

Democracy in Danger S2E9 The Wild Web

Siva Vaidhyanathan [00:00:03] Hello, I'm Siva Vaidhyanathan and from the University of Virginia's Deliberative Media Lab, this is Democracy in Danger. When Danielle Citron was a law student at Fordham University in the 1990s, she would check her grades on a printed sheet that was posted in the hallway of the law school, and all the grades were listed by Social Security number.

Danielle Citron [00:00:28] My spouse teases that he would I'd ask him to go over to the law school and look at my grades, and he knew my SSN! And we were that reckless.

Siva Vaidhyanathan [00:00:40] Now, of course, the Internet was barely a thing then, and it just didn't occur to anyone, not even law professors or law students, that displaying such private data in a public place might not be such a good idea. Well, of course, over the next few years, that laissez faire attitude about personal information would come to haunt us. Millions of lives became enmeshed in a world wide web of dataflow. And we know now what that looks like. Virtually everything we do is tracked, analyzed and monetized.

Danielle Citron [00:01:16] Services and products that were once just services and products...now really the money is in collecting our data and selling our data to advertisers, marketers and data brokers.

Siva Vaidhyanathan [00:01:31] Danielle is now our colleague here at the University of Virginia, where she teaches in the law school. She's the author of an important book, Hate Crimes in Cyberspace. And in 2019, she was named a MacArthur Fellow certifying both her brilliance and her importance in American intellectual life. And my co-host, Will Hitchcock, who's here with me now, had an opportunity to speak with Danielle a few weeks ago at an open forum sponsored by the Jefferson Scholars Foundation. Will, that was a very insightful conversation you had with Danielle. What did you learn from her about that shift from paper to bits and what it is all meant for democracy?

Will Hitchcock [00:02:13] Siva. I learned so much from Danielle about free speech online, about privacy and what we can and unfortunately can't do to protect it online, and also about how apps and social media platforms are just speeding everything up.

Danielle Citron [00:02:33] What is so interesting about network tools is that they're an accelerant, they're a force multiplier, and they also change dynamics in ways like - they allow us to do things we could have never done before.

Will Hitchcock [00:02:46] Like take political polarizations, she says. OK, so that's always been around, people have always disagreed, but social media has created online communities almost like tribes that reinforce and deepen our viewpoints and frankly, that make dialog more difficult.

Danielle Citron [00:03:02] But there's some things that are really different that you can do on the Internet that you couldn't do before. Like now cyber mobs, you don't need to live in the same time zone. You don't need to live in the same remotely geography. And you can gather together and coordinate in ways that you couldn't have possibly coordinated, just given the expense and the time it would take.

Will Hitchcock [00:03:25] And anonymity online makes for yet another problem, like the old New Yorker cartoon said, nobody knows you're a dog on the Internet. But also the truth is that people can be extremely cruel when no one is watching.

Danielle Citron [00:03:39] Like from behind a veil, we feel like we can do things we couldn't ordinarily do if we thought someone could see us and we could see someone else's pain.

Will Hitchcock [00:03:50] And interestingly, that pain online is really what propelled Danielle to start investigating the question of online civil rights, as she calls it, especially the immense harassment of women in online platforms.

Danielle Citron [00:04:03] I start reading and hearing about women who are being targeted online on message boards, women from all walks of life, female law students, software developers have nothing to do with anything exciting that they're being targeted on various different outlets. And I start to think about them as raising a civil rights problem because we just systematically saw mobs come together and shoved them offline with rape threats, death threats, nude photos, terrifying reputation, destroying autonomy, denying attacks.

Siva Vaidhyathan [00:04:37] Will, Danielle's work in this area has been so influential, she has not only changed minds through her scholarship and her public speeches and her public writing, but she's actually helping to change state law right now. And I'm wondering, did she say what happened right after she started looking into online harassment? I mean, she was super early to identifying this problem and trying to raise awareness about it. And that was like the early 2000s, right?

Will Hitchcock [00:05:04] Right. It was around 2007. But few people seemed to care a lot about that issue at the time.

