

Privacy Sigma Riders Episode 8: Old Philosophers, a Privacy Renaissance, and Some Shiny New Bling

The Privacy by Design Framework

Host Michelle Dennedy discusses privacy by design for business and technology with Dr. Ann Cavoukian, a pioneering expert in PbD

Michelle Dennedy: "P" poppin'. We don't wanna pop our p's on PbD.

Ann Cavoukian: I love it.

Michelle Dennedy: Search for "Privacy by Design" and the name of our next guest will be all over the top 10 results. Dr. Ann Cavoukian promoted the Privacy by Design or PbD framework back in the '90s. Today, her outstanding work is fundamental to the upcoming General Data Protection Regulation, or GDPR, and many other nations who also adopted PBD at the 2010 Global Data Commissioners' meeting in Jerusalem. And she was recently awarded the prestigious Meritorious Service Medal by the Governor General of Canada for her efforts. Amazing! We'll talk a little bit about that as we go on. If you do business using data and you understand that good privacy is good for business you may want to stick around and hear what the good doctor has to say.

Cyber security. Data protection. Privacy. You like to stay ahead of the curve and listen to experts who are leading the way in deriving greater value from data with a more organized approach to data privacy. You're like us: just a few deviations past the norm. You are a Privacy Sigma Rider.

Hi everyone, Michelle Dennedy here, Chief Privacy Officer at Cisco. I am so excited to have my dear friend, Ann Cavoukian, one of the creative, outspoken, wild and crazy women of privacy. Good morning, Ann, nice to talk to you.

Ann Cavoukian: It's such a pleasure to be on with you Michelle. You are amazing.

Michelle Dennedy: It is going to be very much a mutual fan club. We've known each other for a very long time.

Ann Cavoukian: Yes.

Michelle Dennedy: Privacy by Design is a framework for proactively embedding privacy into technology solutions in business practices. And I will emphasize that "and", technology and business. And developed in the '90s when you were the Privacy Commissioner for Ontario.

Ann Cavoukian: Yes.

- Michelle Dennedy: Tell us a little bit about its origins and how it's made it into government regulations around the world as well as best practice recommendations from places like the US Federal Trade Commission, and fundamental tenets of Europe's GDPR.
- Ann Cavoukian: It's so exciting the way this has developed. I literally developed the 7 Foundational Principles of Privacy by Design at my kitchen table over several nights in the late '90s. A long time ago. And I just felt that even though I was Privacy Commissioner for a long time, three terms, but because I'm not a lawyer I didn't just want the approach to privacy to be regulatory compliance after the fact, after the privacy harms had arisen. Even as Commissioner I said, "Treat privacy as a business issue, not a matter of regulatory compliance." Because I really believed you would do a better job at protecting privacy and preventing the harms from arising if you treated it as a business issue and made it work for you. Gain a competitive advantage by doing this, help your customers, make it work for you. So, that was always my approach to this.
- Michelle Dennedy: Yeah, and it's amazing after all these years that there's been some sort of a renaissance. Everyone's talking about privacy design as if this is a new and shocking thing. So why now?
- Ann Cavoukian: It's so exciting for me because Privacy by Design, I always had it as a model of prevention, much like a medical model. Could you imagine going to your doctor, and they do some tests, and they say, "Yeah, we see some cancers developing here. We'll just see if it gets worse and offer you some chemo after the fact." I mean, what an unthinkable proposition. I want it to be equally unthinkable that you would allow privacy harms to develop and then just go to the regulator and have him or her offer a remedy after the fact. I didn't want that.
- And what surprised me actually at the 2010 conference in Jerusalem, where Privacy by Design was unanimously passed as an international standard, what surprised me was that it was unanimously passed. Because most of the commissioners are what I call lawyer's lawyers, they are brilliant lawyers that love applying section 29 sub 2 par A to fact situation and getting a wonderful outcome. But what I realized they also realized. In this day and age of ubiquitous computing and online connectivity, social media, it was impossible to address all the harms that as commissioners we were only seeing the tip of the iceberg. That the majority of the harms were remaining largely unknown, unchallenged, unregulated and that was unacceptable. So we needed something to compliment regulatory compliance, which is after the fact. We needed a proactive model up front to try to prevent and minimize the harms by identifying the risks and then mitigating them.
- Michelle Dennedy: Getting that many desperate nations, and we're not just talking Europe and North America here. We're talking about people in Asia, out of collective economies. People in Africa, Russians are there. It's really an incredible thing that this is a unanimous decision of people who are very much vested in their local territories. That cannot be overlooked.
- Ann Cavoukian: I was blown away, I really was and I was delighted. I just realized that everyone was getting the fact that, what do they say, you ain't seen nothing yet.
- Michelle Dennedy: Yeah.
- Ann Cavoukian: In terms of the massive potential for surveillance and the intrusions upon our privacy. You know how I think about privacy. I feel that privacy forms the foundation of our freedom.

