Books

Review: "From the Palmer Raids to the Patriot Act"

A History of the Fight for Free Speech in America, by Christopher M. Finan '92GSAS (Beacon Press)

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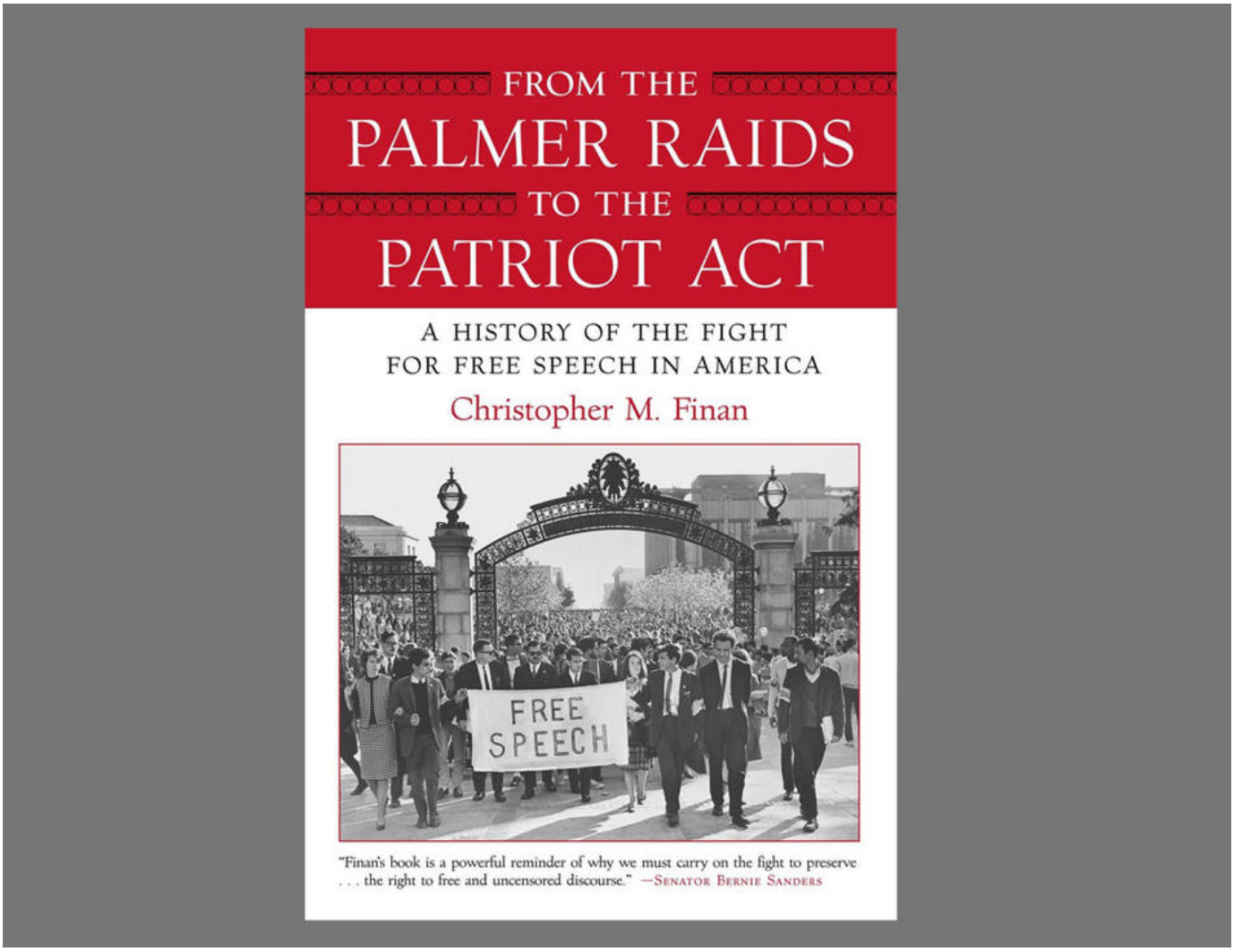

In November 1919, federal agents raided a community center in New York frequented by Russian immigrants, rounded up hundreds of students and teachers, and vandalized the classrooms. So began the Palmer Raids, a response to the threat of foreign radicalism after WWI, in which thousands of supposed subversives — primarily members of American Communist parties — were arrested, though most were never charged with any crime.

In October 2001, Congress passed the Patriot Act, empowering the federal government to round up and deport hundreds of non-citizens it suspected of terrorist connections and expand its authority to conduct covert searches and collect information about American citizens. We don't yet know the extent of these programs because they are secret, but, as in the earlier campaign, people are currently being penalized, not for their actions but for their ideas, affiliations, and words.

With a little historical license, the intervening era could be called America's free-speech century; during this time, the government, as well as organizations that sprang up to suppress or defend various forms of expression, struggled to determine what the 45 words of the First Amendment really mean. Christopher M. Finan '92GSAS, president of the American Booksellers Foundation for Free Expression and chair of the National Coalition Against Censorship, has documented these fights in his comprehensive tour of free-speech controversies over the past nine decades.

Finan writes gracefully about the episodes, and he explains their significance with insight and occasional wit. He relies heavily on the work of other writers who have focused on specific issues in greater detail and nuance (a bibliography would have made tracking his sources easier), but if he charts little new territory, he has drawn a valuable map, with routes and boundaries clearly delineated.

