

Citations: Finkin, Matthew W, “Privacy: Its Constitution and Vicissitudes” – a Half Century On” (2015) 18:2 CLELJ 349

Abstract: Half a century ago, on the verge of the Information Age, the sociologist Edward Shils took the measure of how matters stood with privacy. He argued that privacy was being systematically engulfed by societal elites – government, journalists, business, and social scientists – even as they sought privacy for themselves. He saw a passive populace, indifferent to the intrusion, and a near-total absence of protective law. This essay reflects on what Shils saw from the perspective of a half-century’s experience. It argues that the populace is no longer passive, that the public’s concern for privacy as consumers has had a ripple effect in a concern for privacy in employment. Nor is the law totally absent; but the legislative approach has been piecemeal, attending only to those perceived abuses that most strike the public ire. In terms of the common law, in its address to the large lacunae left by legislation, the legal establishment – represented by the American Law Institute – continues to serve as a handmaiden to those business interests that had and would continue to engulf employee privacy.