SUBMITTED VERSION

Greg Taylor
Hamburger to go? : the German contribution to the Torrens system examined
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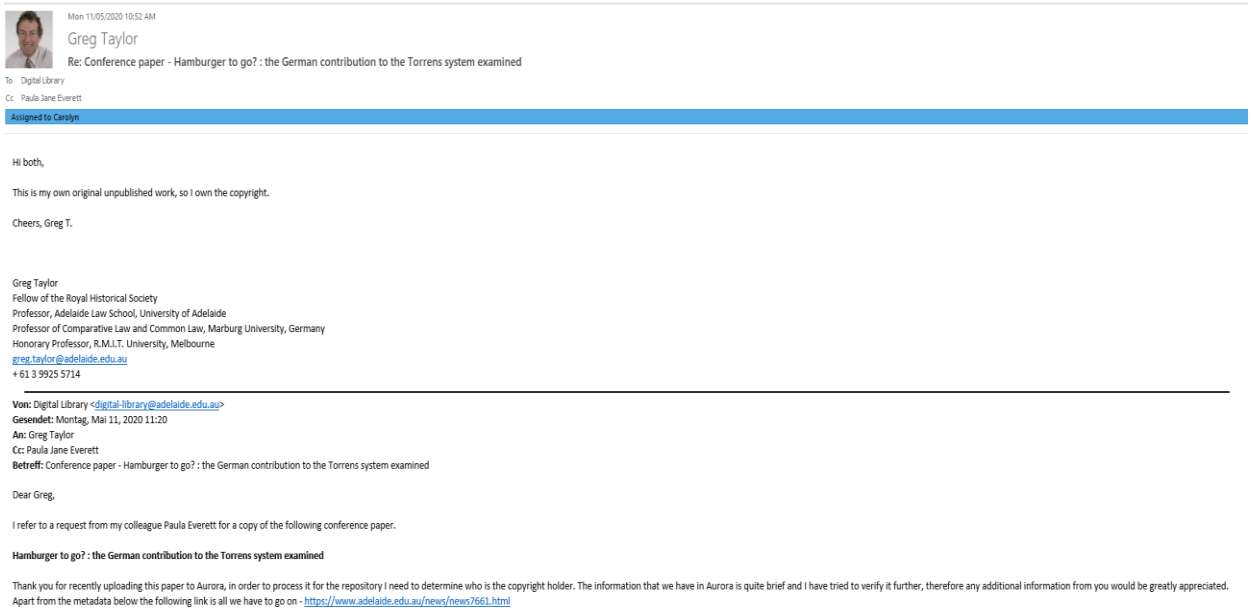

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Greg Taylor

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Cheers, Greg T.

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I refer to a request from my colleague Paula Everett for a copy of the following conference paper.

Hamburger to go? : the German contribution to the Torrens system examined

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11 May 2020

HAMBURGER TO GO?
THE GERMAN CONTRIBUTION TO THE TORRENS SYSTEM EXAMINED

Greg Taylor*

I do not wish, as our American allies would say, to rain on your parade – the parade of German contributions to South Australia and Australia more broadly. However, some light showers at least can be expected in what follows.

Let me however start with some things that I think virtually everyone, including me, agrees with. The first is that Dr Ulrich Hübbe made a considerable contribution to the development of the Torrens system after it had been conceived and introduced and defects in its detailed operation had become apparent. This was a matter of public record at the time, and concealed by no-one. So I join those who acknowledge the contribution of Dr Hübbe to the improvement of the Torrens system in his capacity as a transmitter of certain aspects of the law of Hamburg with which he was familiar.

The second thing on which I think everyone is agreed is that Torrens fought the public, parliamentary and political battles which led to the introduction of the Torrens system. He put his reputation on the line for it. He stood for Parliament as the chief advocate of it, and led the agitation in its favour both inside and outside Parliament. He was greatly assisted in this by a number of people such as Anthony Forster, the editor of the "Register". But without Torrens, clearly, the system that came to bear his name would never have come about because there would have been no champion and public advocate of it.

Had Torrens never lived, or never come to South Australia, we should not have got the system of title to land by registration that was introduced in South Australia in 1858. It would never have spread to the other Australian colonies, New Zealand and the other places around the world such as parts of Canada to which it has spread. None of this had anything to do with Dr Ulrich Hübbe.