Danielle Citron [00:05:10] And I started writing about it. And I remember getting such tough pushback. And the pushback was, Danielle, you're making a mountain out of a molehill.

Will Hitchcock [00:05:17] In fact, Siva, the message Danielle kept hearing in the industry and in the legal community was was gendered. It was, hey, toughen up. You know, stop being hysterical.

Danielle Citron [00:05:28] You don't like it. Get out of the kitchen. Like, essentially we're folks writing about it. We're told much in the way that we told folks suffering from workplace sexual harassment like these are the rules of the Internet, as if the Internet had some rules. Right. As if the house had a self-regulatory body and it was disembodied from real space, which of course, it's not. It's where we all are. But I was told there's nothing that can be done. You're kind of overreacting.

Will Hitchcock [00:05:54] But she was not deterred. And if anything, the resistance that she encountered made her more determined. After all, she was really calling just for the law to do in cyberspace what it was already doing in the real world.

Danielle Citron [00:06:08] Not everything that you say is legally protected speech. So I wasn't like I was calling for anything crazy, like my calling for law to actually address things that we already could address, which is true threats, defamation, particular privacy

invasions, especially involving nudity. I was like within the confines of the First Amendment and still thou shall not touch the Internet.

Will Hitchcock [00:06:32] So it really was treated initially like this kind of free zone.

Danielle Citron [00:06:38] Yes!

Will Hitchcock [00:06:38] The worst thing you could do is get in there with your laws and your restrictions because. Yeah, because what?

Danielle Citron [00:06:43] Because you're gonna take my toys away. No, honestly, it felt like that! Like a bunch of dudes, no offense, telling me that I was going to take their toys away by regulating cyberstalking, which is amounting to terroristic threats and nude photos posted without consent and home addresses next to the suggestion that I should be raped - or the person, right. Really, that's ruining the Internet?

Siva Vaidhyanathan [00:07:10] Well, wow, I, I love how Danielle goes after that toxic masculinity of Internet culture right there.

Will Hitchcock [00:07:20] Yeah, and another thing she helped me see was the history behind the issue. I mean, you know, privacy thinkers and writers were worried about massive databases of private information as early as the 1970s. And by the time Congress finally rolled up its sleeves to address the question of Internet content in the mid 1990s, Daniel says the prevailing feeling about the technology was one of inevitability and maybe even liberation. It was going to be ubiquitous and all of this information superhighway was somehow going to free us.

Danielle Citron [00:07:52] That was a combination of sort of cowboy culture of Silicon Valley with a really strong strain of libertarianism telling state AGs and Congress people like, trust us, we're going to gather data, but we're doing it for good and there's no need to worry about us. We're not the government. You know, we're like two Stanford kids in a garage building Google. All information should be free and when it's free, it can only be prosocial. And so they bought the idea - Congress did in 1996 - that we shouldn't regulate this thing. Certainly not interactive computer service providers, that we needed to let them monitor themselves. Right. And that they shouldn't be responsible for things that are said and done on their platforms because we want to encourage them to be good Samaritans. Right. And to to to cure it themselves.

Siva Vaidhyanathan [00:08:49] Well, you know, now we all live in a world of constant surveillance and one in which a handful of large companies turn the fruits of that surveillance, our personal data into methods of guiding our attention and influencing what we read and see and with whom we interact. And all of that can't be good for democracy, right?

Will Hitchcock [00:09:10] That's exactly where our conversation landed, actually. You know, I asked her where the concept of privacy is right now.

Will Hitchcock [00:09:18] The question of privacy online seems to be at the heart of every every moment we log on. Every time you sit down in front of your computer, you're like, oh, boy, here we go. As a parent, you know, I have certainly said, OK, kids, everything you do online is forever. And everybody's going to know. Just keep in mind you're in the public sphere. Be careful. But I'm wondering, I mean, maybe I'm wrong about that. Do my kids

have a right to privacy online? Is it a different right to privacy? If I mean physically, not online, what how should we now think about that privilege, that right to privacy? Is there a right to privacy and it doesn't exist online?

