

trative integrity of junior administrative officers than this unpredictable personal liability they must assume in transacting governmental business.

The core of the problem is to attain a stable balance between two vital principles: the principle that the final word in authorization of the disposition of public moneys shall be spoken by Congress and, therefore, Congress has a legitimate interest in the enforcement of its commands; the principle that once authority has been delegated and working programs approved, administrators must be allowed a reasonable degree of discretion in execution.

The solution, the author finds, is in the post-audit recommended in the Reorganization Bill. The essential features of this Bill as regards governmental accounting are: centralized uniform accounting; continuous post-audit of expenditures; continuous reporting thereof by the Auditor General to standing financial control committees of Congress.

This program would eliminate the illogical "pre-audit" which clings to legislative control far beyond legislative precincts, and would provide the essential flexibility for expert administration, yet subject executive activity to constant check-up by continuous post-audit reporting to Congress.

The ability to carry out a workable and efficient accounting control of governmental expenditures has been demonstrated by the experts of the General Accounting Office under *carte blanche* from the President to provide adequate accounting for the WPA expenditures. The only requirement now is to carry such accounting activity to every department of government, to substitute continuous post-audit for pre-audit procedures, and to provide for a continuous review by a Congressional committee on expenditure. The last is the most essential part of the program—the best accounting procedure breaks down if there is no provision for review and current use. No accounting procedure will afford a check upon executive exuberance if the legislature ignores the data provided for the purpose of wise planning and exact control.

GEORGE P. ELLIS\*

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James Kent: A Study in Conservatism. By John Theodore Horton. New York: Appleton-Century Co., 1939. Pp. xi, 354. \$3.50.

Justice Story once called James Kent "another Hardwick," and Lord John Campbell considered him the equal of any chancellor whose life he had written. Generations of law students pondered his *Commentaries* and called him "the American Blackstone." Yet the man himself remained something of a shadowy figure because he lacked an adequate and readable biography. Professor Horton has now filled the gap with unusual skill. He writes well. He has done an excellent research job. He has written broadly enough to set the man in his age and locality.

Kent was born of good Connecticut stock and graduated from Yale during the American Revolution. He read law in the office of Egbert Benson, Attorney General of New York, and was admitted to the bar in 1785. But he did not cease his study. First he cultivated "the humanities until the poets and historians of Rome, together with Homer, Hesiod, Demosthenes, and Xenophon, all in their own proper tongues, became sources of genuine enjoyment." Then he turned to Sir Edward Coke, to Sir Thomas Littleton, and to Peere Williams to broaden his knowledge of law and equity.

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In time, through private study he mastered all the great writers, ancient and modern, in his field. Primarily through his efforts the past was brought to bear on American law. He was ever the scholar.

Beginning his profession and entering politics just as the Constitution was being ratified and the new government established, Kent became an ardent supporter of Alexander Hamilton and his Federalist policies. He hated democracy and feared it. He associated it with lawlessness and dishonesty. To the defense of property and the maintenance of established privilege he dedicated his learning and his abilities. Consciously he strove to make the law an instrument for their protection.

Equal to his distrust of democracy was his admiration of English government and law. Blackstone, Mansfield, and Hardwick were his models. Grimly he set about incorporating the common law into American law and then establishing American equity upon English precedents. Her land law and her maritime law were brought to the defense of New York's great landed interests and her growing commerce. Even the law of nations buttressed the Jay treaty!

Opportunity to translate his knowledge and prejudices into action came early. In 1793 he was appointed to a professorship of law at Columbia University. Then followed rapidly appointment as a master in chancery and as Recorder of the City of New York. These were stepping stones to the New York Supreme Court and, after sixteen years on circuit, to the office of chief justice (1804). For ten years he presided over the court and completely dominated its decisions. For ten years more he held the office of chancellor.

From these lofty stations he fought the rising tide of democracy and asserted the application of English common law and equity. He checked labor's efforts to organize combinations for the purpose of raising wages. He protected "vested interests" against legislative enactments (*Dash v. Van Kleeck*). He upheld the Livingston steamboat monopoly on the waters of New York. He decided that "truth" could not be given in evidence in libel cases (*People v. Croswell*). And each and every decision, as well as a whole new American system of equity, was based with a great show of learning on English precedent.

"Jacobinical minds" at last upset his power, abolished the Council of Revision, brought on the War of 1812, widened the suffrage, and forced his retirement. But the records of his court edited and published and soon assisted by his *Commentaries* gave endurance and nation-wide influence to his work.

Such is the story Professor Horton tells with brevity, wit, and keen understanding.

AVERY CRAVEN\*

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Mr. Justice Miller and the Supreme Court, 1862-1890. By Charles Fairman. Cambridge: Harvard University Press, 1939. Pp. 431. \$4.50.

Studies in judicial biography are not numerous in American legal literature; and their value to the student and to the practitioner no one has yet taken the trouble to appraise. Lives of Marshall have until recently almost had the shelf to themselves, although a life of Field appeared in 1930,<sup>1</sup> one of Taney in 1935,<sup>2</sup> one of Waite in 1938,<sup>3</sup>

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<sup>1</sup> Swisher, Stephen J. Field, Craftsman of the Law (1930).

<sup>2</sup> Swisher, Roger B. Taney (1935).

<sup>3</sup> Trimble, Chief Justice Waite, Defender of the Public Interest (1938).