

Common Law S4 Ep 11: Neil Richards Transcript

[THEME MUSIC IN, THEN UNDER]

Risa Goluboff: On this episode of Common Law, why privacy matters with Washington University's Neil Richards.

Neil Richards: Edward Snowden actually put this really well: 'Saying you don't care about privacy because you have nothing to hide, is a bit like saying you don't care about free speech because you have nothing to say.'

[THEME MUSIC UP, THEN UNDER AND OUT]

Risa Goluboff: Welcome back to Common Law, a podcast of the University of Virginia School of Law. I'm Risa Goluboff, the Dean. For our fourth season, we've assembled four UVA Law professors to serve as co-hosts. That's why we're calling this season Co-Counsel. Today, we're welcoming back UVA Law professor Danielle Citron. Danielle is a pioneer in the field of intimate privacy and was named a MacArthur fellow in 2019 for her work in that area. She is the author of "Hate Crimes in Cyberspace" and a new book out this summer called "The Fight for Privacy, Protecting Dignity, Identity and Love in the Digital Age." Danielle, it is such a pleasure to have you here again.

Danielle Citron: Thank you so much. It's so exciting to be your co-counsel today. And I'm really excited about our guest.

Risa Goluboff: So today you're going to help us interview a scholar who is right in your bailiwick – privacy law – but also someone I know as well.

Danielle Citron: Yes. Neil Richards is a professor at the Washington University at St. Louis School of Law and the director of the Cordell Institute, which focuses on human genomics and privacy. But also he's what the UVA folks like to call a 'Double Hoo.'

Risa Goluboff: Double Hoo!

Danielle Citron: Woo hoo!

Risa Goluboff: Wahoowa.

Danielle Citron: He earned both an M.A. in legal history at the University of Virginia and a J.D. at UVA Law. Neil has a new book out “Why Privacy Matters,” and we're going to talk about that today.

Risa Goluboff: I can already tell this is going to be an interview our listeners do not want to miss, so we will be right back with professor Neil Richards.

[THEME MUSIC IN, THEN UNDER AND OUT]

Danielle Citron: Neil, thanks for joining us. It's such a pleasure.

Neil Richards: It's great to be here.

Risa Goluboff: It is great to have you here. And it's so good to see you again, Neil. So let's talk about your new book, which I have a copy of right here, though this is a podcast, so no one can see it, but I have it. And I have read it and it's great. Now you start off in this great way that I just love recounting what you call, “the privacy conversation” that you have with people once they find out that you're a privacy scholar, and I thought maybe you and Danielle could re-enact how that privacy conversation starts out.

Danielle Citron: Oh, yeah. I have borne witness to this conversation myself.

Neil Richards: A bunch of privacy scholars came to St. Louis for the conference to launch the book, including Danielle. And Danielle and I, and somebody else got into an Uber and I'd just been talking at the conference about the conversation, about getting into Ubers, and the Uber driver literally did it.

Danielle Citron: Yes.

Neil Richards: Well, so are we going to role-play this? Uh, so you're gonna be my Uber driver, Danielle?

Danielle Citron: Yeah.

Neil Richards: So we're in this car. My location is being tracked by the company. Danielle, her driving is being tracked by the company. There's all sorts of monitoring going on.

Danielle Citron: So tell me, what are you up to these days?

Neil Richards: First of all, this is a very nice car.

[LAUGHING]

Neil Richards: I'm a professor.

Danielle Citron: Oh, what do you teach?

Neil Richards: I teach privacy law.

Danielle Citron: Oh come on. Seriously. There's no privacy.

Neil Richards: There is privacy. We're all wearing clothes. We all live in homes where we, we close our doors and we lock them. People, companies, government agencies who say that privacy is dying are lying because it serves their interests. Privacy is about power. And Americans have been having the conversation about the death of privacy for at least 125 years, since Warren and Brandeis wrote their paper in 1890. If privacy is dying, it's dying the kind of death that Hamlet dies in the last scene of the play, where he's sort of staggering around. Oh, and I see that we've got to our stop. So I'll get out. You get five stars.

