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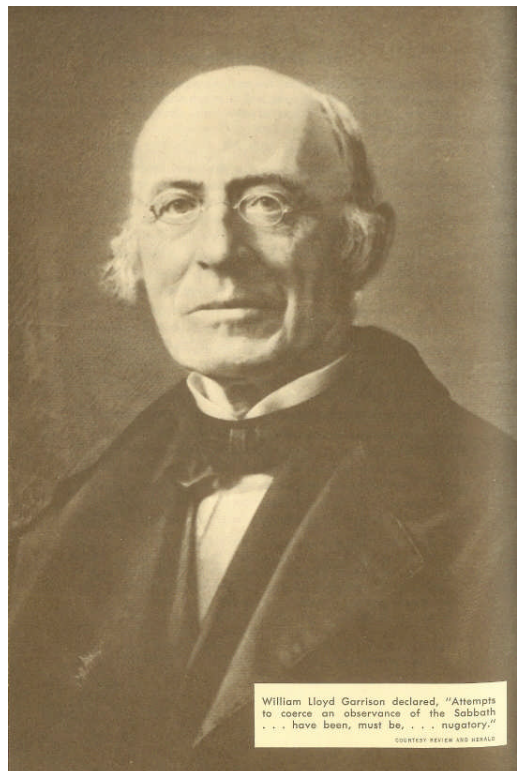
5. **“UPRIGHT
PERSONS HAVE
BEEN THRUST
INTO PRISON”**

The chill of the Pennsylvania winter would have slowed a less ambitious man. But not Charles C. Burleigh, flaming orator of the old school, intent on exposing the slavery that flourished in parts of mid nineteenth-century America.

Arriving in West Chester in February, 1847, he was prepared to promote his cause through public lectures and printed pamphlets. The public listened willingly, but the crusader's efforts ground to an abrupt halt. Burleigh customarily distributed antislavery literature at the conclusion of his lectures. But when he sold this literature following a Sunday lecture in West Chester, he went to jail, not because of his progressive views on human freedom, but because selling *anything* on Sunday, even Christian literature, violated the local blue law. Twice during the month of February, 1847, he went to prison for this same cause, once for six days.¹

While Congress had not succumbed to pressures to create Federal Sunday legislation, blue laws in the states had survived the general disestablishment of religion. In most cases the leaders of the antislavery movement were fighting both slavery and enforced Sunday worship as infringements on human rights. As early as 1836, William Lloyd Garrison, fiery editor of *The Liberator*, had editorialized: [44] “Certain we are that all attempts to coerce an observance of the Sabbath by legislation have been, must be, and ought to be, nugatory.”² He cried out against the utilizing of civil or ecclesiastical pains and penalties in order “to enforce its observances, as a peculiarly holy day.”³

An attempt was made to arrest Garrison under a charge similar to that leveled against Burleigh. The abolitionists concluded the time had come to resist the Sunday-law flanking attack. In a statement drafted by Garrison and signed by Burleigh and other



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COURTESY: PETER AND DEBRA

abolitionist spokesmen, an anti-Sunday-law convention was called in Boston, Massachusetts, for March 23 and 24, 1848. The convention call, addressed “An Appeal to the Friends of Civil and Religious Liberty,” pointed to the widespread existence of “laws enforcing the religious observance of the first day of the week as the Sabbath, and punishing as criminals such as attempt to pursue their usual avocations on that day.”

Citing recent so-called “crimes” of alleged Sabbath desecration in Massachusetts, Vermont, Pennsylvania, and Ohio, the call noted that “conscientious and upright persons have been thrust into prison for an act no more intrinsically heinous than that of gathering in a crop of hay, or selling moral or philanthropic publications.” The Garrison-Burleigh document also referred to an organized religious combination that had been formed during the past five years under the name “The American and Foreign Sabbath Union,” which hoped “to impose the Sabbatical yoke yet more heavily on the necks of the American people.” “Religious bigotry and ecclesiastical tyranny” inspired these efforts, since there was a reliance upon brute force and penal law in the Union's effort “to crush by violence the rights of conscience, and religious liberty and equality.” “Their real spirit,” the document concluded, “is revealed as at war with the genius of republicanism and the spirit of Christianity.”