Danielle Citron [00:09:54] So right now you go online and our assumption and under the United States law is it's sort of like the way we think of the Cayman Islands and banking. We're a bit of a scofflaw in the sense of where you can collect it, you can use it, and you probably can share it so long as you give us some notice somewhere buried in some privacy policy, we treat data privacy like a consumer protection issue and we don't understand privacy as a human right, as they do in Europe or as I conceive of it or want to conceive of it as implicating civil rights. Data is being generated about us every time we interact online. We look at something. We stay on a video for two seconds. Information is being generated about us, analytics, that we don't know is being generated about us because you haven't entered it in, but it's being generated about you anyway. Right? And so we are in a go collect zone like the default is collect as much as you want, use as much as you want - analyze, score, rank, share, sell - all of that data. And each and every one of us, we are there customized profiles about our spending and who we are as consumers that have thousands of data points. It's not just advertisers and marketers, but it's data brokers who will categorize us from our most intimate aspects of our lives, our sexuality, whether we've ever suffered sexual assault like we're categorized as and ranked and rated based on our online behavior and other information about us and our likelihood to develop diseases is scored and ranked. Highly likely to be type one diabetic or highly likely to require whatever it is. Right. And so we have data selves, not one and certainly not true to us, but that exists in databases more than we can ever imagine. And so it's both challenging if we think about it as a right that we could maybe delete. How are you going to delete that from thousands of databases? Right. But it's essentially no privacy. Right. And privacy policies don't kid around here, guys. Most of us, we see that there's a privacy policy. We think that means that we're getting privacy.

Will Hitchcock [00:12:06] Yeah. We tick the box "we like this".

Danielle Citron [00:12:09] It's like my my colleague Woody Hartzog calls it an anti-privacy policy. Right. We don't have privacy. They're telling us, 'Too bad, so sad. You don't have privacy.'

Will Hitchcock [00:12:19] Is it even more extreme, the kind of that you don't have privacy online versus the way we interact in our lives? So it's, as you said, an accelerant.

Danielle Citron [00:12:29] It's an accelerant. And it's much more of a free for all because, you know, all the things that make the practical barriers that would make it difficult for you to, like, write down everything I say. We interact in real space. And I I know what I'm saying to you and you know what you're saying to me. And my writing it all down and recording it right. There is no friction online. Right. The capability of collecting and storing and using and sharing and throwing analytics at something is like costless, essentially at scale. And so it does totally change the dynamics with databases. Now, that was true in the 1970s when we freaked out, rightfully, about the significance of computer databases and now exponentially so. Given how much we can store and how cheap it is. So your first question was like descriptively is their privacy, right? And then is like what kind of privacy should we expect or should we want? And frankly, should we deserve? Right. And so there is privacy about our intimate lives, our bodies, our health, our minds, our thoughts, our sexuality and gender. Our relationships are close relationships we are generating and they're collecting, using and sharing and selling information about our most intimate

aspects of our identity every second of the day. And we are invading each other's intimate privacy in all sorts of really troubling ways. And we haven't quite figured out in part because it's social and cultural attitudes, in part because law just has not caught up because of the social and cultural attitudes. The stakes are so significant and the problem is the risks are so - they're downstream oftentimes. And human beings, you know, we're flawed, right. If something's not right in front of us and we can't feel it right, like physically feel it, we just, "eh." So we need to do a far better job protecting intimate privacy. It's like a bootstrap, intimate privacy. It justifies protecting all of privacy because soon with enough information, even if super porsaic like what kind of hand cream I buy. But with enough of it, computer scientists predict you'll be able to tell the most intimate things about me. And so we deserve privacy and we should get it.

Will Hitchcock [00:14:35] We're on the cusp. I don't know if we've gone ove the egde.

Danielle Citron [00:14:39] Right.

Will Hitchcock [00:14:39] Well, it does sound as if the ability of our digital world to read us, to learn about us now accelerating at a dramatic rate. But we don't really have the tools we need, you're saying, to sort of stop the train, redirect it, and maybe without losing the benefits of the online world to ask it to respect our personhood.