[LAUGHING]

Risa Goluboff: What is the typical Uber driver response to that soliloquy, since you said Hamlet?

Neil Richards: The Uber context is really interesting, because when you talk to an Uber driver whose job is being mediated by the app, that is being told by a robot, essentially to turn left or not to do that, or, hanging over our relationship, not just the mediation, is the specter of a grading system that we're going to grade each other at the end of it. You know, more human information that is structuring our social relations. I think they get it. I think they feel, they feel imprisoned. Um, but I think they're, they're inevitably curious because they can see the ways in which technologies running human data are influencing their lives, influencing

their jobs, influencing the way they talk to strangers who've just climbed into the back of their car.

Danielle Citron: And having seen the conversation at least firsthand a month ago, the person was asking so many questions of Neil that when we got out, the person like gave a huge thank you to Neil and felt, I think, really seen.

Neil Richards: But by the end of the conversation, which was mercifully brief, he did ask where he could buy the book and we pointed him to a local independent bookstore.

Risa Goluboff: Oh, well, that's good.

[LAUGHING]

Risa Goluboff: I'm guessing that part of the challenge in having that conversation is how you define privacy or how we all define privacy. So, what do you mean by that word? And what do other people mean by that word? And you know, why is a book like this necessary?

Neil Richards: Privacy is really important. What I say in the book is that it's actually okay if we can't define something with specificity. There are lots of things that we talk about and deal with all the time – free speech, the rule of law, equality, liberty. In fact, most of the really important things we don't have precise definitions. We argue over them, but we need some sense of what we're talking about. So, I want to focus on information because information privacy is particularly important at this particular point in human history. So I offer a provisional definition of the extent to which human information is neither known nor used. Purely a descriptive definition. How much of it is known, to what extent is it being used rather than just collected? And I talk about the three values that I think well-crafted privacy rules should serve.

Risa Goluboff: And what are those?

Neil Richards: Allowing us to formulate our identities authentically, socially, and with others to live as humans. Allowing us to exercise our, our political rights and to figure out what we think about politics in the world as free citizens. And securing our ability to have trust in the digital economy as consumers and full economic members of society. If I'd had another year to write the book, I'd have added equality to that list as well.

But as long as we're talking about the rules that constrain the collection and use of human information, serving human values, I'm totally happy.

Danielle Citron: Silicon Valley is not going to talk about information privacy as being about power. And I love when you talk about the key concepts that tech companies use and invoke as a sort of smokescreen. What are the concepts that big tech companies use when they want to take our attention away from conversations about privacy. How would they describe what it is we're talking about?

Neil Richards: Well, there are a number of moves that the companies have used. I think the first move is, is merely to emphasize all of the magical things that the digital technology can do, focus on the innovation that it produces. And I think innovation is kind of a dirty word. I mean, I know it's one of those easy words that a politician or a CEO can reach for. It's a very vague term. They never quite know what they mean. Second, it's selectively vague, like innovation is the new version of the iPhone, or new forms of search engines, or social media. But it's selectively vague. It's only for good things. It's never what the hackers used to hack the Ashley Madison company.

Ashley Madison Hack: What We Know About the Group Behind It

Anchor: “Hackers have made good on a threat to expose millions of users of a dating website that caters to people, looking for extra marital affairs. Personal information stolen from Ashley Madison.com has now popped up online. “

Neil Richards: I'm sure that they were very innovative hackers.

[LAUGHING]

Danielle Citron: Yeah.

Neil Richards: Innovation also, third, has a strength of convenience. So when innovation is doing good for society, it's so powerful in the rhetoric. You know, there's an app for that. Democracy? There is an app for that. But whenever regulation is proposed, oh, my goodness, we don't want to stifle innovation. It becomes this really weak, feeble concept. And then finally, innovation is increasingly framed as a fundamental right. And we're seeing in cases that companies are defending regulations of how

they use human information with a First Amendment defense by saying that – and this is wrong, of course – but saying that information is somehow speech, and regulating data brokers somehow is akin to censoring editorials in the New York Times. So the first step is this innovation rhetoric.