So what is the debate about? It is about whether the Torrens system, as I shall defiantly continue to call it, was a mere copy, or perhaps more accurately a close and faithful adaptation, of the system of registration of land titles that existed in Hamburg at the time that the Torrens system was introduced.

Let me first point out to you what a specialised question we are asking here. If a general historian, rather than a legal historian, were to look at the Torrens system's development, introduction in South Australia and spread around Australia and the world, and ask who was mostly responsible for that, there could be little doubt about the answer. For such a person, I suggest, Dr Ulrich Hübbe would perhaps merit a footnote, perhaps not. For it was Torrens who took responsibility for the Bill for the *Real Property Act* before Parliament and the public; Torrens who untiringly promoted it to the powers that were in South Australia at the time; and Torrens who travelled around Australia to urge its introduction into the other colonies. Its adoption by the other colonies gave it the critical mass that enabled it to spread around the world.

In saying what I have just said I do not wish to be taken as claiming that Torrens was some great public benefactor selflessly promoting a reform from which he himself had nothing to gain. He

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* Senior Lecturer, Monash University, Melbourne. I am grateful for the comments of Dr Pam O'Connor on a draft of this paper. The usual *caveat* applies.

was a landowner himself on a moderately large scale and had a lot to gain from a better system. He also got a nice job in the public service out of the Torrens system, becoming the first Registrar-General. And from all accounts he could be a difficult and unpleasant man, so I am also not proposing him for sainthood. He did what he did partly, I think, because he believed it was right and beneficial, and partly because it benefited him personally.

But it's quite unreasonable and unrealistic to expect people to spend a good deal of time and effort promoting law reform from entirely disinterested motives anyway. So Torrens was human and was more concerned about things that personally affected him than about those that did not. Think of any recent or proposed legal change and you will normally find behind it people who would be advantaged by it or feel that it would redress a wrong they have suffered. Thus the agitation for gay and lesbian marriage is led by gays and lesbians, the push for tougher sentencing laws is led by victims of crime, the consumer rights movement is led by consumers, and so on. There is nothing wrong with that. As I say, people will not normally campaign for law reform just because it fills in the time (and we should be extremely wary of those who do!). They will do it because they have something to gain from a change which they say is also in the broader public interest for some reason. Torrens was in exactly the same position, and there was nothing wrong with that in the 1850s either.

Also Torrens probably enjoyed his trips to the other colonies to promote his system just as we might enjoy a junket today. But the fact remains that it was Torrens who did all this, not any other landowner or tourist.

At any rate, whether his motives were good, bad or indifferent, it's pretty much agreed that Torrens was the person who was responsible on a political and public level for the introduction and spread of the system. So the debate is simply about who wrote the words of the Act, and whether they were a copy or adaptation of the Hamburg system or not. This is a question which may be of concern to lawyers with a historical bent, but I suggest that it is very much a subsidiary issue. The real credit belongs to the person who persuaded the politicians and the public to support the system, and I have already indicated who that was. Again I ask you to relate this to how you would think about a major law reform of the present age – say the residential tenancies or consumer protection legislation or any other of the numerous achievements of the 1970s during the last burst of legal creativity here in South Australia. There, we do not worry about who wrote the actual words of the Act or whether they got some of them from some other system already in operation elsewhere. We ask whose idea the whole thing was; who led the debate; who persuaded the public and politicians to accept the proposals. The credit goes to that person, not to the person who wrote the actual words of the Act or someone who suggested isolated improvements in it as it developed. The 1970s were the era of Don Dunstan's law reforms, not those of Parliamentary Counsel who wrote the actual words of the Act or somebody who suggested an improvement in the operation of a reform after it had been proposed. Looking at things in this way, I do not think that anyone has ever disagreed, or could disagree, with the view that, in the case of the Torrens system, it was Torrens, not Dr Ulrich Hübbe, who did the most important work.

