BOOK REVIEWS.

The Economics of Communism, With Special Reference to Russia's Experiment. By Leo Pasvolsky, formerly Editor of the *Russkoye Slovo*, and *The Russian Review*. The Macmillan Company, New York City, 1921, pp. xvi, 312.

The science of economics, in contrast with the natural sciences, is handicapped by its inability to use at will the method of experiment. We cannot isolate particular things for study. Our laboratory is the world, in which the whole mass of economic phenomena are thrown together in a bewildering maze of action and reaction quite beyond the control of the student. Only occasionally, through some accident of history, does any particular group of phenomena stand out in such fashion as to furnish a real experimental test of economic law.

The discussion of socialism has perforce been largely a matter of deductive reasoning. Many experiments in socialism have, indeed, been tried. Isolated communistic communities have sprung up and lived a more or less brief life in various parts of the world. But these have been small affairs, complicated by various extraneous circumstances, and seldom recognized as adequate experiments by either the friends or the foes of socialism. Now at last the world has before it a great national experiment in communism. The experience of the past few years has been a ghastly one for the Russian people. No one, not wholly lacking in human sympathy, can fail to be moved by their sufferings. Yet a service of incalculable value has been rendered to mankind in thus putting before us a great practical test of the philosophy of communism. The world will be blind indeed if it does not take full advantage of its opportunity by studying carefully the Russian experiment.

We have been flooded with "news" from Russia. Much of it is clearly biased, mere propaganda of one side or the other, and not worth serious consideration. The present volume is not of that sort. Its author, Leo Pasvolsky, is a Russian, formerly editor of the *Russkoye Slovo* and *The Russian Review*. He is clearly well-informed as to Russian conditions, both before and during the Soviet regime, and has had unusual access to official documents. While not in sympathy with communism or the Soviet rule, his book shows evidence of careful and impartial study. His sources are all official documents of the Soviet authorities or the writings of their propagandists and agents. So far as the facts go, the author can certainly not be accused of bias against the Soviet idea, and his conclusions follow inevitably from the facts.

To summarize, even briefly, the extraordinary story here presented and the conclusions to be drawn from it is quite out of the question in an ordinary review. What has particularly interested me is the remarkable way in which the general conclusions of economics as to the merits of communism are here confirmed.

We have said that the one great inducement which leads men to work and produce is the guarantee that each shall have (at least approximately) that which he produces. We have predicted that under communism the motive to produce would be lost and, whatever the scheme of distribution, the people would suffer from the lack of the things that satisfy human wants. That exactly this has happened in Russia is here proved beyond the shadow of a doubt. Witness the following, taken at random from the mass of similar evidence (page 171):

"The Petrograd *Krasnaya Gazeta* of September 10, 1920, reports the following results of a casual inspection made at several factories in Petrograd:

"'At the Nobel factory the list of workmen indicated 457 workmen and 116 employees. The inspectors found that 107 workmen and 14 employees were absent on leave; 37 workmen and 17 employees were ill; 19 workmen and 1 employee were absent on special missions. Thirty-one workmen and 1 employee were absent for no reason. Thus, according to the records at the office of the factory, only 263 workmen and 83 employees, *i. e.,* less than half of the list were present.

"'But the inspectors did not stop there. It is not enough that a workman is indicated as having reported for work; it is necessary to see whether or not he is actually at his place. The following was the situation at the shops: In the mechanical shop, in which 43 were reported as present, only 24 were actually at work. In the forge room, only 5 out of 14 were at work. In the moulding room, there were 16 instead of 69 . . . The repair shop beat the record: instead of the 41 workmen indicated as having reported in the morning, two men were wandering about the shop in a weary fashion. The transmission belts were running, but no work was being done, because there were no gears in the lathes. It was only in the assembling room that all the five workmen who had reported in the morning were actually at work.'"

Of the state of starvation and misery to which the Russian people have fallen, evidence appears on nearly every page.

Economics has said that the communistic regime would fail to appreciate the importance of expert skill and organizing ability, of brains, in industry, and that the result would be the breakdown of industrial organization and the decline of production. The Soviet regime has given the proof. At first the idea was to class the experts and managers with the bourgeoisie and prosecute them accordingly, or at best to reduce them to the level of the common unskilled workman. The inevitable collapse of production having come, the attempt was made to bring back the brains into industry, either by compulsion or by the bribe of higher pay and special privilege, all to no avail.

