judicial power" and "whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency . . . for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend." The answer was stated broadly. "In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function. . . . We think that the essential independence of the exercise of the judicial power of the United States in the enforcement of constitutional rights requires that the Federal court should determine such an issue upon its own record and the facts elicited before it." [1230]

It is not at all clear that, in this respect, *Crowell v. Benson* remains good law. It has never been overruled, and it has been cited by several Justices approvingly,[1231] but the Court has never applied the principle to control another case.[1232]

Express Constitutional Restrictions on Congress.—"[T]he Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitations that they may not be exercised in a way that violates other specific provisions of the Constitution." [1233] The Supreme Court has had no occasion to deal with this principle in the context of Congress's power over its jurisdiction and the jurisdiction of the inferior federal courts, but the passage of the Portal-to-Portal Act [1234] presented the lower courts such an opportunity. The Act extinguished back-pay claims growing out

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[1230] 285 U.S. at 56, 60, 64.

[1231] *See* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (plurality opinion), and id. at 100–03, 109–11 (Justice White dissenting) (discussing the due process/Article III basis of *Crowell*). Both the plurality and the dissent agreed that later cases had "undermined" the constitutional/jurisdictional fact analysis. Id. at 82, n.34; 110 n.12. For other discussions, *see* Jacobellis v. Ohio, 378 U.S. 184, 190 (1964) (Justice Brennan announcing judgment of the Court, joined by Justice Goldberg); Pickering v. Board of Education, 391 U.S. 563, 578–79 (1968); Agosto v. INS, 436 U.S. 748, 753 (1978); United States v. Raddatz, 447 U.S. 667, 682–84 (1980), and id. at 707–12 (Justice Marshall dissenting).

[1232] *Compare Permian Basin Area Rate Cases*, 390 U.S. 747, 767, 792 (1968); Cordillo v. Liberty Mutual Ins. Co., 330 U.S. 469 (1947); South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251 (1940). Justice Frankfurter was extremely critical of *Crowell*. Estep v. United States, 327 U.S. 114, 142 (1946); City of Yonkers v. United States, 320 U.S. 685 (1944).

[1233] Williams v. Rhodes, 393 U.S. 23, 29 (1968). The elder Justice Harlan perhaps had the same thought in mind when he said that, with regard to Congress's power over jurisdiction, "What such exceptions and regulations should be it is for Congress, in its wisdom, to establish, having of course due regard to all the provisions of the Constitution." United States v. Bitty, 208 U.S. 393, 399–400 (1908).

[1234] 52 Stat. 1060, 29 U.S.C. § 201.