The claim is, however, that the Torrens system was really just the land registration system of Hamburg translated into English and passed off by Torrens as his own original invention. That hypothesis has been made recently by Dr Tony Esposito and supported by Dr Murray Raff, but I say that it is wrong. I will go further and say that I do not think that a hypothesis should be seriously put forward by scholars if there is no serious evidence for it – if it relies on mere speculation unsupported by evidence and indeed flatly and unambiguously contradicted by all the solid evidence we have. I am not really interested in whether this establishes that the Torrens

system was a "truly South Australian" invention, whatever that means – surely the fact that it came out of South Australia is enough to establish that, if anyone cares. Indeed South Australia was perhaps the ideal location for such a reform, given its innovatory record and desperate need for a system of lands titles better than that inherited from England.

I am motivated to write about this, however, because I believe that the Hamburg claim is false and based on inadequate evidence, and that someone should point out that the emperor has no clothes because the claim might otherwise be accepted as established in the absence of any real critical consideration of it.

I am also rather dismayed to find that an Honours student feels able to write that 'Torrens must be vilified for his deceit'[1] because of his alleged covering-up of the Hamburg contribution without apparently any thought on her part, or suggestion by her supervisor, that her suggestion might be a bit disproportionate. I think it is time we had a bit of a corrective to the constant denigration of Torrens. As I have said, he was no saint, but he was responsible for the most significant legal reform ever to come out of Australia and enrich the world. Surely he deserves slightly better treatment than vilification, especially if it is for an offence he did not actually commit – a question to which I now turn.

Those putting forward the claim that the Torrens system is, in its entirety, a German import are, I know, doing so in perfect good faith. I call at least one of them a good friend, and I hope he will remain so even once this paper is published. But I think that their claim is based largely on wishful thinking and misdirected enthusiasm, mixed with a considerable element of cultural cringe.

Before I pursue that, let me first examine the case which has recently been made by Dr Tony Esposito for Hübbe and Hamburg as the real source of the Torrens system – remembering that the case, as it is put forward by its proponents, is merely that the Torrens system was the Hamburg system in disguise on the level of a collection of legal rules rather than on the more important level of an institution of the law in society which society was persuaded to accept and adopt.

I suggest that there are a number of insuperable problems with the idea that Torrens simply copied or at best closely adapted Hamburg, as explained to him by Hübbe. They are six-fold : the limited probative value of general similarity; lack of similarity in detail; Hübbe's statements at the time; Torrens's statements at the time; the dates; and the statements of contemporaries who were present at the system's conception and birth.

First, there is no doubt that the Hamburg and Torrens systems are similar in broad outline. They are both systems of title to land by registration with associated rules that flow from that similarity in principle. That however does not establish that one was a copy of the other. Making a public register the sole evidence of title to land is not such a complicated idea that it could not possibly have been invented more than once in human history. And in fact undeveloped suggestions that registration of title should be introduced were being made by leading South Australians such as J.H. Fisher as early as the late 1830s,[2] a long time before Dr Hübbe came on to the scene. They were also being made, quite independently of what was happening in South Australia in the late

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[1] Geyer, *Robert Richard Torrens and the* Real Property Act *: The Creation of a Myth* (B.A. (Hons.) thesis, University of Adelaide, 1991), p. 73.

[2] Pike, "Introduction of the *Real Property Act* in South Australia" (1962) 1 Adel LR 169, 175.

1850s, by the British Parliament.[3] No-one suggests that they had Dr Hübbe to hand. So similarity in broad outline, as distinct from at the level of detail, does not establish very much at all.

My second point is that, while the Torrens and Hamburg systems are certainly similar in broad principle, they are different in some important details. In fact the Torrens system is not only unlike the Hamburg system in some details, it is also unlike any other existing system. This indicates that the Torrens system was not taken over from any one single source, let alone from Hamburg.

The Torrens system involves a fund known as the Assurance Fund, which consists of money produced by a small levy on the value of all property transactions conducted under the system. The levy was originally 0.10416% of the value of the land, but is currently nothing because enough money has been collected and so few mistakes have been made. The Fund is used to compensate people who lose their land through no fault of their own. It is one of the pillars of the Torrens system, and was there from its introduction.

Now this Fund has no equivalent, not even the vaguest of analogues, in the Hamburg system. Professor Whalan suggests that the idea of an Assurance Fund was in fact borrowed from England.[4] This would in fact not be surprising. We know that Torrens picked up ideas from wherever he could, like a magpie, and also that he had a large number of informal collaborators. One of the system's chief enemies during the debate on its introduction called it '"a thing of shreds and patches", picked up wherever he [Torrens] could lay his hands upon them'.[5] This was accurate.

