

## The Cigarette and the State

**Author :** Reuel Schiller

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Sarah Milov, [The Cigarette: A Political History](#) (2019).

Until the early 1980s, my high school had a smoking lounge. It was a medium-sized room off the lobby with some beat-up furniture where students could hang out, smoking their Marlboros and their clove cigarettes. There was even a king and queen of the smoking lounge, pictured in the yearbook alongside the prom's royal court.

Today such an accommodation of smoking is unimaginable. Indeed, in most states, it would be illegal. In the past forty years, the United States transformed from a society where the cigarette represented a combination of sophistication and rebellion to one in which smokers are benighted addicts, suffering for their own moral failures. Sarah Milov's breathtaking *The Cigarette: A Political History* explains how this happened. In telling this story, her narrative weaves together legal, political, and economic history in a manner that calls for a reevaluation of the dimensions of twentieth-century liberalism and the nature of its decline. The book is a compelling exercise in historical synecdoche: its subject is the political history of the cigarette, but its story is that of the twentieth-century American state.

Milov recounts this fascinating history with lucid prose and narrative verve. The first half of the book describes the rise of the cigarette during the first half of the twentieth century. Central to this tale is the fraught relationship between an oligopoly of cigarette manufacturers and the thousands of small farmers in Virginia and the Carolinas who grew and cured the bright leaf tobacco that filled American cigarettes. With low barriers to entry, overproduction was a constant problem for these farmers. This supply problem, and an auction system that could be charitably characterized as inequitable, led to debt and impoverishment for growers and massive profits for manufacturers. In the early 1920s, farmers created private cooperatives to limit output, but economic necessity and racial divisions among growers, as well as a concerted counter-offensive by manufacturers and their allies, shattered them within a few years.

Federal policy generated during the Great Depression solved the problem of overproduction and the strife it generated. Economic catastrophe gave the federal government the impetus to implement supply restrictions and expand markets for cigarettes, particularly abroad. While the Agricultural Adjustment Administration and numerous other federal agencies were instrumental to this project, the policies were implemented primarily by private, voluntary associations that the government empowered to form cartels of growers. The policies were a success. The farmers got unprecedented prosperity. The manufacturers got a stable supply of tobacco, entry into foreign markets, and the public relations benefit of linking their industry to the welfare of small, family farms. And consumers? They got cheap cigarettes and nicotine addiction.

The second half of *The Cigarette: A Political History* chronicles the slow collapse of the political-economic system that promoted both this prosperity and this addiction. The 1950s were the high point of U.S. cigarette consumption, with near half of all Americans lighting up. Yet, that decade also saw the beginnings of concerted efforts to disrupt the system. By the middle of the decade, doctors, scientists, and public health officials all pointed with increasing confidence to the links between smoking and disease. The public salience of this issue increased, particularly after the release of the first in a series of reports on the impact of smoking on health by the Surgeon General in 1964. At the same time, the government-industry alliances that sat at the center of national agricultural policy were coming under attack from both the right and the left. To conservatives, agricultural subsidy programs were contrary to the anti-government, free-market ideology that was emerging within the Republican Party. To critics on the left, the relationship among the federal and state agricultural bureaucracies, the voluntary farm associations, and the tobacco industry was the quintessence of "agency capture" – the corrupting influence of private interests on the state.

Milov describes the potent strategies that “big tobacco” used to resist these forces. Well known are the industry’s efforts to undermine the evidence of the nasty health consequences of smoking by sowing scientific confusion where little existed. Less familiar is the success tobacco interests had in turning back attacks on crop subsidies through aggressive public relations campaigns that romanticized small tobacco farmers. The industry worked hard to obscure the place of price supports and government purchases of crop surpluses behind images of independent, dignified, idyllic (and always white) farm communities fighting to maintain their way of life in the face of attacks from interests that did not understand what it was like to work the land.

By the 1970s, however, the tide was turning against cigarette manufacturers as an odd combination of forces undermined these defenses. There were, of course, public health advocates and their political allies. They were joined by public interest lawyers – particularly John Banzhaf — who worked the levers of the administrative state to limit tobacco advertising, ban smoking in federal workplaces, and segregate smokers on airplanes, trains, and interstate busses. At the same time, right-wing, libertarian intellectuals and policymakers deployed anti-statist ideas to attack government agricultural subsidies. Finally, and most important to Milov, were grassroots activists, such as Clara Gouin and Donna Shimp, who fused environmentalism and feminism with consumer protection and public health activism to develop a potent, national movement against smoking.

