joint Session” (to elect Bank of Missouri presidents and directors).</td>
</tr>
<tr>
<td>1855</td>
<td>H</td>
<td>“Resolved, That smoking shall be prohibited in the Hall of the House of Representatives during the sessions thereof.”</td>
</tr>
<tr>
<td>1857</td>
<td>S</td>
<td>“Resolved, That smoking within the Senate Chamber be, and the same is, hereby forbidden during the session of the Senate.”</td>
</tr>
<tr>
<td>1857</td>
<td>H</td>
<td>“Resolved, That in the sense of this House, it is proper for the Speaker to prevent smoking within this Hall, and that his efforts to do so will be approved by this House.” Read first time and, being a proposition to amend House rules, under a House rule, it lay over and was never taken up again.</td>
</tr>
<tr>
<td>1861</td>
<td>H</td>
<td>“Resolved, That no member or officer of this House, and no person not a member thereof, be allowed to smoke in the Hall of the House while the House is in session. Resolved, That the Speaker and all other officers of this House be required to enforce the foregoing resolution.”</td>
</tr>
<tr>
<td>1861</td>
<td>SC</td>
<td>Rule: “No member or other person shall be permitted to smoke within the hall or lobby at any time.”</td>
</tr>
<tr>
<td>1869</td>
<td>S</td>
<td>“Resolved, That notice be given that smoking is not allowed within the Hall while the Senate is in session.”</td>
</tr>
<tr>
<td>1873</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed within the Senate Chamber while the Senate is in session.”</td>
</tr>
<tr>
<td>1883</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed in the Senate chamber between 9 o’clock in the morning and the final adjournment of the Senate for the day.”</td>
</tr>
<tr>
<td>1883</td>
<td>H</td>
<td>Rule: “Speaker...shall preserve decorum and order and prevent smoking in the hall....”</td>
</tr>
<tr>
<td>1887</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed in the Senate Chamber.”</td>
</tr>
<tr>
<td>1917</td>
<td>S</td>
<td>Rule: “Smoking shall not be allowed in the Senate chamber.”</td>
</tr>
<tr>
<td>1921</td>
<td>H</td>
<td>Resolution: “Whereas, Rule 7 [sic; should be 6] has been put into force prohibiting smoking; therefore, be it Resolved, That the ash trays ordered for desks be sold as junk and funds derived from such sale be returned to contingent fund of the House.” Failed of adoption.</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Body</th>
<th>Resolution/Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>MT</td>
<td>1869</td>
<td>H</td>
<td>“Resolved, That there be no smoking allowed inside the bar of this House. Carried.”</td>
</tr>
<tr>
<td></td>
<td>1883</td>
<td>H</td>
<td>“Resolved: That the Sergeant-at-Arms of this House be instructed to suppress smoking within the bar of this House during the sessions thereof.” Adopted.</td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>H</td>
<td>Rule: “during the session of the House no member shall wear his hat...or smoke upon the floor of the House; neither shall any other person be allowed to smoke on the floor of the House at any time; and the Sergeant-at-Arms and Doorkeeper are charged with strict enforcement of this clause.”</td>
</tr>
<tr>
<td></td>
<td>1907</td>
<td>H</td>
<td>Rule: “Loud talk or smoking shall be discontinued on request of the Speaker.” Adopted.</td>
</tr>
<tr>
<td></td>
<td>1911</td>
<td>H</td>
<td>Motion that “after this date the smoking of cigarettes be prohibited in the House” adopted.</td>
</tr>
<tr>
<td>NE</td>
<td>1858</td>
<td>H</td>
<td>Resolution: “That no member be allowed to smoke within the bar during the time the House is in session.” Laid over.</td>
</tr>
<tr>
<td></td>
<td>1871</td>
<td>H</td>
<td>Rule: “there shall be no smoking in the bar or gallery of this House while in session.”</td>
</tr>
<tr>
<td></td>
<td>1873</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed in the Senate Chamber or galleries during the session of the Senate.”</td>
</tr>
<tr>
<td></td>
<td>1877</td>
<td>H</td>
<td>Rule: “The speaker...shall have general direction of the hall, and permit no smoking therein.”</td>
</tr>
<tr>
<td></td>
<td>1917</td>
<td>H</td>
<td>Rule: “The speaker...shall not permit smoking while the house is in session.”</td>
</tr>
<tr>
<td></td>
<td>1931</td>
<td>H</td>
<td>Rule: “No smoking shall be allowed in the house chamber, lobby, or gallery, during session [sic] of the house or its committee of the whole.”</td>
</tr>
<tr>
<td>NV</td>
<td>1864</td>
<td>A</td>
<td>Rule: “No smoking shall be allowed within the Assembly Chamber during the session of the House.”</td>
</tr>
<tr>
<td></td>
<td>1864</td>
<td>S</td>
<td>Rule: “Smoking shall not be allowed within the Senate chamber during the session of the Senate.”</td>
</tr>
<tr>
<td></td>
<td>1923</td>
<td>S</td>
<td>Rule: Repealed</td>
</tr>
<tr>
<td></td>
<td>1931</td>
<td>H</td>
<td>Rule: Repealed</td>
</tr>
<tr>
<td>NH</td>
<td>1931</td>
<td>H</td>
<td>Apparently by custom smoking was prohibited in the House chamber for some period before 1931 since that year the House adopted a resolution that “smoking be permitted in the House for the remainder of the 1931 session.”</td>
</tr>
<tr>
<td></td>
<td>1943</td>
<td>H</td>
<td>Resolution: “in recognition of the dignity of our position as members of the state government, smoking during the time the House is in session shall not be allowed.”</td>
</tr>
<tr>
<td></td>
<td>1949</td>
<td>S</td>
<td>Apparently by custom smoking was prohibited in the Senate before 1949 since on July 19, 1949, “smoking was permitted in the Senate by its members during the balance of today’s session.”</td>
</tr>
<tr>
<td>NJ</td>
<td>1872</td>
<td>A</td>
<td>Rule: “It shall be the duty of the Sergeant-at-Arms, at all times, not to allow any person to smoke in the Assembly Chamber.”</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Session</th>
<th>Rule/Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>NM</td>
<td>1899</td>
<td>H</td>
<td>“No person shall be allowed to smoke tobacco in the chamber of the galleries while the House is in session.”</td>
</tr>
<tr>
<td>NY</td>
<td>1859</td>
<td>A</td>
<td>Resolution: “Whereas, the smoking of tobacco upon this floor is exceedingly offensive, therefore Resolved, That the Sergeant-at-Arms and Door-keepers be, and are hereby directed to prevent any smoking, either on this floor or in any room adjacent thereto.”</td>
</tr>
<tr>