Danielle Citron [00:15:01] And that's what I want. I don't want us to get rid of our menstruation apps. I do not want us to give up our network vibrators. Excuse me. Every time we talk to someone like me, I'm going to talk about sex toys. That's just I write about intimate privacy. I want us to use dating apps. I want us to get the most out of all of these tools. But they should be built, designed and our privacy protected with our best interests in mind. We are now just tools. We're not treated as people deserving respect were treated as ends to someone else's means. We're not ends in ourselves, how we're treated online, and products and services shouldn't be built as data collectors. They should be products and services we pay for and that we want to get the most out of. I hate the fact that I say to my kids, you can't use a period tracking app because it's collecting so much data about you. And both of my girls would love to, but I just say please don't. Right now, privacy. They're selling it to researchers, analytics firms, advertisers, marketers like you don't want that. I wish I could say to them absolutely, how exciting that you could feel in control of your body and know what's happening. It could be helpful for your health. There are all these great things that you can get out of it.

Will Hitchcock [00:16:09] So with just some better guardrails, maybe, we can imagine a better balance. You mentioned, you know, that the apps and the platforms that we use, which are so ubiquitous, sometimes feel like public goods. But really these are owned by corporations and they have, as you say, they've asked us for permission, that we've given it to them to store all of our data. But here's a question about the consequences of corporations governing us and our relationship to them. Why can't we hold them liable, legally liable for the harm that people do to each other online? Maybe we can. Or maybe they are liable but they're often not policed. I just don't quite understand the degree to which the law allows us to say to a big digital corporation, "Man, somebody said something hateful and it led to inciting violence or murder and you're responsible." Are they responsible or is the real problem that there is gray areas where you just can't be tracked or controlled? What the significance of the fact that this is a private industry running our digital interfaces?

Danielle Citron [00:17:13] So it's the former, not the latter. Congress made a choice in 1996, sort of overwhelmed by the cowboy talk and the libertarian talk that we could police ourselves, you can trust us and that we need freedom to not worry about facing liability for defamation. We'll police ourselves, allow us that legal shield and we'll do that. And so in 1996, Congress adopts what they call the Communications Decency Act, which, by the way, let's have a moment - it was about regulating porn. Most of the statute is struck down, rightfully so. But what remains is that provision Section 230 of the Decency Act, which provided a legal shield for providers of interactive computer services for liability for content provided by someone else. And so there has two provisions, one the under filtering provision, like if you don't catch enough, we're not going to stick you with liability. If you take down too much, if you do it in good faith, you also can't be sued. And it struck a good balance in the sense of like we have social media, you know, thanks to Section 230 and we have, you know, rating sites like Yelp. We have Reddit, right. We've had iterations of different ways in which user generated content is shared and lots of good has come of it. But also Section 230 has some excesses. And we interpret that provision so in such an overbroad way that even sites that solicit illegality, sites whose business model is non-consensual pornography. Is deep sex videos. Is the sale of guns. Even those sites enjoy the legal shield, so immunity from responsibility, and it's gone too far. So there are negative externalities that these firms don't have to internalize, and time is that they should.

Will Hitchcock [00:19:01] And that can change. I mean, that is that is a question of legislation.

Danielle Citron [00:19:04] Absolutely.

Will Hitchcock [00:19:04] You were helping to frame. We haven't mentioned the T word, but I think it's time that we mentioned Trump because many of us - let me just say me - learned about Section 230 is because the former president was railing against it suddenly for the last few months. And not being a scholar of these matters. I was thinking, wait a minute, what is that? What is that? But where is the debate now on section 230? Is it just, "Nope, we're never going to regulate the Internet. Don't you dare ask for that." Or is it like, "Yeah, we've got to do something and let's start building a strategy."