[45] Criticizing the blue law as “a shameful act of imposture and tyranny,” these reformers denounced “all penal laws respecting the religious observance of any day as the Sabbath” as despotic and anti-Christian and demanded that they should be repealed promptly.⁴

Following such a massive uproar, it came as no surprise that the 1848 Boston convention produced a package of six resolutions calling for the abolition of all state Sunday blue laws. The resolutions charged that those “who are for subjecting to fine or imprisonment such as do not receive their interpretation of the Scriptures in regard to the observance of the first day of the week as the Sabbath, are actuated by a mistaken or malevolent spirit . . . which in various ages, has resorted to the dungeon, the rack, the gallows, and the stake, for the accomplishment of its purpose.”⁵

Those in attendance at the convention reasoned that if there was a law indicating the proper day for religious worship and forcing abstinence from work on such a day, laws could eventually be established which would force the people to worship at certain places and times, all under government supervision. By the same token, laws might determine the doctrines to be preached and the ordinances to be observed. Since the young nation had proved a refuge from the scourge of church-state tyranny, and since the people were accustomed to making their own decisions regarding worship, liberation from Sunday legislation seemed a logical next step. Supporters of

religious liberty were urged to petition their state legislators for blue-law repeal.

With characteristic articulation, Garrison spoke in vehement defense of the convention resolutions, likening the Sunday law advocate to a thief that warns, “If you do not obey me, I will put my hands into your pocket, and take out as much as I please in the shape of a fine; or if I find nothing there, I will put you in prison; or if you resist enough to require it, I will shoot you dead.”

“Passing a law, forbidding me or you to do on a particular day, what is in itself right . . . is nothing better than sheer usurpation,” Garrison warned.

[46] Garrison relegated blue laws to the class of “tyrannical legislation which formerly sent men to the stake, in the name of God and for His glory, because they did not agree in the theological views of those who burnt them to ashes.”

“If it [Sabbatical observance] be of God, it does not need legislation to uphold it,” Garrison reasoned. “There is no power which can prevail against it.”

Since Christianity, as taught by its Founder, does not rely for its safety and prosperity “on the rack or the stake, the dungeon or the gibbet, unjust proscription or brutal supremacy,” why not “let the first day of the week stand on its own basis, as the second or third day stands?”

If we do so, Garrison predicted, “it will be much more rationally observed than it is now.”⁶

While the work of Garrison and others in the antislavery cause was successful, their efforts to defeat Sunday laws largely failed, perhaps because slavery and national union were the ultimate political concerns of the day.

Meanwhile, undeterred by the Federal Bill of Rights, local states continued to enforce Sunday observance. In a steady stream of decisions, the majority of state courts sanctioned blue laws for obviously religious objectives.

The Massachusetts Supreme Court in 1880 tied the statutes of that era to the Puritan pioneers when it observed:

Our Puritan ancestors intended that the day should be not merely a day of rest from labor, but also a day devoted to public and private worship and to religious meditation and repose, undisturbed by secular cares or amusements. They saw fit to enforce the observance of the day by penal legislation, and the statute regulations which they devised for that purpose have continued in force, without any substantial modification, to the present time.⁷

[47] An earlier Massachusetts court had accepted the religious establishment of Sunday because “the legislative power or the uniform usage of every Christian state has exacted the observance of it as such.”⁸

Chief Justice English, of the 1856 Arkansas Supreme Court, defended Sunday laws in an opinion involving playing cards: “The object of the statute was to prohibit the *deseccration* of the *Sabbath* by engaging in the vicious employment of playing *cards* on that day, which is set apart by Divine appointment, as well as by the law of the land, for other and better engagements; and whether the defendant played for a wager or amusement, he is alike guilty of a desecration of the Sabbath, and consequently of a violation of the law.”⁹

Chief Justice Kent of New York described the Sunday law of his day (1811) as a statute which “consecrates the first day of the week, as holy time.”¹⁰ Decades later, in 1834, another New York jurist pointed to the obvious solemnity of the day.”¹¹

A short time prior to the abolitionists' anti-Sunday-law convention in Boston, the Alabama Supreme Court found the legislative intent clear to “advance the interest of religion, by prohibiting all persons from engaging in their common and ordinary avocations of business, or employment, on Sunday.”¹² And it was in the year of the Boston convention that the Iowa case of *Davis v. Fish* was reported, attesting to the sacred character of Sunday as a Heaven-appointed institution which was “established by laws, both human and divine, for public worship and private devotion.”¹³

