Maine Law Review

Volume 69 | Number 1 Article 6

January 2017

A Modern Look at the Right to a Civil Jury Trial Under the Maine Constitution

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I. INTRODUCTION

Article I, Section 20 of the Maine Constitution states "In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, *except in cases where it has heretofore been otherwise practiced* . . . ."[1] The exception noted in Section 20 has been the subject of multiple interpretations by the Maine Supreme Judicial Court, sitting as the Law Court, since the ratification of the Maine Constitution in 1820. This has resulted in inconsistency in Maine case law, as well as a significant shift in the right to a civil jury trial over time.

The confusion appears to be rooted in an erroneous reliance on the United States Supreme Court's interpretation of the Seventh Amendment to the U.S. Constitution.[2] The language granting a civil jury trial right under the Maine Constitution differs from the language of the Seventh Amendment,[3] yet for several years, the Law Court mirrored the accepted interpretation of the Seventh Amendment in its interpretation of Article I, Section 20.[4] Under this view, the Maine Constitution "preserves the right to a jury trial in civil actions where that right existed when the Maine Constitution was adopted."[5] In other words, actions that did not exist prior to 1820, as well as actions that had no right to a jury trial at common law, do not have the right to a jury trial under this interpretation. In 1986, the Law Court first used this reading of Article I, Section 20 to determine there to be no jury trial right for traffic infractions with a penalty of license revocation in *State v. Anton*.[6] The Law Court reasoned that because license revocation was not a remedy at common law, there is currently no jury trial right for such an action.[7]

This interpretation was extended by the Law Court in *Dir. of Bureau of Labor Standards v. Fort Halifax Packing Co*.[8] In this decision, the court affirmed the trial court's holding that there is no right to a jury trial in actions involving the state's severance pay statute. The court reasoned that because no such action existed at common law, using the interpretation introduced in *Anton*, there is no right to a jury

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* J.D. Candidate, University of Maine School of Law, Class of 2017. The Author is grateful to Associate Professor Dmitry Bam for his guidance throughout the writing process, and to Justice Wayne Douglas for asking the hard questions. The Author would like to thank her family for always cheering her on, especially her husband, Adam, and daughter, Claire.

1. ME. CONST. art. I, § 20 (emphasis added).

2. Minneapolis & St. Louis R.R. Co. v. Bombolis, 241 U.S. 211, 217 (1916) (holding that "the 7th Amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials by jury in state courts . . . .").

3. ME. CONST. art. I, § 20; U.S. CONST. amend. VII.

4. *See* State v. Anton, 463 A.2d 703, 709 (Me. 1983); *see also* Dir. of Bureau of Lab. Standards v. Fort Halifax Packing Co., 510 A.2d 1054, 1063 (Me. 1986).

5. *Fort Halifax Packing*, 510 A.2d at 1063 (emphasis omitted).

6. 463 A.2d 703 (Me. 1983).

7. *Id.* at 708.

8. 510 A.2d at 1054.

trial in these circumstances.[9]

In *City of Portland v. DePaolo*[10] in 1987, the Law Court abruptly reversed course, departing from the interpretation of Article I, Section 20 it used in *Anton* and *Fort Halifax Packing*.[11] The court stated, "In language plain and broad, [A]rticle I, [S]ection 20 guarantees to parties in all civil suits the right to a jury trial, except whereby the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury."[12] Under this interpretation of the Article I, Section 20 exception, the court held that the defendant had a right to a jury trial in an action involving violation of the City of Portland's anti-pornography ordinance, a cause of action that did not exist at common law.[13] With minimal analysis or explanation of the significant departure from its previous interpretation, the court broadened the right to a civil jury trial under the Maine Constitution considerably, beyond the scope of the federal right under the Seventh Amendment. The court's correction in *DePaolo* properly interprets the plain text of Article I, Section 20 and reflects Maine's longstanding commitment to the civil jury trial.

The challenge in determining whether there is a jury trial right under Article I, Section 20 is that intensive research and historical analysis must be undertaken separately for each type of action. To determine the jury trial right for each type of action, a party must put forth an argument based on historical research into Massachusetts's statutory law and common law prior to the adoption of the Maine Constitution in 1820.[14] Under the *DePaolo* interpretation, the analysis can be even more complex. For actions that did not exist at common law, the law requires that one must first examine "suits of the same general nature" in 1820 to determine whether the action was decided without a jury at the time.[15] This analysis is frequently time-intensive, and may be prohibitively time-consuming when being conducted to determine whether there is a jury trial right for an action that will not typically drive large legal fees, for example, in a small claims case or a Forcible Entry and Detainer (FED) action.

As evidenced by the interpretation of the civil jury trial right under the Maine Constitution, which was upheld for many years, state courts often substitute the well-settled interpretation of United States constitutional provisions for the independent interpretation of the language of state constitutions. In some states, this can be attributed to limited judicial resources, as well as the abundance of federal case law that exists on each constitutional provision. But especially for provisions of the United States Constitution that the states have not incorporated, such as the Seventh

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9. *Id*. at 1063.

10. 531 A.2d 669 (Me. 1987).

11. The court did not reference its departure from precedential interpretation of the exception in Article 1, Section 20. It only stated "[t]he unmistakable import of [the exception] obviates resort either to nice semantic distinctions or to wooden interpretative principles." *Id*. at 670.

12. *Id*.

13. *Id*. at 671.

14. *See* N. Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1190 (Me. 1989).

15. *Id.*; *see also In re* Shane T., 544 A.2d 1295, 1297 (Me. 1988) ("Since prior to 1820 suits of the same general nature as the present action fell within the jurisdiction of the chancery courts and were not tried to a jury . . . .").

Amendment,[16] the judiciary is in error in substituting the federal constitutional provision for that of the state. In substituting the Court's interpretation of the Seventh Amendment for the proper interpretation of Article I, Section 20 of the Maine Constitution, the Law Court overlooked the Maine Constitution, and in essence, assumed incorporation where it does not exist. The court's correction in *DePaolo* not only broadened the right to a civil jury trial under Maine law, but also reclaimed the power of the Maine Constitution in determining the legal rights of Maine citizens.

This Comment will first undertake a historical survey of the right to a civil jury trial under the Maine Constitution, as it has been both narrowed and broadened by the Law Court's interpretation of Article I, Section 20 over the years.[17] Next, this Comment will analyze the right to a jury trial in several common civil actions under the court's corrected interpretation of Article I, Section 20. Finally, this Comment will argue that the court's reversal of its interpretation of the provision in *Anton* was the proper legal outcome for several reasons, including honoring the plain meaning of the Maine Constitution's text, mitigating unequal outcomes, promoting judicial consistency, and treating the Maine Constitution as worthy of interpretation distinct from that of the Federal Constitution.

II. A HISTORICAL SURVEY OF THE CIVIL JURY TRIAL RIGHT UNDER THE MAINE CONSTITUTION

A. An Introduction to the Civil Jury Trial Right

The right to a civil jury trial has long been considered a cornerstone of the American legal system.[18] While there has been heated debate among academics and lawyers in recent decades on whether the civil jury trial right in America benefits the judicial system or leads to fairer outcomes,[19] the right to be judged by one's peers

16. In 1916, the Supreme Court held in *Bombolis* that the Seventh Amendment right to a civil jury is not incorporated to the states. 241 U.S. 211, 217 (1916).

17. Although there is a long history of both judicial and legislative recognition of a broad jury trial right in Maine, the right has not been held static over time. At various points in Maine's history, the Legislature and the drafters of the Maine Rules of Court have also narrowed the right to a civil jury trial for specific claims of action by statute or court rule, respectively. For example, in 1976, District Court Rule 80H, which granted concurrent jurisdiction to the Superior Court in civil violations proceedings, became effective. This rule was amended in 1977 to prohibit the removal of civil violation proceedings from the District Court to the Superior Court. Rule 80H, read in conjunction with former M.D.C. CIV. R. 73, which restricted appeals to questions of law, eliminated the right to a jury trial on civil violations. *See* Gerald F. Petruccelli & John D. McKay, *The Right to Jury Trial Under the Maine Constitution*, 1. ME. B. J. 240, 242-43 (1986). The Law Court held in *DePaolo* that these two rules were unenforceable in actions in which there is a constitutional right to a jury trial under Article I, Section 20. 531 A.2d 669, 671 (Me. 1987). The Rules of Civil Procedure for the District Courts and the Superior Courts have since been abrogated by the Maine Rules of Civil Procedure, which contain no provisions limiting the right to a jury trial. This paper will mainly analyze the Law Court's decisions that have narrowed and broadened the civil jury trial right; actions by the Legislature and the drafters of the Maine Rules of Court are largely beyond its scope.