Dr Murray Raff would have us believe, however, that the Pauline action, available to those who had lost their land under the law of Hamburg, was the true precursor to the Assurance Fund.[6]

Now, let us first take a step back and consider this issue from a common-sense point of view. It is probably true to say that every legal system on the planet is going to have some more or less efficient means of enabling people to get compensation if they have been defrauded out of their land by a trickster. So we should not be surprised that the law of Hamburg had some means of achieving this end. Indeed, the English common law applying in South Australia before the invention of the Torrens system obviously allowed people to sue fraudsters who had tricked them out of their land. The problem under that system was actually a practical one, not a legal one : first, one had to catch one's fraudster, and then one had to get money out of him.

The question is thus not whether the Pauline action served vaguely the same purpose as the Assurance Fund, for every legal system will have some means of serving that purpose, but rather how similar they are in detail. Only if they are similar in detail could one conclude that one might have inspired the other.

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[3] "Report of the Commissioners Appointed to Consider the Subject of the Registration of Title with Reference to the Sale and Transfer of Land", House of Commons Sessional Papers, 1857 vol. XXI, pp. 245ff. See further, for a most helpful analysis, Raff, *Private Property and Environmental Responsibility : A Comparative Study of German Real Property Law* (Kluwer, the Hague, 2003), pp. 47-54.

[4] Whalan, "The Origins of the Torrens System and its Introduction into New Zealand" in Hinde (ed.), *The New Zealand Torrens System : Centennial Essays* (Butterworths, Wellington 1971), p. 9.

[5] "Adelaide Times", 30 November 1857, p. 2. See also "Adelaide Times", 15 January 1858, p. 2 (a confession that some of the provisions of the Bill adopted from those of R.D. Hanson's).

[6] Raff, *Private Property*, p. 110.

The Pauline action in Hamburg appears to have been of a quite different type from the Assurance Fund. I have to confess to a merely casual and intermittent acquaintance with Roman law, from which the Pauline action is ultimately derived, and the source that Murray Raff quotes in his work, which I have myself referred to, does not greatly advance my state of knowledge. However, another learned author whose description of the Pauline action is available to me says that it was an action

> which could be instituted against a debtor who became insolvent through transferring his property to others. What was more important was the fact that the action could also be instituted against third parties with the purpose of reclaiming what they had received, fraudulently or gratuitously but in all innocence, from an insolvent debtor.[7]

The usefulness of this in land transactions is obvious. But unlike the Assurance Fund, a person who sued using the Pauline action did not sue against a permanent fund maintained by the state. This is in fact the great innovation of the Torrens system in this field, as the state has more money and is less likely to disappear than are private persons, particularly fraudsters. It is missing from the supposed "model" for it. Furthermore, the Pauline action was not funded by a tax on land transactions, as the Assurance Fund is. It is therefore quite different from the Assurance Fund in a number of very significant details. Only with the eye of faith, a very discerning faith, could it be seen as a precursor of the Assurance Fund under the Torrens system.

The Pauline action is not similar to the Assurance Fund at all, except at the broadest level of purpose. It is however very similar to the pre-Torrens arrangements under the inherited English common law under which a defrauded person was reduced to suing private parties, if they could be found and had enough money to be worth suing. The Torrens system took a step beyond this, and beyond Hamburg.

Let us look at another point of similarity, and see what it proves. In the Hamburg system, transactions are conducted not by lawyers, but by what we should call conveyancers or land brokers. This looks quite similar to practice under the Torrens system in South Australia today, as you will know if you have ever bought a house here in South Australia. And indeed it is. Unlike the Assurance Fund, this is quite a probative point of similarity, one that operates at the level of detail where similarity is less likely to be mere coincidence. But if you trace it back you will find that the land broker was not created in South Australia until the *Real Property Act* was amended in 1860.[8] Now I am perfectly willing to give Dr Hübbe the credit for that, but the point is, of course, that it was not in the original system of 1858. If the original system had been merely a copy of the Hamburg system, it would have been. Because of its date, this point of similarity actually disproves the thesis that the Torrens system was, from the beginning, an adaptation of the land titles law of Hamburg.