A Minnesota Sunday law was enforced “to prevent a desecration of the day.”¹⁴ Just before the Civil War, a Georgia court described Sunday as “that holy day.”¹⁵

Shortly after the war, the Georgia Supreme Court heard the case of *H. Karwisch v. The Mayor and Council of Atlanta*, relating to the rights of a citizen to keep the doors of his business open on the first day of the week. [48] The court declared, “The law fixes the day recognized as the Sabbath day all over Christendom, and that day, by Devine injunction, is to be kept holy – on it thou shalt do no work.”¹⁶

In the case of *Judefind v. The State of Maryland*, in 1894, Judge Boyd argued that the spirit shown in the religious-liberty declaration of the Maryland constitution was satisfied as long as free exercise of religion was permitted, even though the Christian religion enjoyed preferred status. He admitted, “It is undoubtedly true that rest from secular employment on Sunday does have a tendency to foster and encourage the Christian religion.”¹⁷

Mr. Judefind, a Seventh-day Adventist of Rock Hall, Maryland, had been arrested November 20, 1892, on a charge of husking corn on Sunday. Pastor Rowe, of the local Methodist Episcopal church, was the accuser.

While passing by on an adjacent road, he testified, he spotted Judefind at work in his field. The warrant was issued and served later that same day, Sunday – an act in itself out of harmony with local legal practice. Although the justice of the peace who issued the warrant and tried the case later denied this procedure, the constable who served the warrant admitted to having done the work on Sunday.

The justice of the peace fined Judefind five dollars. Judefind appealed to the circuit court, and the case was heard in Chestertown, in April, 1893, with Attorney Ringgold of Baltimore acting for the defense. When judgment was withheld at time of trial, Ringgold gave notice of intent to appeal in the event of an adverse decision and returned to Baltimore expecting that he would be informed when the court was prepared to render its decision in the case.

“At the end of a week, Judge Wicks, in the absence of the counsel for the defense, delivered the opinion of the court, and committed the defendant to jail for thirty days. When Mr. Ringgold received notice of this fact, he journeyed to Chestertown and applied for a writ of release for the defendant, pending the appeal; but the judges refused to sign the release, and Mr. Judefind had to serve his time out before the case was heard in the court of appeals, January 23, 1894.”¹⁸ [49]

Judefind could find little comfort in the contention of Judge Boyd that, though the state law favored Sunday, free exercise of religion was permitted for all.

The Judefind case is not particularly refreshing either in its reflection on due process of law or respect for freedom of conscience. And it does not stand alone as a phenomenon of the times. In the nineteenth century, Sunday laws served as an active instrument of religious intolerance in more than one state.

Organized as a church in 1863, Seventh-day Adventists were committed to the doctrine of Sabbath observance from sundown Friday evening to sundown Saturday evening, as a memorial of creation. They were also committed to civil obedience, respect for government, and love of country. Their leaders counseled them honestly to endeavor to obey Sunday laws, however unjust.

Still there were some who, like Judefind, misjudged the zeal of their spies and critics. At Shady Side, Maryland, a “Watchman's Association” was formed for the avowed purpose of spying on the Sunday conduct of seventh-day observers in hopes of ferreting out “illegal” actions and sending them to jail “or driving them from the country. . . . The door and transom of their meetinghouse at this place were broken and their worship was disturbed.” A Mr. Howard was arrested for taking two or three minutes to pick up some sticks in a churchyard Sunday morning before breakfast. A Mr.

Bullen ran afoul of the law for inspecting his garden for five minutes one Sunday. This happened at a time when “axes were to be heard all around the neighborhood. Even their informants were caring for their boats, bailing out water, drying sails, etc., preparing to amuse themselves on the same 'Lord's day,' commonly called Sunday.”

