

The Crisis and

By James

I. *What Is a*

This is the first of a series of important fundamentals of the American government. In succeeding numbers, Mr. Adams tion," our changing government, and ing a thesis but rather presenting facts people will have to answer before they paramount issues

THE past two decades have witnessed almost unprecedented changes, considering the interests at stake, in the governments of the civilized world. Economic and other discontents have caused the overthrow of kingdoms, empires, and other old-established forms on all sides. One might have hoped that when old governments were being destroyed and new ones erected in a score or so of countries the field of political economy might prove unusually fertile in the production of new ideas. Unfortunately it has not been so and thus far the twentieth century would seem to be behind the eighteenth. To mention only two ideas which come to us from the latter we may note Jefferson's plan for the development of the West, and the gradual erection and incorporation in the Union of new States, with all the privileges of the old, which enabled a self-governed Republic to grow to a size which had always theretofore been considered impossible. Another idea, likewise American, was that of allowing the British colonies to become practically independent, linked to the mother country solely by the Crown, an idea which, when finally accepted produced the British Commonwealth of Nations of today, the most populous and widely-extended political unit which the world has ever seen.

As compared with such fecund ideas as these and others of a century and a half or so ago, our own generation does not appear to have been as successful in coping with the needed governmental adaptations to the economic and other demands of the present and future. Indeed, in spite of much attempted rationalizing of fascism and other "isms," it is hard, in looking around today, to find much which is genuinely both new and constructive. Mussolini, Hitler, and the host of smaller dictators scattered from Spain to Asia Minor, however able they may or may not be as individuals, are not distinguishable from the old despots, and at the best can be merely temporary stop-gaps until the peoples find more permanent and satisfactory forms of government. Thus far, those nations which had become most imbued with the eighteenth-century doctrines are those which have best weathered the storm, whether we judge by economic recovery, political stability, or individual freedom and happiness. It may be considered therefore that there is something to be said for those doctrines, provided that they fit the race which embraces them.

Our own country escaped almost all the horrors of the war, and, with the sharp but brief depression of 1920-1921, we escaped economic suffering on any large scale until well after 1929. Our political institutions thus went mostly unquestioned from the pre-war period

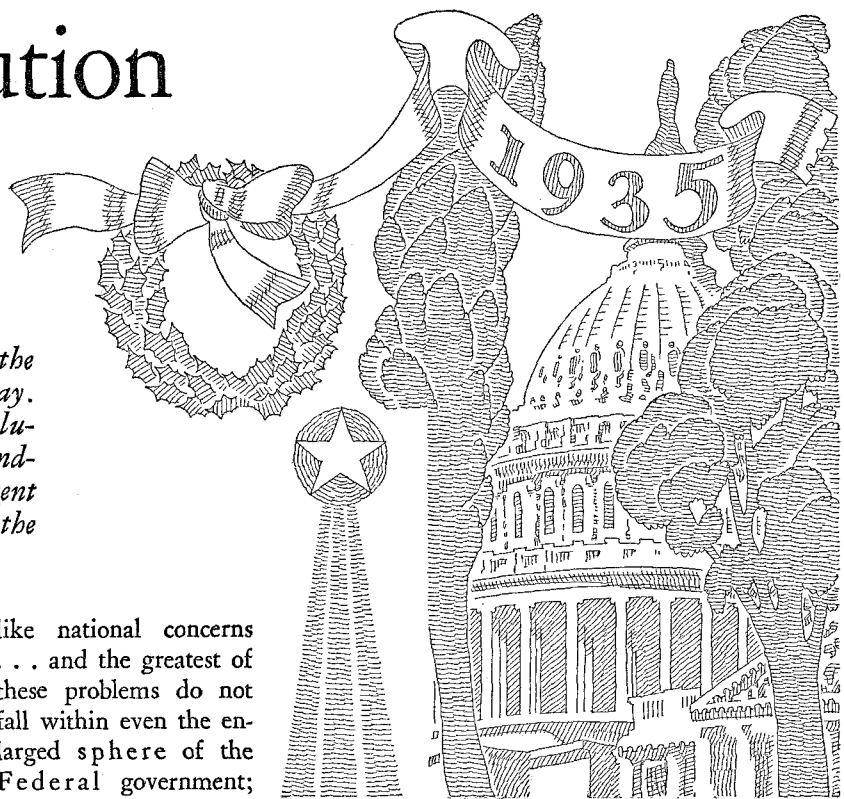
of Theodore Roosevelt and Wilson until now. It looks, however, as though the nature and power of our Federal government might become leading issues in the next campaign. Our attempts to deal with economic and social questions may bring us squarely up against what is very loosely and often wrongly called "the Constitution." The, present Roosevelt administration, in its desire and effort to achieve wholesale reforms, as they appeared to it, apparently went ahead with its mind wholly intent on what were considered desirable aims and the legislation necessary to secure them. It forgot the Constitution. The historic decision of the Supreme Court in the NRA Schechter Poultry case startled not only the administration and its advisers but the American people also. It was suddenly brought home to every one that there was something more to the American government than an optimistic, social-minded Executive and a subservient Legislature. Would that "something more" dangerously interfere with or make impossible our efforts to adjust our national life to the social and economic conditions of the new world as it is developing? Would it, as Roosevelt suggested, put us back into "the horse and buggy days"? The question is both legitimate and important. In discussing it in this series of articles I have no intention of entering upon an erudite legal examination of our government but rather to suggest certain general ideas and points of view which may be of use in trying to understand the problem in its entirety and not with reference to any one bill, reform,