18. Paul D. Carrington, *The Civil Jury and American Democracy*, 13 DUKE J. COMP. & INT'L L. 79, 79 (2003).

19. The debate on the value of the civil jury trial has been the subject of many scholarly legal articles and books. Proponents of the right, including Paul Carrington, cite several key reasons for its importance,

has consistently been considered a fundamental element of American democracy throughout history. The use of juries in civil cases can be traced back to eleventh century England, when "petty juries" sat in the common law courts administered by the royal judges sent from Westminster to "bring the king's law to every shire of the realm."[20] In *Dimick v. Schiedt*,[21] the United States Supreme Court elucidated the centrality and importance of the jury trial to American civil procedure:

> [T]rial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases. Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.[22]

The civil jury trial right became increasingly important to American colonists in the eighteenth century, as tensions grew between the colonists and the royal judges sent from England to preside over controversies.[23] Although each state adopted different constitutional language on the right to a jury trial, the tradition of a constitutional right to a jury in both civil and criminal cases was reflected in all eleven state constitutions ratified before 1787.[24]

Whether to include the right to a civil jury trial was of significant controversy during the framing of the Federal Constitution. The inclusion of such a right was of high priority for Anti-federalists,[25] but was ultimately omitted as a key element of compromise.[26] One reason for its omission was that different existing practices among the states would make framing a general rule difficult.[27] However, the ratification of the Seventh Amendment[28] in 1791 reflected the continued widespread belief that the jury is an important element of our political process and a key

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including serving as an important check on the judiciary. *Id*. at 89; *see also* Victoria A. Farrar-Myers & Jason B. Myers, *Echoes of the Founding: The Jury in Civil Cases as Conferrer of Legitimacy*, 54 SMU L. REV. 1857, 1858 (2001). Additionally, Carrington claims the right to a civil jury "imparts structural rigidity to civil procedure that is not encountered in other legal systems." Carrington, *supra* note 18, at 91. In contrast, Jerome Frank argues that "the single greatest obstacle to effective fact-finding" is the jury, because juries are "stupid, ill-informed, swayed by emotion and prejudice, indifferent to legal rules, and unscientific in reaching verdicts." JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE 8-9 (1973).

20. Carrington, *supra* note 18, at 80.

21. 293 U.S. 474, 485 (1935).

22. *Id*. at 485-86.

23. Carrington, *supra* note 18, at 82.

24. *Id*. at 83.

25. The Anti-federalists viewed the jury as an important check on power of the federal government, and a safeguard against corruption. Specifically, the Anti-federalists viewed the jury as an additional separation of power, but one *within* the judicial branch. *See* Carrington, *supra* note 18, at 84-85.

26. *Id.*

27. Lisa S. Meyer, *Taking the "Complexity" Out of Complex Litigation: Preserving the Constitutional Right to a Civil Jury Trial*, 28 VAL. U. L. REV. 337, 342-43 (1993).

28. The Seventh Amendment provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. CONST. amend. VII.

safeguard against the power of the judiciary.[29]

The Supreme Court's interpretation of the Seventh Amendment has been fairly consistent, with one scholar arguing that it "has been interpreted as if it were virtually a self-explanatory provision."[30] Since Justice Story's interpretation of the Seventh Amendment in *United States v. Wonson*,[31] the United States Supreme Court has interpreted the amendment to include two key features. First, the right to a civil jury trial is determined by examining English common law in 1791, not by looking to the present-day laws of the United States.[32] Second, the determination is made by "render[ing] . . . the common law of England temporally static, for the matured doctrine also required that the view of English law be taken as of the date of the adoption of the Seventh Amendment in 1791."[33] Hence, the language of the Seventh Amendment, as interpreted by the Court, creates a narrower federal right to a civil jury trial than is available under the language of Article I, Section 20 of the Maine Constitution.[34]

Although the Supreme Court has been consistent in its interpretation of the Seventh Amendment, it is one of three amendments to the Constitution that have not been incorporated to the states, and there is significant variation in the civil jury trial right offered under state constitutions. The majority of the Bill of Rights has been incorporated through the theory of selective incorporation, under which the Supreme Court analyzes whether the particular protection is "fundamental to our Nation's particular scheme of ordered liberty and system of justice."[35] Upon the Court's determination that a protection is fundamental, it is incorporated to the states under the Due Process Clause of the Fourteenth Amendment.[36] Although the Supreme Court's rationale for failing to incorporate the Seventh Amendment to the states is somewhat cloudy, the Court has maintained its position on this issue since its 1875 decision in *Walker v. Sauvinet*.[37]

Despite the lack of incorporation of the Seventh Amendment to the states, the majority of states voluntarily maintain a right to a civil jury trial equivalent to that provided by the Seventh Amendment. [38] Today, forty-nine of fifty states provide civil litigants with some right to a jury, either through constitutional provision, state statute, or common law decision.[39] Colorado is the only state that does not recognize

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29. Carrington, *supra* note 18, at 83.

30. Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 MINN. L. REV. 639, 639 (1973).

31. 28 F.Cas. 745, 750 (C.C.D. Mass. 1812) (No. 16,750).

32. Wolfram, *supra* note 30, at 641-42.

33. *Id.*

34. MARSHALL J. TINKLE, THE MAINE STATE CONSTITUTION 59 (2d ed. 2013).

35. McDonald v. City of Chicago, 561 U.S. 742, 763-64 (2010).

36. *Id.* at 759.

37. *See id.* at 765 n.13 ("Our governing decisions regarding the . . . Seventh Amendment's civil jury trial requirement long predate the era of selective incorporation."); Walker v. Sauvinet, 92 U.S. 90, 92 (1875) (holding that due process does not necessarily require a jury trial so long as "the trial is had according to the settled course of judicial proceedings.").

38. TED A. DONNER & RICHARD K. GABRIEL, JURY SELECTION STRATEGY AND SCIENCE § 35:2 (3d ed. 2015).

39. *Id.*

a right to a civil jury trial.[40] In Connecticut, "[t]he constitutional prohibition on the abridgment of the jury trial right historically has been interpreted to apply, not in all possible instances, but only in those cases for which the right existed when the constitution was adopted."[41] In many states, because the right to a jury trial in civil cases only exists for actions that held that right at common law, determining whether a right exists today requires a historical analysis, just as it does under the Seventh Amendment.

In addition to the variations in the language of civil jury trial rights offered under different state constitutions, the methods used by state courts to interpret the right vary as well. State courts have the final authority to interpret state constitutions.[42] In doing so, courts generally use one of three methodologies to interpret a state constitutional provision in relation to federal constitutional law: the lockstep approach, the criteria approach, and the primacy approach.[43] The lockstep approach, in which the state court looks only to the interpretation of the federal constitutional provision in determining the meaning of the state constitution, was frequently used in the middle part of the twentieth century, and, in many cases, rendered state constitutional provisions completely ineffectual.[44] Some argue that "the lockstep approach remains the most common approach to state constitutionalism."[45]

However, in the late 1970s, after a period of expansion of federal constitutional law, the importance of state constitutions in protecting the rights of state citizens was brought to light in a Harvard Law Review article written by Justice Brennan.[46] Often referred to as "New Judicial Federalism,"[47] Brennan's call to revitalize state constitutional law relies on the premise that state courts must broadly interpret state constitutional guarantees.[48]

The two methodologies of interpretation that align with new judicial federalist principles are the criteria approach and the primacy approach. Under the criteria approach, the courts use several criteria to determine whether the state constitutional provision allows broader protection, warranting deviating from the federal constitutional interpretation.[49] Although the criteria used by different courts vary under this approach, one criterion commonly used by the court is whether the text of

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40. *Id.*; *see also* Firelock Inc. v. District Court, 776 P.2d 1090, 1097 (Colo. 1989) (en banc) (clarifying that "there is no constitutional right to a jury trial in civil cases" in Colorado).

41. Gentile v. Altermatt, 363 A.2d 1, 17 (Conn. 1975) (citing La Croix v. County Comm'rs, 50 Conn. 321, 327 (1882)).

42. Lawrence Friedman, *The Constitutional Value of Dialogue and the New Judicial Federalism*, 28 HASTINGS CONST. L.Q. 93, 101 (2000); *see generally* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

43. Friedman, *supra* note 42, at 105.

44. *Id*. at 102.

45. Robert K. Fitzpatrick, Note, *Neither Icarus Nor Ostrich: State Constitutions as an Independent Source of Individual Rights*, 79 N.Y.U. L. REV. 1833, 1850 (2004).

46. Brennan, *supra* note 42.

47. "New judicial federalism" has been the topic of much scholarly writing since Justice Brennan's introduction of the concept in 1977. *See, e.g.*, David Schuman, *A Failed Critique of State Constitutionalism*, 91 MICH. L. REV. 274, 280 (1992); *see also* Fitzpatrick, supra note 45, at 1850. This Comment will not attempt to explore the nuances of this vast area of state constitutional law.

48. Joseph Blocher, *What State Constitutional Law Can Tell Us About the Federal Constitution*, 115 PENN ST. L. REV. 1035, 1037 (2011).

49. Friedman, *supra* note 42, at 104.

the state constitutional provision "differs significantly from its federal counterpart."[50] Other criteria can include "[the] legislative history of the state constitutional provision; . . . preexisting state law, . . . [and] state traditions, which may emphasize greater protections for individual rights . . . ."[51]

In contrast to the criteria approach, which judges use to determine when a deviation from the interpretation of its federal counterpart is warranted, the primacy approach interprets the state constitutional provision independently of the federal provision.[52] The court assumes that the state constitution guarantees significant rights to its citizens, and then determines the scope of those rights by using standard tools of statutory interpretation, such as examining the language of the provision and considering prior interpretations of the provision by the state courts.[53] State courts have used all three approaches to interpret the language of various state constitutional provisions. As this Comment will discuss in depth, the Law Court has used both the "lockstepping" method of interpretation as well as the primary approach to arrive at very different interpretations of the right to a civil jury trial under the Maine Constitution.

