page 141) with Carolingian capitularies, instead of seeking their prototype in a constitution of Arcadius and Honorius.

Professor Maitland has, however, done so much for us in these essays, and has done it so well, that it is hardly fair to quarrel with him for stopping wherever he sees fit. His main theses, it seems to me, are fully established; and he helps the reader in a hundred lesser points to a better understanding of English history in the later middle ages. A book like this — touching, as it does, upon matters with which every English historian of the period has to deal — makes us realize how flabby history is without the backbone of law; and if the "pure" historian has not time to undertake such researches for himself, he should at least appropriate the results which the legal historians are working out for him.

The late Professor Seeley, as is well known, had a deep-rooted prejudice against history that tried to be literature; and it may be conceded that when the literary instinct is not under strict control, it is a dangerous gift to the historian, or indeed to any writer whose business it is to tell the truth. When, however, as in Professor Maitland's case, facts are neither twisted to perfect an epigram nor whittled away to point a climax, we can enjoy the historian's felicity of phrase and power of dramatizing a situation without even a vicarious twinge of conscience; and we can wish, without any mental reservation, that other scholars, whose material is equally solid, were able to present it with the same polish.

MUNROE SMITH.

Du Rôle des chambres en matière de traités internationaux. Par ALBERT DAUZAT, Docteur en droit. Paris, Félix Alcan, 1899. —219 pp.

This monograph is divided into four parts, the first of which relates to questions of doctrine, such as the modes of legislative sanction, the extensions and limitations of the legislative sanction, and the legislative sanction from the point of view of international law; the second, to the history of the English constitution; the third, to the constitution of France; and the fourth, to the study of certain foreign constitutions, including those of the United States, Spain, Italy and the German Empire. In the development of constitutional government the legislature has, as the author points out, been invested with certain powers in respect of the making of treaties. The time and manner of the legislative participation depend upon the provisions of the various constitutions, or upon customs which have acquired the prac-

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tical force of fundamental law. The tendency, however, has been to leave the initiation and conduct of negotiations to the executive, reserving the power of approval or disapproval to the legislature.

But, even where the constitution requires the legislative sanction in one form or another for the making of treaties, questions often arise as to whether an international agreement of a certain kind constitutes a treaty in this sense, so as to come within the requirement. With reference to this question, the author divides treaties for which the legislative sanction is requisite into three classes: (1) Those that cannot be executed without the concurrence of the chambers, such as those involving subsidies, changes in public or in private law, or matters of commerce. (2) Treaties affecting the territorial dominion of the state. (3) Special treaties, such as a treaty of offensive alliance under the Spanish constitution. It is obvious, however, that this classification can be considered as only approximately accurate. The final test is the actual law and custom in each state; and generalizations on the subject possess little value, unless founded upon a more thorough examination of particular cases than the author appears to have made.

In the United States, apparently owing to the inconveniences involved in the peculiar constitutional provisions as to the making of treaties, a practice has grown up of concluding international agreements which, though commonly called treaties, are entered into on the strength of previous legislation and without employing the treaty-making power. In this category are postal conventions, the reciprocity agreements effected under the McKinley and Dingley acts, and international copyright arrangements under the act of 1891.

In the discussion of the various questions embraced in his work, the author has relied chiefly on secondary sources, with the result that his statements are not always either definite or correct. In one place (p. 45) he refers to the irritation caused in England by the rejection in the United States Senate of "the treaty of commerce of 1865." The incident to which he probably intends to refer is the notice given to Great Britain in that year, under a resolution of Congress, of the intention of the United States to terminate the reciprocity treaty of 1854, in accordance with its terms. No question of senatorial approval of a treaty was involved in the case. In another place (p. 194) he states that the Senate always deliberates on treaties "in secret committee." This is, indeed, the usual practice; but there was a notable departure from it in the instance of the fisheries treaty of 1888, which was debated in open session and at length rejected

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in August of that year. Again, relying upon an imperfect reading of Bryce's *American Commonwealth*, he represents the President as being "in constant relations with the majority of the Senate" and as keeping "the leaders of the principal parties" in touch with the negotiations themselves. Mr. Bryce's text is far from justifying these representations. The author also states that it is a rare thing for the Senate to reject a treaty; and in this relation he adverts to the effect produced in England by the defeat of "the Anglo-American treaty of 1859." The particular treaty to which he probably intends to refer was the Johnson-Clarendon claims convention of 1869. But it was not so much the rejection of this treaty by the Senate, for which there were ample precedents, as the circumstances attending the rejection, that created feeling in England. The author also discusses the question whether, "in concluding a treaty, the President is bound by the legislation of the different states of the Union." He states that this question has been decided in the negative, upon the strength of the constitutional provision, which he quotes in an imperfect form, that the judges in every state are bound by treaties, anything in the constitution or laws of any state to the contrary notwithstanding. The subject would have been made clearer, if the author had quoted in its original form the whole of the clause (Art. vi, Cl. 2), of which the phrases cited by him form only the concluding part. It would then have appeared that the constitution, the laws made in pursuance thereof, and treaties made under the authority of the United States, are expressly declared to be "the supreme law of the land," and that it was with a view to assuring the observance and enforcement of this principle that the declaration as to the judges in the various states was added.

J. B. MOORE.

The Necessity for Criminal Appeal, as Illustrated by the Maybrick Case and the Jurisprudence of Various Countries. Edited by J. H. LEVY. London, P. S. King & Son, 1899. — xii, 609 pp.

The editor of this volume is to be commended for the fullness with which he has placed the facts in the Maybrick case before the public. While his own opinions on the case, and the grounds upon which they are based, are fully stated, he affords the reader an opportunity to form an independent judgment, by spreading before him the full record of the trial, including the testimony of the witnesses, the speeches of counsel and the charge of the presiding justice. In addition to these things, he presents what may be called the after-

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