the Constitution

Truslow Adams

Constitution?

articles by an eminent historian on the ment in relation to the situation today. will discuss the "Roosevelt Revolution" the future. Mr. Adams is not expound- and posing questions which intelligent can determine their own attitude on the of the day



or program. This first article will of necessity be more general than the others.

We may note at the beginning that the question is not new, nor is the crisis, whether really grave or not, a sudden one. In a later article we shall try to show how the Constitution has developed; here, in order to get some historical perspective, we need only quote a few words from a distinguished American of the same party as Roosevelt. "There are voices in the air," he wrote, "which cannot be misunderstood. The times seem to favor a centralization of governmental functions such as could not have suggested itself as a possibility to the framers of the Constitution. Since they gave their work to the world the whole face of that world has changed. The Constitution was adopted when it was six days' hard travelling from New York to Boston; when to cross the East River was to venture a perilous voyage; when men were thankful for weekly mails; when the extent of the country's commerce was reckoned not in millions but in thousands of dollars; when the country knew few cities, and had but begun manufactures; when Indians were pressing on near frontiers; when there were no telegraph lines, and no monster corporations. Unquestionably, the pressing problems of the present moment are the regulation of our vast systems of commerce and manufacture, the control of giant corporations, the restraint of monopolies, the perfection of fiscal arrangements, the facilitating of economic exchanges, and many other

like national concerns . . . and the greatest of these problems do not fall within even the enlarged sphere of the Federal government; some of them can be embraced within its jurisdiction by no possible stretch of construction, and the majority of them only by wresting the Constitution to strange and as yet unimagined uses." Those are not the words of a member of the Brain Trust in 1935 but of a brilliant young student of government in 1884, fifty-one years ago, Woodrow Wilson. Yet in spite of Wilson's forebodings, in that momentous half-century of change, including our transformation into a world-power with an over-seas empire, the Constitution, by the usual methods of amendment, interpretation, and others, has stood the strain until today.

Nor in his prediction was the youthful Wilson making the mistake so often made of considering the Constitution as only that admirably lucid and brief document drawn up in 1787, with its subsequent formal amendments. He was considering the whole Constitution as it then stood. Leaving to the next article the discussion of what specifically the American Constitution does consist of, we may here ask what is a constitution, any constitution? The answer may possibly help to clarify the whole problem.