B. The Civil Jury Trial Right Under the Maine Constitution

Article I, Section 20 of the Declaration of Rights of the Maine Constitution promises a broader right to a civil jury trial than is offered by many states. Its language has been consistent since the ratification of the Declaration of Rights of the Maine Constitution in 1820, and has guaranteed an affirmative right to a civil jury trial.[54] The provision states, "In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself or herself and with counsel, or either, at the election of the party."[55] This provision derived from Article XV of the Massachusetts Constitution of 1780, which stated in part, "In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury . . . ."[56] As the Law Court stated in *Farnsworth v. Whiting*,[57] the Maine provision "is in all substantial particulars the same as that of Massachusetts."[58]

Unlike the Seventh Amendment, which has been interpreted to refer exclusively to a jury trial right under English common law, the right to a jury trial under Article I, Section 20 relies on historical state law, as nearly thirty years of Massachusetts law existed at the time of the ratification of the Maine Constitution.[59] However, the roots of the English common law system still influence its scope. For example, as

50. *Id.* at 104-05.
51. *Id*. at 105.
52. *Id.* at 106.
53. *Id.* at 106-07.
54. ME. CONST. art. I, § 20.
55. *Id.*
56. MASS. CONST. of 1780, Part the First, art. XV.
57. 106 Me. 430, 76 A. 909 (1910).
58. *Id*. at 911.
59. TINKLE, *supra* note 34, at 59.

the Law Court held in its decision in *Farnsworth* in 1910,[60] the right to a civil jury trial is a common law right, which is not extended to suits at equity.[61]

Like the Seventh Amendment, Article I, Section 20 of the Maine Constitution requires a historical analysis of the legal system in place at the time of its adoption in 1820 to determine whether a current jury trial right exists for a specific action. But in contrast with the analysis required under the Seventh Amendment and the state constitutions that mirror it, the historical analysis required to determine whether there is a present-day right to a jury trial for a particular action under the Maine Constitution is more complex. The historical analysis requires several layers of inquiry, including comparisons between present-day actions, such as license revocations, to actions "similar in nature" at common law.[62] The opportunity to conduct such an analysis has simply not arisen for each type of civil action in the Maine courts because it is uncommon for a litigant to request a jury trial in the first place, [63] and even less common for a litigant to appeal a decision based on the fact that a request for a jury trial was denied.

C. The Maine Supreme Court's Interpretation of Article I, Section 20 Before State v. Anton

Article I, Section 20 of the Maine Constitution promises a broader right to a jury trial than does the U.S. Constitution.[64] Rather than only offering a right to a jury trial in actions that held that right at common law, the provision protects the right to a jury trial as long as the type of action in question does not fall within the exceptions noted in Article I, Section 20. The Law Court first interpreted Article I, Section 20 in *Farnsworth* in 1910.[65] In *Farnsworth*, the administratrix of an estate sued for the return of articles of personal property that had belonged to the decedent.[66] The court held that the action was equitable in nature, and would have been heard in the chancery court at common law.[67] Thus, the cause of action fell firmly into the exception noted in Article I, Section 20, and no jury trial right existed.[68]

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60. 106 Me. at 430, 76 A. at 911 (holding "[t]he article as it now stands is a declaration of the common law right to a trial by jury, and in no way inconsistent with the establishment of a court of chancery having general jurisdiction, as it was at the time of the adoption of the Constitution, and proceeding in accordance with its fundamental rules of practice as then existing."); *see also* Portland Pipe Line Corp. v. Envtl. Improvement Comm'n, 307 A.2d 1 (Me. 1973).

61. Suits at equity are proceedings in which the remedy sought is not monetary compensation, but instead is some other sort of special remedy by the court, such as an injunction. *See* TINKLE, *supra* note 34, at 60. The origin of these proceedings is English common law, which had both courts of law and courts of equity (also known as chancery courts). Courts of law had jurisdiction over "actions at law," while courts of equity had jurisdiction over suits in equity.

62. *See* N. Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1190 (Me. 1989).

63. Although statistics on how many civil litigants request jury trials are not available in Maine, data show that only three to four percent of cases were resolved through a jury trial in Maine in 2004. *See* KENNETH T. PALMER ET AL., MAINE POLITICS AND GOVERNMENT 104 (2d ed. 2009). However, Palmer suggests that the number of jury trials in Maine has stayed fairly constant in recent years, which goes against the national trend of a reduction of in the number of jury trials used to resolve civil disputes. *Id.*

64. *See* TINKLE, *supra* note 34, at 59.

65. 106 Me. at 430, 76 A. at 909.

66. *Id.*, 76 A. at 910.

67. *Id.*, 76 A. at 911.

68. *Id.*, 76 A. at 911.

After *Farnsworth*, the Law Court continued to interpret the exception in a manner consistent with the provision's text, although the next Article I, Section 20 case did not arise for almost sixty years.[69] *Portland Pipe Line Corp. v. Envtl. Improvement Comm'n*,[70] decided in 1973, concerned the plaintiffs' right to a jury trial to determine third-party damages under the Oil Discharge Prevention and Pollution Control Act of 1970, which required damages to be determined by arbitration conducted by an administrative body.[71] The court held that at common law, "the Legislature directed the County Commissioners to determine the flowage damages and report to the Court."[72] The report was subject to impeachment by a jury, but was not originally determined by a jury, and therefore no right to a formal jury trial attached to damage to real property.[73] Additionally, the court cited to an early case concerning damage to real property under the Mill Act, in which the court determined that the suit was at equity, and therefore held no jury trial right under Article I, Section 20.[74]

In its 1979 decision in *Cyr v. Cote*,[75] the Law Court was consistent in its interpretation of the provision, stating, "Our constitutional provision safeguards the right to a jury trial on all legal claims."[76] The court properly differentiated between legal and equitable claims to determine whether the exception applied, acknowledging, "To determine the often elusive question of whether a claim is legal or equitable, there must be an appraisal of the basic nature of this issue presented, including the relief sought."[77] The court implicitly distinguished *Cyr* from *Farnsworth*, reasoning that although both cases involved estates, the cause of action in *Cyr* contained broader legal issues, including undue influence, duress, and lack of capacity.[78] The *Cyr* court concluded that the cause of action as a whole was legal in nature, and therefore held an affirmative right to a jury trial exists in such actions.[79]

D. The Law Court's Incorrect Interpretation under State v. Anton

After almost 100 years of interpreting Article I, Section 20 in a manner consistent with its text, the Law Court made an about-face, applying a dichotomous interpretation and narrowing the jury trial right protected by the Maine Constitution. In 1983, the Law Court significantly constricted the right to a civil jury trial in its erroneous interpretation of Article I, Section 20 in *State v. Anton*.[80] The court's reasoning for its departure from the long-held guarantee of a broad right to a jury trial may have been driven by several factors, including an undercurrent of judicial

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69. *See* Thad B. Zmistowski, Note, *City of Portland v. DePaolo: Defining the Role of Stare Decisis in State Constitutional Decisionmaking*, 41 ME. L. REV. 201, 205 (1989).
70. 307 A.2d 1 (Me. 1973).
71. *Id*. at 10.
72. *Id*. at 28.
73. *Id.*
74. *Id.*
75. 396 A.2d 1013, 1016 (Me. 1979).
76. *Id.*
77. *Id.*
78. *Id*. at 1017, 1019 n.8.
79. *Id.* at 1017.
80. 463 A.2d 703, 708 (Me. 1983).

expediency, a desire to protect administrative procedural process, as well as the court's willingness to substitute federal constitutional interpretation for proper interpretation of Maine's own constitution. The confluence of these factors likely led to the Law Court's illogical, somewhat tortured analysis used to arrive at the conclusion that Article I, Section 20 does not include the right to a jury trial for a defendant charged with a speeding violation.[81]

In *Anton*, two defendants in two separate cases were charged with exceeding the speed limit in violation of Maine statutory law.[82] Each defendant requested his case be transferred from the District Court, where the case was filed, to the Superior Court for a jury trial.[83] The District Court denied both motions, found each defendant responsible for committing the traffic violation, and imposed a fine.[84] Each defendant appealed to the Superior Court in his respective county.[85] The Cumberland County Superior Court affirmed the District Court's denial of a jury trial, while York County reversed, ordering that the case "remain on the civil docket of the Superior Court for further proceedings."[86] Both cases were brought to the Law Court on appeal, where they were combined under the same issue: whether defendants had a right to a jury trial in a traffic infraction proceeding.[87]

In its decision, the Law Court first held that a traffic infraction—with a possible penalty of license revocation—did not constitute a criminal violation for which a jury trial would be guaranteed under Article I, Section 7 of the Maine Constitution.[88] Defendants argued that even if the court deemed the infraction a civil violation, their right to a civil jury trial was preserved under Article 1, Section 20.[89] In response to defendants' argument, the court stated: "That provision, substantially similar to Article 15 of the Declaration of Rights in the Massachusetts Constitution, preserves the right to jury trial in civil actions *where that right existed when the Maine Constitution was adopted*."[90] The court cited to only one case following this interpretation, the case of *State v. Sklar*,[91] which does not reference the right to a civil jury trial, but only the right to a criminal jury trial under Article I, Section 7.[92]

The court went on to state: "The provision does not apply to suits in equity or other civil proceedings not then tried by jury in the common law courts,"[93] citing five

81. *Id.* at 708-09.

82. *Id*. at 704. The statute in question was 29 M.R.S.A. § 1251 (Supp. 1982), *repealed by* P.L. 1993, ch. 683 (effective Apr. 14, 1994).

83. *Anton*, 463 A.2d at 704.

84. *Id.*

85. *Id.*

86. *Id.* at 705 (internal citation omitted).

87. *Id*. at 704.