<td></td>
<td>1867</td>
<td>S</td>
<td>Resolution: “That smoking be strictly prohibited in any of the rooms or ante-rooms of the Senate while the Senate is in session, and that the Sergeant-at-Arms and his assistant be directed to see this resolution strictly enforced.”</td>
</tr>
<tr>
<td>NC</td>
<td>1875</td>
<td>CC</td>
<td>Rule: “No smoking shall be allowed within the hall during sessions.”</td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed within the Senate Chamber during the sessions.”</td>
</tr>
<tr>
<td></td>
<td>1895</td>
<td>H</td>
<td>Rule: “Smoking shall not be allowed in the hall.”</td>
</tr>
<tr>
<td>ND</td>
<td>1889</td>
<td>CC</td>
<td>Rule: “No smoking shall be allowed within the hall at any time, whether the Convention be in session or not.”</td>
</tr>
<tr>
<td></td>
<td>1889</td>
<td>H</td>
<td>Rule: “No smoking shall be allowed in the House while in session.”</td>
</tr>
<tr>
<td>OH</td>
<td>1857</td>
<td>H</td>
<td>Resolution: “Whereas the smoking of tobacco is very offensive to a number of the members of this House; therefore be it Resolved, That the members and officers of the House of Representatives be requested to refrain from smoking within this Hall, whether the House be in session or not, and that the Sergeant-at-Arms be instructed not to permit it to be done by others.” As amended to include chewing tobacco, defeated 38-40.</td>
</tr>
<tr>
<td></td>
<td>1870</td>
<td>S</td>
<td>Rule: “It shall be the duty of the Sergeant-at-Arms and his assistant to prevent smoking within the Senate Chamber during the session of the Senate.”</td>
</tr>
<tr>
<td></td>
<td>1884</td>
<td>H</td>
<td>Resolution: “That during the sessions of the House no smoking be permitted within the Hall, and that the Sergeant-at-Arms be required to strictly enforce this order.”</td>
</tr>
<tr>
<td>OK</td>
<td>1890</td>
<td>C</td>
<td>Rule: “It shall be the duty of the Sergeant-at-arms and his assistants to prevent smoking within the Council Chamber during the session of the Council.”</td>
</tr>
<tr>
<td></td>
<td>1890</td>
<td>H</td>
<td>Rule: “nor shall any person be permitted to smoke on the floor of the House or in the galleries at any time during the session of the House.”</td>
</tr>
<tr>
<td></td>
<td>1905</td>
<td>C</td>
<td>Rule: “No smoking shall be allowed during the session of the Council.”</td>
</tr>
<tr>
<td></td>
<td>1905</td>
<td>H</td>
<td>Rule: “nor shall any person be permitted to smoke on the floor of the House or in the galleries at any time during the session of the House.”</td>
</tr>
<tr>
<td></td>
<td>1906</td>
<td>CC</td>
<td>Resolution: “Whereas, There are members to whom smoking is offensive; therefore, Be it Resolved, That all smoking upon the floor of the Convention hall be prohibited during the hours of sitting of the Convention.”</td>
</tr>
<tr>
<td></td>
<td>1909</td>
<td>H</td>
<td>Rule: “No member or other person shall be permitted to smoke on the floor of the House or in the gallery during sessions.”</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>House/Chamber</th>
<th>Rule</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1856</td>
<td>OR</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke within the Hall or lobby thereof.”</td>
<td></td>
</tr>
<tr>
<td>1857</td>
<td>OR</td>
<td>CC</td>
<td>Rule: “No person shall be allowed to smoke in the hall or lobby thereof while the convention is in session.”</td>
<td></td>
</tr>
<tr>
<td>1860</td>
<td>OR</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall or lobby thereof while the House is in session.”</td>
<td></td>
</tr>
<tr>
<td>1868</td>
<td>OR</td>
<td>S</td>
<td>Resolution: “Whereas, smoking and open conversation in the senate chamber have become annoying and disturbing to the senate; therefore, Be it resolved by the senate, That the sergeant-at-arms is hereby directed to prevent smoking and loud talking in the senate chamber; and is further directed to post a notice to this effect in some places in the chamber where it can be seen and read by excited lobbyists; provided such lobbyists can see to read through the smoke that rises from their ‘sweet-scented’ pipes.” Adopted. “Resolved, That it be the sense of the Oregon State Senate that no member, clerk or any other person be permitted to smoke during the sessions of the Senate.” By roll call vote of 9 to 21 Senate refused to adopt minority committee report that resolution not pass; Senate adopted resolution. Motion a month later to dispense with the rule failed.</td>
<td></td>
</tr>
<tr>
<td>1911</td>
<td>OR</td>
<td>S</td>
<td>Resolution: “Whereas there are many members of the senate to whom smoking on the part of other members is very obnoxious, and often causes sickness and headaches; therefore be it Resolved, That there shall be no smoking allowed in the senate chamber during the time the senate is in session.” Adopted.</td>
<td></td>
</tr>
<tr>
<td>1816</td>
<td>PA</td>
<td>H</td>
<td>Rule: “It is not permitted to any person to smoke tobacco, at any time, within the chamber of the House.”</td>
<td></td>
</tr>
<tr>
<td>1881</td>
<td>PA</td>
<td>S</td>
<td>Rule: “No person shall be permitted to smoke tobacco within the Senate chamber during the session of the Senate.”</td>
<td></td>
</tr>
<tr>
<td>1908</td>
<td>RI</td>
<td>H</td>
<td>“An amendment introduced by Mr. Kearney proposing a new rule as follows: ‘smoking shall be prohibited on the floor of the House during the session thereof,’ is not passed.”</td>
<td></td>
</tr>
<tr>
<td>1898</td>
<td>SC</td>
<td>S</td>
<td>Rule amendment: “Nor shall smoking be permitted in the Senate chamber.”</td>
<td></td>
</tr>
<tr>
<td>1916</td>
<td>SC</td>
<td>H</td>
<td>Rule: “Smoking shall not be allowed on the floor while the House is in session.”</td>
<td></td>
</tr>
<tr>
<td>1885</td>
<td>SD</td>
<td>CC</td>
<td>Rule: “No smoking shall be allowed inside the hall during the sessions of the Convention....”</td>
<td></td>
</tr>
<tr>
<td>1890</td>
<td>SD</td>
<td>S</td>
<td>Rule: “No person shall be permitted to smoke in the Senate chamber....”</td>
<td></td>
</tr>
</tbody>
</table>
## The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Body</th>
<th>Resolution/Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>TN</td>
<td>1851</td>
<td>S</td>
<td>Resolution: “That smoking be prohibited, either in the lobby, or in the bar of the Senate during business hours.”</td>
</tr>
<tr>
