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America in the twenty-first century exists in a perpetual Dickensian sort of best-of-times-worst-of-times state when it comes to putting into practice the sacred principles of liberty and equal justice. On the one hand, the once unthinkable occurred in November 2008, when the nation – a land that had permitted and promoted human slavery for more than half of its four-hundred-year history – elected an African American man president. The symbolic importance alone of placing Barack Obama at the pinnacle of power in the United States, given its sordid past practices, cannot be overstated. On the other hand, on the very same day, a majority of voters in the most populous state in the union, California, voted to deny thousands of their fellow citizens, gay Americans, the equal right to marry. The California experience is only one of numerous legislative-judicial struggles beginning to play out on the issue of gay marriage in other states around the nation.¹

Taking the long view, if history is any guide (and it is), there is little doubt that the discriminatory laws against gay marriage will eventually end up on history's scrap heap. The current battles will soon go the way of those of some fifty years ago involving interracial marriage, during which one Virginia trial court, in upholding the state's antimiscegenation statute, reasoned: "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix." Most Americans today would view such

language with a mixture of shock and disbelief – but it was not long ago that legislative majorities in sixteen states gave official voice to such ignorant biases.²

Fifty years from now, the current arguments against gay marriage will seem similarly archaic. As the Reverend Martin Luther King Jr. limned, “The arc of the moral universe is long; but it bends toward justice.” For all its faults, the U.S. Constitution has, over time, provided a one-way ratchet toward greater, not lesser, liberty and equal justice – every constitutional amendment but one (the eighteenth, itself repealed by the twenty-first just fifteen years later), for example, has, if anything, expanded Americans’ freedoms.³

America’s story is remarkable: a nation, sprouting from the seeds of Enlightenment principles by which “tolerance was a moral virtue, even a duty; no longer merely the prerogative of calculating monarchs, but a fundamental element of the ‘rights of man.’” For the first time in history a people – coming together toward the common goal of liberty and equal justice, and clearly cognizant of human nature’s split personality between good (freedom) and evil (tyranny and oppression) – created a government explicitly designed to resolve the tension in favor of freedom.⁴

That is the myth, anyway. But all is not well in the land of milk and honey; for America’s constitutional structure has failed to thwart government’s moves to the darker side: its shameful history of slavery and apartheid; its past oppression of women; its systematic subjugation of Native Americans in violation of sacred treaty promises; its pervasive discrimination against immigrants and homosexuals; and, among other more recent repressions, its curtailments of civil liberties and inexcusable use of torture in the ill-considered war on terror. Consider also American geopolitics of the past hundred years: World War I censorship (Congress’s and President Wilson’s 1917–1918 Espionage and Sedition Acts imposing egregious punishments on political speech); World War II nativism (the president’s authorizing of the military to force 120,000 people of Japanese ancestry, two-thirds of them American citizens, from their homes and to quarantine them in internment camps for nearly three years); Cold War McCarthyism (powerful committees of both the U.S. Senate and the U.S. House of Representatives conducting modern-day witch-hunts of thousands of American citizens accused of having communist sympathies); and millennial Cheneyism (the executive branch’s aggressively exceeding long-accepted constitutional limits on its power – even while operating in a system that separates powers to provide checks and balances on each coequal branch).

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In each case, prejudice, greed, and political expediency took hold before being beaten back – for the time being. It is a constant struggle. As much as America has accomplished in advancing humankind's perpetual quest for greater freedom, it has never completely lived up to its own promise, for whatever reason – whether because of bitter class wars (Howard Zinn), its economically motivated Constitution (Charles Beard), or some combination of these or other factors.⁵

Which viewpoint more accurately describes the true America – the mythic common-interest, pursuit-of-equal-liberty view; the grittier class-warfare explanation; the more cynical economic-interest rationale; or something else altogether? The reality is that there are elements of accuracy in each. And it is useful to keep them all in mind: Lest we become swept-up in misty patriotic myth, we should recall America's ignoble history of injustices and intolerance. Conversely, lest we lose hope, we should remember that the myth and partial reality of America as beacon of freedom has for centuries truly inspired millions around the world. In the end, the goals represented in the positive myth are worth fighting for, both idealistically and practically, for they advance our individual and collective humanity – and offer a model of ambition, idealism, and hope for future generations.