Risa Goluboff: That's the first step. Is there another step?

Neil Richards: There are many other steps, but let me just highlight one more, which is when companies get pushed – and this happened when Mark Zuckerberg got hauled before Congress and made to wear a suit in the wake of the Cambridge Analytica scandal – where Facebook was, let's say heavily involved, if not complicit, in an attempt to hack our elections using personal data.

[Mark Zuckerberg Admits His Data Harvested By Cambridge Analytica | NBC Nightly News](#)

Reporter: “Tonight, Mark Zuckerberg, once again, facing skeptical lawmakers, pushing him on Facebook's failure to protect its users' private information.”

Rep. Mike Doyle: “It seems as though you turned a blind, blind eye to this, correct?”

Mark Zuckerberg: “Congressman, I disagree with that assessment.”

Reporter:: And pressing him to change Facebook's default settings to minimize how much of your personal information is shared.

Mark Zuckerberg: “Congressman, this is a complex issue that I think is – deserves more than a one word answer.”

Rep. Mike Doyle: “Well, again, that's disappointing to me because I think you should make that commitment.”

Neil Richards: The solution that companies generally put forth is we just want to put our users – notice they call them “users” rather than customers or clients. Drug dealers are the only other industry that have “users” as their customers. Anyway, they say well, we want to put our users in control of how their data is used. And this is, if anything, a bigger fraud than innovation rhetoric. Because at the one hand, who doesn't want to be in control of their data? Who doesn't enjoy – well, maybe I'm projecting here – but, but who doesn't enjoy playing with those sliders on the, on the privacy settings? There's only a few

problems with, with control. The first is that, control is overwhelming. If we had one account with our bank and another account with our social media company, and that was all we had, I think we could manage our privacy settings. But think about how many passwords you have. Every one of those passwords is associated with a privacy dashboard that can have 5, 10, 50 to a hundred different settings, and a privacy policy, and they change all the time. So the illusion of control here is undermined by the fact that no one has the time to deal with all of this. Second, there's a second form of the illusion, which is that companies don't give you the choices you might want, like stop tracking everything I do on the internet, right? That's never given as a choice. But do you want to have location settings when you use the app or all the time?

[LAUGHING]

Neil Richards: That's the choice you get. You don't get the one you might want. Third – and this is, I think, the most important part – is that control completes the trap that is set here.

Risa Goluboff: What do you mean by trap?

Neil Richards: They offer us choice. We like choice. They offer us control and choice. We like to be put in control. It's overwhelming. So you go to a website and you want to read the article. Will you accept all cookies or do you want to go through our settings and tweak – no, I just, want to read the article because I'm in a hurry, and I've got class in 10 minutes and I want to read this, this story in Wired or New York Times or wherever. So you click through, and then you had a chance to adjust your privacy settings. Why didn't you, Neil? Why didn't you take advantage of this? Well, because it's, it's overwhelming and it's illusory. And so I feel guilty after that, right? I had an opportunity and I didn't take it. Maybe it's my fault that I have no privacy. Maybe it's my fault that privacy is dying. So this very subtle maneuver, you know, completes this trap. We're given the illusion of control and then we don't exercise it and we feel guilty and we feel complicit in the fact that all this data processing is happening. That's I think, a really cynical and highly effective con that companies have, have placed on us.

Risa Goluboff: So it sounds like in addition to us not having the kind of control that companies suggest that we have, or that we might feel like we should have, companies actually also have a lot more control than we may even be aware of, right? So, you know, the, in this book,

obviously technology is a big part of what you're talking about and how it's changing our lives in ways that affect our privacy and our control. And you know, I think we all know about online ads that get targeted to us. You know, you go onto a social media site and suddenly the ads are just the things you were just browsing someplace else. And you talk about not just that, but like that on steroids, right? And, and how deliberate that is and how much information goes into companies doing that. So can you give us a couple of examples to ground it? I'm thinking about your Target example about the baby marketing. I think people will really want to understand what that looks like a little bit more concretely.