Though the skirmishes he describes show America at its most intolerant and silly, Finan portrays the larger war as being won. That's true to an extent — even with the current retrenchment, the First Amendment is remarkably generous in what it protects — but censorship will always be with us. The instinct to ban offending words or images is too powerful to litigate or legislate out of existence. Thus, Finan's history serves as a useful reminder that, for all its glory, the First Amendment has been put to the test as often as it has been honored.

Finan organizes his review of this testing more or less by decades, beginning his chapters with an anecdote about a controversy, then circling back to fill in details, historical context, and legal benchmarks. Many of these stories will seem the stuff of familiar headlines: the government swinging from openness to secrecy and back again, money buying legal favor, fundamentalists pushing to substitute church for state, new technologies causing panic, civil libertarians caroming from optimism to despair to internecine warfare, and everybody, it seems, chanting, "I'm not in favor of censorship, but..."

Governments tend to censor in the name of national security, which often includes business interests, moralists, and reformers in the name of propriety and protection of the weak. The reasons remain remarkably consistent, as do the effects: covering other people's mouths, ears, and eyes, purportedly for their own good. The sticking points are words that make us feel unsafe or that challenge authority — frequently confused — and portrayals of sex. (American depictions of sex have long been a dance of approach and avoidance; our way of accommodating that friction seems to be to excoriate and entice simultaneously — and then feel bad about it.)

Finan begins with national-interest issues, linking the Espionage Act of 1917 to the repression of radicals and immigrants, then moves on to the persecution of labor activists in the 1920s. He dates the birth of the civil liberties movement from this time, charting in detail the founding of the ACLU and the tactics of Roger Baldwin, its resourceful first executive director, who understood that when the government is hostile and the courts supine, enlisting public sympathy may be the only tool available to the politically oppressed.

The early years of the ACLU exemplify the face-offs that still typify free-speech fights, along with the capacity of the fighters to convince themselves that bad legal decisions and rotten laws could have been worse. Finan also sets up the ever-present tension between compromise and radicalism. Supporting popular speech is easy; it's the offensive words and ideas that put the First Amendment — and civil libertarians — to the test.

Until the 1930s, the courts read the First Amendment as applying only to the federal government. Then came the Depression, which, Finan writes, "created a new tolerance for ideas that had once seemed radical and a new appreciation for those who defended free speech." Civil libertarians were suspicious of the New Deal at

first, as were the anti-Communists who, after the war, hounded individuals in the government, schools, and entertainment industries with loyalty oaths and blacklists. The chill of this second Red Scare lingered into the 1960s, when the government harassed political activists in the civil rights and antiwar movements with domestic spying and other destabilizing activities. But this time, Congress and the Supreme Court resisted, instituting significant First-Amendment safeguards for incendiary speech, student speech, and journalism.

Finan also dives into waves of American culture wars, marked by suspicion of intellectuals and by ever-futile attempts to wall off "good" art from "bad" porn. We learn about the Scopes trial, which challenged the teaching of evolution in schools; the Comstock laws — Finan labels this "the first national censorship regime" — which used the postal system to ban racy novels and information on such topics as birth control; the give-and-take over what can appear in books, magazines, movies, and comic books and on radio and TV; the dustups over public funding for the arts in the 1980s and 1990s; and the backlash against permissiveness stoked by the unlikely alliance of right-wing evangelicals, who sought to protect "family values," and left-wing feminists, who sought to protect women. He also examines prominent free-press victories that expanded protection for dissenting views by prohibiting prior restraint and making it harder for public figures to silence journalists through libel lawsuits.

In the final chapter, Finan presents his most original material, reporting from an activist perspective on our post-9/11 era, with its extreme government secrecy, reignited fear of foreign influences, and vilification of dissent. Temporarily shedding his historian's voice, he offers a first-person account of ongoing efforts to guard civil liberties in the face of a collective national shrug. He notes that most Americans were frightened into accepting repressive measures they might otherwise have resisted and didn't think the Patriot Act affected them anyway until the infamous Section 215 came to light. It allows the government to monitor what anyone takes out of a library or buys at a bookstore. It also prevented librarians and book - sellers from so much as mentioning that the feds had visited them, a restriction they refused to accept. Their resistance helped loosen the gag and add a little accountability to the reauthorized Patriot Act in 2006. And it minted some of Finan's recent free-speech heroes, such as board members of the Vermont Library Association, who led the fight to repeal the offending provisions, and their senator, Bernie Sanders, who took their fight to Congress.

Of the post-9/11 crackdown, Finan writes, "As in the past, the greatest threat to free speech came not from individuals or private groups but from government." Governments do have the power to stifle speech, but so do churches, schools, employers, editors, and sometimes even our neighbors. Censorship is ultimately a transaction between people, and it is individuals who fight it most effectively, often one by lonely one. Finan introduces a host of well- and lesser-known advocates in all their complicated humanity, including the many jurists who upheld the First Amendment with thrilling eloquence.

So maybe the real story of free speech in America is how we came to understand the need to tolerate expression we dislike and to believe that persecuting people for what they say and think is un-American. We still do it, but somebody somewhere can be counted on to rise up to call it unworthy of ourselves and of our nation. To Finan, that is notable progress. "We are fortunate to live in a country that includes many brave souls," he concludes. "They have made freedom of speech one of the glories of American civilization."

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