In the spirit of Albert Einstein's words in the epigraph to this book, *Radicals in Their Own Time* discusses the personalities of five important Americans who have led the way in bursting some of America's most inglorious chains of injustice and oppression. As noted, progress toward greater freedom in America has never been direct or easy – democracy is messy, and the nation has had its share of despotic leaders and oppressive majorities, but one constant throughout American history has been the recurring theme of individuals of superior character and judgment who have courageously stood up to lead the fights for freedom and justice, despite considerable hardships to themselves. Every generation has them – men and women who speak truth to power in the face of sometimes overwhelming official and unofficial resistance; people who rebel against stifling orthodoxy and demand governmental tolerance and equal treatment even when it seems they alone are waging the fight; individuals who crave freedom from arbitrary authority like the very air they breathe.

This book explores the lives of five such individuals whose lifetimes, laid beginning to end, together form a nearly continuous sweep of four hundred years of American history: Roger Williams (1603–1683), Thomas Paine (1737–1809), Elizabeth Cady Stanton (1815–1902);

W. E. B. Du Bois (1868–1963); and Vine Deloria Jr. (1933–2005). Radicals all, each did more than anyone during his or her respective era to challenge and ultimately force government to honor Americans’ natural birthright of individual liberty and equal justice. Each, as we shall see, has had a profound impact on American history.

These five are especially appropriate for our purposes because all are relatively lesser-celebrated figures in the American historical tableau. None are household names in the manner of a Franklin, Washington, Jefferson, Lincoln, or King. None, moreover, were aristocratic legacies to family political dynasties. Rather, they were self-made, in true American fashion, and so represent well the millions of Americans over the past four centuries who have waged, and wage still, their own battles largely in obscurity.⁶

Part of the reason Williams, Paine, Stanton, Du Bois, and Deloria are less-celebrated is that each was, in a sense, too principled for his or her own good. They were controversial and impolitic. They spoke truth to power in ways irritating to authorities, and all were at times harshly critical of America. They were not approval-seeking, conflict-averse people; rather, they were agitators, and they did not shrink from offending others – not only their enemies but also sometimes their own friends – as they resolutely championed the natural rights of liberty and equal justice. There were no sacred cows for these five – including, for all, the particularly combustible topic of Christian orthodoxy.

Roger Williams, who moved from England to the Massachusetts Bay Colony in 1631 at the age of twenty-eight to escape religious persecution, was expelled from the colony in 1635 for his nonconforming views on religious freedom and separation of church and state. Yet with his views favoring unconditional broad tolerance of the views and practices of all (believers and nonbelievers alike) – “I plead for impartiality and equal freedom, peace and safety to other consciences and assemblies, unto which the people may as freely go, and this according to each conscience, whatever conscience this conscience be” – he set the template for governmental tolerance of religion in the New World in his new state of Rhode Island, which made the guarantee of religious liberty a part of its fundamental law.⁷

Thomas Paine, a corset stay maker’s son who moved from England to the colonies as a thirty-seven-year-old in 1774, faced withering criticism from his more appeasement-minded colonial colleagues (such as John Adams) and charges of sedition in his home country of England. Yet with his flair for the written word (Ben Franklin once said,

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“Others can rule, many can fight, but only Paine can write for us the English tongue”; and Thomas Jefferson, who for many years sent Paine manuscripts for criticism and correction, wrote him, “You must not be too much elated . . . when I tell you my belief that you are the only writer in America who can write better than your obliged and obedient servant – Thomas Jefferson”), Paine was a key intellectual player in not one but two revolutions – penning in *Common Sense* the words that provided “the January heat of 1776 that balanced the July light of Thomas Jefferson’s Declaration of Independence” and lending crucial moral support to the revolutionary cause in its darkest hours.⁸