Few realize the extraordinary complexity of the modern industrial organization. Without legal compulsion, without apparent conscious plan, each person, be he the president of the railroad, the managing director of the factory, the mechanic at the lathe, the stenographer in the office or the longshoreman on the dock, finds his place and does his work. A scheme of co-operative effort too complicated for the human mind fully to grasp works day by day on the basis of freedom in the choice of occupation and money exchange of the products. The economist has said that if ever communism should scrap this organization, nothing but the brute force of

iron-clad military compulsion could ever take its place, and that even military compulsion would be powerless to keep production going. Here again the Russian experiment gives conclusive evidence. In the author's words (page viii):

> "But the year 1920 also ended with an almost universal realization, even on the part of the Soviet leadership, of the fact that, from the viewpoint of economic production, the situation in the country was rapidly becoming more and more desperate. Out of this realization there emerged the inevitable envisagement of the fundamental dilemma which the leaders of Communism must face and which may be expressed as follows:
>
> "Communism is impossible without the application of compulsion in the economic life of the country; but economic production is impossible with the application of such compulsion."

It has been charged against communism that its organization would inevitably lead to a top-heavy officialdom, occupying a privileged position, and recruited on the basis of political favoritism rather than efficiency. As Professor Sumner used to say: "When the community is ruled by a committee, the place to be is on the committee." What does the Russian experiment show?

> "The growth of the officialdom, in the economic and political administration of the country, may be seen from the following figures, indicating the status of the population of Petrograd. In July, 1920, the total adult population of Petrograd was estimated at 562,404, divided into five groups. The first group comprised the workmen, the actual producers in the Communist sense; it numbered 253,340, or less than one-half of the total. The next group comprised the government employees; it numbered 142,912, or over one-quarter of the whole adult population. The next group comprised soldiers and sailors, of whom there were 113,207. The other two groups consisted of university students and of housewives. *Thus one out of every four adults in Petrograd is a government official; one out of every two adults in Petrograd is either a government official or a soldier.*
>
> "It must be borne in mind that Petrograd is not the capital of the country. Its officialdom is not national, but local in character. The situation in Moscow in this respect is very much worse." (Page 206.)

And again:

> "Whatever (the Soviet regime) hoped to be economically, it is anything but the 'workman-peasant' authority, as it still styles itself with pride. It has alienated itself from both workmen and peasants. It has to apply to both a constantly increasing pressure of sheer force. It has created for itself a support consisting of two privileged classes, the officialdom and the army, the privileged condition of which is bound up with the continued existence of the regime itself." (Page 303.)

Finally we see in Russia demonstration of the vitality of those fundamental economic principles of demand and supply and the laws of trade. Free exchange has been forbidden. Goods may be sold only to the government and purchased only from the government, and at "fixed" prices. Yet in spite of this prohibition, in spite of dire punishment, including even death, for its violation, there has grown up an extensive illicit trade, "spekulyatsia," which in volume has gained steadily on the legal trade through government agencies. Only by means of this illegal trade has the bulk of the city

population avoided starvation, the government having been utterly incapable of providing more than a small fraction of the food and other products necessary to sustain life. What is more significant, the bulk of the manufactured products entering into this trade is actually obtained from the government's own warehouses, through favor, bribery and theft. The Soviet government has been powerless to cope with the situation. Even the official guards appointed to stop the "spekulyatsia" and arrest the "bagmen" have been corrupted by bribes and become the guardians and assistants of the illegal traders. The prices charged by the "bagmen" are enormous and their profits great. Yet their business thrives and the people are supplied, after a fashion.

There is nothing of the sensational in this book, in spite of the rich opportunity for such appeal. We have here a study in economics, pure and simple, requiring no lurid pictures to give it interest, a story that will grip any intelligent reader by the sheer force of the importance of the subject and the clearness of the lesson.

Fred Rogers Fairchild.

Professor of Political Economy,
Yale University.

MEN AND BOOKS FAMOUS IN THE LAW. By Frederick C. Hicks, A. M., LL. B. With an Introduction by Harlan F. Stone, Dean of Columbia University Law School. The Lawyers' Co-Operative Publishing Company, Rochester, New York, 1921, pp. 259.

This little book is written by the Associate Professor of Legal Bibliography and Law Librarian of Columbia University Law School, who submits his studies as impressionistic sketches of their subjects, expressing the hope that they will give some inspiration to his readers to look further into the realms of legal literature. The preliminary chapter is entitled *The Human Appeal of Law Books,* which the author well says exists because of their contents, and the pictures of life which form their background, telling the story of men and events. Other chapters discuss Cowell's Interpreter; Lord Coke and The Reports; Littleton and Coke upon Littleton; Blackstone and his Commentaries; Kent and his Commentaries; Livingston and his System of Penal Law; and finally Henry Wheaton. A valuable though necessarily partial bibliography concludes the book.