<td></td>
<td>1853</td>
<td>S</td>
<td>Resolution: “that neither pipe nor cigar shall be smoked in the Senate Chamber in business hours, during the present session of the Legislature.”</td>
</tr>
<tr>
<td></td>
<td>1869</td>
<td>H</td>
<td>Rule: “No member shall smoke tobacco within the Representative Hall during the hours of the session.”</td>
</tr>
<tr>
<td></td>
<td>1875</td>
<td>S</td>
<td>Resolution: “WHEREAS, Members and visitors have been in the habit of smoking in the Senate Chamber, and filling the same so full of tobacco smoke as to make some members of this House, who are not in the habit of smoking the weed, sick, when they come into the Chamber, and thereby rendering them unfit for business; therefore, be it Resolved, That the members of this House be most respectfully requested, and visitors strictly forbidden, from smoking in the Senate Chamber while the Senate is in session, and for one-half hour before the setting of the same; and that it shall be the duty of the Doorkeeper and porter to see that this Resolution is carried into effect.” Withdrawn.</td>
</tr>
<tr>
<td>TX</td>
<td>1849</td>
<td>H</td>
<td>Resolution: “Whereas, It is deliterious [sic] to the health of many of the members of this House to inhale fumes of tobacco; and whereas, all respectable deliberative bodies consider smoking during their sessions, as a breach of decorum; Be it therefore resolved, that this House consider smoking during its session, to be a breach of decorum, and shall therefore not be permitted either within the bar of the House, or its lobby.”</td>
</tr>
<tr>
<td></td>
<td>1849</td>
<td>S</td>
<td>Rule: “No smoking shall be allowed in the Senate Chamber during the session of the Senate.”</td>
</tr>
<tr>
<td></td>
<td>1875</td>
<td>CC</td>
<td>Rule: “No smoking shall be allowed in the Hall during the session of the Convention.”</td>
</tr>
<tr>
<td></td>
<td>1879</td>
<td>H</td>
<td>Rule: “There shall be no smoking, eating or cracking nuts allowed in the House during its sitting.”</td>
</tr>
<tr>
<td>UT</td>
<td>1896</td>
<td>S</td>
<td>Rule: “No person shall be permitted to smoke in the Senate chamber....”</td>
</tr>
<tr>
<td></td>
<td>1896</td>
<td>H</td>
<td>Rule: “No person shall be permitted to smoke in the House of Representatives....”</td>
</tr>
<tr>
<td></td>
<td>1899</td>
<td>H</td>
<td>Rule: “No person shall be permitted to smoke in the House of Representatives, or in the committee rooms....”</td>
</tr>
<tr>
<td></td>
<td>1917</td>
<td>H</td>
<td>Motion that smoking be prohibited in the House Chamber carried.</td>
</tr>
<tr>
<td></td>
<td>1919</td>
<td>H</td>
<td>Rule: “No person shall be permitted to smoke within the House, or gallery, while the House is in session.”</td>
</tr>
<tr>
<td></td>
<td>1919</td>
<td>S</td>
<td>Rule: “No person shall be permitted to smoke within the Senate Chamber while the Senate is in session.”</td>
</tr>
<tr>
<td></td>
<td>1921</td>
<td>H</td>
<td>House speaker rule interpretation: “while the House is in session” meant only “the actual time the body was in session” and not the entire 60-day period.</td>
</tr>
</tbody>
</table>
### The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Action</th>
<th>Resolution/Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>VT</td>
<td>1878</td>
<td>S&amp;H</td>
<td>Joint Resolution: “That the Sergeant-at-Arms is hereby directed and authorized to prohibit the smoking of pipes and cigars within the Hall of the House, Senate, library and executive chamber.”</td>
</tr>
<tr>
<td>VA</td>
<td>1882</td>
<td>S</td>
<td>Resolution: “That the sergeant-at-arms of this Senate be, and he is hereby required to prohibit and prevent smoking by senators and all others, within the Senate chamber while the Senate is in session, and on every day before the opening of the day’s session.”</td>
</tr>
<tr>
<td></td>
<td>1883</td>
<td>H</td>
<td>Resolution: “That the sergeant-at-arms be, and he is hereby instructed to take such steps as will prohibit all persons from smoking in the hall.”</td>
</tr>
<tr>
<td></td>
<td>1901</td>
<td>CC</td>
<td>Rule: “No person shall be allowed to smoke in the hall, lobby, or galleries during the sitting of the Convention.”</td>
</tr>
<tr>
<td>WA</td>
<td>1889</td>
<td>H</td>
<td>“The speaker ruled that smoking was out of order during the sessions of this House.” Motion carried and ordered: “That it is the sense of this House that members be prohibited from smoking in the hall during recesses.” “The sergeant-at-arms was directed to enforce rule No. 56, prohibiting smoking in the hall or lobby during recess.”</td>
</tr>
<tr>
<td></td>
<td>1889</td>
<td>S</td>
<td>Rule: “Smoking shall not be allowed within the Senate chamber during the session of the Senate....”</td>
</tr>
<tr>
<td></td>
<td>1891</td>
<td>H</td>
<td>Rule: “No person shall be allowed to smoke in the hall or lobby thereof during session or recess.”</td>
</tr>
<tr>
<td></td>
<td>1897</td>
<td>S</td>
<td>Rules Committee report recommended amending rule by striking out “within the Senate Chamber” and inserting instead “on the upper floor of the capitol building, except in room 6. The purpose of this change is to prevent smoking, which is offensive to so many members, in and about the Senate, and confining [sic] smoking to the room adjoining [sic] the room of the sergeant-at-arms.” Adopted</td>
</tr>
<tr>
<td></td>
<td>1921</td>
<td>H</td>
<td>“On motion of Mr. Adams, Rule No. 20 was suspended for the purpose of permitting the House members and employees to enjoy the smoking of cigars presented with the compliments of Senator Barnes.”</td>
</tr>
<tr>
<td>WV</td>
<td>1895</td>
<td>H</td>
<td>Resolution: “That no smoking be allowed in the hall of House of Delegates while the House is in session.”</td>
</tr>
<tr>
<td></td>
<td>1923</td>
<td>S</td>
<td>Concurrent Resolution: “A Bill to prohibit the smoking of cigarettes within the temporary state capitol building or any of the offices of said building” failed to secure required 3/4 majority.</td>
</tr>
<tr>
<td>WI</td>
<td>1853</td>
<td>A</td>
<td>Rule: “No member or officer of the assembly shall be permitted to...smoke in the assembly room at any time.”</td>
</tr>
<tr>
<td></td>
<td>1878</td>
<td>S</td>
<td>Rule: “Smoking on the floor of the Senate, or in the lobby, while the Senate is in session is prohibited.”</td>
</tr>
</tbody>
</table>
The Prohibition of Smoking Inside Legislatures

