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Efficiency, Stability/State's Right to Jury Trial

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EFFICIENCY, STABILITY

The following from the pen of Clarence N. Goodwin, Chairman of the Board of Directors of the American Judicature Society, and former Judge of the Appellate Court of Illinois, is worthy of your questioning consideration:

"I venture to assert that the good people of this country are living in a fool's paradise, since they confidently rely on constitutional guarantees which cannot resist if economic pressure and political fanaticism create a sufficiently deep and widespread dissatisfaction. We are wont to look upon our government as something permanent, indestructible, and, in its fundamentals, unchangeable. Any one who accepts this thought unqualifiedly disregards world history. Governments and civilizations arise, prosper and disintegrate. We rely upon the constitution as a foundation for our civilization, whereas the fact is that it is not a *foundation* at all, but a *superstructure,* depending for its permanence on the traditions and good will of the people at large."

We applaud Judge Goodwin's expression. Right at this time there is need for analytical understanding. We need to renew our faith in this all-embracing instrument, but idolatrous admiration should never be substituted for profound respect.

STATE'S RIGHT TO JURY TRIAL

Professor Jerome Hall of the University of North Dakota presented, through the medium of the American Bar Association Journal for April, a very interesting review and discussion of the decision of the Illinois Supreme Court in *People vs Scornavache* (Dec. 1931), which affirmed the contention of the prosecution that the State had the right to demand a jury trial in criminal cases. Professor Hall concludes as follows:

"Finally, one secures much insight into the motivation of the court, and consequently much help in understanding its judgment from the following statement in the closing lines of the decision: 'It is evident from a study of criminal jurisprudence, that safeguards more than sufficient to insure justice to him have been thrown around the defendant in criminal cases.'

"It thus appears that in spite of the fact that the jury system is a cumbersome way of determining facts, we may be compelled to retain it simply because the only alternative that exists in our present machinery, namely trial by the court, is even a less satisfactory method, at least in certain situations. If the considerations enumerated above are actually potent, vital, dominant forces in an otherwise intellectually serene judicial process, then the interpretation and holding of the Illinois Supreme Court become understandable. If the right to waive the jury in felony cases ushered in by the *Fisher* case, *340 Ill. 250, 172 N. E. 722,* designed to expedite the administration of the criminal law, can be perverted by powerful and unscrupulous defendants, a court may be pardoned for taking 'judicial notice', if, of course, it does not force too great a strain upon recognized legal mechanics."