Neil Richards: Yeah, so companies – and I don't begrudge companies this part of it – wanted to make money for a long time, and they've often tried to make money through advertising. And there's a great line, I think, from John Wanamaker, the department store tycoon: "Half of my money on advertising is wasted, I just don't know which half."

[LAUGHING]

Neil Richards: Surveillance-based advertising offers the promise of perfectly targeted advertising to the right customer at the right time. And so what Target did is it paired data science with insights and behavioral science to try and make this happen. They identified a pattern of changes that would not only identify which of their customers were pregnant, but when they were due. And to enable them to deliver a coupon for formula or diapers at precisely the second trimester. So what Target did was it delivered the coupon. "Hey, congratulations, you're expecting, here's a coupon."

"Target knew teen was pregnant before her dad" - Fox News

Anchor: "Store's tracking your every move, well, may have finally taken it too far. Target's advanced advertising system even knew about a teenage girl's pregnancy before she could break the news to her own father. And he found out when the store sent her maternity deals in the mail."

Neil Richards: People freak out.

Danielle Citron: Oh yeah.

Neil Richards: This is a famous, famous example in privacy circles, but it's usually used for the idea that, 'isn't it creepy that Target knows you're pregnant?' And I don't think that's the right lesson to draw from this at all. The insight here is it's not that it's creepy because Target wants to minimize the creepiness. It's about power. It's about the use of data science, coupled with behavior science, to know what our vulnerabilities are and to target messages to it, to influence our behavior in a way that is secret and non-transparent. And I think that's what's really problematic and that's what I, what I mean when I say privacy is about power. And again and again, we see areas where information is used to control, to influence, to nudge, to manipulate. That's what's really at stake here.

Danielle Citron: So Neil, because it's often so subtle, you often hear people say, 'Come on, I have nothing to hide.' And you've got to convince them. This happens when you have those talks with Uber drivers. And when you meet people all the time and they say like, why should I really care about it? No one really cares about me. I'm no big deal. So how do you – even if they have nothing to fear personally, why should they care about all this power?

Neil Richards: The first reason is sort of a cheap shot, which is that, 'If you have nothing to hide, you have nothing to fear' is attributable, I think, to Goebbels, right? So it was a phrase that was coined by a literal Nazi. There are better arguments we can make.

Danielle Citron: Like what?

Neil Richards: 'Nothing to hide' as an idea is wrong in its own terms. We ALL have something to hide, or at least we have facts about ourselves we don't want to have shared, disclosed or indiscriminately broadcast, right? We all wear clothes to hide our naked bodies. We all – or most of us – close the bathroom door when we go to the toilet. We all have secrets, intimacies that we share with other people. I know Danielle's work is foundational in this respect. We all need privacy at one time or another, and this need for privacy is legitimate.

Danielle Citron: Absolutely.

Neil Richards: The second problem with the nothing-to-hide argument is that it misunderstands why privacy matters. Privacy is not about hiding dark secrets. It's not a – as Judge Posner put it in a 1978 article – 'a fraud on the reputation market.' Privacy is about power. Information is