<table>
<thead>
<tr>
<th>Year</th>
<th>Chamber</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1888</td>
<td>H</td>
<td>“No smoking shall be allowed within the Assembly Chamber at any time.”</td>
</tr>
<tr>
<td>1888</td>
<td>C</td>
<td>“Smoking shall not be allowed in the Council Chamber while the Council is in session.”</td>
</tr>
<tr>
<td>1889</td>
<td>CC</td>
<td>“No smoking shall be allowed in the hall while the convention is in session.”</td>
</tr>
<tr>
<td>1895</td>
<td>H</td>
<td>“Smoking shall not be permitted on the floor of the House while the House is in session.”</td>
</tr>
<tr>
<td>1895</td>
<td>S</td>
<td>“Smoking shall not be allowed in the Senate while the Senate is in session.”</td>
</tr>
<tr>
<td>1917</td>
<td>H</td>
<td>Proposed Rule: “Smoking shall not be permitted on the Floor of the House while the House is in the Committee of the Whole.” “Mr. Kelley moved that the report of the Special Rules Committee be amended by striking out ‘Smoking shall not be permitted while the House is in the Committee of the Whole,’ which motion prevailed.”</td>
</tr>
</tbody>
</table>

Abbreviations: A=Assembly; C=Council; CC=Constitutional Convention; H=House; SC=State Convention; S=Senate