We may say, I think, that a constitution is that entire body of fundamental laws, customs, beliefs, habits, outlooks, and so on which limit the en-

actment, or, if enacted, the enforcement, of laws. Webster in his dictionary defined it as "the mode of organization of a social group," and more definitely as "the fundamental, organic law or principles of government of a nation, state, society, or other organized body of men, embodied in written documents, or implied in the institutions and customs of the country or society."

It is immensely important that we should bear this wide definition in mind, or we cannot understand constitutional problems, such as we may have to discuss and vote on. Constitutions are sometimes classified as written and unwritten, with the American as an example of the former and the British of the latter. In fact, however, although it is possible for an illiterate people to have a wholly unwritten constitution it is impossible for any people to have a wholly written one. Even among civilized peoples the distinction rapidly breaks down. In Great Britain, the Magna Carta and many other written documents and records are cornerstones of the constitution, and in the United States there is much which is part of the Constitution and yet which is not embodied in formal written record, all that part, for example, which Webster speaks of as "implied in the

institutions and customs" of a country or society.

Institutions and customs spring from the character and needs of a people. The often extremely rigid *mores* of a savage tribe, by which their whole public and private life may be regulated, arise naturally and are not the result of any conscious effort to mold those lives. Nevertheless, they are likely to prove very effective as a constitution of that particular society. Even in the most irresponsible form of government, a tyrant ruling apparently only according to the dictates of his own unpredictable will, we speak of a "despotism tempered by assassination," indicating that there are limits within which he can exercise that will but beyond which he cannot go with safety.

This applies, in varying degrees, to all forms of government, and it means that behind any written clauses in a constitution or the unwritten parts of it, there is always molding and influencing it—indeed a part of it—the character, daily habits, and desires of the people. In all law, constitutional or other, words tend strongly to remain the same while, nevertheless, they subtly change their meanings. Let us suppose that when we inaugurated our government in 1789 in accordance with the "Constitution of 1787," the kernel of our present one, the same Constitution had been adopted simultaneously by a South European, a South American, and an Oriental nation. If all had retained them, there can be no question but that, just as ours has changed greatly through amendment, interpretation, accepted usage and in other ways, so also would have each of the others. Each, however, would have changed in accordance with the spirit of the people until, although the original document of 1787 might in each case remain as Wilson well called it, the "tap root," of all the constitutions, they would in their alterations and practical workings have become quite different from one another.

There are a number of important deductions from this fact. One is that even a written constitution is not something static. Because it is a human institution it contains within itself a principle of life. Wilson in America and Bagehot in England long ago pointed out the great difference which exists between the "literary constitution," that

is the constitution of a nation as it appears in documents and textbooks, and the living constitution, that is, the government as it actually works. As in the case of even the written parts of our own Constitution, precept and practice may come to vary widely. The conscious wish or the unconscious instinct of a people gradually molds the apparently rigid instrument, by one means or another, to the changing needs of life with or without formal legal recognition of the changes.

The "literary constitution" is, in fact, as different from the real one as a photograph of John Smith is from the living person it depicts. We cannot say of the photograph "that is John Smith." To the features in the picture we have to add that vital principle in the man himself which permits him to grow and to adapt himself to circumstances day by day. In the same way the constitution of a nation is not merely the "literary" one. To that we must add the vital principle in the nation itself, as expressed in the character, wishes, and ideals of the people. Some peoples have a political instinct which enables them to get these expressed through their government by peaceful and gradual adaptation of almost any instrument, whereas others seem unable to do so except often by violent methods. It will be only at long and rare intervals that the former will be unable to get around an apparent impasse by the usual means of adjustment. The British people have been able to do so for a hundred and sixty years, and we have done so for the same period with the exception of the Civil War seventy years ago. The character and quality of a nation are thus as important elements in its constitution as is the literary formulation of that constitution at any given moment. To look only at the word and to forget the spirit is to misjudge the possibilities of any constitution for good or ill.