Elizabeth Cady Stanton, groomed in her upbringing as daughter of a prominent judge in upstate New York to a conventional life as mother and homemaker, long endured mocking disdain from countless strangers and even her own father and husband for insisting that women were morally and legally entitled to equal treatment. Yet with her lifetime of unflinching advocacy for women’s rights – including her two singular landmark creations, the *Declaration of Rights and Sentiments* for the Seneca Falls Convention of 1848, and the *Woman’s Bible* in 1896 – Stanton did more than any single person to establish the framework for eventual gender legal equality in the United States (including the “right” to vote, gained some eighteen years after her death with the Nineteenth Amendment in 1920).

Controversy followed black radical historian, scholar, and agitator-prophet W. E. B. Du Bois during his life and beyond, to the point that the government of his country of birth, America, effectively disowned him during the last year of his life by denying the renewal of his passport while he was abroad in Ghana; and the town of his birth, Great Barrington, Massachusetts, only grudgingly, after a bitter 1969 struggle, established a memorial park at his boyhood home. Yet Du Bois advanced a principled moral approach to race relations and society that predestined the end of Jim Crow and won the hearts and minds of his successors who carried on the civil rights movement. Long committed to core Enlightenment principles, “Du Bois had a towering sense of the Right, of the Just,” explains Du Bois’s literary executor Herbert Aptheker, “[and] a basic faith in reason and a passionate commitment toward achieving the just through the use of reason.”⁹

The Sioux author, scholar, and activist Vine Deloria Jr., whose views on government naturally came through his own tribal traditions, antagonized the establishment while shaking mainstream America out of its complacency with his provocative works exposing the American

government's systematic centuries-long oppression of Indian tribes. Beginning with *Custer Died for Your Sins*, his devastating 1969 critique of the U.S. government and passionate call to action to a new generation of Native Americans, Deloria was a central figure in providing a unifying intellectual, political voice to Indians past, present, and future in their battles for self-determination and reclaiming tribal heritage. As the Indian law scholar Charles Wilkinson comments, "If you mark down the great figures of the American West in recent times, [Deloria] belongs there because of his role in reshaping Indian country. . . . I think in the last 100 years, he's been the most important person in Indian affairs, period."¹⁰

In discussing Williams, Paine, Stanton, Du Bois, and Deloria, this book makes two important observations. First, each argued in essence that governmental tolerance for the autonomy of all citizens is a fundamental, mandatory feature of American democracy. Second, each believed that organized religion was a major source of society's ills (including American government's regular intolerance of citizens' autonomy), and all five endured serious negative repercussions for saying so.

Regarding the first, they believed government must tolerate the personal autonomy of all citizens on the reasoning that matters involving individual choice not affecting the rights of others are natural rights predating government itself. Indeed, in this context, Roger Williams believed the term *tolerance* is itself a misnomer, as it implies that government has the authority in the first place to decide whether or not to recognize the right, whereas the idea of preexisting natural rights forecloses government interference – period.

Thomas Paine explained the concept in the 1792 *Rights of Man*: "Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others." As for the role of society and government vis-à-vis those natural rights, Paine explained in *Common Sense*: "Society in every state is a blessing, but government even in its best state is but a necessary evil; in its worst state an intolerable one." He elaborated in *Rights of Man*: "Man did not enter into society to become *worse* than he was before, nor to have fewer rights than he had before, but to have those rights better secured." In other words, government, which is merely a useful tool devised to protect every person's preexisting natural rights, simply lacks authority to curtail these rights. Government, one might say, is liberty's servant.¹¹

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It makes perfect sense that tolerance of natural rights would be a critical governmental attribute in a country formally dedicated to “free[ing] the individual from the oppressive misuse of power, [and] from the tyranny of the state,” in the words of renowned historian Bernard Bailyn. “No idea is more fundamental,” historian Eric Foner adds, “to Americans’ sense of themselves as individuals and as a nation than ‘freedom’ or ‘liberty.’”¹²

