there is no direct historical antecedent dating to the adoption of the amendment, the court may also consider whether existing precedent and the sound administration of justice favor resolution by judges or juries.[32]

The amendment does not apply to cases in admiralty and maritime jurisdiction, in which the trial is by a court without a jury,[33] nor does it reach statutory proceedings unknown to the common law, such as an application to a court of equity to enforce an order of an administrative body.[34] Thus, when Congress committed to administrative determination the finding of a violation of the Occupational Safety and Health Act with the discretion to fix a fine for a violation, the charged party being able to obtain judicial review of the administrative proceeding in a federal court of appeal and the fine being collectible in a suit in federal court, the argument that the absence of a jury trial in the process for a charged party violated the Seventh Amendment was unanimously rejected. "At least in cases in which 'public rights' are being litigated—*e.g.*, cases in which the government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact—the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible."[35]

On the other hand, if Congress assigns such cases to Article III courts, a jury may be required. In *Tull v. United States*,[36] the Court ruled that the Amendment requires trial by jury in civil actions to determine liability for civil penalties under the Clean Water Act, but not to assess the amount of penalty. The penal nature of the Clean Water Act's civil penalty remedy distinguishes it from restitution-based remedies available in equity courts, and therefore makes it a

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Hedden, 137 U.S. 310, 329 (1890); (8) a summary disposition by referee in bankruptcy of issues regarding voidable preferences as asserted and proved by the trustee, Katchen v. Landy, 382 U.S. 323 (1966); and (9) a determination by a judge in calculating just compensation in a federal eminent domain proceeding of the issue as to whether the condemned lands were originally within the scope of the government's project or were adjacent lands later added to the plan, United States v. Reynolds, 397 U.S. 14 (1970).

[32] Markman v. Westview Instruments, Inc., 517 U.S. 348 (1996) (interpretation and construction of terms underlying patent claims may be reserved entirely for the court).

[33] Parsons v. Bedford, 28 U.S. (3 Pet.) 443 (1830); Waring v. Clarke, 46 U.S. (5 How.) 441, 460 (1847); Romero v. International Terminal Operating Co., 358 U.S. 354 (1959). *But see* Fitzgerald v. United States Lines Co., 374 U.S. 16 (1963).

[34] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937). *See also* ICC v. Brimson, 154 U.S. 447, 488 (1894); Yakus v. United States, 321 U.S. 414, 447 (1944).

[35] Atlas Roofing Co. v. OSHRC, 430 U.S. 442, 450 (1977).

[36] 481 U.S. 412 (1987).