used to control and influence people. That's why privacy matters. And so talking about dark secrets is the wrong way of focusing on privacy. And third, and perhaps most importantly, the nothing-to-hide fallacy focuses on privacy as an individual matter, rather than as a social value, right? It's this idea that, that I am boring, and I am mainstream, and nothing is interesting about me, and so therefore, there's nothing to worry about. Now putting to one side the fact that information can be used to manipulate everybody, as in the Target example. I think in a democratic society, it's important for us to recognize that other people have a legitimate right to privacy. People who are non-normative people, who are, who are different, people who are dissident, teenagers or older people who are figuring out their sexuality or their identity, people like Martin Luther King and his successors today who are engaged in legitimate and foundational and tremendously important practices of idea generation and political dissent. And of course, consumers who don't want to be manipulated. And to say that 'I am boring and I have nothing to hide,' is not only just false, but it denies the, the richness, the vibrancy, the commitment to eccentricity, political dissidence, political freedom, and sometimes just plain weirdness that privacy can nurture and cultivate and shelter. Edward Snowden actually put this really well when he said in this context, 'Saying you don't care about privacy because you have nothing to hide is a bit like saying you don't care about free speech because you have nothing to say.' I think we all benefit from being in a, in a politically free society where both privacy and free speech are tremendously important, protected, nurtured values.

Risa Goluboff: So you think both the individual's wrong, they do actually care about privacy, they just don't realize it, or they do actually have things to hide, they just don't realize it. And two, even if there are individuals who are so normative and so unabashed that they don't really have anything that they want to hide, there's a collective harm and a collective need for regulation that still stands, that they should be thinking about the group and not only about themselves and others who might be situated in ways that do require more protection. So, talk about the rules. What do you mean by, you know, now we have to shift because what we're really talking about are rules?

Neil Richards: Well, this is where as lawyers, I think, we get back on familiar territory. Because privacy is fundamentally about power – the Target example and other forms of manipulation, Cambridge Analytica, uh, electoral manipulation. Struggles in privacy, about privacy, are really struggles over the rules that should, or maybe shouldn't constrain the power that human information confers. From that perspective, if we're

thinking about Facebook can track us to serve ads across Instagram and Facebook and in the Metaverse – if they ever build this, this monstrous thing they have planned – struggles about whether they can track this or not are struggles about whether we should have a rule in place or whether we should decide not to have a rule. In other words, there's no neutral territory here.

Risa Goluboff: Right. The choice not to have a rule is a choice, by default. Right?

Neil Richards: Exactly. These are defaults and they're socially constructed and they can be socially manipulated. But the choice to let something happen is a choice. And so from that perspective, privacy rules of some sort – do we allow these business models or not, do we allow consumer manipulation or not – a rule of some sort is inevitable. So I think rather than thinking about privacy as an intrinsic good, I think we should think about privacy in instrumental terms as promoting human values through rules. And actually, you know, it's interesting, this idea of rules constraining power has such an old pedigree in our law. When I was in law school, I was Dick Howard's research assistant, and of course he, famously wrote a great book on Magna Carta in the 800's. And so Anglo-American law has been using rules to constrain power for, uh, if I do my math right, 1200 years. And this is very much in that tradition. It's the use of rules, but rules to promote human values and human flourishing rather than merely economic efficiency and profit maximization.

Danielle Citron: So can we dig into some of those central values? You know, you focus on identity, freedom, and consumer protection. Can you tell us a bit more about them and why they're at the fore for your call to privacy, or why we should care about privacy and why it matters.

Neil Richards: Let's talk about identity first. Figuring out who you are is one of the most important things we do as people. We have a couple of teenagers, one's just started college and one's in high school. And they're in the process of figuring themselves out. And when we're figuring ourselves out, we need privacy, we need breathing room. I think here of Julie Cohen's work on privacy as play, creating these areas in which we can figure out who we are, we can be playful with our identities, we can try things on. Or as parents would say, we can go through a phase. But even, even when we're no longer teenagers, we can engage in multiple identities at different times in a day. There was a