Then, thirdly, there is the fact that Dr Hübbe repeatedly referred to the *Real Property Act* as Torrens's work, not his own, as the proposed system was being debated in 1857. In fact he wrote a book in which he referred repeatedly to the system as Torrens's, not the Hamburg one. We find him talking repeatedly about 'Mr Torrens's plan',[9] 'Mr Torrens' Bill'[10] and 'Mr Torrens'

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[7] van Warmelo, *An Introduction to the Principles of Roman Civil Law* (Juta, Cape Town 1976), p. 225. Similar : Buckland/Stein, *A Text-Book of Roman Law from Augustus to Justinian* (3rd ed., Cambridge U.P. 1963), p. 596.

[8] *Real Property Act* 1860 s 133.

[9] Hübbe, *The Voice of Reason and History Brought to Bear against the Present Absurd and Expensive Method of Transferring and Encumbering Immovable Property, With some Comments on the Reformatory Measures Proposed in the Opening Speech of the Governor-in-Chief, and the Bill Recently Introduced by the Hon. R.R.*

proposals'.[11] As late as 1874, we find him applying for a Professorship at the newly-established University of Adelaide and stating that he had 'assisted' with the 'preparation, promotion and defen[c]e'[12] of the Torrens system. I suggest nothing more exciting than that Dr Hübbe was telling the truth here, even if it was in a job application.

Fourthly, there is Torrens's much-debated statement of 4 June 1857 which is reported in Hansard as follows : he said that 'although he was not at first aware of it, it' – his proposed system he means – 'had been in operation for 600 years in the Hanse Towns'[13] such as Hamburg. This is indeed a very important statement and needs to be analysed having regard to the context in which it was made.

If we analyse it from today's perspective, when the Torrens system is an established success and people are arguing about who invented it, the statement looks a bit defensive. It almost looks as though Torrens's cover is blown and he realises that the cat is about to be let out of the bag and set among the pigeons. People are on to him. They are about to realise that he has just copied someone else's system, and so he is desperately claiming that he was 'not at first aware' of the copying rather like a student caught plagiarising might today.

But that would be to look at the statement with today's knowledge and to project back on to it what we now know about the system's extraordinary success. When the statement was made the system was not a success, extraordinary or otherwise. It was not even a reality. Torrens was trying to persuade Parliament, and through Parliament the public, to adopt his system. In that task it is well documented that one of the chief objections to his proposal was that he was not a lawyer and was poking his ignorant nose into areas that he did not understand. The "Adelaide Times", for example, dismissed the Bill as 'the production of a non-legal mind'.[14]

It is also obvious that the success of Torrens's system was dependent on public acceptance, because people had to be persuaded to entrust their land – the most valuable asset they owned – to him and his system.

So when Torrens pointed out that he had unwittingly created a proposal that was similar to an existing system that worked well, he was not trying to cover up his plagiarism in order to elbow anyone aside and claim all the credit for himself. There was no credit to claim yet. At this point he is a would-be law reformer trying to sell a system, and he is trying to enlarge the circle of his supporters, persuade the public and rebut criticism that he was a bumbling amateur who had created a system that would never work in practice and would endanger people's land holdings. Accordingly, he is only too pleased to be able to claim here that he, a bumbling non-lawyer, had achieved the feat of creating a system that was similar to one that worked elsewhere. Far from covering this up, he proclaims it from the rooftops as soon as he finds out about it. He also probably felt the need to say why he had not pointed out this similarity from the start to the critics of his system. For these reasons, I believe that Torrens was telling the truth in the statement I have quoted. He had developed the principles of the system, and then he found out that it was similar to an existing one when Hübbe told him that it was.

(..continued)

Torrens, Esq., into the House of Assembly (Gall, Adelaide 1857), p. 90. (A similar phrase may be found at p. 97.)

[10] Hübbe, *Voice of Reason*, p. 79 (similar : pp. 70, 78).

[11] Hübbe, *Voice of Reason*, p. 3.

[12] Letter from Hübbe to the Council of the University of Adelaide, 7 December 1874, available at : http://www.adelaide.edu.au/records/archives/series169/169-009.htm.

[13] South Australian Parliamentary Debates, House of Assembly, 4 June 1857, col. 210.