The learned author has well performed his labor of love, and his book should be widely read, especially by the law students and the younger lawyers of this generation, not to speak of their elders, whose scholastic career began after the older system of legal education had been superseded by that at present in vogue. It has now most unfortunately become the fashion to neglect and even to deprecate the study of the writings of Coke and of Blackstone. We hear much of the pedantry and historical errors of the former, as well as sneering criticisms of his personal and temperamental characteristics, but too often these criticisms are voiced by those who never read his life, and never opened his Reports or Institutes, even the immortal

Co. Litt., except perhaps to verify an occasional citation. These men ignore the fact that Coke was the oracle and ornament of the Common Law; a lawyer of prodigious learning and untiring industry, an accurate and conscientious judge, and an upright constitutional statesman; and just as the great Elizabethans fixed the usage of the English tongue, so Coke fortified the common law on its firm foundation. His reply to King James in the great case of the Commendams, and his conduct in the Parliament of King Charles in relation to the Petition of Right, have earned for him undying fame and gratitude. No lawyer even now can afford to disregard his writings, and even the best lawyer is made a better one by reading them.

Blackstone, once the universal text-book of the American student and lawyer, has in these latter days likewise passed into eclipse. This should be considered most unfortunate. As Judge Sharswood said, the whole body of American lawyers with few exceptions since the Revolution had drawn their first lessons in jurisprudence from the pages of Blackstone, and certainly they learned their lessons well, and had no reason to feel ashamed of their preceptor. Just as Coke summed up the common law as it existed in the beginning of the Seventeenth century, so Blackstone summed it up in the crucial close of the Eighteenth. These important periods were, to adopt a phrase of Coleridge's, landing places, and the summaries of Coke and Blackstone marked the times in the history of the law when its newer developments began.

Professor Hicks has very happily included Edward Livingston in his Hall of Fame, and it may be hoped that his account of Livingston will lead many lawyers to read and study his Codes and the Reports thereon, which they have also neglected. Livingston was one of those comparatively few men to whom the much abused title of jurist may fitly be applied. He derived his inspiration from Bentham, but possessed much more common sense, although he was at times led by Bentham's example into some rather bizarre suggestions, such as that noted by Professor Hicks on page 179 (Code of Procedure, Art. 427). Livingston's task was more complicated than Bentham's, for Louisiana inherited the Spanish law before her acquisition by the United States. Livingston had evidently studied that system, and refers to some of the principal Spanish authorities, among them Antonius Gomezius, the celebrated criminalist of the sixteenth century whose *Variæ Resolutiones* and *Commentarium ad Leges Tauri* were republished at Madrid as late as 1780. Livingston was not only more learned than Bentham, but had the great advantage of being a practicing lawyer, and besides had much more of the temperament of the true reformer. Bentham was an iconoclast, and disliked and despised everything in the existing system simply because it existed. Livingston, on the other hand, realized that the law is an historical science, and that its reform to be beneficial and effective must hold fast to that which is good, as well as let go that which is outworn. But as Livingston's code was never adopted, his influence like Bentham's was indirect. Chancellor Kent's notes on the Penal Code made in his copy, now in the Columbia University Law Library, are printed by Professor Hicks and form an interesting commentary.

A review in order to be readable, or at least to be read, should be short, so mention is omitted of the chapter on Henry Wheaton, interesting as it is, and only a little will be added of James Kent, of whom Professor Hicks gives an admirable account. It has not been long, as time goes, since his charming and lucid commentaries were read by every American student of the law. A book that has appeared in fourteen editions certainly must possess merit, and this book has been fully appreciated by the foremost lawyers of the country, among them the late Judge Penrose, of Philadelphia, who was a warm admirer of Kent's Commentaries, and cited them in his opinions with great frequency. Hampton L. Carson, Esq., recently delivered an address on Kent (published in the *Journal of the American Bar Association* for December, 1921) in which he presented a number of interesting letters of Kent hitherto unpublished. Mr. Carson well says: "He was to legal literature in America what Blackstone was in England, and prior to this he had played a judicial rôle such as Blackstone had never filled or could have hoped to fill. The student of American Society—whether lawyer or layman,—cannot afford to ignore either the importance or the extent of the work accomplished by Kent, both as judge and commentator."