Conceptually, this is easy – when it comes to matters of individual free will causing no harm to others, government is not required to do anything; rather, it must simply stay out of the way and do nothing at all. The mid-nineteenth-century English philosopher John Stuart Mill aptly articulated the concept with his harm principle: “The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.” A century and a half earlier, John Locke, the great thinker of the European Enlightenment who was probably the most influential source of revolutionary American political thought (Thomas Jefferson, for example, considered Locke “[one of the three] greatest men that have ever lived, without any exception”), wrote: The care . . . of every man’s soul belongs unto himself, and is to be left unto himself.” To Locke, government acts properly in protecting individuals from fraudulent or physical harm but acts improperly when it paternalistically regulates private choice. It must, in other words, tolerate individual free will.¹³

The U.S. Supreme Court has also recognized this principle (albeit too infrequently). As Justice Louis Brandeis intoned in acknowledging the concept in a 1928 case: “The makers of our Constitution . . . conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation.” Or, as a majority of the Supreme Court commented in 1943 in striking down a West Virginia law requiring schoolchildren to recite the Pledge of Allegiance, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what is orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” And in one of its finest moments, in a 2003 case striking down a Texas law punishing consenting adults for certain sexual behavior within their own homes, the Supreme Court majority explained: “Freedom extends beyond spatial

bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”¹⁴

To Williams, Paine, Stanton, Du Bois, and Deloria, too, a tolerant government does not interfere, thereby allowing diverse viewpoints and practices the necessary breathing space they require in a free pluralistic society. Roger Williams believed government should stay separate from – that it should tolerate – all religious practices. Thomas Paine was committed to the commonsense principle that government must not abridge – that it must tolerate – the individual rights of all people. Elizabeth Cady Stanton demanded that government replace a legal regime imposing separate, inferior status on women with one that recognizes – that tolerates – the equal legal status of women. W. E. B. Du Bois tirelessly challenged government to repudiate laws and practices that institutionalized white supremacist principles and thereby to accept – to tolerate – black people as equals under the law. Vine Deloria Jr. spent his lifetime exposing the practices of a U.S. government that systematically reneged on its solemn promises to leave alone – to tolerate – Indian tribes with their native lands and traditions and pointed the way forward for how that government should make amends for its egregious breaches of faith.

It is worth noting what governmental tolerance is not. It is not a strict libertarian approach in which government would have little or no role in all matters – instead, as Thomas Paine said, “the Public Good is to be [government’s] object.” Government has vital, important functions. In exercising those functions, however, elective government acts legitimately only insofar as it respects the individual’s “right to be let alone.” All government activity must be guided by this test – if the elective government’s action abridges individual free will on matters of natural private concern, presumptively it is not legitimate and should be struck down by another branch of government – the judiciary. Outside of such freedom-depriving sorts of actions, however, elective government is free to enact policy as it will – whether progressive, conservative, or of any other description. This is where the people and their representatives exercise the will of the majority in a democratic society. In such cases, judicial intervention is inappropriate, and an intervening court would raise legitimate countermajoritarian-difficulty concerns. Finally, at the same time, when judicial opinions fail to respect liberty and/or equal-justice interests, it is elective government’s responsibility to enact legislation to (among other things) guide the judiciary.¹⁵

One last note on tolerance: as much as one may sing its praises, it is important not to view governmental tolerance as a panacea for all

of society's ills. As Professor Michael Walzer notes, "Tolerance brings an end to persecution and fearfulness, but it is not a formula for social harmony. Newly tolerated groups [and individuals], insofar as they are really different, will often also be antagonistic, and they will seek political advantage." The point is that in a governmental tolerance regime, the one thing those groups and individuals will not be able to do, even while seeking political advantage, is to enlist government assistance in denying the other groups and individuals from engaging in their preferred activities. Government, with rare exceptions, must tolerate them all.¹⁶