It would thus seem evident that the working of a constitution in normal times or in a crisis, real or apparent, will depend quite as much, if not more, upon the restraint and political instinct of the people themselves as upon the form of constitution as previously developed up to any given point. A constitutional crisis which might easily be overcome by a people with the enormous political sagacity and experience

of the British might be quite insurmountable, except by violence, for another lacking those qualities. A people with long training, and homogeneous in race and outlook, might safely make rapid changes under a highly flexible constitution. Another, lacking these, might be able to find social safety and stability only under a constitution which required changes to be made more slowly and after longer consideration.

It is generally agreed that the body of law as laid down in all parts of a constitution is quite different from the mass of laws passed daily for rapidly changing needs. It might be put in a constitution, for example, that the central government should have control over all highways, but it would be absurd also to put in that no vehicle could ever, without a constitutional amendment, travel on them at more than so many miles per hour. The difference is, roughly, between a man's considered philosophy of life, and the applications of it called for in particular cases. A man may lay down for himself the permanent rule that he will be honest in his dealings but each case in daily life must be considered by itself in the light of that general rule. In somewhat the same way, a constitution at any time expresses the general ideas of a people as to its government, more particularly its form, function, purpose, and sphere of power. Having decided these matters, individual cases are left to be determined accordingly. It is true that these ideals may, and do, change in time, but they change fairly slowly, and thus far the British and American Constitutions have been readily adapted to such changes. On the other hand, constitutions should not be changed lightly to meet any apparent difficulty of the moment, any more than a man changes his rule of being honest to meet a troublesome case. Such a man would clearly be utterly unstable and unreliable, as would a people that changed its character and ideals every few years, or a constitution the fundamental laws of which could be altered any moment to meet a popular demand in favor of what might prove to be a transient and mistaken policy.

Of the ideals as to our own government, the one most likely to change in the near future is that of the sphere of its activities and powers. The form and functions of its parts, as we shall

show in a later article, have already been immensely altered with little difficulty in the past century and a half, as they have in the British Empire, though words—President, Congress, Supreme Court, King, Lords, and Commons—remain the same. It is true that the Supreme Court may be an issue but that is incidental to the possible change in the ideal as to the sphere of government, an extension of which is thought by some at the moment to be blocked by the Court.

The first thing therefore for the serious-minded citizen to consider in pondering the crisis and the Constitution is what should be the sphere of the Federal government under conditions as they are and appear likely to be. Having decided that—no easy task—he has then to consider what changes, if any, have to be made in the Constitution, and how best to make them. These articles are intended merely to illuminate and not to settle the problem.

I think we may agree that there is nothing sacred about a government or a constitution. Both are merely mechanisms developed for the smooth running of a society of individuals. Obviously a social organism such as the body of our 125,000,000 active American citizens cannot be over-restricted from growing, like a foot in a Chinese shoe. On the other hand, if there is great danger in trying to keep a society static and unchanging, there is also as great danger in making the government and constitutional law so unstable as to prevent the individual from being able to forecast the conditions of his life for a reasonable time ahead, at least so far as fundamental institutions are concerned.

We may also agree that the purpose of government should be the good of the whole. But here some hard thinking has to be done. What is the "good" and what is the "whole"? The former will evidently differ for different people, and even for the same person under different conditions. The good for a person in agony may be mere surcease from pain whereas for a person full of health and energy it will be activity and adventure. Thus, there are a long list of goods, such as free play of activities, adventure in sport or business, reliance upon self, ownership of property, the chance to rise, freedom for self-expression, and so on. On the

other hand, another list would comprise economic security, the receiving of aid when needed, the guarantee of a certain, even if limited, standard of living, security against sickness and old age, and so on. Any one can make up a list for himself at haphazard. If he does so, he will find that many of the goods listed will conflict with one another, such as a sense of adventure and a sense of complete safety. Also he will find that what may seem a good at first glance may prove an evil in its effects, such as being relieved too early in life from all necessity of working. Moreover, there are different scales of goods. One man might be willing to give up all liberty of thought, speech and action in exchange for a daily ration according to a certain living scale. Another would find such an exchange intolerable. The choice among goods calls for intelligence and far-sightedness. It will sometimes depend on a preceding condition, as in the case of the man in pain who asks only to feel nothing. Yet when he gets well, the lack of all sensation would be not a good but an evil.