scandal a few years ago involving Facebook where Facebook said one identity, that's the only authentic thing that you can do. And they, they would say you have to have a real name and you can only have the real name on your passport. You know, people like Salman Rushdie who had a different name on his passport, but more importantly, not just world famous authors, people with non-Western names, native Americans with names like Creeping Bear and members of the trans community for whom multiple identities or identity definition was literally a matter of life or death, were really significantly disadvantaged and put at risk by this kind of a rule. Privacy is essential to this kind of identity and to the ability to be different people at different times in the day, whether, whether you are a professor, or in, in Risa's case, a professor and a dean, which are different roles, also a parent and a friend and a child and a coworker, or you know, a passenger in an Uber, right? We play these different roles in society and all of these roles are still me and privacy enables us the breathing space to play these different roles, particularly in digitally mediated contexts, where you can be different on Twitter than you are on say your family Instagram feed. But also at the end of the day, you can take your mask off and you can be the backstage self, that professors and deans and lawyers don't always show to their coworkers. Because you know, playing these professional roles is important and playing these social roles is important, but it can also be exhausting and, and privacy enables us to figure ourselves out and to play these multiple roles at different times in a day, and be full, complete, rich human beings. And that's being authentically human, not what's easier for Facebook to code.

Danielle Citron: Tell us a bit about the second pillar of your values, the freedom piece, and in particular freedom vis-a-vis the state and as citizens, which is such a meaningful part of the work that you've long been doing.

Neil Richards: Sure. Right. So this, this does build on some, some earlier articles that I've worked on, but the basic idea is that privacy, something I call intellectual privacy, is essential to the practice of citizenship. Just as we need time and space and opportunity to figure out who we are as people, it's important also to figure out who we are as citizens, to develop our political beliefs through the processes of thinking, reading, communicating with confidence and developing these ideas about who am I and what do I believe in matters of politics or religion or policy. And a special kind of privacy, intellectual privacy, is necessary to have these opportunities to develop our beliefs and our ideas free from the chilling effect of observation or interference by other

people. If we don't have intellectual privacy, we can be more readily blackmailed, as political dissidents including Martin Luther King had been by the government. We can be persuaded by database technology, like in the Cambridge Analytica scandal, or in the case of the the South Korean election a few years ago, where the intelligence service decided they wanted a particular candidate to win and they intervened in the political process using the techniques of psychological warfare to influence the election in favor of, well, the candidate that won, I don't know the causative effect in that election, but the danger is certainly there. Those are the stakes.

Risa Goluboff: You give an example from South Korea, but I don't think we have to necessarily look so far afield to see the influence of data and technology on elections and the spread of misinformation. So, you know, how do we think about safeguarding democracy in this context? I know that's a big question, but it's one I think about all the time, you know?

Neil Richards: Fix democracy in three to four minutes.

Risa Goluboff: And go!

Danielle Citron: Yeah!

[LAUGHING]

Neil Richards: I would say this: I think we hear a lot of platitudes from technology companies about – and Danielle and I have written about this together – about the digital public square. Whether we accept that or not, the fact is our democratic activities, like every other activity that we're engaged in, is being shaped by digital information technologies. They're having as undeniable effect upon the nature and, and tenor of our politics as the radio demagogues of the 1920s and the TV demagogues of later years had. And technology is a human creation. It is shaping our politics. And I think what we need to do are think about ways in which to deploy, as I said, rules to constrain the power that these technologies confer in order to shape our democracy in deliberative, fair, and free ways. There's no neutral position here. We can't just say, well the internet is a thing, um, and we just need to let it do its thing. I think the internet is, is constructed by law. It is constructed by policy or the absence of policy. We certainly need – and let me be abundantly clear about this – we need to craft rules that are consistent with our commitments to the First Amendment and to democracy, but

that doesn't mean we're powerless to do nothing. At a certain point, I think if you have this out of control, misinformation train that is unconstrained, engagement-driven, quarterly shareholder return-driven social media, at a certain point – at least morally, if not legally – our commitment to democracy, to equality, to the rule of law and to the First Amendment mandates regulation of some kind as, as European law with this notion of horizontal effect of fundamental rights embraces even more so than we do.

Danielle Citron: You are very persuasive, Neil. So now that you've convinced us that these values matter, what can each and every one of us do right now to protect privacy?