[50] A Mr. Ford, of Queen Anne's County, Maryland, swore he would prosecute the first Seventh-day Adventist he could find at work on Sunday. Consequently he was instrumental in the arrest of his own brother on June 5, 1893. The crime was the act of “hauling some window sashes for the new Seventh-day Adventist church, from the steamer dock on Sunday, to prevent their being destroyed, threats to that effect having been made.”¹⁹

Samuel Mitchel, a Seventh-day' Adventist of Quitman, Brooks County, Georgia, was sentenced to thirty days in jail in 1878 for plowing his own field. Although in poor health, he served the sentence rather than pay the fine.

In 1889, Day Conklin of Bigcreek, Forsyth County, Georgia, was found guilty of chopping wood on Sunday. The Friday before, much of his family's possessions had been soaked in a cloudburst while moving. The weather turned bitter cold, and with his meager supply of firewood exhausted by Sunday, Conklin acted to preserve the health of his family.

Fine and court costs totaled \$83! Eradicating all doubt as to the motive behind Conklin's conviction, one of the witnesses against him, and one of the jurors giving the verdict, “chopped wood at their own homes on the very next Sunday after the trial”²⁰ apparently immune to any threat of prosecution. But Conklin was a Seventh-day Adventist.

Seventh-day observers were charged with a wide variety of Sunday-law violations. In Arkansas, J. W. Scoles, a clergyman, was seen painting the back of a church “out of sight of all public roads.” James A. Armstrong dug potatoes in his field. William L. Gentry plowed on his farm. Fourteen-year-old John A. Meeks hunted squirrels. J. L. James did carpenter work as an act of charity. He worked in the rain to repair a house for a widow about to be evicted from her home. The widow was a Methodist. The informer was a minister of the Missionary Baptist Church who had a habit of chopping wood for his own use on Sunday. J. L. Shockly cleared land and hauled rails. Joe McCoy plowed his field. John Neusch picked some overripe peaches which threatened to spoil on the trees.

[51] In 1887, Arkansas State Senator R. W. Crockett, grandson of the legendary “Davy,” made an impassioned plea to his cohorts to restore an exemption for seventh-day observers which would offer some relief from Sunday-law enforcement. The exception was restored after Crockett's dramatic plea which cited the hardship case of a Mr. Swearingen:

He was a member of the Seventh-day Adventist Church, and after having sacredly observed the Sabbath of his people (Saturday) by abstaining from all secular work, he and his son, a lad of seventeen, on the first day of the week went quietly about their usual avocations. They disturbed no one – interfered with the rights of no one. But they were observed, and reported to the grand jury – indicted, arrested, tried, convicted, fined; and having no money to pay the fine, these moral Christian citizens of Arkansas were dragged to the county jail and imprisoned like felons for twentyfive days – and for what? For daring in this so-called land of liberty, in the year of our Lord 1887, to worship God!