Sources and annotations:
**Alabama:** Journal of the Called Session of the Senate of the State of Alabama...1861, at 20 (Jan. 17) (1861); “All Ended in Smoke,” Milwaukee Daily Sentinel, Feb. 6, 1861 (2:2); Journal of the Session of 1872-73 of the Senate of Alabama 133 (Feb. 8, 1873) (1873); Journal of the House of Representatives of the State of Alabama. Session of 1896-7, at 95 (1897) (Rule 48); Journal of the Proceedings of the Constitutional Convention of the State of Alabama 59 (1901) (Rule 19)

**Alaska:** Journal of the House of Representatives of the Second Legislative Assembly of the Territory of Alaska 347 (1915) (Rule 46)

**Arizona:** Journals of the Fourteenth Legislative Assembly of the Territory of Arizona...1887, at 280 (Jan. 15) (1887); Journals of the Nineteenth Legislative Assembly of the Territory of Arizona 20 (Jan. 20) (1897); Journals of the Twenty-Third Legislative Assembly of the Territory of Arizona...1905, at 127-28 (Feb. 24) (1905); Journals of the Second Legislative of the State of Arizona: Regular Session...1915, at 24, 232 (Jan. 11, Mar. 1). On Mar. 11, 1905, by a vote of 10 to 2 a motion prevailed suspending the Council smoking ban rule for the remainder of the day’s session. Journals of the Twenty-Third Legislative Assembly of the Territory of Arizona...1905, at 212 (Mar. 11) (1905).


**California:** Journals of the Legislature of the State of California; at Its Second Session:...1851: Journal of the Proceedings of the Assembly 1441-42, 1452-54 (Mar. 27-28) (1851); Journals of the Legislature of the State of California; at Its Second Session:...1851: Journal of the Proceedings of the Senate 418 (Apr. 17) (1851); Journal of the Fifth Session of the Legislature of the State of California: Journal of the Proceedings of the Assembly 70 (Jan. 11) (1854) (Rule LXVII); Journal of the Fifth Session of the Legislature of the State of California...1854, at 368, 377 (Mar. 31, Apr. 1) (1854); Journal of the Senate During the Thirteen Session of the Legislature of the State of California: 1862, at 574 (Apr. 17) (1862) (Rule XIII); Journal of the Senate During the Fourteenth Session of the Legislature of the State of California: 1863, at 7 (Jan. 5) (1863); Journal of the Senate During the Twenty-Second Session of the Legislature of the State of California, 1877-8, at 19 (Dec. 7, 1877) (1878); Journal of the Senate During the Twenty-Ninth Session of the Legislature
of the State of California, 1891, at 553 (Feb. 27) (1891); Journal of the Senate During the Thirty-Sixth Session of the Legislature of the State of California: 1905, at 77 (Jan. 6) (1905) (Rule 62); Journal of the Assembly During the Thirty-Ninth (Extra) Sessions of the Legislature of the State of California, 1911, at 13 (Nov. 27, 1911) (1912); List of Members Officers and Committees and the Rules of the Two Houses of the California Legislature...for the Year 1921, at 83 (1921) (Rule 71).

Under the rubric, “Votes Necessary on Senate Activity,” No. 30, the Senate also provided that a majority of those present was required to permit smoking during a night session. Id. at 86. The 1921 Senate rule was still in effect in 1931: Journal of the Senate During the Forty-Ninth Session of the Legislature of the State of California: 1931, at 246 (Jan. 12) (1931) (Rule 71)

**Colorado:** House Journal of the Legislative Assembly of the Territory of Colorado: Fourth Session 17 (Jan. 5) (1865) (Rule 13); Proceedings of the Constitutional Convention Held in 1875 to Frame a Constitution for the State of Colorado, at 30 (1907) (Rule 31); Council Journal of the Legislative Assembly of the Territory of Colorado, Eleventh Session 30 (Jan. 11) (1876); “General Assembly,” Daily News (Denver), Mar. 6, 1887 (13:1); Rules and Joint Rules of the Senate and the House of Representatives...of the State of Colorado: 1895, at 30 (Sen. Rule XXXIII.1), 90 (House Rule IV.6) (1896)


**Hawaii:** Journal of the House of Representatives Regular and Extra Session of the 1901: First Legislature of the Territory of Hawaii...1901, at 75 (Feb. 28) (1901) (Rule 74); First Legislative Assembly of the Territory of Hawaii: 1901: In Extra Session: Journal of the Senate 6 (May 9) (1901); The Sixth Legislature of the Territory of Hawaii: Journal of the Senate: 1911, at xxxii (1911) (Rule 72)

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Indiana: Journal of the Convention of the People of the State of Indiana, to Amend the Constitution...1850, at 38, 58 (Oct. 11, 14) (1851) (Rule 43); Journal of the Indiana State Senate, During the Forty-First Session of the General Assembly...1861, at 108 (Jan. 18) (1861); Journal of the Indiana State Senate, During the Called Session of the General Assembly...1858, at 11 (Nov. 22) (1858); Journal of the Indiana State Senate, During the Fifty-First Session of the General Assembly...1879, at 68 (Jan. 16) (1879) (Rule 57); Journal of the House of Representatives of the State of Indiana During the Fifty-Eighth Session of the General Assembly...1893, at 90 (1893) (Rule 74)

Iowa: Journal of the House of Representatives of the First Legislative Assembly of the Territory of Iowa, Begun and Held at the City of Burlington, on the Twelfth Day of November, One Thousand Eight Hundred and Thirty-Eight 188 (Jan. 7) (n.d.); Journal of the Council of the Third Legislative Assembly of the Territory of Iowa, Begun and Held at the City of Burlington, on the Second Day of November, One Thousand Eight Hundred and Forty 231 (Nov. 5) (n.d.); Rules of the Twentieth General Assembly of the State of Iowa 21 (1884) (Rule 66); Journal of the Senate of the Twenty-First General Assembly of the State of Iowa 12 (1886) (Jan. 13) (Rule 32); State of Iowa: 1927: Journal of the Senate of the Forty-Second General Assembly 189 (Jan. 27); State of Iowa: 1933: Journal of the House of Representatives of the Forty-Fourth General Assembly 309 (Feb. 6)

