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LOUISIANA WORKMEN'S  
COMPENSATION LAW AND PRACTICE, by  
Wex S. Malone. West Publishing Company, St. Paul,  
1951. Pp. 740. \$15.00.

Warren A. Seavey

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in St. Thomas on such subjects as monsters and angels, I personally have found him full of useful wisdom on matters of law and government. But curiously most of the neo-Thomist writings in the legal field are almost destitute of reference to St. Thomas himself, who taught, as I read him, that positive law is a human thing intended to promote the happiness of human beings.

Though Professor Reuschlein found it necessary to fill in the European background of Pound's thinking by a long digression, he apparently felt no need for a similar introduction to the neo-scholastic philosophy, and there is no real exposition of what St. Thomas thought to be found in the book. What I hope is that Professor Reuschlein will next attempt a book that will present us with what may be truly called a neo-Thomist philosophy of law. The publication of such a book might convert the seemingly endless exchange over the grave of Holmes of epithets like "absolutist," "relativist," "authoritarian," and "positivist" into a serious discussion of intellectual issues.

In closing I do not wish to leave the impression that Professor Reuschlein's professed adherence to the neo-Thomist legal philosophy in any way impairs the utility of his book for those who think they would find that philosophy uncongenial. On the contrary, the outstanding quality of the book, as I have already suggested, is its scrupulous fairness and the faithfulness with which it presents all points of view.

*Lon L. Fuller\**

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Workmen's Compensation is a problem subject in the law schools. As the pressure on the curriculum has increased, only a small remnant may be found, sometimes in the course on agency and sometimes in torts. There remains a large uncovered field of great importance to millions of workers and of great interest to the 4000 or 5000 lawyers largely engaged in dealing with industrial accidents. In the absence of law school teaching, it is imperative that clearly written and carefully prepared treatises should be available. Since there is no uniformity in the statutory

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law, works written by experts in the idiosyncrasies of the individual states are necessary.

It is for this reason that I welcome Professor Malone's text which combines an exposition of the subject as it has developed nationally and a minute examination and criticism of the statutes and decisions in Louisiana. Among other things, the book indicates the difficulties which come from pioneering. Louisiana was one of the early states to adopt a Workmen's Compensation Act (1914). Although it has been amended as to details it still has the defects of some of the early acts. There is no unified administration, since there is no commission. Although the courts have been sympathetic to the employees, proceedings are expensive and the delays frequently lead employees to compromise their claims for very meager sums. Again, there is no substantial guarantee that judgments will be paid, since insurance is not normally required for domestic employers. Finally, the act covers only dangerous employments, a limitation found chiefly in the early acts when unconstitutionality was feared.

In expounding the problems created by the act, Professor Malone has used both skill and insight. His book is a model for those writing monographs on narrow topics or on local law. It is not a mere collection of judicial statements, nor only a digest of the cases. He has followed the best traditions of treatise writing by giving the facts, including the backgrounds, of the critical cases, comparing them, giving the reasons assigned by the court, and adding his own opinion as to the validity and effect of the judgments.

Among the numerous places where he has given this critical examination may be mentioned his treatment of the difficult question whether a particular employee can recover under an act which limits recovery to those engaged in dangerous employment. Although the Louisiana act does not on its face limit recovery to an individual who at the time is engaged in a dangerous act, he points out (in Section 98) that one whose employer is covered by the act may not be able to recover when he is performing non-hazardous duties. Then, having worked out a formula to care for the situations in which such an employee may or may not recover, he uses several sections in the examination of the cases, giving the reader a sufficient insight into the specific cases so that he may judge whether or not the author's statements are sound. I may add that they seem to me to be sound.

Perhaps the most universally difficult questions in workmen's compensation acts are those which turn upon the language limiting recovery to acts arising out of and in the course of employment, and the courts have not always been consistent. The Louisiana court has had the usual difficulty; to an outsider some of the decisions appear to be irreconcilable. This would appear to be true in a number of cases dealt with by Mr. Malone in his Chapter 9. Malone seeks to harmonize two of the leading opinions in this area by pointing out that the terms "during the course of" and "arising out of" are to be considered in the light of each other, that sometimes the worker will be protected against almost any risk that he may encounter and at other times, when the worker is barely within the fringe of employment, he will be protected against only risks closely connected with the nature of his duties. This type of analysis should be of great value in making the difficult discriminations.

Without giving further illustrations of specific situations, I can testify that Malone has created a valuable tool, not only for Louisiana lawyers but for all who are interested in the rights of employees against their employers. The cases are reported accurately and the criticisms are acute. Because the subject is narrow, it has been possible for Malone, in a book of usable size, to give a complete exposition of the statutory rules, the procedure and the forms. It is an excellent piece of work.

The treatise is primarily for lawyers and law students dealing with a technical matter and because of this, discussion was properly limited to the effectiveness of the act in dealing with accidents occurring in connection with the employee's work for his employer. However, the philosophy of the workmen's compensation acts is not that the employer as such is responsible, but that the employee needs help in emergencies and that the business in which he is employed should be the one to give the help. Under existing limitations, it is purely fortuitous whether or not a disabled employee is aided. The logical answer is to give protection against serious disablement, whether or not in the scope of employment, to consolidate all the social legislation for the benefit of employees, including minimum wage, unemployment and similar legislation, and place the administration of the whole under a commission.

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