88. *Id*. at 706-08. The Law Court considered factors including the severity of the potential penalties, as well as the nature of the infraction, in determining that the violation was not criminal in nature.

89. *Id.* at 708.

90. *Id*.

91. 317 A.2d 160 (Me. 1974).

92. *Id.* at 169-71.

93. *Anton*, 463 A.2d at 708.

cases[94] and one judicial opinion[95] in Maine and Massachusetts in which the right to a civil jury trial was in question. The court was partly right. It has long been held that no right to a jury trial exists in actions at equity, because equity courts did not include juries at common law.[96] For example, in *Portland Pipe Line*, the court held there to be no Constitutional right to a civil jury trial for damages caused to property owners from the construction of a dam, because the action was closest to an eminent domain proceeding, which is a proceeding at equity.[97] However, the *Anton* court's conclusion that the right to a jury trial does not apply to "other civil proceedings not then tried by jury in the common law courts"[98] was incorrect. The court incorrectly interpreted the cases it cited to exclude the right to a jury trial in actions unknown at common law. None of the five cases cited interpreted Article I, Section 20 to prohibit the right to a jury trial in actions that did not exist at common law. Two of the cited cases concerned actions at equity, which do not hold a jury trial right.[99] One involved an action determined by a proceeding other than a jury trial prior to 1820, precluding the common law right to a jury trial today.[100] Finally, two of the actions were determined to be outside the right to a jury trial as defined by the Massachusetts Constitution, which contains an exception to the jury trial right for actions at equity at common law similar to that provided in the Maine Constitution.[101]

Based on its improper interpretation and analysis of precedent under Massachusetts and Maine law, the court in *Anton* concluded that there is no right to a jury trial in traffic infraction proceedings, reasoning "[w]e are aware of no civil suit in 1819 that would have been comparable to such a proceeding."[102] The court's interpretation of Article I, Section 20 in *Anton* was in direct contradiction to the plain text of the provision. The implications of this incorrect interpretation of the text are significant. By putting forth this interpretation, the Law Court narrowed the right to

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94. *Id*. at 708-09. The *Anton* court cited the following cases in holding no right to a civil jury trial unless that right affirmatively existed for such an action at common law: Portland Pipe Line Corp. v. Envtl. Improvement Comm'n, 307 A.2d 1, 28 (Me. 1973); Farnsworth v. Whiting, 106 Me. 430, 76 A. 909 (1910); Kennebec Water Dist. v. City of Waterville, 96 Me. 234, 52 A. 774 (1902) (condemnation proceedings); c*f.* Ashley v. Wait, 116 N.E. 961 (Mass. 1917) (no jury trial for petition under corrupt practices act); Attorney General v. Sullivan, 40 N.E. 843 (Mass. 1895) (no jury trial in quo warrants proceeding to try title to political office).

95. Opinion of the Justices, 315 A.2d 847, 852 (Me. 1974). The judicial opinion, cited by the *Anton* court, upheld Maine's workers' compensation law as constitutional, reasoning that participation was elective between employer and employee, and the law did not interfere with the right to a jury trial under Article I, Section 20.

96. *See Farnsworth*, 106 Me. at 430, 76 A. at 911.

97. 307 A.2d at 28.

98. *Anton*, 463 A.2d at 708.

99. *Portland Pipe Line*, 307 A.2d at 29 (a civil action is equitable in nature, and does not hold a common law right to a civil jury trial under Article 1, Section 20); *see also Farnsworth*, 106 Me. at 430, 76 A. at 911.

100. *See* Kennebec Water Dist. v. City of Waterville, 96 Me. 234, 234, 52 A. 774, 780 (1902) (holding that a proceeding for assessing the amount of just compensation for private property taken for public uses is not a civil suit, but a 'proceeding *in rem*').

101. *See Ashley*, 228 Mass. 63, 80, 116 N.E. 961, 967 (1917) (no jury trial for petition under corrupt practices act because public office is not "property" within the definition of "suits concerning property"); Sullivan, 163 Mass. 446, 451, 40 N.E. 843, 846 (1895) (one's right to public office is not a controversy concerning property, so no jury trial right exists).

102. *Anton*, 463 A.2d at 709.

a jury trial to apply only to actions that existed prior to the adoption of the Maine Constitution in 1820. The court further limited the jury trial right by shifting the burden of proof to the defendant to identify a "suit of a similar nature" that held the right to a jury trial at common law.[103] Given the complex research and analysis required to determine whether a jury trial right existed for a particular type of action at common law, placing the burden of proof on the defendant created a significant barrier to access to a jury trial in certain civil actions.

The court's precise rationale for its abrupt departure from over one hundred years of precedent[104] is impossible to determine, in part due to the lack of any logical justification contained in the *Anton* decision itself. However, several factors may have influenced the court's decision to interpret Article I, Section 20 in a manner contrary to the text of the provision, well-established precedent, and a judicial culture in Maine that had rigorously upheld the right to a jury trial for decades.[105]

The decision may have been influenced by a desire for judicial efficiency, especially given the roles and responsibilities of the District and Superior Courts in Maine. The Maine Superior Court is the only court able to conduct jury trials. Therefore, narrowing the constitutional right to a jury trial in civil cases can limit overburdening the Superior Court.[106] The court alluded to this concern in its tone at one point in *Anton*, where Justice Godfrey stated, "[w]e are concerned here with an entire system for disposition of traffic infractions that requires the District Court judge first to determine a defendant's liability and then either impose a civil fine within prescribed limits or suspend defendant's operator's license."[107] His statement implied that defendants' claim of a jury trial right would disrupt the entire system that has been put into place to allow the District Court to decide traffic infractions.

The court's decision to go against precedent in *Anton* was likely made easier by the prevalence of state courts across the nation substituting federal constitutional interpretation for proper interpretation of state constitutional provisions.[108] This phenomenon, known as "lockstepping," is a common method of state constitutional analysis today, but was even more pervasive at the time of the *Anton* decision.[109] By borrowing the accepted interpretation of the Seventh Amendment and applying it to Article I, Section 20 of the Maine Constitution, the court effectively narrowed the civil jury trial right while maintaining an appearance of legitimacy in its interpretation.

Anton was controlling precedent for four years. But even under *Anton*, the court sometimes found in favor of a jury trial if the party requesting the jury could prove such a right existed at common law. For example, in *Ela v. Pelletier*,[110] a unanimous court held that the Maine small claims procedure was unconstitutional as it infringed

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103. *Id*. (stating "[defendants] cite no authority for the proposition that a comparable civil suit by the Commonwealth even existed in 1819, let alone that it was heard by a jury.").

104. Petruccelli & McKay, *supra* note 17, at 246.

105. *See id.* ("From *Johnson's Case* to *State v. Sklar* to *Ela v. Pelletier*, the Law Court has vigilantly rejected expedient attempts to circumvent the constitutional guarantee of trial by jury.").

106. PALMER, *supra* note 63.

107. *Anton*, 463 A.2d at 709.

108. *See* Friedman, *supra* note 42.

109. *See* Blocher, *supra* note 48, at 1037; *see also* PALMER, *supra* note 63, at 102-03.

110. 495 A.2d 1225 (Me. 1985).

on the right to a jury trial in a small claims action.[111] In its analysis, the court quoted *Anton*, stating "[t]his provision 'preserves the right to a jury trial in civil actions where that right existed when the Maine Constitution was adopted."[112] Because a small claims action was heard by a jury under Massachusetts statute prior to 1820, Ela's action was considered "of a kind that was heard and determined by a common law court with a right to a jury trial prior to the adoption of the Maine Constitution."[113] Thus, the court upheld the right to a jury trial for small claims actions under the *Anton* interpretation.[114] Although small claims actions fell within the narrower right to a civil jury trial under the *Anton* interpretation, the fact that the court did not take the opportunity to correct this interpretation in *Ela* helped to cement the incorrect interpretation further.

Perhaps of greater significance was the Law Court's exclusion of the right to a jury trial for an action that did not exist at common law in *Dir. of Bureau of Labor Standards v. Fort Halifax Packing Co.*[115] in 1986. In this case, the court used the *Anton* interpretation to determine whether an action to collect severance pay under Maine statute has a right to a jury trial.[116] The Law Court quoted *Anton* extensively in its decision:

> When a new type of statutory action is created, the existence of a constitutional right to jury trial under [A]rticle I, [S]ection 20 depends on the nature of the action. If it is a kind that was heard and determined by a common law court with a right to jury trial prior to adoption of the Maine Constitution, then [A]rticle I, [S]ection 20 guarantees that right today.[117]

Using this reasoning, the Law Court concluded that there is no jury trial available in an action to recover severance pay under Maine statute, because there was no such action at common law.[118] The Law Court upheld the Superior Court's denial of defendant's request for a trial by jury,[119] further narrowing the civil jury trial right under the *Anton* interpretation.