Michelle Dennedy: Yes.

Ann Cavoukian: And to me it's just unacceptable not to be able to have privacy preserved now and well into the future. And also for me, just to be clear, privacy is not about secrecy. It's not about having something to hide. That makes me crazy.

Michelle Dennedy: Yes.

Ann Cavoukian: I always tell people, "Privacy is not a religion. You wanna give away your information, by all means be my guest. As long as you make the decision to do that, it's all about having user control and freedom of choice to make these decisions to relay into your personal information."

Michelle Dennedy: Just this weekend we were going back and forth with some adorable little old man who was saying that privacy is dead. And that those of us who fight for it and build and have multibillion dollar industries based upon data protection and privacy, apparently we're all just delusional in some way.

Ann Cavoukian: Of course.

Michelle Dennedy: I just find it adorable, really, in some ways but in some ways it is a conversation that has been going on for a couple of decades. Saying that privacy is over, privacy is dead. But I think as you say, Ann, it is a confusion that privacy is some sort of magical eraser or secrecy that applies in every context for everybody. And I think it's also, in certain communities in particular, the fact that technology allows us, enables us, to break in, spy, crack the technology, invade other peoples expected human rights because that we are able to do it somehow that vitiates the need, the desire and the right to have that space of your own to tell your story in your own way.

Ann Cavoukian: And you know that space is so important. I always say privacy equals personal control. That the individual makes the determination whether to share their information or not and to whom they disclose it. And the reason it's so important as the individual is because context is key to privacy. Only you know the data subject. You're the only one who knows the sensitivity associated with certain information about themselves, or the lack of it. You know, that's why context is so important and I love the German term, informational self-determination. The Germans consider this to be such an important value that in 1983 they enshrined it as a right in their Constitution. And it's as simple as the individual should be the one to determine the fate of his or her personal information. You want to release it, by all means. It may be of value to you to share it and by all means do that. But if you don't want to, if there's a sensitivity that others may not be aware of, you should be able to control that.

Michelle Dennedy: Yeah, and it applies to businesses as well. Right? I don't release all my products at once. Why should I release all of my employees' names or other pieces of data. I mean, it just doesn't make sense to just push everything through the wires. It's, sort of, a social DDoS attack if you think about it in that way.

Ann Cavoukian: Yes and what I would say to people, you mentioned earlier that the death of privacy has been projected for so many decades now ...

Michelle Dennedy: It's like Mark Twain.