Neil Richards: Yeah. So, a list of things you can do to protect your privacy – common at the very end of a privacy book. Use a password manager, turn on two factor authentication, choose search engines like Duck Duck Go. And so my book does not have that. It is a conscious choice not to have that because I think while of course we will always continue to have responsibility for making good choices with respect to our privacy and with respect to anything else in our lives, the power effects of platforms, of digital technologies are so great, that privacy is about power and privacy is fundamentally important to us as humans, as citizens, and as members of society, and to agitate for reasonable consumer protective privacy rules that promote human and democratic flourishing and critically to make this a nonpartisan issue. I was really encouraged in the fall when Francis Haugen went public with allegations about Facebook's reckless indifference towards the mental health effects that its products were causing, particularly to children and teenagers.

[Washington Post: Facebook whistleblower Frances Haugen's full opening statement at Senate hearing](#)

Frances Haugen: “My name is Francis Haugen. I used to work at Facebook. I joined Facebook because I think Facebook has the potential to bring out the best in us. But I'm here today because I believe Facebook's products harm children, stoke division, and weaken our democracy.”

Neil Richards: I was really encouraged by the fact that the, the outrage to that reckless indifference was bi-partisan.

CSpan: Facebook Whistleblower Frances Haugen testifies before Senate Commerce Committee

Senator Marsha Blackburn: “What happens to that data? Does Facebook keep that data? Do they keep it until those children go to age 13?”

Neil Richards: There were republican as well as democratic senators who were leading the charge, who were asking the pointed questions of Facebook.

Senator Amy Klobuchar: “Do you think that Facebook turned off the safe guards because they were costing the company money, because it was reducing profits?”

Neil Richards: We are all children relatively speaking, when it comes to the power effects of these powerful corporations. And I think we need to make not just the protection of children and children's data against platforms, a nonpartisan issue. I think that is true for all consumers. If we put these rules in place, if we can build real meaningful trust in digital platforms, that can actually be good for companies too. I've been married for 30 years, and I've had a relationship with Apple and with Microsoft longer than that. You know, these relationships we have with our technology companies really do last our whole lives. And the true value in those relationships is when they're sustainable, and when there is trust, which ironically enables even more data sharing. So I'm hopeful that if we make privacy a nonpartisan issue, if we have a reasonable set of human and consumer protective privacy rules, we can do so in a way that is, that's not a zero sum game, that is good for business, but fundamentally is good for human beings.

[THEME MUSIC CREEPS IN]

Risa Goluboff: Well, that was just fascinating and so important, Neil, and thank you for being here with us.

Danielle Citron: Thank you so much Neil.

Neil Richards: Thanks for having me. It's been great.

[THEME MUSIC UP, THEN UNDER AND OUT]

Danielle Citron: That was so much fun!

Risa Goluboff: So interesting. So I'm curious as I think about the book and our conversation, I guess I wish I'd asked him this question – is it empowering or disempowering? So, on the one hand, I think he's trying to empower by, you know, articulating that the death of privacy is overwritten or overdrawn, and that we shouldn't assume we have no privacy and therefore not care about these issues. And on the other hand, you know, as he was talking about at the end, he's not speaking to us as individuals to take action in our own lives, right? And the kinds of responses that he thinks are necessary – large scale, regulatory, legislative responses, which are much harder to see as empowering your individual lay reader. So I, I'm just curious, you know, how you think about the book and what it does to either individual or collective action or a sense of individual or collective empowerment?

Danielle Citron: How it's been empowering is in nudging companies to emphasize and push them to think about their relationships with individuals and consumers, and creating trust relationships that are good for everybody, right? Good for the company and good for society and human flourishing. That conversation has not been lost on companies. And so in nudging folks like Microsoft and Facebook and others, to think about their trust relationship with individuals, with consumers, with their subscribers, I've seen that creep into their own conversations about themselves. You know, Brad Smith, Microsoft's president saying, 'We want you to trust us.' What Neil is also doing in, in helping shape that conversation, he's almost saying put up or shut up. You say you're interested in trust, well mean it! That to me is the empowering part of this, you know, rather than as he said, the checklist that, that I think is still important for us to do, because even if it's at the margins, let's all do it.