E. The Reversal of the Anton Interpretation in City of Portland v. Depaolo

Four years after *Anton*, the Law Court abruptly reversed its interpretation of Article I, Section 20 in *City of Portland v. DePaolo*, restoring the provision's guarantee of a broad right to a civil jury trial.[120] In *DePaolo*, defendants were assessed civil penalties in the District Court for violating the City of Portland's anti-pornography ordinance for selling obscene magazines to undercover police officers.[121] Defendants requested removal of the case to the Superior Court for a jury

111. *Id.* at 1228.
112. *Id.* (emphasis omitted) (quoting *Anton*, 463 A.2d at 708).
113. *Id.* (quoting *Anton*, 463 A.2d at 709).
114. *Id.*
115. 510 A.2d 1054 (Me. 1986).
116. *Id.* at 1056.
117. *Id*. at 1063 (quoting *Anton*, 463 A.2d at 709).
118. *Id.*
119. *Id.*
120. 531 A.2d 669 (Me. 1987).
121. *Id*. at 669.

trial, but their request was denied.[122] One of the questions on appeal to the Law Court was whether defendants had the right to a jury trial for the violation of a civil ordinance under Article I, Section 20.[123] The Law Court did not reference *Anton*[124] at any point in its interpretation of the provision, which stated:

> The unmistakable import of [the Article I, Section 20 exception] obviates resort either to nice semantic distinctions or to wooden interpretative principles. In language plain and broad[,] [A]rticle I, [S]ection 20 guarantees to parties in all civil suits the right to a jury trial, except where by the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury.[125]

In its affirmative interpretation of the Article I, Section 20 exception, the *DePaolo* court cited to several of the very cases incorrectly interpreted in *Anton*, including *Farnsworth, Portland Pipeline,* and *Kennebec Water District*.[126] However, the court did not explicitly overrule *Anton* or address the reversal of its interpretation of Article I, Section 20 under *Anton*.[127] The *DePaolo* court simply stated that there was a "broad constitutional guarantee of the right to a jury trial in all civil cases" granted by Article I, Section 20.[128] Without explanation for its about-face, the court effectively reversed its earlier narrowing of the civil jury trial right under the Maine Constitution.[129] It held that the exception in Article I, Section 20 did not apply to civil actions exclusively seeking a monetary recovery; therefore, defendants have a right to a jury trial in this case.[130] Accordingly, the court vacated the decisions of the Superior Court and remanded it for a new trial.[131]

The Law Court may have been influenced by an article by Gerald F. Petruccelli

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122. *Id*. at 670.

123. *Id.* at 671.

124. The Law Court later acknowledged that "*DePaolo* overruled *Anton* without citing it." Sirois v. Winslow, 585 A.2d 183, 188 (Me. 1991).

125. *DePaolo*, 531 A.2d at 670 (citing Portland Pipe Line Corp. v. Envtl. Improvement Comm'n., 307 A.2d 1, 28 (Me. 1973); Farnsworth v. Whiting, 106 Me. 430, 76 A. 909 (1910); Kennebec Water Dist. v. City of Waterville, 96 Me. 234, 246–51, 52 A. 774, 779–81 (1902)).

126. *Id.*

127. *Id.*

128. *Id.*

129. The Law Court was criticized for disregarding *stare decisis* when it ignored *Anton* in *City of Portland v. DePaolo.* Thad B. Zmistowski, Note, City of Portland v. DePaolo: *Defining the Role of Stare Decisis in State Constitutional Decision-Making*, 41. ME. L. REV. 201, 203 (1989). The author observed:

> In reaching its decision, the Law Court made no mention of the *Anton* case. Indeed, the only attempt the court made at confronting *Anton* consisted in two veiled references, one to "nice semantic distinctions [and] wooden interpretive principles," and the other to "intimations and statements" in prior cases that were "incompatible with the broad view of the guarantee of a jury trial."

Id. (alteration in original).

130. *DePaolo*, 531 A.2d at 671.

131. *Id.* In addition to the court's restoration of the broad jury trial right through its proper interpretation of Article I, Section 20, the court further protected the constitutional right to a jury trial in *DePaolo*. Maine Rule of Civil Procedure 80H(g), as amended in 1977, read in conjunction with former Maine District Court Civil Rule 73, which restricted appeals to questions of law, eliminated the right to a jury trial for civil violations. *Id*. The *DePaolo* court held that to the extent Rule 80H(g) prohibits removal of a civil violation to the Superior Court, where a jury trial is available, it is unenforceable as a violation of Article I, Section 20. *Id*.

and John D. McKay, "written largely in anticipation of the *DePaolo* case,"[132] published by the Maine Bar Journal in September 1986.[133] The authors argued that the court in *Anton* went against both the "exceptionally rigorous" jury trial mandates of the Maine Constitution, as well as the plain text of Section 20.[134] Regarding the court's decision in *Anton* and the extension of the *Anton* interpretation to *Fort Halifax Packing,* the authors stated that:

> [T]he Law Court has vigilantly rejected expedient attempts to circumvent the constitutional guarantee of trial by jury. If *State v. Anton* and *Fort Halifax Packing* hold otherwise they are not consistent with either the text of Section 20 or the considered opinions of the Law Court from 1821 to 1985.[135]

The *DePaolo* interpretation of Article I, Section 20 was further solidified in the Law Court's decision in *North Sch. Congregate Hous. v. Merrithew* in 1989.[136] The question in *Merrithew* was whether there is a right to a jury trial for a tenant who has been evicted under Maine's Forcible Entry and Detainer (FED) statute.[137] The landlord in this case brought an FED action to the District Court, where jury trials were unavailable.[138] In response, the defendant filed a motion to remove the FED action to the Superior Court.[139] In its analysis, the court stated:

> We have recently modified how we analyze the constitutional right to a jury trial to track more closely the language of [A]rticle I, [S]ection 20. Specifically, our practice now is to find that there is such a right unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820.[140]

The court undertook an in-depth historical analysis to conclude that FED actions have the right to a jury trial, because suits of a similar nature—actions of eviction—had such a right prior to 1820, under both common law and Massachusetts statute.[141]

The court in *Merrithew* went beyond its decision in *DePaolo* to further repair the right to a civil jury trial under Article I, Section 20 in two important ways. First, the *Merrithew* court stated that although the right to a jury trial for FED proceedings had been eliminated by statute with the creation of the modern district court in 1961, a jury was used under a Massachusetts statute at the time of the adoption of the Maine Constitution, as well as under Maine statute from 1824 to 1961.[142] According to the court, the elimination of the right to a jury trial under the Maine District Court Rules from 1961 onward was in violation of the constitutional right to a jury trial in FED actions.[143] The court declared the rules invalid to the extent they removed the right

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132. Sirois v. Winslow, 585 A.2d 183, 189 (Me. 1991).
133. Petruccelli & McKay, *supra* note 17.
134. *Id*. at 240, 246.
135. *Id*. at 246.
136. 558 A.2d 1189 (Me. 1989).
137. *Id*. at 1189.
138. *Id.*
139. *Id*.
140. *Id*. at 1190 (first citing *In re* Shane T., 544 A.2d 1295, 1297 (Me. 1988); then citing City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987)).
141. *Id.* at 1191.
142. *Id*. at 1191-95.
143. *Id*. at 1195.

to a jury trial for civil violations.[144] Second, the court stated that a right to a civil jury trial exists "unless it is *affirmatively* shown that a jury trial was unavailable in such a case in 1820."[145] Thus, the *Merrithew* court shifted the burden from the party seeking a jury trial to the party opposing it. Given the complexity of the analysis required to determine whether such right was available in 1820, the court's burden-shifting considerably strengthened the jury trial right.

F. The Outer Limits of the Depaolo *Interpetation*

The court's strengthening of the right to a civil jury trial under *DePaolo* soon led to an important question: how does this stronger right impact new remedies that did not exist at common law, such as administrative remedies and court procedures? The limits of the *DePaolo* interpretation of Article I, Section 20 were tested in *Sirois v. Winslow* in 1991.[146] In this case, property owners filed a complaint with the Department of Environmental Protection (DEP) for damages sustained as the result of leaking gasoline tanks on a neighbor's nearby property.[147] The defendant filed a motion to dismiss the portion of the complaint regarding alleged damage to property, on the grounds that plaintiffs had filed a previous claim with the DEP's administrative tribunal that "sought recovery for the same damages, and that the exclusivity provisions of the Acts . . . precluded the Superior Court action."[148] In response, the plaintiffs claimed they had a constitutional right to a jury trial to resolve the issues.[149] The Superior Court granted the motion to dismiss, holding that the exclusivity provisions of the Acts in question did not violate plaintiffs' right to a jury trial.[150] The court reasoned that initially, plaintiffs had the option of choosing between an administrative hearing with the DEP and proceedings with the court, and plaintiffs chose the administrative remedy.[151] Under the court's rationale, the right to a jury trial was reserved to the plaintiffs only until they elected the administrative remedy, at which point the administrative remedy became the only remedy available.[152]

Plaintiffs filed a motion for a report of the interlocutory ruling, challenging the Superior Court's ruling on the issue of the plaintiff's right to a jury trial in light of the administrative remedies available under the Acts.[153] The motion was granted by the Superior Court.[154] The Law Court denied the report of a question of law, concluding that the procedure is "an improper method for deciding the constitutional question presented," as "[t]he plaintiffs have yet to establish by either the DEP

144. *Id.*
145. *Id*. at 1190 (emphasis added).
146. 585 A.2d 183 (Me. 1991).
147. *Id*. at 184.
148. *Id.* Plaintiffs brought action under the Oil Discharge Prevention and Pollution Control Act, 38 M.R.S.A. §§ 541-560 (1978 & Supp. 1989), and the Underground Oil Storage Facilities and Ground Water Protection Act, 38 M.R.S.A. §§ 561 to 570-G (1978 & Supp. 1989).
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.*

proceeding or the action in the Superior Court that the alleged contamination occurred or that Winslow was responsible for the contamination."[155]

The question at issue, which the court declined to weigh in on via advisory opinion, tests the strength of the civil jury trial right granted by Article I, Section 20 under the *DePaolo* interpretation. In his dissenting opinion, Justice Collins addressed this unanswered question:

> The question not answered by *DePaolo,* and raised here, is whether the language of [A]rticle I, [S]ection 20 also guarantees the right to a jury trial where the Legislature has crafted a new remedy that is not a "civil suit." What makes this question difficult is the language of the exception; the parties have a right to a jury trial "except in cases where it has heretofore been otherwise practiced." Does this clause prevent the Legislature from ever setting up a non-jury tribunal for any controversy that would have been settled by a common-law action prior to 1820?[156]

If the answer to Justice Collins's question is "yes," the constitutionality of a significant body of legislation is called into question, including legislation such as the Workers' Compensation Act. In an earlier advisory opinion,[157] the Maine Supreme Court had concluded that the Workers' Compensation Act is constitutional under the *Anton* interpretation of Article I, Section 20. The court reasoned that because employees did not have the right to workmen's compensation under the law at the time the Constitution was adopted, the exclusion of a civil jury trial under the Workers' Compensation Act was not in violation of Article I, Section 20.[158] Following *DePaolo*, the constitutionality of statutes that allow administrative bodies to preclude a jury from determining controversies would have to be upheld under another rationale.