- Ann Cavoukian: And will continue to. I just read, somebody else last week said, "There's no privacy, get over it just like you know who did so many years ago." But the folly in that is that they have no awareness of the massive strengths that are also developing in terms of end to end encryption. And the principle positions that are being taken by Cisco and Apple and others to protect your privacy. So for every intrusion, every advancement of surveillance and there are many, I'm not suggesting otherwise, there are equal gains on the privacy side. So that's why I always try to tell people you don't give up on privacy, just like you don't give up on your freedom.
- Michelle Dennedy: Right.
- Ann Cavoukian: You have to fight for this and it's worth it because there are such benefits to be gained by doing this. It drives me crazy when people say, "Oh privacy stifles innovation." Are you kidding me? Privacy breeds innovation.
- Michelle Dennedy: Absolutely.
- Ann Cavoukian: Because if you wanna have products and services that have both the product value and privacy, data utility and privacy, security and privacy, you've gotta be really smart, and creative and innovative. And we can do that.
- Michelle Dennedy: Yeah, I mean, when you think about privacy in context, so being able to control and contextualize an experience for your end user all the way out from sensor data all the way back into the data center and somehow manage that for the 7 billion plus souls on the planet. If you think that's easy and if you think that's not valuable then you're not an innovator. So good for you, but leave it to the big boys. We're happy to pick up that innovation.
- Ann Cavoukian: Absolutely and if I can add, the Privacy by Design has been embraced globally. It has now been translated into 40 languages, that's 4, 0 languages all around the world. And of course with the inclusion of Privacy by Design for the first time in the EU GDPR that is coming into effect next year, this raises the bar dramatically on privacy and data protection, which just makes me so happy.
- As you know, the second foundational principle of Privacy by Design is Privacy as the Default setting. And that's critical, that's also been included in the GDPR. And the reason it's critical is the exact opposite of how most companies do it now. If you want to protect your privacy right now you have to wade through the terms of service, and the legal lease, and the privacy policy until you can finally find the opt out box for negative consent, which is do not use my information for any purpose other than the purpose intended, the primary purpose. Privacy as the default flips that on its head and says to the customer, "We will only use your information for the primary purpose you gave it to us for. You automatically get privacy embedded into what we're doing. If we wanna use it for a secondary use later on, we'll come to you and seek your positive consent." Exact opposite of present day.
- Michelle Dennedy: Yeah, I love that. And I think, you've touched on the 7 Foundational Principles but I don't know that they are universally memorized, shocked as I am about that. I think there are probably are 40 different language tattoos on the Foundational Principles. But if you're game, I'd like to play a game with you, Ann.

Ann Cavoukian: Of course.

Michelle Dennedy: Let's do a 30-second round. I'll name the principle, you give us our elevator pitch per principle. Are you game?

Ann Cavoukian: Okay.

Michelle Dennedy: Okay.

Ann Cavoukian: Got it.

Michelle Dennedy: Foundational Principle number one. Be Proactive not Reactive; Preventative, not Remedial.

Ann Cavoukian: You want to make sure you prevent the harms from arising. You don't wait for a privacy issue to arise, a privacy data breach, no you identify the risks in advance and prevent them from happening.

Michelle Dennedy: Love it. Foundational Principle number two. Privacy as the Default setting.

Ann Cavoukian: This is the best, strongest principle ever because it makes privacy automatic in whatever service you're offering. The bottom line is, we will only collect your information and use it for the purpose intended, the primary purpose of the data collection. Then we will control our use of that information to that purpose, unless we come back to you and seek additional consent. It's golden.

Michelle Dennedy: I love it. Three is one of my personal favorites. Foundational Principle number three. Privacy Embedded into Design.

Ann Cavoukian: And that of course builds on all of your work with privacy engineering, Michelle, because embedded in design means you make it an essential feature. You bake it into the data architecture. Privacy engineering, the invaluable work that you do, speaks directly to this because it is seamlessly part of the operation as opposed to bolted on after the fact.

Michelle Dennedy: And this goes directly to Foundational Principle number four. Full Functionality: Positive-Sum, not Zero-Sum.

Ann Cavoukian: I hate zero-sum. Zero-sum means you can only have one interest versus another. You can have security versus privacy. Business interest versus privacy. Get rid of the versus. This either or, win lose proposition is a no brainer; it's a dead end. Throw that out; that's so yesterday. Positive-sum just means you can have two positive gains, two increments at the same time. It's a win-win, doubly enabling system. Privacy and data utility, privacy and security, you can have both. You have to have both.

Michelle Dennedy: I love it. It's like I don't have to choose Sweet Cheeks over Ms. Thang. I love both my daughters.

Ann Cavoukian: Exactly.