So it is with peoples. In the eighteenth and nineteenth centuries, owing to preceding conditions, there was a list of goods considered so necessary to happiness that they were embodied in 1791 in our Constitution as goods which could not be taken from us. Among these were freedom of religion, speech, and press. The evils from which we have suffered of late having been of a wholly different sort, the goods which many now clamor for are likewise of a different sort. A decision as to which, in the long run, will prove the most satisfying goods evidently lies deep down in any consideration of constitutional changes. Not less so does the question as to whether we shall always want to decide for ourselves what we consider our goods or allow it to be decided for us by others. In connection with the first consideration we have to make sure that the securing of alleviation from a temporary evil shall not result in the loss of a permanent and important good, as though a hungry man should sell himself into life slavery.

But it is not simply our own good that is in question. If it is to be the function of government to secure us goods, it must do so as far as possible for all. This means not only that no one group, such as the veterans or the

farmers or the tariff beneficiaries, should be given goods at the expense of others, but also that the machinery of government should be so devised and perpetuated as to enable us to ascertain what the people as a whole consider the highest and most desirable goods. In such governments as those of Russia, Germany, or Italy this is obviously impossible, and the determination of what is good for all has to be made by a few individuals. The voice of the majority is a crude method of finding out the good of the whole, but it is only in those countries—such as Scandinavia, Holland, Belgium, France, Great Britain and the Dominions, the United States—in which such a method had become customary, that the goods of personal liberties, which until recently had seemed the chief goods, are still maintained.

If government and constitutions are machinery for providing for the good of the whole, there is no definite line to be drawn between the sphere of government and that of private enterprise. Such a line can be drawn only after careful consideration of the questions as to what is "a good" and what is the "whole." As we have already said, one has not only to choose among the large range of temporary or permanent goods, and those which neutralize each other or may become evils, but also to judge of the effects on human nature of such goods as may be bestowed upon it. As to what constitutes the "whole," if it is not, as we have said, an individual dictator, a group, class, or section, neither is it a mere 51 per cent majority, although, as an entire nation will never think precisely alike, there must always be minorities.

As civilization has become more complex, the range of goods and the numbers constituting the wholes have greatly increased, and consequently the sphere of government. There has also been another most important factor back of the demand for the wider range of governmental action and control, namely, the wide extension of what are called "rights." At the time of the formation of our own government every American was familiar with the idea of "inalienable rights," such as the "life, liberty, and the pursuit of happiness" of the Declaration of Independence. The chief objection to the Constitution as drawn and adopted was that it did

not have a "Bill of Rights," that is a guarantee of certain rights which were considered super-important. This was later practically provided in the first ten amendments.

The history of "natural," or "inalienable," rights is largely the history of the ideals of mankind as to a certain set of "goods" so transcendently important for a full and happy human life as to outrank other goods a man might possess. These rights have a long history, stemming back to the Greeks. Used by the Romans as legal fictions to mitigate the harsh rigors of class law, they have played an enormous part in the gaining of liberty and the rise of man. Theoretically there is no such thing as a "natural" right or any right *apart from society*. A solitary individual, human or animal, has the freedom to do as he can in the face of a hostile universe but it is impossible to conceive of his having a right to anything in the modern sense of right, that is as something to which he is entitled regardless of the rest of the universe. He has no "right" to ample food, to a mate, to his cave, to killing, to protection, any more than he has a right to fine weather or health.

As civilized society developed, however, the idea of a fundamental right of the individual member of it also developed, first as a philosophical conception, then as a legal fiction, and finally as a political demand. As ideals of the minimum to which an individual must be allowed to attain in order to reach the full stature of a human being, they have been, as I said, of enormous importance.