It is much to be hoped that Professor Hicks will follow Dean Stone's suggestion in his Introduction, and give us another similar volume. We might mention as especially proper for inclusion, from England, Sir Henry Sumner Maine; from America, Joseph Story; but there are many others.

John Marshall Gest.

Judge of the Orphans' Court of Philadelphia County, Pennsylvania.

THE QUESTION OF ABORIGINES IN THE LAW AND PRACTICE OF NATIONS. Including a Collection of Authorities and Documents. By Alpheus Henry Snow. G. P. Putnam's Sons, New York, 1921, pp. v, 376.

The author defines aborigines to be "members of uncivilized tribes which inhabit a region at the time a civilized State extends its sovereignty over the region, and which have so inhabited from time immemorial; and also the uncivilized descendants of such persons dwelling in the region." In fact there is no attention paid in the book to the condition of immemorial habitation. Uncivilized tribes under the sovereignty of a civilized state would be a truer definition. His book, however, extends far beyond this limitation and a large part of it treats of the control of semi-civilized peoples like the Philippinos and Moors.

The basic idea of the author is that there are rules of the Law of Nations which constitute the sovereign, or colonizing state, trustee of the aborigines within its territory, similar to the rules of municipal law governing the relation of guardian and ward. "The conclusion which would seem to follow from this whole survey is that the power which a civilized State exercises over all its colonies and dependencies is, according to the law of nations, a power of trusteeship, and that power of guardianship over its dependent aboriginal tribes is one of the manifestations of this general

power" (page 113). (See also pages 128, 191 and 362.) The reviewer notes that the author differentiates betwen the "Law of Nations" and "International Law" (page 110), and says that such trusteeship is not included in the rules of International Law. This distinction is certainly not usually made, and this use of the term "Law of Nations" is confusing. In any case the reviewer believes that rules made and recognized by human society, which can properly be called law, setting up rights and duties, must apply to persons entitled to enforce the right, and in respect to whom the duty must be performed. Now, the persons of the Law of Nations are states. The author disclaims any idea that the aboriginal tribes are states, so they are not persons of the Law of Nations and cannot therefore be subjects of rights thereunder. (See page 195, S. S. for the unfortunate economic results of another conception.) But it will not be claimed that a foreign state could, for example, have interfered in the relations between the United States and the Indian tribes on any legal ground or that the claim of an individual Indian could have been sustained against the United States by any foreign power, so that a person of the Law of Nations, a state, would be involved. So in respect to the Philippines. The United States has declared its intention to rule the Islands in the interest of the Philippine people (p. 329), but the treaty with Spain expressly provided for ceding the Island to the United States and for the determination of the rights of the native inhabitants by Congress (page 328). Even admitting that the United States is trustee for the Philippine people, its declaration did not make that people a person of the Law of Nations, nor did this country undertake any responsibility towards other nations which would authorize them to compel performance of the trusteeship. The true legal relation between aborigines and the colonizing power is that quoted from Chief Justice Marshall: "The relations which were to exist between the discoverer and the natives were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interfere between them." Compare page 207, the Alaska Treaty, and page 76 in respect to the relations between Belgium and the Belgian Congo.

The situation in Central Africa is different. There an obligation, vague it is true, was undertaken by the free state and the nations having territories in the conventional basis of the Congo towards, not the natives, but other persons of the Law of Nations, signatories of the Act of Berlin and the Act of the Brussels-African conference. (See Chapter 10, page 246, and page 307, S. S.). It is in effect an agreement by one state to grant special treatment to a certain class of its subjects, so that an interesting light could be thrown on the whole question by a study of the history of the treaty agreements to protect religious and racial minorities contained in the Berlin Treaty in respect to the Balkans which have not been easy to enforce, to say the least. Very grave are the practical difficulties of enforcing rights of a class of citizens or subjects against their own government by a foreign power, or concert of powers, especially in a society of nations in which no one is free from fault. Besides experience has shown that the nations are slow to offend their neighbors by taking up quarrels in which they have no material benefit to gain. The treatment of the question of Morocco, pages 36, S. S., shows the practical difficulty of action by the great

powers. National interests and international jealousies are dangerous enemies of concerted international action.