According to Milov, this movement accomplished two things that dramatically weakened the hold that big tobacco had on American public policy. First, it “created the non-smoker.” Gouin’s activism generated a self-conscious constituency of rights-bearing consumers with the power to assert its right to a smoke-free environment. Second, these activists convinced businesses and the state that smoking was harmful not only to people’s health, but also to the economic health of the nation. A smoke-free workplace wasn’t simply a healthier workplace. It was a more profitable one. Banning smoking saved money. No more decreased productivity due to cigarette breaks. No more cleaning nicotine stained walls and replacing carpets marred by cigarette burns. No more of the sick days and inflated insurances costs that came with hiring smokers.

This thumbnail description doesn’t do justice to Milov’s rich narrative, which she tells with a propulsive style and a wry voice. Even more impressive are the number of analytical threads that she successfully weaves together. Frankly, one could teach a course on twentieth-century legal history using this book as a textbook. It speaks to a broad range of subjects central to the interests of legal historians: the role of law in constituting capitalism; the interaction of law, gender, and race in the construction of social movements; the simultaneously emancipatory and constraining potential of framing policy preferences as rights; the profound role of the administrative state in structuring politics and policy; the rise of public interest litigation; the importance of understanding the legal history of agriculture, a field sorely neglected by legal historians. While different readers will find different analytic points particularly compelling, two stand out for me.

First, Milov’s narrative suggests the need to reevaluate the postwar state’s legal and political contours. For readers familiar with early New Deal policies such as the National Industrial Recovery Act and its industry-written “codes of fair competition,” American tobacco policy is familiar. It was “associationalism” — an interweaving of public and private power that obscured the extent to which private institutions acted as vehicles for public policy. In the traditional narrative of the New Deal, associationalism ended with the political and legal demise of the National Recovery Administration in 1935. Joining scholars such as Brian Balogh, Milov shows how, in fact, associationalism outlasted the NRA and became an integral component of postwar state. Far from being replaced by the light touch of Keynesian fiscal policy, Milov shows how producer-oriented associationalism melded with consumer-oriented Keynesianism to give an alliance of corporate and state interests an active role in structuring the post-war economy as it simultaneously created an illusion of statelessness.

Second, *The Cigarette: A Political History* furthers our understanding the demise of postwar liberalism at the end of the twentieth century. While Milov does not suggest that American tobacco policy was progressive, she notes that the tactics deployed against it had a distinctly illiberal bent. By combining libertarian hostility towards the administrative state with an efficiency-based, cost-benefit attack on smoking, big tobacco’s opponents helped create a political

culture that undermined egalitarian public policy. This market-based political culture denied the state a role in combatting systemic inequities within markets and ignored the fact that policies based on cost-benefit analysis frequently ignored important, not-easily-quantifiable values.

Don't get me wrong. The fact that fewer Americans smoke now than at any time since the introduction of the cigarette is a triumph of postwar public policy. But this victory did not come without a cost. Milov concludes *The Cigarette: A Political History* with the dismaying observation that while the "cultural cachet" of the cigarette has all but disappeared, smokers have not. Instead, concentrated within poor and minority communities, they have become increasingly stigmatized. Most Americans blame them for an addiction that is the legacy of a century of governmental action. Nor has big tobacco's political and economic power waned. The deregulation of tobacco farming allowed cigarette manufacturers to drive down the price of tobacco to levels not seen since the 1920s. Their political power repeatedly thwarted attempts to regulate smoking at the federal level, leading to a sieve-like patchwork of state and local restrictions.

Thus, the victory against big tobacco was hardly a total one. More complete, dismayingly, was the transformation of the relationship between Americans and the state occasioned by the fight against tobacco. Milov tells us that "the non-smokers' rights movement refashioned what Americans believed the government owed to citizens and what citizens owed to the government." (p. 278) Few of us, Milov included, would want to go back to a system of governance in which public and private elites worked together to promote a deadly product. But some of the values that percolated through that system – that the state should promote a measure of economic egalitarianism, that "free" markets are often anything but free, and that social solidarity rather than atomized competition might be a legitimate basis for public policy – are ones that we sorely miss.

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