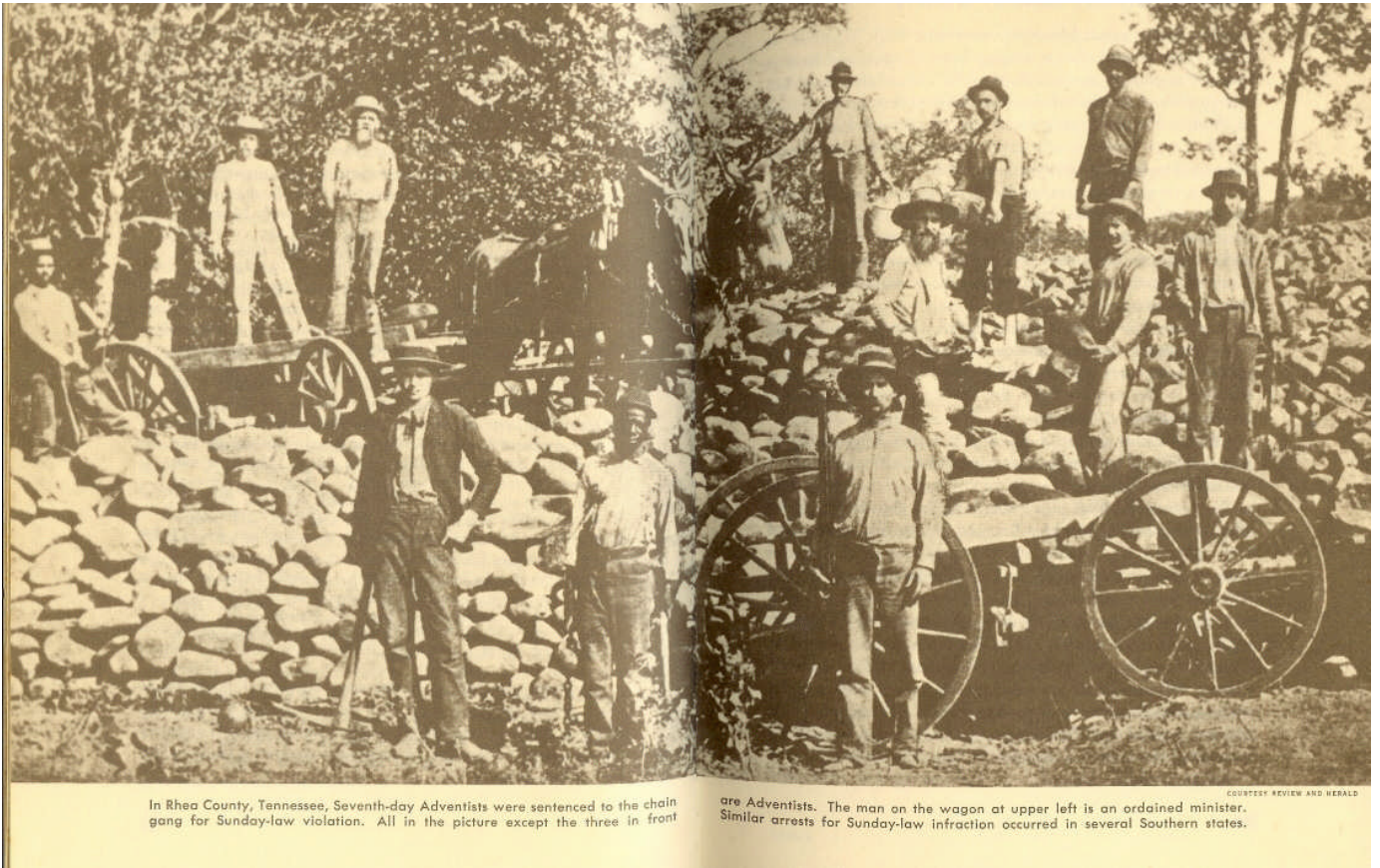
Was this the end of the story? Alas, no sir! They were turned out; and the old man's only horse – his sole reliance to make bread for his children, was levied on to pay the fine and costs, amounting to thirty-eight dollars. The horse sold at auction for twenty-seven dollars. A few days afterward the sheriff came again, and demanded thirty-six dollars, eleven dollars balance due on fine and costs, and twenty-five dollars for board for himself and son while in jail. And when the poor old man – a Christian, mind you – told him with tears that he had no money, he promptly levied on his only cow, but was persuaded to accept bond, and the amount was paid by contributions from his friends of the same faith. Sir, my heart swells to bursting with indignation as I repeat to you the infamous story.²¹

Tennessee also had an unfortunate number of prosecutions which offered evidence suggesting that the law was being arbitrarily exercised against a religious minority. It was in Tennessee that convicted Sunday-law violators were reserved a place in line on the chain gang.

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[54] Four Seventh-day Adventists were tried May 27, 1892, at Paris, Tennessee, on charges ranging from chopping and hauling firewood to plowing in a strawberry field. After being fined \$25 apiece, three of the defendants were marched through the streets of Paris in the chain gang and forced to perform street labor. W. B. Capps served ninety-seven days in jail for performing ordinary farm labor in Dresden, Tennessee.

Then there was the case of R. M. King, a Tennessee farmer charged with cultivating his corn on a Sunday in June, 1889. Members of his community had urged King to forsake his beliefs and conform to the Sunday-keeping traditions of his neighbors. They suggested that he either change his ways, move away, or face prosecution.



In Rhea County, Tennessee, Seventh-day Adventists were sentenced to the chain gang for Sunday-law violation. All in the picture except the three in front

are Adventists. The man on the wagon at upper left is an ordained minister. Similar arrests for Sunday-law infraction occurred in several Southern states.

It was no idle threat! Citizens signed a pledge late in 1888 to prosecute all observed Sunday violations. Hunting, fishing, ordinary farm labor, and urgent business were common Sunday practices in the neighborhood. But the vigilantes had eyes only for the seventh-day observers.