Several points, however, must be noted. As these "natural rights" changed from legal fictions and became

political demands, they altered their character. The very name seemed to give them an eternal validity. They were no longer ideals to be striven for but were deemed valid claims to certain goods, whether or not society could safely, to itself, provide them. Until comparatively recently they remained, nevertheless, political and spiritual, and *could* be yielded by society, not only not to its detriment but greatly to its advantage. Just as the new governments which refuse the rights of freedom of thought and speech are bound to deteriorate, so the granting of those liberties in the past has forwarded advance.

These natural rights, as political and spiritual aspirations, have now been changed into economic demands, and there is a tendency to consider any general desire as a "natural right." The germ, indeed, appeared as early as 1774 when the first Continental Congress listed natural rights as "life, liberty, and property," changed two years later to "life, liberty and the pursuit of happiness," but it is only of late that economic demands on a large scale, such as the "right to a job," to a certain standard of living, to support by the community, and so on, have come to take their place beside the old "natural rights."

The present contrast between our means of production, our desire for consumption, and our wholly inadequate means of distributing the social product, is a sickening one, but we cannot say that because we have the first, therefore we have solved the problem of the abundant life. We have not yet learned to manage the third factor, though it may be hoped that we shall in time. It may well be uncertain there-

fore whether society can stand the strain upon it of economic desires and demands considered as "natural rights" or whether it should not rather let them exert their influence upon the law and thought of the day as the other "natural rights" did at first, as legal fictions. In any case, it may be an open question whether it is wiser to attempt to solve the problem of trying to satisfy these new demands for economic "natural rights" on a national scale or whether, as has proved so useful in the past, we experiment on the smaller stages of the states.

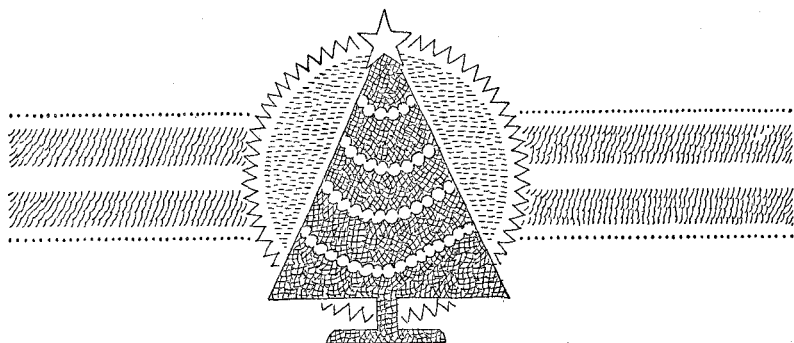
What I have wished in part to point out in this first article is that a constitution is not merely a written document or a set of inherited rules but that an important part of it is that vital force in it which comes from the genius and character of the people. I have also wished to emphasize the fact that before any of us can pass judgment on any specific suggested change we must arrive at some considered judgment as to the larger problems of what government is for, what the goods are in life which it should help to provide, and, above all, that we must think through to the end as well as we can, what the future effects, and not merely the temporary relief afforded, may be of any action taken. Any human society, even of the simplest, is of infinite complexity in its interplay of forces and influences. Many a missionary to savages has found that he has succeeded in abolishing an obnoxious custom only to pull down an entire system of ethics and to substitute moral chaos in its place. I do not for a moment advocate a policy of no change and no advance but one of acting only after deep consideration and not on hasty impulse.