Danielle Citron [00:19:36] So so there's definitely that camp of like, don't touch the Internet. You're going to break it. You change section 230 the sky will fall and those folks are serious and they exist. And they're some really smart people like at ACLU and folks I respect tremendously that are like don't touch section 230. But then, as you said, well, there's a whole lot of clamoring for change, but from really different directions. So on the one hand, you have - Trump didn't realize this was the argument he was making, he didn't get it - but he was with the chorus of people who are saying companies are over censoring, they're over filtering speech. And there was a complaint from the right that conservatives speech was being silenced. There actually isn't empirical proof of that at all. But but that was the complaint. And so that's where Trump was and allies like Senator Cruz and Louie Gohmert, there are people who have - Josh Hawley - made proposals to change Section 230, and that was around the over filtering provision, said you shouldn't touch content online, A) because they made the ridiculous assertion that Section 230 said they should be neutral, which is the opposite. Section 230 was 'we'll debate this legal shield so long as they act like a good Samaritan and you filter and block offensive speech'. That's the language of the statute. Now, liberals have a criticism of Section 230, which is you're not taking down enough hate speech or extremist speech. Now, I at least think the problem is under filtering, but I think the problem isn't a hate speech necessarily, because

we can't regulate that in the United States. The problem is, under filtering or to encourage illegality, not these companies, we should pressure them to filter legally protected speech. Right. Hate speech is an endemic problem we all have to face. And I hope and I've advised companies on how they can address it themselves, but we know the government can't.

Will Hitchcock [00:21:24] I mean, can you write legislation with this coalition or are they so opposed in their motives?

Danielle Citron [00:21:30] They're interested in different things. Right. So there are two pieces of the law. Section 230 C1. That's the under filtering provision that I'm interested in and working on. And then there's C2 that's the over filtering, but you can only do it in good faith. And so one camp is only focused on C2 the other campuses is focused on C1. And then there are people who are silly who say burn it all down when that would be very bad for them. So when Trump said burn it all down, he didn't realize by taking away Section 230, what would happen is because platforms would then be responsible for what he would say, they would take them down without question.

Will Hitchcock [00:22:08] And many other people. I mean millions potentially.

Danielle Citron [00:22:10] Absolutely. That's what the Congress that's what Ron Wyden and Chris Cox, when they wrote Section 230, were worried about what they called the 'moderators dilemma', which is if you're going to be strict, like, be responsible as a publisher, you're just going to take everything down or you are going to be either over or under cautious. And we didn't want them to be in that pickle or spot. But it's just interesting because the burn 230 down crowd, if they're worried about over filtering, should not have that argument. Like it just doesn't serve them.

Will Hitchcock [00:22:39] And it didn't go anywhere either. I mean, it was it just became a cry.

Danielle Citron [00:22:42] Like a meme. Yeah.

Siva Vaidhyanathan [00:22:50] That was the conversation between Will Hitchcock and our new colleague, UVA law professor Danielle Citron. She is the Jefferson Scholars Foundation, Schenck distinguished professor in law. Danielle is also the author of Hate Crimes in Cyberspace, and she's a MacArthur Fellow. For a full version of this conversation, visit our Web site, DinDanger.org.

Will Hitchcock [00:23:16] Democracy in Danger is part of the democracy group podcast network. Visit democracygroup.org to find all our sister shows. We'll be right back after this message from our friends.

Will Hitchcock [00:24:05] Well, Siva, you're one of the leading experts on these issues, and so I really want you to remind us again, why is Section 230 both so hard to understand, but also so present in our political discourse? Everybody seems to have an opinion about it, but it's actually not very well known. Is this something we need to really unpack and figure out what parts of it we want to save, what parts of it we might want to tweak? Or do we really need to scrap the whole thing and rethink the Internet?

Siva Vaidhyanathan [00:24:33] Yeah, I mean, I'm sort of out of sync with a lot of prevailing opinion on this matter. I actually don't think that Section 230 of the

Communications Decency Act is all that important for a couple of reasons. The fact is that protection from liability has generated a sense of irresponsibility among mostly pornography sites. So pornography sites have for years refused to take down videos or images that were done nonconsensually or posted nonconsensually. And those videos really hurt people. They destroy people's lives. And the companies have sat back and said, yo, section 230 protects us. Right. The fact is, section 230 is not a problem in general. It is a problem in those specific situations. People try to apply it to the big monsters like Facebook and Google. And believe me, I believe they're monsters. But the fact is those companies would do just as well without Section 230. They have all the money in the world. They have all the ability to manage all of these permutations. I think too much is made out of the whole thing. You know, that said, it's also a local ordinance. It's a US law in a global media ecosystem. Most countries don't have that sort of liability protection. And yet all of these big Internet companies seem to do fine around the world. So, look, Section 230, I think was important in the early days of the Internet. It's not that important now. I think it's really important that we revise it to protect people who are clearly being hurt. And that is what Danielle has been working on very closely and effectively.

