

Foreword

In 2014, Oxford Dictionaries chose “vape” as their “word of the year.” This term is used to describe an electronic cigarette or similar device as well as the action of inhaling and exhaling the vapor produced by these. Electronic cigarettes simulate the experience of smoking a cigarette by allowing the user to inhale vapor from a solution that typically contains nicotine along with flavoring agents and other chemicals. Although the number of people vaping is growing rapidly, it remains relatively small, at 40 million vapers compared to 1 billion smokers.

The availability of e-cigarettes has proved to be intensely controversial. There is disagreement about the health risks that e-cigarettes present and about their effectiveness as a tool to encourage people to stop smoking. There are particular concerns that young people may be attracted to vaping and that this could constitute a “gateway” to smoking conventional cigarettes. There is a “flavour for every taste”:¹ fresh, earthy, fruity, savory—including polar mint, passionfruit, caramel café, blueberry, and green apple!

Given the manner in which the tobacco industry harnessed junk science to manufacture “doubt” about the link between smoking and cancer,² it is challenging to approach the topic of e-cigarettes with an open mind. This is not made easier by the fact that some of the key protagonists are the same. British American Tobacco, Philip Morris, and Imperial are all investing heavily in e-cigarettes as well as “heat-not-burn” (HNB) technology. The Altria group which makes Marlboro cigarettes recently acquired a 35 percent share in the electronic cigarette giant JUUL Labs. A study of JUUL’s marketing techniques between 2015 and 2018 suggested that its approach was “patently youth oriented” and that it “faithfully recapitulated the playbook of traditional cigarette marketers.”³

¹ ‘Discover a world of flavour’ <https://www.blu.com/en/GB/flavours/blu-e-liquid-flavours> accessed March 1, 2019. To access this information, I was required to tick a box declaring that I am over eighteen years old.

² E.M. Conway & N. Oreskes, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (Bloomsbury Press 2010).

³ R.K. Jackler et al, ‘JUUL Advertising Over its First Three Years on the Market’ (Stanford Research into the Impact of Tobacco Advertising 2019) <http://tobacco>.

But it would be misguided to let the wrongdoing of tobacco companies conceal the dilemmas to which electronic cigarettes give rise. This product could be a posterchild for Sunstein's critique of a strong version of the precautionary principle, because regulating or not regulating electronic cigarettes presents "risks on all sides."⁴ This is apparent from a recent report produced by the National Academies of Sciences, Engineering, and Medicine in the United States.⁵ On the one hand, using electronic cigarettes reduces exposure to toxic and carcinogenic substances as compared to smoking conventional cigarettes. On the other hand, young people use electronic cigarettes more than any other tobacco product and nicotine is considered to be especially harmful to children, teenagers, and young adults. There is also ongoing scientific uncertainty about the long-term health effects of electronic cigarettes.

This volume does not seek to step back from the controversy generated by electronic cigarettes or to silence the dissension that they cause. The engaging and informative chapters offer different and sometimes opposing perspectives and lay bare the challenges that both courts and regulators face in contending with this new frontier. The volume offers a sweeping overview of current approaches to the regulation of electronic cigarettes at national, regional, and international level and explores the different drivers that can help us to understand the wide variations in approach. The volume also acknowledges the central and controversial role of courts, which are called upon to appraise the lawfulness of regulations adopted in a context that is characterised by disagreement and uncertainty. The book walks a careful middle line between recognizing the specificity of the regulatory challenges presented by electronic cigarettes and acknowledging that the questions and dilemmas to which this product gives rise are to some extent familiar from previous experiments in the regulation of new technologies. This is a book about contemporary challenges in regulation as well as a book about the science, law, and governance of electronic cigarettes.

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stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf accessed March 1, 2019, at 1 and 39.

⁴ C.R. Sunstein, 'Beyond the Precautionary Principle' (2003) 151 U Pa L Rev 1003.

⁵ Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems, *Public Health Consequences of E-Cigarettes* (The National Academies Press 2018) <https://www.nap.edu/catalog/24952/public-health-consequences-of-e-cigarettes> accessed March 1, 2019.