- Michelle Dennedy: Although, they cause me to be gray haired. Number five Foundational Principle for PBD, End-to-End security. Another one of my favorites. Full lifecycle protection. Go.
- Ann Cavoukian: While the term privacy sub seems a much broader set of protection than security alone, in this day and age of massive daily cyber security attacks, if you don't have a strong foundation of security from end to end with full lifecycle protection you're not going to have any privacy. You have to start with this and make sure it's solid.
- Michelle Dennedy: I love it. And end to end is the beginning where the data is and the end when the data is no longer accessible, usable, causing harm. And I think people often think end-to-end security just means the pieces of technology I own and that is not the principle here.
- Ann Cavoukian: Agree, totally agree.
- Michelle Dennedy: Foundational Principle number six. Visibility and Transparency, keep it open.
- Ann Cavoukian: This is so basic and yet it is often overlooked. It's essential that the data you collect from people, customers, citizens, whatever, be accessible to them. People have a right to access their data. But the reason you as a company might want to ensure you do this is because the accuracy of the data, the quality of the data will only be 100 percent if the data subject has access to it. What I often hear from companies is, "Oh my God we would never have known we had mistaken data if the individual hadn't told us we had the wrong stuff on file." So, it's to your benefit as a company to ensure this happens. That individuals have access to their data and a right of correction. But the other thing I tell companies is, "You may have custody and control over someone's data but it doesn't belong to you. It belongs to them, the data subject. So again, make it a win for yourself and for them. Make sure they have access to their data."
- Michelle Dennedy: That's right. I think of six as almost like the LinkedIn principle. I could keep a black book but it would be full of hash marks of people who move and relocate and I'm assuming where they are. If they are self-correcting and they have that access, I have everyone's most current data and I love that.
- Ann Cavoukian: Absolutely.
- Michelle Dennedy: Number seven, not the least important even though it comes last. Respect for User Privacy: keep it user centric.
- Ann Cavoukian: You know Michelle I could have started with this as the first principle ...
- Michelle Dennedy: Yeah.
- Ann Cavoukian: Because, it is so important. I find when companies focus on the user and keep it user centric, the rest flows. The purpose specification, the use limitation, the making sure that the notices and the consents are understandable and accessible to the individuals, all of this flows from keeping it user centric. That really makes it a win for everyone.
- Michelle Dennedy: Yeah, I couldn't agree more. And this is why this all so perfectly works with having these guiding principles of what is your foundation, truly foundational principles. This is what we use as a

foundation for privacy engineering to say these are the outcomes. These are the business outcomes, these are the individual outcomes. And then how do we innovate? You know, to your earlier point out, Ann, of is there any innovation left, I would say for every fair principle there is not yet a trusted and automated way to provide notice, to provide security, to provide proportionality. Every single one of those -ilities and -alities has a great mind that is right now probably in college dreaming about what they did last weekend. Someone is going to come out of that college experience and go, I have a great idea on how to make this better. And I'm excited.

Ann Cavoukian: It's so true and this business is growing. For every naysayer, which of course drives me crazy but I've been exposed to that for so many years, there're 50 that have brilliant ideas as to how you can protect privacy and data using encryption. And we have so many tools available to us now and so I just urge people not to focus on the negative and focus on the positive associated with privacy and functionality. Privacy and so many other interests.

Michelle Dennedy: Absolutely. It's a side story but Hal Stern's little bear cub sent me the most wonderful email this weekend. She was a 15-year-old working for me when I was writing my first paper about privacy engineering and she is graduating from U Penn and she'll be clerking on the second circuit this year. And she wants to be a lawyer who's looking at these things and she said, "You know, it all started when I was 15 interning at Sun Microsystems, working with my team on privacy engineering." And I just was blown away.

Ann Cavoukian: That must have melted your heart.

Michelle Dennedy: Oh my gosh. And as a professor I'm sure you hear these stories all the time. There's all this inspiration out there.

Ann Cavoukian: It is heartwarming. It is heartwarming because you can get past the negatives, because you're flooded with negatives. I often feel like I'm the David versus the massive Goliath ...

Michelle Dennedy: Yes.

Ann Cavoukian: Of surveillance out there but we know how that story ended.

Michelle Dennedy: Yep.

