that purported to reduce statutorily determined duties,[326] and congressional enactment of authority for the President to negotiate reciprocal trade agreements all seem to point to the necessity of some form of congressional implementation.

What other treaty provisions need congressional implementation is debatable. A 1907 memorandum approved by the Secretary of State stated that the limitations on the treaty power that necessitate legislative implementation may "be found in the provisions of the Constitution which expressly confide in Congress or in other branches of the Federal Government the exercise of certain of the delegated powers. . . ."[327] The same thought has been expressed in Congress[328] and by commentators.[329] Resolution of the issue seems to be for legislative and executive branches rather than for the courts.

Congressional Repeal of Treaties.—Madison contended that, when Congress is asked to carry a treaty into effect, it has the constitutional right, and indeed the duty, to determine the matter according to its own ideas of what is expedient.[330] Developments have vindicated Madison in this regard. This is seen in the answer that the Court gave to the question: What happens when a treaty provision and an act of Congress conflict? The answer is that neither has any intrinsic superiority over the other and therefore the later one will prevail. In short, the treaty commitments of the United States do not diminish Congress's constitutional powers. To be sure, legislative repeal of a treaty as law of the land may amount to its violation as an international contract. In such case, as the Court said, "its infraction becomes the subject of international negotia-

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[326] S. Crandall, supra, at 189–190.

[327] Anderson, *The Extent and Limitations of the Treaty-Making Power*, 1 Am. J. Int'l L. 636, 641 (1907).

[328] At the conclusion of the 1815 debate, the Senate conferees noted in their report that some treaties might need legislative implementation, which Congress was bound to provide, but did not indicate what in their opinion made some treaties self-executing and others not. 29 Annals of Congress 160 (1816). The House conferees observed that they thought, and that in their opinion the Senate conferees agreed, that legislative implementation was necessary to carry into effect all treaties which contained "stipulations requiring appropriations, or which might bind the nation to lay taxes, to raise armies, to support navies, to grant subsidies, to create States, or to cede territory. . . ." Id. at 1019. Much the same language was included in a later report, H. Rep. No. 37, 40th Congress, 2d Sess. (1868). Controversy with respect to the sufficiency of Senate ratification of the Panama Canal treaties to dispose of United States property therein to Panama was extensive. A divided Court of Appeals for the District of Columbia reached the question and held that Senate approval of the treaty alone was sufficient. Edwards v. Carter, 580 F.2d 1055 (D.C. Cir.), *cert. denied*, 436 U.S. 907 (1978).

[329] T. Cooley, General Principles of Constitutional Law 175 (3d ed. 1898); Q. Wright, The Control of American Foreign Relations 353–356 (1922).

[330] *See*, *e.g.*, 5 Annals of Congress 493 (1796).