Risa Goluboff: Right.

Danielle Citron: Cover our cameras when we're not using them on our computer and using two-factor authentication and not using the same password everywhere, though we all tend to do that. Those are important things, but I think the way in which it is empowering is that it's seeping into the conversation and then we can hold companies to it.

Risa Goluboff: Right. Keep creating obligations on their, on their part.

Danielle Citron: Yep, cause right now, it's so procedural. You know, you give people the right to know data about you and that you can fix it if it's wrong and we don't set substantive limits and we need to.

Risa Goluboff: Tell me what you think are the most interesting ways that his work interacts with yours.

Danielle Citron: Oh yeah. You know, Neil said if he had another book to write at the heart of my book ...

Risa Goluboff: He'd add equality, right.

Danielle Citron: Right, he'd add equality. And for me, like, my work focuses more on, on the role of dignity, understood as both the way in which we develop our self-esteem and as social esteem, that is, what others think about us. And my work focuses on the intersection between privacy and equality. So that's where we, you know, we differ in some of the values that we focus on.

Risa Goluboff: I was struck by the three roles that Neil is thinking about – the role of, you know, the person, the citizen, and the consumer as the three most significant roles that we play in our lives. And as a person who's written a lot about labor history and employment, I think, well, what about producer? And how does that figure in, and in particular, given the last two years and how much of our production and our work lives are now mediated by screens, how important is that now? How important will that be as another key role that we embody? And then what's the corresponding value, right? So if, if person is identity, and citizen is freedom, and consumer is protection, what is the value that we get to if we think about ourselves as producers in this way?

Danielle Citron: And the interesting thing is that the book opens with the example of Uber.

Risa Goluboff: Right!

Danielle Citron: The person is worker, right, is producer.

Risa Goluboff: That's right.

Danielle Citron: And their data is being used in ways to manipulate and shape them, but not really to empower them, right? It's used against

them, right? It's not used in ways that are empowering as, as we were talking about before. And so we're constantly being tracked and rated and scored as employees, as a credit risk. So that you're right that as worker, it's such an essential part of it. I think dignity would be an important way in which we ...

Risa Goluboff: That's what I thinking! I was thinking the value might be dignity! Yeah.

Danielle Citron: Yes. Right. Sense of self. I, I know this from "The Lost Promise of Civil Rights," your brilliant book, right, and how we think about work and its importance. And as a civil right, as a substantive protection for each and every one of us, and data mediates those relationships now, but I think affording that respect and allowing people to enjoy both self-respect and self-esteem and social esteem in their work relationships, to me, dignity strikes me as just the right value to capture that.

Risa Goluboff: I agree.

[THEME MUSIC CREEPS IN]

Risa Goluboff: Danielle, as always it's such a pleasure to talk to you and I can't wait for our next podcast episode.

Danielle Citron: Thank you so much. It was so much fun.

[THEME MUSIC UP, THEN UNDER]

Danielle Citron: That does it for this episode of Common Law. If you'd like more information on Neil Richard's work on privacy, head to our website, CommonLawPodcast.com. There you'll find all of our previous episodes, links to our Twitter feed, and more.

Risa Goluboff: In two weeks, co-host Greg Mitchell and I will be interviewing UVA Law's John Monahan, an expert on predicting violence.

John Monahan: You predict a person to be safe, and then they go out and murder five people. Then you got it wrong big, big time. And I think that clinicians are petrified.

Risa Goluboff: We can't wait to share that with you. I'm Risa Goluboff.

Danielle Citron: And I'm Danielle Citron. Thanks for listening.

Emily Richardson-Lorente: Do you enjoy Common Law? If so, please leave us a review on Apple Podcasts, Stitcher, or wherever you listen to the show. That helps other listeners find us. Common Law is a production of the University of Virginia School of Law and is produced by Emily Richardson-Lorente and Mary Wood.

[THEME MUSIC UP THEN OUT]