In his dissent, Justice Collins stated that applying *DePaolo* to administrative proceedings would be too restrictive in limiting the legislature's ability to authorize administrative agencies to establish specialized proceedings creating "new remedies unknown to the common law."[159] His view aligns with the approach suggested by Petruccelli and McKay, who suggest that jury trial rights under Article I, Section 20 should not be available for "newly established rights . . . or inherently administrative matters . . . properly assigned to administrative bodies."[160] Under Justice Collins's view, *DePaolo* should not be applied to cases in which an administrative body is administering new remedies that were not available under the common law.[161] According to Justice Collins, the court should provide certainty to the legislature that new remedies created by statute are not in violation of the Maine Constitution in light of *DePaolo*, rather than declining to address the question.[162]

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155. *Id.* at 185. The court expressed hesitancy in granting a report of a question of law, stating that the procedure "is a departure from the final judgment rule barring piecemeal appeals and should be used only on extraordinary occasions." *Id.* at 184. The court expressed further reluctance to resolve constitutional questions via the procedure of report. *Id.* at 185.

156. *Id.* at 188-89 (quoting Me. Const. art. I, § 20).

157. Opinion of the Justices, 315 A.2d 847, 854 (Me. 1974).

158. *Sirois*, 585 A.2d at 189 (citing *Opinion of the Justices*, 315 A.2d at 854).

159. *Id.*

160. *Id.* (quoting Petruccelli & McKay, *supra* note 17, at 245-46).

161. *Id*. at 190.

162. *Id.*

Although Justice Collins's dissent is not controlling, it demonstrates the challenges faced by the judiciary in upholding a broad right to a jury trial under Article I, Section 20 of the Maine Constitution. The strong right to a civil jury trial as promised under *DePaolo* could be a constitutional barrier to new remedies, such as those designed by administrative agencies. The court has not addressed this issue to date, and has not amended its opinion on the constitutionality of the Workers' Compensation Act under the *DePaolo* interpretation.[163]

III. THE CURRENT RIGHT TO A JURY TRIAL IN CIVIL ACTIONS

The constitutional right to a jury trial must be analyzed independently for each civil action. To determine whether a jury trial right exists for a particular action, one must first understand whether that cause of action existed at common law: for Maine, in or prior to 1820. If the same cause of action existed at the time the Constitution was adopted, the next step required by the court is to determine whether the cause of action was granted a jury trial, or if [it] was handled in some other non-jury proceeding, such as a proceeding under equity jurisdiction. If the cause of action did not exist at common law, the same analysis must be undertaken by assessing whether a "suit of a similar nature" was decided in a non-jury proceeding at the time.[164] If no similar cause of action existed, there is an affirmative right to a jury trial under the *DePaolo* interpretation of Article I, Section 20.

For several causes of action, the court has determined whether there is a right to a jury trial using an interpretation consistent with *DePaolo*.[165] For the cases decided under *Anton*, the right to a jury trial would likely change under the *DePaolo* interpretation of Article I, Section 20, but the court has not yet had the opportunity to undertake the analysis. Additionally, given the limited number of constitutional challenges brought by parties seeking a civil jury trial in Maine, the jury trial right has never been determined for many types of civil actions. This part of the Comment will analyze the right to a jury trial for several common civil actions and violations under the court's most recent interpretation of Article I, Section 20.[166]

Civil claims and violations fall into several categories depending on the jury trial rights they hold. First, we will consider the claims that hold a right to a jury trial because suits of the same general nature held such a right prior to 1820. These types of claims have a jury trial right under the *DePaolo* interpretation of Article I, Section 20, but would also hold a jury trial right under the narrower *Anton* interpretation. One example of this type of claim is a small claim proceeding, as discussed earlier in our analysis of *Ela v. Pelletier*. Another example is a civil judicial forfeiture. In 1999, the court held in *State v. One 1981 Chevrolet Monte Carlo*[167] that "long before the adoption of the United States Constitution the common law courts in the Colonies . . . were exercising jurisdiction *in rem* in the enforcement of forfeiture statutes."[168]

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163. *Opinion of the Justices*, 315 A.2d at 854.

164. *See* N. Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1192 (Me. 1989).

165. *See id.*; *see also In re* Shane T., 544 A.2d 1295, 1296-97 (Me. 1988).

166. *See* Addendum, *infra* Part VI, for an outline of the current jury trial right in Maine for several types of civil actions.

167. 1999 ME 69, ¶ 7, 728 A.2d 1259.

168. *Id.* (quoting C.J. Hendry Co. v. Moore, 318 U.S. 133, 139 (1943)).

For several actions, the court has undertaken a historical analysis to limit the jury trial right. These include small claims[169] and Forcible Entry and Detainer (FED) actions.[170] The court reasoned that because, prior to 1820, the right to a jury trial was only available *de novo* on appeal, both of these actions hold a jury trial right today only on appeal from a bench trial in the District Court.[171] The one exception is in FED cases in which title is raised as an issue, which are granted a jury trial through removal to the Superior Court without first requiring a bench trial.[172]

The second category includes claims that do not hold a right to a jury trial because, at common law, they were heard in equity without a jury in the Court of Chancery.[173] Examples of these actions include proceedings to terminate parental rights[174] as well as actions of civil judicial forfeiture.[175] In 1988, the court determined there to be no jury trial right for termination of parental rights proceedings in *In re Shane T*.[176] In this case, Shane T.'s father, George, appealed the probate court's termination of his parental rights, claiming that the probate court proceeding violated his right to a jury trial under Article I, Section 20.[177] The court used the *DePaolo* interpretation of the provision in its analysis, but stated that this case was "sharply distinguished from *DePaolo*," in which the remedy sought was a monetary judgment.[178] In contrast, the remedy sought in this case was a "coercive, injunctive-type order against the father governing his future relationship with his son."[179] The court stated that although the termination of parental rights statute specifically at issue in this case was a recent statutory creation, similar suits adjusting the relationship between parent and child were heard in equity without the intervention of a jury prior to 1820.[180] The court's analysis was similar in *Kennebec Fed. Sav. & Loan Ass'n v. Kueter*,[181] where the court held in an interlocutory appeal that there is no jury trial right for a mortgagee bringing a civil foreclosure action.[182] The court determined the action to be equitable in nature, because under Massachusetts statute prior to the adoption of the Maine Constitution, "matters related to a mortgage foreclosure were within the equity jurisdiction of the court."[183]

The third category of actions are those in which the court has found in favor of a jury trial right because the exceptions found in Article I, Section 20 do not apply.

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169. *See* Ela v. Pelletier, 495 A.2d 1225, 1228 (Me. 1985).

170. *See Merrithew*, 558 A.2d at 1192.

171. *See id.* at 1196 (stating that "except in title cases, the appropriate procedure is to provide a de novo jury trial only on appeal after judgment is first entered in the District Court."); *see also Ela*, 495 A.2d at 1228 (holding that "According to statutory law of Massachusetts at the time the Maine Constitution was adopted, a party in a small claim case . . . for an amount not exceeding a statutory limit, had the right to a jury trial *de novo* on appeal at the Superior Court. 1783 Mass. Acts ch. 42.").

172. *Merrithew*, 558 A.2d at 1196.

173. *See In re* Shane T., 544 A.2d 1295, 1297 (Me. 1988).

174. *Id.*

175. State v. One 1981 Chevrolet Monte Carlo, 1999 ME 69, ¶ 7, 728 A.2d 1259.

176. 544 A.2d at 1297.

177. *Id.* at 1296.

178. *Id*. at 1297 (citing City of Portland v. DePaolo, 531 A.2d 669, 671 (Me. 1987)).

179. *Id.*

180. *Id.*

181. 1997 ME 123, 695 A.2d 1201.

182. *Id.* ¶ 1.

183. *Id*. ¶ 5 (first citing 1785 Mass. Acts 474-75; then citing 1798 Mass. Acts 127).

