

THE DISCLOSURE DEBATES: INTRODUCTION

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In the 1700s, Samuel Johnson reportedly said, “Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information upon it.”¹ Johnson’s adept characterization of knowledge assumes that the information is available to be found. This book probes the fascinating issues of law and policy that determine what information we should have a right to find. What rights should we have to information that is in the hands of other people and that would not otherwise be public? Limits on access to that information will inevitably define the spheres of knowledge that Johnson describes.

Throughout 2013 and now in 2014, Edward Snowden has riveted the world with questions about what we should (or should not) know about how government works and who has the right to disclose that information. He took the keys to the government’s lock box and released information into the world. Equally important issues of disclosure permeate many other corners of society as well, although perhaps not as dramatically as the Snowden affair. This collection of scholarship looks not at what government should disclose about its own internal workings, but rather at what government should require *others* to disclose, and why.

These Disclosure Debates are intriguingly complex. They involve a variety of players who want information—individuals as consumers, the private sector as society’s economic engine, voters who participate in the development of society’s governance and rules, government institutions that act to protect our individual and collective interests, and others. We want information for a variety of purposes, yet we cherish our own privacy. We may each view the tradeoffs differently depending on the role in which we are functioning at any particular point in time; most of us play multiple roles. This intricate prism of perspectives sets the stage for the challenges of the Disclosure Debates, which attempts to reconcile our societal and personal interests. Given the complexity of these competing interests, the lines defining access to information are not always easy to draw.

Consider, for instance, our different interests as we think about how to weigh the rights of access to personal information against personal privacy in various contexts. Should we be able to see the President’s tax returns? A governor’s tax return? What about a law school dean’s? a neighbor’s? or *yours*? The public and private interests shift with the spectrum of facts as

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1. 2 JAMES BOSWELL, THE LIFE OF SAMUEL JOHNSON 317 (1826).

we consider what we need to know, why, and whether we are prurient or overly protective.

Similarly, challenges arise when we think about how to reconcile the public's right to know with rights to participate in the democratic process. Should the public have a right to know when the CEO of ExxonMobil meets with senators? or when the president of the Sierra Club makes the rounds on Capitol Hill? or when you meet with your senator? Where we draw the disclosure lines depends on what we think we should know as voters and members of society, how personal we think the information is, and perhaps what biases we carry into the debate.

A final example lies in the context of how we balance the business sector's interest in privacy with the public's desire to know. The reasons for protecting the trade secrets of U.S. companies from the hands of foreign competitors seem clear, but should a landowner have access to the chemical trade secrets of an energy company fracking next door? The law must reconcile the need to protect entrepreneurial innovation with the public's need to know as consumers, landowners, and voters.

Decisions about when to require disclosure of information also turn on whether access to information will be effective in achieving the desired purpose and which types of disclosure are most effective. For example, are we more likely to read food labels in the grocery store than information in SEC filings before we buy a company's stock? Even if we do not routinely read what is available, is it still important to know that it is there to be found if we need it? As policymakers construct the rules, they will weigh the costs and benefits of disclosure.

These are only some of the challenging issues surrounding governmentally mandated disclosure of information. The Vermont Law Review's 2013 Symposium, *The Disclosure Debates* considered disclosure issues from a range of perspectives—environmental protection, securities regulation, food and product safety, campaign finance, and alternative approaches to disclosure in other countries. However, the discussions shared the common questions of who should know what, when, why, and how. To frame the topic in Johnson's terms: what information, in the hands of private individuals or entities, should we be able to find?

Thanks are owed to the Editors of the *Vermont Law Review* who organized the Symposium, which generated a fruitful day of discussions and a number of the articles in this book. Thanks are equally due to the panelists who stimulated debate, the probing audience, and the authors who have made this book possible.

Disclosure debates are an inherent part of a dynamic and democratic society, which should constantly reevaluate how best to balance the needs

of its different members and interests. We hope that this book will contribute to the ongoing assessment of what information we should be able to find to maintain a healthy and vibrant democracy, economy, and environment.