[14] "Adelaide Times", 23 November 1857, p. 2.

Fifthly, there is the question of dates, which prove the assertion I have just made. An outline of the Bill for the Torrens system was published in a newspaper in October 1856.[15] It is recognisably the prototype of the Act of January 1858. Hübbe himself says that he and Torrens first met some months after this Bill was published, in early 1857, because Hübbe had read about it in the newspaper.[16] This was doubtless the time when Hübbe explained to Torrens that he had, without knowing it, created a system similar in outline to that which existed at the time in Hamburg. The principles of the Torrens system had been developed up to this point without any help from Hamburg.

There is just no arguing with these dates, whether we like what they prove or not.

Sixthly and finally, there are the statements of contemporaries. Everyone at the time when Torrens's Bill was being debated referred to it as his. Not just Hübbe; we have seen him doing this already; everyone else, without any exception whatsoever, called it Torrens's Bill as well. That included its numerous opponents as well as its supporters. Its opponents attacked it (as we have seen) because it was by Torrens – because it was by a non-lawyer who had a very imperfect grasp of real property law. They did not attack it because, for example, it was a foreign system unsuited to South Australia and its English common-law inheritance. Nor did Torrens defend it on the basis that it was similar to an existing system until he found out that it was similar to the Hamburg system and made the statement to that effect quoted above.

Over the next couple of decades there is no statement to the effect that Torrens had merely copied an existing system, other than a very brief one by Torrens himself (something which those who have accused Torrens of suppressing the truth about the system's origin and deserving vilification have not deigned to notice). This statement was made at a public meeting on 5 July 1860 – a public meeting at which Torrens was feted by all present as the originator of the system. The public meeting was put on by those who were there at the system's conception and birth and would have had no illusions about who its father was. It was also designed to reinforce support for the Act at a time when it was facing significant teething problems and continued opposition from within the community. In fact the public meeting was called a 'demonstration in favo[u]r of the *Real Property Act*' by the "South Australian Weekly Chronicle".[17]

Torrens's statement at that meeting, after numerous speeches praising him (but not mentioning either Dr Hübbe or Hamburg) is an example of modesty which one might choose to describe as either becoming or false (and was probably, given what we know of Torrens's character, the latter). It is also designed to reassure the public that the system will be made to work. He says that the South Australians 'were simply introducing principles which had been acted upon for upwards of 600 years in the Hanse towns in Germany. They were, in fact, only copying.'[18] He then referred to information provided by a Bavarian, Dr Bayer, and the fact that he had just been informed that a similar system also worked in Bavaria. Torrens is still trying to convince the public, and perhaps himself also, that his system will be made to work. It would certainly be an odd statement to make if Torrens were covering up the real authorship of his great contribution. There is, by the way, no reference at all to Dr Hübbe anywhere in the very long report of the

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[15] "Register", 17 October 1856, p. 2.

[16] Robinson, *Transfer of Land in Victoria* (Law Book, Sydney 1979), p. 15 fn 13. Hübbe himself is unsure of the date in (1931) 32 Proceedings of the Royal Geographical Soc of A/asia (S.A.) 109, 110, but he is sure that the Bill was already a work in progress.

[17] 7 July 1860, Supplement, p. 1.

[18] "South Australian Weekly Chronicle", 7 July 1860, Supplement, p. 2.

meeting's proceedings : the report seems to reproduce a number of speeches given at it virtually *verbatim*.

A couple of decades later a member of Parliament of German birth, who had had no involvement in the system's origin at all, said in Parliament that Dr Hübbe had been the real brains behind the system.[19] This statement was not supported, but was rather contradicted, by everyone else who expressed a view on the topic at that time. The M.P. concerned corrected himself a few years later and said that Hübbe had merely provided assistance to Torrens.[20] Then there is a statement by Hübbe's daughter in 1931, three-quarters of a century later, referring to a tale allegedly told by Sir Edwin Smith about Torrens consulting Hübbe when the Bill was going through Parliament.[21] But Edwin Smith was not even a member of Parliament when the Bill was being debated. He first became a member of Parliament in 1871. This statement is not only dubious for that reason; it also emanates from a biased source, is admittedly hearsay and is very vague about dates and times. I do not think it deserves any credence at all.