Kansas: Kansas Constitutional Convention: A Reprint of the Proceedings and Debates...1859, at 40 (July 7, 1859) (1920); Senate Journal of the Legislative Assembly of the State of Kansas...1861, at 15 (Mar. 27) (1861); House Journal of the Legislative Assembly of the State of Kansas at Its Second Session 51 (Jan. 22) (1862); House Journal: Proceedings of the Legislative Assembly of the State of Kansas: Fourteenth Annual Session...1874, at 80 (Jan. 19) (1874); Senate Journal: Proceedings of the Legislative Assembly of the State of Kansas: Fourteenth Annual Session...1874, at 112 (Jan. 26) (1874); House Journal: Proceedings of the Legislative Assembly of the State of Kansas: Fifteenth Annual Session...1875, at 103, 125 (Jan. 15, 18) (1875); Senate Journal: Proceedings of the Senate of the State of Kansas: Sixteenth Annual Session...1876, at 205 (Feb. 5) (1876); House Journal: Proceedings of the House of Representatives of the State of Kansas: Second Biennial Session...1881, at 110 (Jan. 18) (1881); House Journal: Proceedings of the House of Representatives of the State of Kansas: Third Biennial Session...1883, at 147 (Jan. 17) (Rule 67) (1883); House Journal: Proceedings of the House of Representatives of the State of Kansas: Sixth Biennial Session...1889, at 268 (Jan. 23); Senate Journal: Proceedings of the Senate of the State of Kansas: Sixth Biennial Session...1889, at 147 (Jan. 16) (Rule 64) (1889); Admire’s Political and Legislative Hand-Book for Kansas: 1891, at 59 (Sen. Rule 64) (1891); House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-First Biennial Session...1919, at xiv (1919) (Rule 72); House Journal: Proceedings of the House of Representatives of the State of Kansas: Special Session...1920, at xxxii (1920) (Sen. Rule 66); House Journal: Proceedings of the House of Representatives of the State of Kansas: Twenty-Second Biennial Session...1921, at xiv (1921) (Rule 70). The House and Senate both dropped their no-smoking rules in 1925. See above this ch.

Kentucky: Journal of the Regular Session of the House of Representatives of the Commonwealth of Kentucky...1875, at 490 (Feb. 5, 1876), 694 (Feb. 17) (1876); Journal of the Regular Session of the House of Representatives of the Commonwealth of Kentucky 76 (Jan. 7, 1892) (1891 [sic]);
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Mississippi: Manual of the Legislature of the State of Mississippi: Session of 1870, at 63 (1870) (House Rule XLV); Journal of the Proceedings of the Constitutional Convention, of the State of Mississippi...1890, at 44 (Rule XIV)

Missouri: Journal of the Senate, of the State of Missouri, at the First Session of the Tenth General Assembly...one thousand eight hundred and thirty-eight 296 (Feb. 3) (1839); Journal of the Senate, of the State of Missouri, at the First Session of the Thirteenth General Assembly...one thousand eight hundred and forty-five (Feb. 8) (1845) (amendment to include chewing tobacco negatived); Journal of the House of Representatives of the State of Missouri, at the First Session of the Sixteenth General Assembly 324 (Feb. 12) (1851); Journal of the House of Representatives of the State of Missouri, at the Extra Session of the Seventeenth Extra Session...1852, at 80 (Sept. 11, 1852) (1852); Journal of the House of Representatives of the State of Missouri, at the Extra Session of the Seventeenth Extra Session...1852, at 250, 251 (Jan. 4, 1853) (1852); Journal of the Senate of the State of Missouri, at the First Session, Being the Regular Session of the Eighteenth General Assembly...one thousand eight hundred and fifty-four 80 (Jan. 15, 1855); Journal of the House of Representatives of the State of Missouri, at the First Session of the Eighteenth General Assembly...one thousand eight hundred and fifty-four 271 (Feb. 12, 1855) (1855); Journal of the Senate of the State of Missouri, at the First Session, Being the Regular Session, of the Nineteenth General Assembly...one thousand eight hundred and fifty-six 81 (Jan. 14, 1857) (1857); Journal of the House of Representatives of the State of Missouri, at the First Session of the Nineteenth General Assembly...one thousand eight hundred and fifty-six 105-106 (Jan. 15) (1857); Journal of the House of Representatives of the State of Missouri, at the First Session of the Twenty-First General
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Assembly 65 (Jan. 7) (1861); Journal and Proceedings of the Missouri State Convention...March, 1861, at 14 (Mar. 1) (1861) (Rule Forty-Fifth); Journal of the Missouri State Senate at the Regular Session of the Twenty-Fifth General Assembly...one thousand eight hundred and sixty-nine 75 (Jan. 14) (1869); Journal of the Missouri State Senate at the Adjourned Session of the XXVIIth General Assembly...1873, at 87 (Jan. 9) (1873) (Sen. Rule 73); Journal of the Senate of Missouri of the Thirty-Second General Assembly (Regular Session): 1883, at 75 (Jan. 9) (1883) (Rule 46); Journal of the House of Representatives of the Thirty-Second General Assembly, of the State of Missouri (Regular Session): 1883, at 84 (Jan. 9) (1883) (Rule art. II sec. 2); Journal of the Senate of Missouri of the Thirty-Fourth General Assembly (Regular Session): 1887, at 42 (Jan. 7) (1887) (Rule 46); Journal of the Senate of the Forty-Ninth General Assembly of the State of Missouri:1917, at 55 (Jan. 17) (Rule 46); Fifty-First General Assembly (Regular and Extra Sessions): Journal of the House of the State of Missouri 1:95 (Jan. 19) (1921).  The 1917 Senate rule was still in effect in 1921. Fifty-First General Assembly (Regular and Extra Sessions): Journal of the Senate of the State of Missouri 23 (Jan. 12) (1921). The 1883 House rule was still in effect in 1921. Fifty-First General Assembly (Regular and Extra Sessions): Journal of the House of the State of Missouri 1:31 (Jan. 12) (1921).