These include: possession of marijuana,[184] possession of drug paraphernalia,[185] and a violation of a city pornography ordinance.[186] Parties to these three actions would have certainly had no right to a jury trial under *Anton*. In *State v. DiPietro*, the State argued that DiPietro had no jury trial right under *Anton*, because "no civil suit in 1819 . . . would have been comparable to such a proceeding."[187] Justice Studstrup pointed to the court's shift in its interpretation of Article I, Section 20 in *DePaolo*, and concluded, "*DePaolo* seems to be the controlling law at the present time, and the State has failed to demonstrate that possession of marijuana (or any other type of contraband) was not previously entitled to a jury trial."[188]

Because of the unique nature of the Juvenile Code, juvenile proceedings fall outside the analysis otherwise used to determine the jury trial right in adult proceedings.[189] The court has held there to be no jury trial right in juvenile proceedings due to the unique rehabilitative purpose of the State's juvenile justice system and the Maine Juvenile Code.[190] In 1979, the court considered the issue in *State v. Gleason*.[191] Rather than analyze whether the juvenile had a right to a jury trial under Article I, Section 7 or Article I, Section 20, the court focused on the due process requirements of the Federal Constitution to determine whether a jury trial right existed for the defendant.[192] The court determined that the procedural safeguards afforded an adult criminal defendant must be afforded a juvenile, unless these safeguards "compel the States to abandon or displace any of the substantive benefits of the juvenile process."[193] As the court concluded that it "cannot say that the juvenile's interest in obtaining a jury determination outweighs the State's continuing interest in the existence of an independent and unique juvenile justice system," no jury trial right exists in juvenile proceedings.[194] This result has not been successfully challenged since *Gleason*, therefore, the lack of a jury trial right would likely extend to other juvenile statutory violations as well, including Illegal Possession by Minors,[195] and Illegal Transportation by Minors.[196]

The Law Court has not yet had the opportunity to determine the right to a jury trial for a number of civil actions. For example, the jury trial right for statutory violations for possessing a "dog at large"[197] and keeping a dangerous dog[198] have not been challenged in Maine to date. These are both civil violations with a penalty of a fine up to $1000, and additional penalties as serious as euthanizing the animal can

184. State v. DePietro, KENSC-CV-2005-VI-04-03 at 1 (Me. Super. Ct., Ken. Cty., Feb. 23, 2005).
185. *Id.*
186. City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987).
187. State v. DePietro, KENSC-CV-2005-VI-04-03 at 2 (Me. Super. Ct., Ken. Cty., Feb. 23, 2005) (quoting State v. Anton, 463 A.2d 703, 709 (Me. 1983)).
188. *Id*. at 3.
189. *See* State v. Gleason, 404 A.2d 573, 582 (Me. 1979).
190. *Id.* at 583-85.
191. *Id.* at 573.
192. *Id*. at 580.
193. *Id*. (quoting *In re* Winship 397 U.S. 358, 367 (1970)).
194. *Id*. at 585.
195. 28 M.R.S.A. § 2051 (2007 & Supp. 2015).
196. 28-A M.R.S.A. § 2052 (2015).
1. 197. 7 M.R.S.A. § 3911 (2015).
198. *Id.* § 3952.

be sanctioned if an individual is found responsible for keeping a dangerous dog.[199] Under the *DePaolo* interpretation of Article I, Section 20, we must examine "suits of the same general nature" to determine whether a right to a jury trial exists.[200] Although these violations are statutory, they are similar in nature to nuisance actions at common law, which were heard in the Court of Common Pleas where jury trials were available.[201] Because these suits of the same general nature were not precluded from the right to a jury trial at common law, parties to dog at large or keeping a dangerous dog actions should have an affirmative jury trial right.

IV, DEPAOLO AS THE PROPER LEGAL OUTCOME IN MAINE CONSTITUTIONAL JURISPRUDENCE

The Law Court's reversal of the *Anton* interpretation of Article I, Section 20 in its *DePaolo* decision was the proper legal outcome, and an outcome that is important to Maine jurisprudence for several reasons. First, the Law Court's reversal properly restored the right to a jury trial to one that is consistent with the plain meaning of the text of Article I, Section 20 of the Maine Constitution. Second, *DePaolo*, along with subsequent decisions including *North School Congregate Housing,* restored judicial consistency, marking a return to the interpretation of Article I, Section 20 used without fail by the Law Court from 1821 to 1985.[202] The *DePaolo* decision also restored an exceptionally strong jury trial mandate that, prior to *Anton*, had been rigorously upheld by the Law Court since its decision in *Johnson's Case* in 1821.[203] Finally, the reversal of *Anton* reflects the Law Court's recognition that the Maine Constitution is separate and distinct from the United States Constitution, which should provide another layer of constitutional protection for Maine citizens.

Under both the Maine Constitution and the Federal Constitution, the availability of a jury trial varies based on the type of action in question, and how that action was adjudicated at common law. In both Maine cases and federal cases, the results of this analysis can seem counterintuitive. For example, a jury trial is available in a small claims case, but it is not available in an action to terminate parental rights, an action whose outcome is likely to have a much greater impact on the parties involved. Whether the right to a civil jury trial should be based on the gravity of the action in question, rather than the procedural process that existed at common law, is a question for the legislature, not the judiciary, and is beyond the scope of this paper. What must be considered, however, when analyzing the Law Court's decisions on the right to a jury trial under the Maine Constitution, is the danger of arbitrary results that stem from inconsistent constitutional interpretation.

One of the more troubling aspects of the *Anton* decision was the Law Court's disregard for the doctrine of *stare decisis*. Rather than addressing its departure from well-established precedent, the Law Court simply wrote as though its interpretation

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199. *Id.*

200. N. Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1190 (Me. 1989).

201. THOMAS J. ARNOLD, REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF COMMON PLEAS 25 (1840).

202. Petruccelli & McKay, *supra* note 17, at 246.

203. *See, e.g.*, *id*. at 240 ("From the beginning, the Law Court has consistently recognized that the jury trial mandates of the Maine constitution are exceptionally rigorous.").

was a widely accepted one. The primary way the Law Court did so was by erroneously citing several Maine cases as supporting its interpretation of Article I, Section 20. These cases do not in any way support the interpretation of the provision offered by *Anton*. The first case cited is *State v. Sklar*,[204] which addresses only the right to a jury trial in a criminal proceeding under Article I, Section 6 of the Maine Constitution.[205] The other cases cited[206] establish the principle that types of actions that would have been heard in a court of equity at common law do not hold a Constitutional right to a jury trial, but they do not support the Law Court's interpretation in *Anton* that only cases that held a jury trial right at common law currently hold such a right.

There are significant fairness implications to the Law Court's disregard for legal precedent. Although the request for a jury trial is exercised somewhat infrequently in Maine courts, the Law Court's inconsistency may have also resulted in the denial of other jury trial requests in the district court under *Anton*. Fortunately, the Law Court mitigated the number of inconsistent outcomes and unfair treatment for those individuals seeking a jury trial by reversing course through its decision in *DePaolo* fairly quickly.

The Law Court's departure from *stare decisis* in this line of cases was criticized in an article written by Thad B. Zmistowski in 1989.[207] Interestingly, Zmistowski criticized the Law Court for disregarding its precedent established by *Anton* in its decision in *DePaolo*.[208] The author did not examine the history of the court's interpretation of Article I, Section 20, which establishes that *Anton* is the outlier from precedent on the issue of the civil jury trial right, not *DePaolo*. Nonetheless, by failing to address its departure from established precedent in any way in either *Anton* or *DePaolo*, the court ignored the time-honored principle of *stare decisis* and contributed to a period of inconsistent decisions and confusion in the law.

The Law Court's correction in *DePaolo* is in line with the principle of new judicial federalism, which holds that state constitutions are critically important in determining the legal rights of state citizens. Maine is one of many states that have extended greater Constitutional protections to its citizens than are granted under the Federal Constitution.[209] The differences between state constitutions and the Federal Constitution are frequently overlooked, and federal constitutional law is often substituted for careful analysis of the unique language of each state's Constitution, an approach known as "lockstepping,"[210] that was present in *Anton*. For provisions

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204. 317 A.2d 160 (Me. 1974).

205. *Id.* at. 161.

206. The *Anton* court cited the following cases in holding no right to a civil jury trial unless that right affirmatively existed for such an action at common law: Portland Pipe Line Corp. v. Envtl. Improvement Comm'n, 307 A.2d 1, 28 (Me. 1973), *appeal dismissed*, 414 U.S. 1035 (1973); Farnsworth v. Whiting, 106 Me. 430, 76 A. 909 (1910) (citing Parker v. Simpson, 62 N.E. 401 (Mass. 1902)); *see* Opinion of the Justices, 315 A.2d 847 (Me. 1974) (upholding workers' compensation law); Kennebec Water Dist. v. City of Waterville, 96 Me. 234, 52 A. 774 (1902) (examining condemnation proceedings); *cf.* Ashley v. Wait, 116 N.E. 961 (Mass. 1917). 463 A.2d at 708-09.

207. Zmistowski, *supra* note 69, at 203.

208. *Id.*

209. *See* Brennan, *supra* note 46, at 500.

210. Friedman, *supra* note 42 ("Under the lockstep approach, the state constitutional analysis begins and ends with consideration of the U.S. Supreme Court's interpretation of the textual provision at issue.").

of the Bill of Rights that have not been incorporated to the states,[211] it is the role of state courts to interpret the language of the state's unique constitutional provisions independently. By substituting interpretations of federal constitutional provisions for analysis of unique provisions of state constitutions, state courts eliminate a parallel source of constitutional rights.