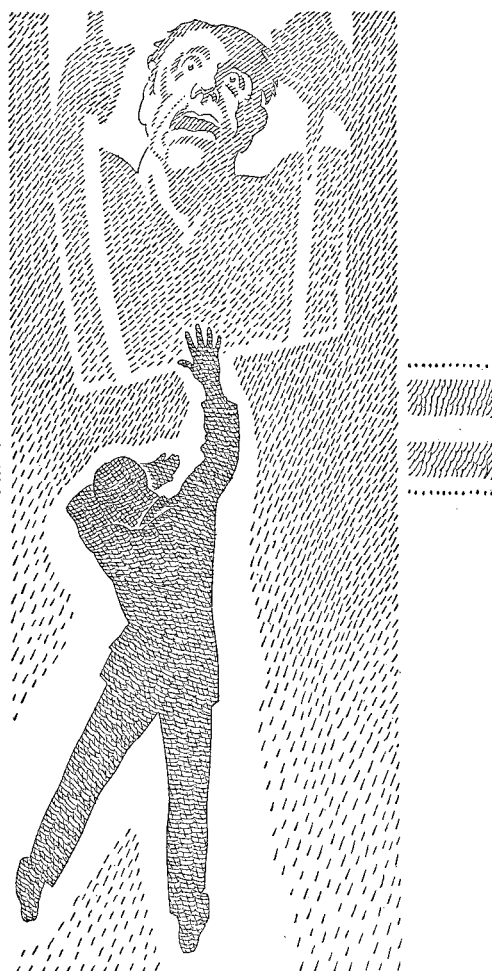
Man's Last Specter

The Challenge of Mental Disease

By Inis Weed Jones



The fear and the mystery which have surrounded mental disorders have kept the general public from knowing what really happens to people who go to mental hospitals. This authoritative article, written after observation at hospitals and consultation with psychiatrists, is an important statement of present conditions and future possibilities



THERE is some bogey in the life of every child. In my case it was fear of those who are demented. I had witnessed a guest in the sudden throes of madness spring at my father's throat.

This was aggravated by the creeping horror I came to have from a midnight experience at the house of a relative. All the farm hands had driven into town that evening. My uncle, wakened by sounds in the dining room, called out, "Is that you, boys?" No answer. Only queer tunking sounds as of some one stumbling unfamiliarly about the room.

"Who is that?" my uncle Jay called peremptorily. Still no answer. Only the strange groping noises. He leaped from his bed, seized a flatiron that had been used as a foot warmer and rushed to the doorway opening into the living room. In the moonlight he could see a man entering from the dining room.

"Stand still or I'll brain you!" shouted my uncle Jay. The man continued to move forward. My uncle hurled the iron. The figure dropped to the floor. A scramble for matches. At last a light! And there on the carpet in a pool of blood lay a strange man senseless from a gash in his forehead.

Then the farm hands arrived from

town. The unconscious man was removed to a room in one of the barns and cared for until morning which

brought two officers hunting for a harmless escaped patient from the nearby State hospital. Not a burglar, just a poor demented creature, but of the two the former would have seemed to me less terrifying. For a while after that every one in the neighborhood locked their doors at night. No telling when another patient might escape from the hospital. Only in those days we called it "the asylum."

We always had to drive past it on our weekly shopping excursions into town, and always my mind ran riot with horrid speculation as to what went on behind those hundreds of barred windows. In those vast secluded buildings, what did those strange beings do who were mad for life? Always I thought of their stay as final. It was expressed in the very phrase by which people spoke of commitment. I can remember my grandfather driving up to the hitching post at our gate and saying, as he eased himself down from the carriage—with due regard for his rheumatism, "I've been over to the Bradleys'. They've had to put Sam

away." And the finality implied in that expression was in those days highly accurate. Few recovered, for their care was merely custodial, that is, mainly to protect society against the patient and the patient from himself.

I

Fear, primitive and ancient as the race itself, has long retarded our conquest of this last specter in the field of medicine. Fear of insanity. Fear of the pitiful victim. Fear that the malady was always hereditary. Fear of family stigma. Fear that madness was incurable. A growing fear that it is increasing. Fear and fatalism. They still keep most of us from facing this age-old enemy.

True, most of us—after two decades of "parlor talk" about psychoanalysis for the neurotic—have accepted the fact that few of us make a completely successful adjustment to life; but to the fact that the psychotic, those driven so far from the normal as to require hospitalization, are only an extreme exaggeration of ourselves, most of us still close our minds. This mental aversion