Montana: House Journal of the Sixth Session of the Legislative Assembly of the Territory of Montana 102 (Dec. 22, 1869) (1870); House Journal of the Thirteenth Session of the Legislative Assembly of the Territory of Montana...1883, at 283 (Mar. 3) (1883); House Journal of the Fourth Session of the Legislative Assembly of the State of Montana...1895, at 67 (Jan. 17) (1895) (House Rule XI.7); Senate Journal of the Tenth Session of the State of Montana 49 (Jan. 17) (1907) (Rule 1 amended); House Journal of the Twelfth Session of the Legislative Assembly of the State of Montana...1911, at 35 (Jan. 6)

Nebraska: House Journal of the Legislative Assembly of the Territory of Nebraska, Fifth Session...1858, at 161 (Oct. 26) (1859) (not taken up); House Journal of the General Assembly of the State of Nebraska: Eighth Regular Session 46 (Jan. 9) (1871) (Rules Committee reporting that it had substituted that provision for previous Rule 49, which had obligated the sergeant-at-arms to keep House secrets); Senate Journal of the General Assembly of the State of Nebraska, 6th Regular Session 45 (1873) (Rule 43); House Journal of the General Assembly of the State of Nebraska, Fourteenth Regular Session 58 (Jan. 4) (1877) (Rule 5); Manual of Nebraska Legislative Procedure: Edition of 1919, at 44 (Rule 2). The Senate rule (now Rule 58) was unchanged from 1873. Id at 42; House Journal of the Legislature of the State of Nebraska: Forty-Seventh Session...1931, at XXVIII (Rule 20). By 1931, when the Senate rule was no longer in effect, “the senators voted almost to the man against a proposal to ban smoking in the senate chamber.” “Would Prohibit Campus Smoking,” BDS, Mar. 11, 1931 (1:5). That year the House prohibition was still in the rules but apparently not stringently enforced: “Max Kier, speaker of the Nebraska house of representatives, arose in session yesterday and read a standing rule against smoking in the chamber. Two members had requested him to do so. While he spoke, blue rings of cigar smoke circled lazily upward. After he concluded, more of it continued to rise. Today smoke continued to rise in the Nebraska house of representatives.” “Take Rules Lightly,” BDS, Jan. 15, 1931 (10:3). Nevertheless, shortly thereafter the House voted to table a motion to strike out all of the rule. House Journal of the Legislature of the State of Nebraska: Forty-Seventh Session...1931, at 169 (Jan. 16).

Nevada: Journal of the Assembly During the First Session of the Legislature of the State of Nevada 1864-5, at 51(Dec. 16, 1864) (1865) (Assembly Rule LXVII); Standing Rules of the Senate (n.d.) 11 (Rule LXV), in Appendix to Journals of Senate of the First Session of the Legislature of the State of Nevada (n.d. [1864-65]); Journal of the Senate of the Thirty-First Session of the Legislature of the State of Nevada: 1923, at 7 (Jan. 16) (1924); “Tie in Assembly Vote on Rules Broken by Speaker,” REG, Jan. 22, 1931 (2:3); “Women Gone; Assembly to Smoke Again,” Nevada State Journal, Jan. 23, 1931 (2:7). The rule was enforced by means of fines. For example, in 1919 Sen. Ducoy was fined for breaking Rule 50: “The fine was a box of candy for the attaches.” “Jots from
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New Hampshire: Journal of the House of Representatives: January Session of 1931, at 749 (May 6); Journal of the House of Representatives: January Session of 1943, at 81 (Jan. 12); Journal of the Honorable Senate: January Session of 1949, at 583 (July 19)


New York: Journal of the Assembly of the State of New York: At Their Eighty-Second Session 97 (Jan. 14) (1859); Journal of the Senate of the State of New York: At Their Ninetieth Session...1867, at 144 (Feb. 1) (1867)


North Dakota: Journal of the Constitutional Convention for North Dakota 11 (1889) (Rule 37); State of North Dakota: 1889-90 Legislative Manual 15 (1890) (Rule 57). As late as 1915 the Senate still had no rule regulating smoking. State of North Dakota: Journal of the Senate of the Fourteenth Session of the Legislative Assembly 54-61 (1915). The Legislative Manual (or Blue Book) was not published in 1915 or 1917, and when publication resumed in 1919 it no longer contained the House and Senate Rules; it then ceased publication again. The 1921 Senate Journal adopted the rules of 1919 without printing them. State of North Dakota: Journal of the Senate of the Seventeenth Session of the Legislative Assembly 20 (Jan. 6) (1921). On the first day of the 1915 session a motion to eliminate the House anti-smoking rule was lost. State of North Dakota: Journal of the House of the Fourteenth Session of the Legislative Assembly...1915, at 61 (Jan. 5) (1915); “Fourteenth Legislative Session Organized Without Any Friction,” BT, Jan. 6, 1915 (1:6). Some weeks later, during an evening session, when the acting house speaker “had a freshly lighted cigar in his hand” despite the fact that the House rule had been brought to members’ attention that very afternoon, a member, noticing his “predicament,” successfully moved the rule’s suspension for the evening “and the speaker had his smoke.” “Legislative Notes,” BT, Feb. 24, 1915 (4:7). The House rule in 1923, as it had ever since the first legislative session of 1889, read: “No smoking shall be allowed in the House while in Session.” State of North Dakota: Journal of the House of the Eighteenth Session of the Legislative Assembly...1923, at 62 (Jan. 8) (1923) (Rule 57). That same year the Senate rules contained no such provision.