Obion County Justice J. A. Barker found King guilty on July 6, 1889. The fine and costs totaled \$12.85, which King had to forfeit.

Next came a grand jury indictment for virtually the same offense for which he had been fined by Barker. He was charged with “plowing on Sunday, and doing various other kinds of work on that day [June 23] and on Sundays before that day without regard to said Sabbath days.”

Judge Swiggart and a jury heard the matter in Troy, Tennessee, on March 6, 1890. The defense was not allowed to introduce evidence of the previous conviction for the June 23 offense. Within a half hour the jury was back with a guilty verdict. This time the fine was \$75. The judge refused a new trial and warned that “Mr. King and all other men should and must obey” the laws of Tennessee “or leave the country.”²²

King appealed.

[55] Colonel T. E. Richardson represented the appellant and submitted a brief to the state supreme court. But the trial verdict was sustained in 1891. Don M. Dickinson, Postmaster General in 1888-89, joined

with Richardson in representing King's case on appeal before the United States Circuit Court for the western district of Tennessee.

In an August 1, 1891, decision, Federal Judge Hammond acknowledged that “by a sort of factitious advantage, the observers of Sunday have secured the aid of the civil law, and adhere to that advantage with great tenacity, and in spite of the clamor for religious freedom and the progress that has been made in the absolute separation of church and state, and in spite of the strong and merciless attack that has always been ready, in the field of controversial theology, to be made, as it has been made here, upon the claim for divine authority for the change from the seventh to the first day of the week,”²³ they cling to their advantage.

But the Federal Court refused to reverse the decision because, in the court's words, “The proper appeal is to the legislature. For the courts cannot change that which has been done, however done, by the civil law in favor of the Sunday observers.”

Like the Judefind case of Maryland, the King case epitomized judicial recognition of enforced Sunday observance as *a religious institution*.

The decisions reflected an era pockmarked with widespread religious agitation on the issue. During the years 1895 and 1896 alone, “no less than seventy-six Seventh-day Adventists were prosecuted in the United States and Canada under existing Sunday laws. Of these, twenty-eight served terms of various lengths in jails, chain gangs, etc., aggregating 1,144 days.”²⁴

Not always did the Sunday-law violators lose their cases. The Sullivan Wareham family moved from Montana to Greenville, South Carolina, to farm. [56] Worshipers on the seventh day, they were seen picking strawberries on Sunday, May 2, 1909, and with others of like belief, charged with disrupting “the peace and dignity of the State of South Carolina.”

This time, a friendly jury took only thirty minutes to return a “not guilty” verdict. The case drew wide attention and prompted the Washington Post of August 19, 1909, to editorialize:

A few days ago a thoroughly orthodox Christian in one of the Southern States found five members of the Adventist faith working in the field on a Sunday. Deeply imbued with the gloomy faith of a John Balfour of Burley, this excellent and exemplary man, just from the sanctuary, where he worshiped in the name of Him who sat at meat with publicans and sinners and plucked green corn on a Sunday – this child of orthodoxy and cruelty swore out a warrant, and had the five arrested for breaking the Sabbath.

The jury was composed of enlightened men, and the accused were acquitted on the plea that they kept one day of the week holy, a

Saturday. And such is orthodoxy, that argues by the stake, the fagot, and the torch. This paper is not sectarian, though it is Christian, and as an observer of men, things, and events, it is ready to say that as few criminals, male and female, are recruited from the Adventists as from any other sect, numbers computed.

They work Sundays, but they keep Saturdays, and that fulfills the law of God, as it should of man. These folk are earnest, sincere Christian men, women, and children. They may be wrong in faith, desperately wrong. That is a matter of conscience; but their consciences are about as likely to be right as yours or ours. "Leave thought unfettered every creed to scan," and take care of your own conscience. That will keep you busy without meddling with the consciences of other people.²⁵

In 1848, William Lloyd Garrison had hopefully predicted the imminent demise of blue laws. "I am confident that, in the course of a few years, there will not be a Sabbatical enactment left unrepealed in the United States, if in any part of Christendom."²⁶

[57] Logic gave substance to optimism, but the facts of history shattered the dream.

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