Ann Cavoukian: But I don't want to slay Goliath. I want to embrace him in a dance and I want to make sure we can do both. There's warranted surveillance, I mean, if the police have reasonable and probable grounds to believe a crime was committed and they go to the court and they get a warrant, be my guest. Come in and investigate, but you can't do it absent those judicial measures, which are intended to protect us all.

Michelle Dennedy: That's right and those balances are so critical.

Ann Cavoukian: Yes.

- Michelle Dennedy: Now, before I let you go Ann, you gotta tell me about the new bling. Your Meritorious Service Medal. Why aren't you wearing it everywhere? Are you? Tell me how this came about. You must still be just glowing.
- Ann Cavoukian: You know, I was really honored. And let me tell you what really touched me when they called me to tell me I was awarded this lovely medal, and they checked, they did six months of vetting because they gotta make sure you're the real thing and all that. They are giving it to me for Privacy by Design and spreading it globally. And they said, "We contacted people in Canada and they, of course, said nice things about you but," they said, "We were blown away by how people embraced it outside of Canada. All around the world, how positively they spoke about it." And that's what melted my heart ...
- Michelle Dennedy: Yeah.
- Ann Cavoukian: Because that's what I wanted, I want this to be globally accepted and understood and that it's a positive. That's not about negative results. Privacy and data utility and security, always "and", doubly enabling win-win systems. And can I add just one more thing?
- Michelle Dennedy: Of course.
- Ann Cavoukian: I just formed a new international council on what I'm calling as Global Privacy and Security by Design.
- Michelle Dennedy: Cool.
- Ann Cavoukian: And the reason I did that is whenever you have an increase in terrorist incidence, you know dating back to Paris, Charlie Hebdo and San Bernardino and Manchester and on and on, the pendulum swings right back to forget about privacy, we need security.
- Michelle Dennedy: Right.
- Ann Cavoukian: Of course, we do but not to the exclusion of privacy. We need to show the world we can do both. So someone contacted me, one of my colleagues in Europe and said, "Look Ann, spread the word broader than just you getting talks on this. Form an international council, do this." And I always do what I'm told, so ...
- Michelle Dennedy: Well that's not entirely true.
- Ann Cavoukian: We are delighted, Michael Chertoff, your second Secretary of Homeland Security, he is one of my founding members. The CEO of Telus, one of our major telcos in Canada, is a founding member. Gilles de Kerchove, who is the EU director of Counter-Terrorism, is a founding member. And I could go on and on. So, we've had such support for this. We're going to be launching this later in the year so please stay tuned.
- Michelle Dennedy: That is exciting, exciting news. I almost don't need to ask this next question but I ask it of everyone. So, Ann, what is next for you? What gives you hope for the future?

Ann Cavoukian: What gives me hope for the future is that we can preserve our privacy and our freedom, not just for ourselves but for our children and grandchildren to come. I want to build a world where freedom and privacy are essential to the way we live. You see, to me, we can't have a world without those ingredients. I do not want to live in a world where I'm looking over my shoulder and worried about everything. That's no way to live. So that's the vision that I have for the future, that I hope to work on until the day I die.

Michelle Dennedy: I love it. So, Ann, I failed to mention in the intro that you are currently the Distinguished Expert-in-Residence at Ryerson University where you lead the Privacy by Design Centre of Excellence. And you're also the co-author of two books, *The Privacy Payoff: How Successful Businesses Build Customer Trust* with Tyler Hamilton and *Who Knows: Safeguarding Your Privacy in a Networked World* with Don Tapscott. How else can we find you? I know you have your own Wikipedia and you're active on Twitter.

Ann Cavoukian: If you follow my Tweets every morning between 5:30 and 6:30AM, I Tweet the major stories of the day because a lot of them are coming over from Europe already from the night before. So if you follow me on Twitter you'll know exactly what I'm doing, and I'll point you to all the latest developments and try to make it all interesting.

Michelle Dennedy: Excellent. And we can find more news on your security and privacy come to the table for the combined design.

Ann Cavoukian: Yes, thank you so much, Michelle.

Michelle Dennedy: Thank you Ann, it's just a pleasure to talk to you as always.

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