The second observation, again, is that each of the five profiled radicals argued that organized religion (especially Christian orthodoxy) has been a significant source of intolerance throughout American history – just as it had been for many centuries previously in Europe. Each admired Jesus Christ the man, and the principles of tolerance, equality, humility, and forgiveness he advocated. "[Jesus] was a virtuous and an amiable man," Thomas Paine explained in *The Age of Reason*. "The morality that he preached and practiced was of the most benevolent kind." Indeed, they admired his stubborn commitment to principle (recognizing, no doubt, some of themselves in Christ's own life experiences): "[Christ] preached also against the corruptions and avarice of the Jewish priests; and this brought upon him the hatred and vengeance of the whole order of priesthood," Paine recalled. "The accusation which those priests brought against him was that of sedition and conspiracy against the Roman government, to which the Jews were then subject. . . . Jesus Christ [likely] had in contemplation the delivery of the Jewish nation from the bondage of the Romans." For that, Paine explained, "this virtuous reformer and revolutionist lost his life." One might accurately say Jesus Christ was himself a radical in *his* own time.¹⁷

What Paine and the others objected to were the elaborate superstitions and practices that arose around Christ's teachings in the many centuries following his death, which variously punished, stigmatized, marginalized, and victimized certain individuals or groups. And for daring to challenge the church's dogma – which has always been accepted essentially verbatim by the vast majority of Americans, with marginal variations depending on the particular Judeo-Christian flavor – all five, to varying degrees, were vilified.

Williams railed against the hypocrisy of religious wars: "The blood of so many hundred thousand souls of Protestants and Papists, spilt in the Wars of present and former Ages, for their respective Consciences, is not required nor accepted by Jesus Christ the Prince of Peace." In the end,

for having “broached and divulged [such] diverse new and dangerous opinions against the authority of magistrates,” Williams was banished – literally to the wilderness – from the Massachusetts Bay Colony.¹⁸

Paine said, “I do not believe in the creed professed by the Jewish church, by the Roman church, by the Greek church, by the Turkish church, by the Protestant church, nor by any church that I know of,” explaining instead: “My own mind is my own church.” “All national institutions of churches, whether Jewish, Christian, or Turkish,” he added, “appear to me no other than human inventions set up to terrify and enslave mankind, and monopolize power and profit.” These are fighting words in a Christian country like America; and in 1888, approaching a century after his death, Paine was still being derided as “that dirty little atheist” by the likes of Theodore Roosevelt.¹⁹

Elizabeth Cady Stanton charged, too, that the clergy were responsible for much of society’s ills, especially for women. “I now see more clearly than ever, that the arch enemy to women’s freedom skulks behind the altar,” she ruminated in 1886. “No class of men have such power to pervert the religious sentiments and oppress mankind with gloomy superstitions through life and an undefined dread of the unknown after death.” But Stanton was convinced the clergy did not truly speak for the Almighty, reasoning, “I cannot believe that a God of law and order . . . could have sanctioned a social principle so calamitous in its consequences as investing in one-half the race the absolute control of all the rights of the other.” To so baldly criticize mainstream Christian orthodoxy at the turn of the twentieth century was too radical even for most women’s rights activists – who distanced themselves from Stanton by issuing a formal censure at the 1896 National American Woman Suffrage Association convention, and for decades after her death rendering her persona non grata even while canonizing her longtime collaborator Susan B. Anthony.²⁰

Although W. E. B. Du Bois believed the true teachings of Jesus were morally uplifting, he had “no particular affection for the Church. I think its record on the Negro problem has been shameful. . . . [T]he southern branch of the Church is a moral dead weight and the northern branch . . . never has had the moral courage to stand against it.” “The church of John Pierpont Morgan,” he stressed, “[is] not the church of Jesus Christ.” “Of course, it is the Churches which are the most discriminatory of all institutions!” The U.S. government sued Du Bois on trumped-up charges after his turn to the avowedly atheist communist nations of China and Russia, and then, as noted earlier, effectively