Oklahoma: Journal of the First Session of the Legislative Assembly of Oklahoma Territory...1890, at 33 (Sept. 1), 56 (Sept. 3) (1890) (Council Rule 65 and House Rule 62); Journal of the Council Proceedings of the Eighth Legislative Assembly of the Territory of Oklahoma 33 (1905) (Council Rule 48); Journal of the Proceedings of the House of Representatives of the Eighth Legislative Assembly of the Territory of Oklahoma...1905, at 63 (Rule 60) Proceedings of the Constitutional
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the State of Utah 355 (1917); House Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 73 (Rule 18); Senate Journal: Thirteenth Session of the Legislature of the State of Utah: 1919, at 19 (Rule 15); “House Smoking Rule Interpreted by Speaker,” SLT, Jan. 18, 1921 (10:2); House Journal: Fourteenth Session of the Legislature of the State of Utah: 1921, at 70 (Jan. 18) (Rep. A. W. Morrison moved to amend House Rule 18 to read: “No person shall be permitted to smoke within the House or gallery during the Fourteenth session of the Legislature,” but the motion died in Rules Committee). The House Rules of 1915 contained the identically same no-smoking provision as those of 1896. House Journal: Eleventh Session of the Legislature of the State of Utah 77 (1915) (Rule 40). Neither the Senate nor House Rules of 1917 contained any mention of smoking. House Journal: Twelfth Session of the Legislature of the State of Utah 44-55 (1917); Senate Journal: Twelfth Session of the Legislature of the State of Utah: 1917, at vii-xix, 8-19. The press offered various explanations for Salt Lake Rep. J. W. McKinney’s 1917 House motion to prohibit smoking in the House chamber: (1) smoking in House chamber was prohibited “at all times” because “it was impolite to the women members”; (2) House banned smoking “in its legislative chamber at all times” because “the health of some members ha[d] been injured in the chamber during the past six weeks”; and (3) “[i]nasmuch as smoking has not been tolerated while the house was in session in the past, the action has to do only with the periods when the house is in recess.” “‘Dry’ Amendment to Be Recalled,” DEN, Feb. 21, 1917 (2:3); “Appropriation of $100,000, for Ogden Fair, Favored by the Joint Committee,” Ogden Standard, Feb. 21, 1917 (6:3); “Lady NicotineIntroduced and then Banished,” Salt Lake Telegram, Feb. 21, 1917 (3:3). The House and Senate Rules of 1923 were identical to those of 1919. House Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 33 (Rule 18); Senate Journal: Fifteenth Session of the Legislature of the State of Utah: 1923, at 13 (Rule 18). The identical House rule was still in effect in 1929. House Journal: Eighteenth Session of the Legislature of the State of Utah: 1929, at 110 (Rule 18).

Vermont: Journal of the Senate of the State of Vermont: Biennial Session, 1878, at 116, 117 (Oct. 31) (1879); Journal of the House of Representatives of the State of Vermont: Biennial Session, 1878, at 176, 177, 179 (Nov. 1) (1879)


Washington: House Journal of the First Legislature of the State of Washington: Commencing...1889...and Ended...1890, at 10 (Nov. 7, 1889), 24 (Nov. 13, 1889), 505 (Feb. 14, 1890) (1890); Senate Journal of the First Legislature of the State of Washington: Begun...1889...Adjournd. 1890, at 38 (Nov. 20, 1889) (1890) (Sen. Rule 62); House Journal of the Second Legislature of the State of Washington: Begun...1891...Adjournd. 1891, at 27 (Jan. 9) (1891) (Rule 54); Senate Journal of the Fifth Legislature of the State of Washington: Begun...1897...Adjournd. 1897, at 75 (Jan. 15 (1897); House Journal of the Seventeenth Legislature of the State of Washington: Begun...1921...Adjournd. 1921, at 199 (Feb. 14) (1921). The identically same House and Senate smoking bans were still in effect in 1921: House Journal of the Seventeenth Legislature of the State of Washington: Begun...1921...Adjournd. 1921, at 70 (Jan. 25) (1921) (Rule 20); Senate Journal of the Seventeenth Legislature of the State of Washington: Begun...1921...Adjournd. 1921, at 610 (1921) (Rule 63)

West Virginia: Journal of the House of Delegates of the State of West Virginia, for the Twenty-Second Session: 1895, at 6 (Jan. 9) (1895); Journal of the Senate of the State of West Virginia for the Thirty-Sixth Regular Session...1923, 441 (1923). The 1917 House rules contained no reference to smoking. Journal of the House of Delegates of the State of West Virginia, for the Thirty-Third Regular Session...1917, at 14-31 (Jan. 15) (1917)

Wisconsin: Manual for the Use of the Assembly of the State of Wisconsin, for the Year 1853, at 103 (1853) (Rule 29); In Senate: Journal of Proceedings of the Thirty-First Annual Session of the
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*Wisconsin Legislature:* 1878, at 303, 313 (Feb. 27 and 28) (1878) (Rule 53)