The authorities collected by the author show rather the development of a principle of political science, an internal policy of civilized states to protect the interests of the aborigines or other subject peoples. The duty is moral rather than legal. The author does not consider the question of how this trusteeship has been carried out in practice, since the instance he gives of the so-called trust under which the northwest territory was held by the United States on transfer from the states, was, if it can be called a trust at all, a trust not for the benefit of the native inhabitants, but for the benefit of future white settlers. The author calls attention to the essential difference between the treatment of aborigines both as to personal and property rights, where the territory is suitable for European settlement, and where it is not (pp. 133-4). He quotes at length the admirable land law of Nigeria, page 129, which was the text for perhaps the most successful solution of the problem of dealing with aborigines in the tropics. It would evidently have not been possible to deal similarly with a temperate region.

The book arouses thought on a subject which seems destined to become of much greater importance in the future because of the mandates under the Treaty of Versailles and the provisions for the protection of the rights of minorities in the new states created at the close of the war. Here are true legal liabilities of an indefinite nature, and experience must develop the method for their enforcement.

Joseph P. Chamberlain.

Columbia University.

THE EMPLOYMENT OF THE PLEBISCITE IN THE DETERMINATION OF SOVEREIGNTY. By Johannes Mattern. John Hopkins University Studies in Historical and Political Science. The Johns Hopkins Press, Baltimore, 1920, pp. ix, 214.

The theory and practice of self-determination through the medium of the plebiscite has received a great deal of attention in recent years. Even before the war the subject had received thorough and scholarly treatment by Soldière[1] and Freudenthal.[2] The embodiment of the principle as one of the outstanding war aims of the allies and its incorporation, in theory at least, in the treaties subscribed to by the powers great and small after the war, brought the subject forward as a practical question of unusual importance. That this should soon be reflected in the literature of the subject is only natural. In 1918, André David published his doctor's dissertation on *Les plébescites et les cessions de territoires.* This was followed by Sara Wambaugh's *Monograph on Plebiscites,* and now we have the work by Mattern.

[1] E. Solière: Le Plébiscite dans L'annexion. *Étude historique et critique de droit des gens.* Paris, 1901.

[2] F. Freudenthal: Die Volksabstimmung bei Gebiets abstretungen und Eroberungen. Eine Studie aus dem Völkerrecht. Erlangen, 1891.

It was begun as a study at the Johns Hopkins University and was already well under way when Miss Wambaugh's work appeared. There is, therefore, a good deal of unavoidable duplication. On the other hand, Mr. Mattern has extended the field to include a chapter on "The Plebiscite in Ancient and Feudal Times," and a brief section on the use of the plebiscite in the secession movement in the South at the beginning of the Civil War, and a chapter on the theoretical aspects of the subject.

The work as a whole is not based on primary sources. Even in the account of instances of the case of the plebescite in American history, the story is based on Bancroft, W. F. Dodd, V. A. Lewis' History of West Virginia, MacPherson and Appletons. The sketch is well done, but one cannot but feel that the author missed an opportunity of making a real contribution in this part of his work. That it was difficult to do so in the ancient and medieval phases of the subject is evident. Special knowledge of the historical background is needed at every turn. Errors are bound to creep in, as for example, on page 53 when it is stated that "France conquered and secured for herself in the treaty of Muenster (1648) practically all of Lorraine and Alsace," that is, before Louis XIV came on the scene. Napoleon III's sudden desertion of the Piedmontese cause at Villafrancer was due to a variety of causes, of which the fact "that the Italian states not only desired to free themselves from Austrian interference and sovereignty but that they wanted unity under the House of Savoy" was only one.

The part of the work of most interest at this time is the chapter on "The Plebiscite in the Peace Treaties Ending the World War." After a brief sketch of the illusory provision for a registry of the popular will in the transfer of territory to the Central Powers in the Brest-Litovsk and the Bucharest treaties of 1918, the author gives an account of the application, or more frequently non-application, of the principle in the transfer of enemy territory and peoples. In Chapter VII, the theory of plebiscites is discussed in the light of some of the practical difficulties arising in the problem areas of Europe.

In general, the author concludes that both the practice and the views of authorities do not require the sanction of the inhabitants of a ceded territory. The treaty of Versailles, the author believes, bears out the statement that "The necessities of international policy may now and then allow or even demand such a plebiscite, but in most cases they will not allow it." On the whole, the work presents a clear and sane view of a moot subject even if it is lacking in research in primary sources. The authorities cited save for a few collections like Hertslet, Martens, and the Archives Parlemantaries are secondary in character. The Archives are used when the Laws or the *Procès Verbaux* would be better. Wambaugh appears in a few footnotes but not in the bibliography.

William E. Lingelbach.

Professor of History,
University of Pennsylvania.