[00:26:14] Siva, one of the things that Danielle stressed was that, you know, as much as we would like to look to the government for some better guidelines or guardrails, the government is not in the business of moderating speech, even hate speech online. So we really can't expect that, nor should we. But that what she's emphasizing is there's illegal stuff that happens online that the government can and should deal with because it has the tools already, whether that's in Section 230 or in other kinds of regulations. I mean, underage or nonconsensual pornography is all over the Internet. That should be dealt with through legal means. The sale of guns or other kinds of illegal contraband - that should be dealt with. I mean, there are some tools that are available out there, aren't there?

Siva Vaidhyathan [00:26:55] Yeah, not that many. You know, look at child pornography. It has long been illegal, is totally illegal. You know, no one really argues that shouldn't be illegal and it's not really protected by our current regulatory system. You know, nonconsensual pornography, unfortunately, is a gaping loophole there where there just aren't state or federal laws that so clearly make it a problem. And it's largely because the victims are are powerless in society and they don't have lobbyists. Right. So Danielle has been working with people and with state legislatures around the country to urge them to clearly make nonconsensual pornography illegal. And that helps install liability. It gets around Section 230. But we need those laws to be able to make it clear that we will not accept this kind of exploitation and abuse of innocent people. So I think that Danielle's work in this area has been crucial in making sure that everybody has a voice. You know, when we try to connect this to democracy and we try to connect things like privacy and dignity to democracy, this is what we have to remember. The First Amendment exists to help us operate better as citizens, to let us all be heard and be taken seriously so that we can collectively make decisions about about how we want to live. Right. But when significant numbers of us are terrorized and silenced and undermined in our efforts to express ourselves, well, that just defeats the purpose of the First Amendment. And so we're in this weird situation where harassers, you know, people who are terrorizing other people and flooding them with abuse are saying, hey, First Amendment, First Amendment protects us. Well, sure, it it does as currently read. But that's not what the First Amendment was supposed to accomplish. Right. The First Amendment is supposed to be a means to an end, not an end in itself. And Danielle has been really central in making sure we remember that the First Amendment is about making sure we have the richest, broadest, most diverse public sphere, and that means letting women speak without fear of harassment and threats and even violence. That's a problem we have only just begun to

examine. And we won't have a full and rich public sphere and a full and rich democracy until we solve that problem.

Siva Vaidhyanathan [00:29:34] That's all we have this week, next time on Democracy in Danger. We will talk to media scholar Whitney Phillips. She'll pick up this conversation about the digital world, which she describes as an ecosystem.

Whitney Phillips [00:29:47] People are not harmed equally online, particularly when you're talking about historically underrepresented communities. They are going to be more frequently targeted, more viciously targeted, not just of harassment, but disinformation campaigns.

Will Hitchcock [00:30:03] In the meantime, help keep that media ecosystem vibrant and healthy. Let us know what you think of the show on Twitter at @dindpodcast.

Siva Vaidhyanathan [00:30:11] Or leave a comment on our Web page, DinDanger.org. And you should subscribe to the show wherever you listen to your favorite podcasts.

Will Hitchcock [00:30:20] Democracy in Danger is produced by Roberto Armengol with help from Jennifer Ludovici. Our interns are Denzel Mitchell and Jane Frankel.

Siva Vaidhyanathan [00:30:27] Support comes from the University of Virginia's Democracy Initiative and from the College of Arts and Sciences. The show is a project of UVA's Deliberative Media Lab. We are distributed by the Virginia Audio Collective, the podcast Network of WTJU Radio in Charlottesville. I'm Siva Vaidhyanathan.

Will Hitchcock [00:30:46] And I'm Will Hitchcock. We'll catch you next time.