In analyzing the *Anton* decision in light of the three methods of state constitutional interpretation introduced in Part I,[212] the Law Court's method of interpretation aligns most closely with the "lockstepping" approach. The glaring departure from over one hundred years of precedent in Maine, as well as from the plain text of the statute, makes the court's interpretation of Article I, Section 20 an extreme example of the substitution of federal constitutional law for independent analysis of the state constitution. By limiting the scope of individual rights under the Maine constitution to those guaranteed under the Federal Constitution, the *Anton* court significantly narrowed the jury trial right that had existed for over one hundred years in the state of Maine.

The *Anton* court could have used either the criteria approach or the primacy approach to its interpretation of Article I, Section 20 to arrive at the proper result. Under the criteria approach, the court would determine that the plain text of Article I, Section 20 differed significantly from the text of the Seventh Amendment, warranting an independent interpretation of the provision. The court could bolster its analysis by looking at prior case law, which supports the deviation from the interpretation of the Seventh Amendment. Finally, the Law Court's unwavering commitment to a broad jury trial right throughout Maine history supports the deviation from the federal interpretation of the Seventh Amendment.

V. CONCLUSION

The reversal of the *Anton* interpretation of Article I, Section 20 repaired judicial consistency, demonstrated sound textual interpretation of the Maine Constitution, and recognized the Maine Constitution as a unique source of rights for its citizens. As Justice Brennan so eloquently stated:

> [S]tate courts cannot rest when they have afforded their citizens the full protections of the [F]ederal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law – for without it, the full realization of our liberties cannot be guaranteed.[213]

Maine has an admirable tradition of upholding a rigorous jury trial right as guaranteed by her own constitution, despite ongoing pressures to make the judiciary more efficient, as well as the procedural complications that can arise when honoring a broad civil jury trial right. Despite a centuries-old tradition of rigorously defending

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211. Provisions of the Bill of Rights that have not been incorporated to the states include the Second Amendment, the Third Amendment, the grand jury indictment clause of the Fifth Amendment, and the Seventh Amendment. *See* McDonald v. City of Chicago, 561 U.S. 742, 765 n.13 (2010).

212. See *supra* pp. 1-5.

213. Brennan, *supra* note 46, at 491.

the broad right to a jury trial in Maine, the Law Court's decision in *Anton* shows how fragile these rights can be if interpreted without rigorous analysis and respect for historical precedent. Through one poorly crafted and poorly supported decision, the Law Court reversed its long-standing interpretation of Maine's provision guaranteeing a jury trial in civil cases, and eliminated the right to a jury trial for many plaintiffs in many types of actions. Fortunately, the damage caused by *Anton* was mitigated by the Law Court's fairly quick reversal in *DePaolo*. Nonetheless, a historical analysis of *Anton* illustrates the importance of state constitutions as a source of individual rights for state citizens, as well as the influence of the judiciary in determining the scope of those rights.

VI. ADDENDUM

TABLE 1: THE RIGHT TO A JURY TRIAL FOR CIVIL VIOLATIONS UNDER THE MAINE CONSTITUTION				
Civil Action/ Violation	Jury Trial Right	Case Law	Source	Commentary
Violation of Wage Payment Statute 26 M.R.S.A. § 626	No	"An action to recover severance pay under 26 M.R.S.A. § 625-B . . . creates a new cause for action unknown to the common law."	Dir. of Bureau of Labor Standards v. Fort Halifax Packing Co., 510 A.2d 1054, 1063 (Me. 1986).	Though *Fort Halifax Packing* was not expressly overruled in *DePaolo*, the *DePaolo* interpretation would likely determine a right to a jury trial. In *Merrithew* the court states in a footnote that the *DePaolo* interpretation runs contrary to its decision in *Fort Halifax Packing*.
Small claim	Yes, but only on appeal, following the decision of a nonjury court.	"According to statutory law of Massachusetts at the time the Maine Constitution was adopted, a party in a small claim case . . . for an amount not exceeding a statutory limit, had the right to a jury trial *de novo* on appeal at the Superior Court. 1783 Mass. Acts ch. 42."	Ela v. Pelletier, 495 A.2d 1225, 1228 (Me. 1985).	Right to a jury trial is only available following the decision of a nonjury court in a small claims case. *Id.* at 1227. *Ela* was decided under *Anton*, but would likely lead to the same result under *DePaolo*.
Civil judicial forfeiture	Yes	"Long before the adoption of the United States Constitution the common law courts in the Colonies . . . were exercising jurisdiction *in rem* in the enforcement of forfeiture statutes."	State v. One 1981 Chevrolet Monte Carlo, 1999 ME 69, ¶ 7, 728 A.2d 1259.	

TABLE 1: THE RIGHT TO A JURY TRIAL FOR CIVIL VIOLATIONS UNDER THE MAINE CONSTITUTION				
Termination of parental rights	No	"Although the specific action for termination of parental rights is a creature of recent statute, P.L. 1979 ch. 733, § 18, similar suits adjusting the relationship between parent and child were heard in equity without the intervention of a jury prior to 1820."	*In Re* Shane T., 544 A.2d 125, 1296-97 (Me. 1988).	
Traffic Infraction	No	"The legislation here in question does not provide merely that a fine be levied against a defendant found liable for a traffic infraction. It reposes discretion in the District Court to suspend the defendant's operator's license in addition to or instead of imposing a fine. We are aware of no civil suit in 1819 that would have been comparable to such a proceeding."	State v. Anton, 463 A.2d 703, 709 (Me. 1983).	Though *Anton* was not expressly overruled in *Merrithew*, the court modified its interpretation of the Maine Constitution, and states in a footnote that it is contrary to its interpretation in *Anton*. The new interpretation, which runs contrary to that used in *Anton*, is that there is a civil right to a jury trial unless there was a specific exception for a type of action at common law.

TABLE 1: THE RIGHT TO A JURY TRIAL FOR CIVIL VIOLATIONS UNDER THE MAINE CONSTITUTION				
Forcible Entry and Detainer (FED)	Yes*	"Suits under Maine's modern FED statute to evict tenants who hold over peaceably are 'of the same general nature' as the causes of action that carried the right to a jury trial in 1820. Thus, a jury trial is required under [A]rticle I, [S]ection 20 because in the eviction of tenants prior to 1820 it had not 'heretofore been otherwise practiced . . . .'"	N. Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1192 (Me. 1989).	*Except in cases where title is raised, judgment in a bench trial in the District Court must be made prior to appeal to the Superior Court for a jury trial. *Id*. at 1197.
Mortgagee bringing a civil foreclosure action	No	"Pursuant to the law of Massachusetts as it existed prior to the adoption of the Maine Constitution, matters related to a mortgage foreclosure were within the equity jurisdiction of the court."	Kennebec Fed. Sav. & Loan Ass'n v. Kueter, 1997 ME 123, ¶ 5, 695 A.2d 1201.	The court determined that the deficiency assessment procedure is not a separate action at law, but is part of a unified civil foreclosure action, which was an equity proceeding at common law. *Id*. at 1203.

TABLE 1: THE RIGHT TO A JURY TRIAL FOR CIVIL VIOLATIONS UNDER THE MAINE CONSTITUTION				
Violation of city ordinance banning pornography	Yes, through party's removal to Superior Court	"Nothing in either the common law or in the statutory law of Massachusetts as they existed prior to the adoption of the Maine Constitution in 1920 indicates that defendants in a case such as the instant one would have been denied the right to a jury trial."	City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987).	This case solidified the interpretation that there is a right to a jury trial in civil cases unless the type of action was excluded from the jury trial right prior to the ratification of the Constitution in 1820.
Illegal transportation by minors 28-A M.R.S.A. § 2052	No right to a jury trial in juvenile proceedings	"The Maine Rules of Evidence shall apply in the adjudicatory hearing. There shall be no jury."	15 M.R.S.A. § 3310 (2014).	Statutory limit on jury trial for juveniles upheld in *State v. Gleason,* in which the court stated: "To import a jury trial requirement into Maine's juvenile justice system would not greatly strengthen the fact-finding function of the Juvenile Court, but would result in definite attrition of that court's ability to function in the informal and protective manner which has long been a goal of the system." 404 A.2d 573, 585 (Me. 1979).
Illegal possession by minors 28-A M.R.S.A. § 2051	No right to a jury trial in juvenile proceedings	"The Maine Rules of Evidence shall apply in the adjudicatory hearing. There shall be no jury."	15 M.R.S.A. § 3310 (2014).	Statutory limit on jury trial for juveniles upheld in *State v. Gleason*, 404 A.2d 573, 585 (Me. 1979).

TABLE 1: THE RIGHT TO A JURY TRIAL FOR CIVIL VIOLATIONS UNDER THE MAINE CONSTITUTION				
Possession of Marijuana	Yes	In cases of possession of marijuana, the Superior Court held there to be a right to a jury trial in *State v. DiPietro* under the *DePaolo* interpretation.	2009 ME 12, ¶ 5, 964 A.2d 636.	
Possession of Drug Paraphernalia	Yes	In cases of possession of drug paraphernalia, the Superior Court held there to be a right to a jury trial in *State v. DiPietro* under the *DePaolo* interpretation.	2009 ME 12, ¶ 5, 964 A.2d 636.	
Dog at Large	Maybe	Would likely be considered a nuisance violation at Common Law, which would be heard in a Court of Common Pleas.	THOMAS J. ARNOLD, REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF COMMON PLEAS 25 (1840).	
Dangerous Dog	Maybe	Would likely be considered a nuisance violation at Common Law, which would be heard in a Court of Common Pleas.	THOMAS J. ARNOLD, REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF COMMON PLEAS 25 (1840).	