That as I see it is the state of the evidence. I do try to be fair to those who say that the system was from the very beginning really just the Hamburg system, but as I look at the evidence for that proposition I find it extraordinarily weak. If we had only the date when the Bill was published in the newspaper and the date when Torrens met Hübbe, it would be weak enough. But every other piece of evidence we have points the same way. Even the proposed candidate as the real originator of the system, Dr Hübbe, says repeatedly that the idea was Torrens's.

I ask : What more could we want? What piece of evidence is missing that would persuade some people that Torrens did not copy Hamburg? Can anything persuade people that Torrens did not merely copy Hamburg, if not the evidence that I have outlined?

A claim which cannot be falsified by evidence is a claim to which no attention should be paid.

Whether we like it or not, by far the best conclusion based on the evidence is that the Torrens system was developed independently of the Hamburg system, but that Dr Hübbe helped to refine it after its conception using his knowledge of the Hamburg system. None of this calls into question any long-established theses about the involvement of Dr Hübbe in the development of the system in the form that I have described, as one of a number of helpers – only the wider claim made more recently that the whole system was a transplant from Hamburg. Only with a good deal of forensic skill, a heroic faith and considerable commitment to the task can one dodge the bullets, so to speak, and come up with a theory which suggests that the system was really just the Hamburg system.

The conclusion therefore is that the Torrens system was enriched by German experience in certain detailed respects, such as the creation of the land broker, but is not a mere adaptation of that system. South Australia and all the other jurisdictions that have adopted the Torrens system, as it is rightly called, have not joined the sphere of influence of German law, although some elements of German law have certainly crept into the details of the otherwise unrelated Torrens system.

Let us therefore celebrate Dr Hübbe's contribution, and through him that of German law, to the Torrens system – a contribution which grew as time went on. Looking at the sources at a level of detail which is not possible here, the best conclusion which the evidence permits is that Hübbe's

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[19] South Australian Parliamentary Debates, House of Assembly, 20 July 1880, col. 427.
[20] South Australian Parliamentary Debates, House of Assembly, 17 September 1884, col. 1025.
[21] (1931) 32 Proceedings of the Royal Geographical Soc of A/asia (S.A.) 109, 110.

contribution to the conception of the system in the period to the beginning of 1857 was precisely zero. It was a bit more during the system's birth in 1857. By its christening in early 1858 it was minimal to moderate – while some earlier authors have tried to be more specific, I do not think that the available evidence allows us to be any more precise than that – but it was a considerable contribution to certain details of the system as it matured thereafter. Continuing the metaphor, I say therefore that Hübbe was not the system's father, but he was one of the many midwives attending at the birth, and an adviser to the young system as it grew up.

So why might people wish to exaggerate Dr Hübbe's contribution? I suggested above that it was the result of wishful thinking, misdirected enthusiasm and the cultural cringe, and in conclusion I will expand on that.

The wishful thinking comes from those trained in German law, who want us to believe that German law had a greater influence than it really did.

The misdirected enthusiasm comes from those who want us to see the Torrens system as some sort of precursor of multiculturalism involving a combination of "Anglo" and "ethnic" effort, or a blessing conferred on "Anglo" Australia by early multicultural elements in it.

I hope it is clear that I, in fact, agree that there some reason to celebrate the Torrens system under this banner of a joint "Anglo" and "ethnic" production, as certain elements of the Torrens system were refined after its invention by some judicious borrowing from the law of Hamburg – although it was not by any means a blessing conferred on Australia solely as a result of its admission of early multicultural groups. That would be to exaggerate Dr Hübbe's and Hamburg's contribution. The Torrens system would have come about even if Germans had never been admitted to South Australia, although it would probably have taken longer to iron out the original system's faults without Hübbe's contribution. Even so, I certainly do not wish to be seen as attacking multiculturalism. But I do attack the view that the Torrens system was merely a copy from the first moment of its proposal by Torrens.

The cultural cringe exhibited on the part of those who hold the view I disagree with involves the presupposition that early South Australians were not capable of developing significant law reforms without help from Europe. That at least is certainly not so. I have demonstrated elsewhere[22] that early South Australia managed half a dozen significant law reforms without much outside help. It was a place where dissent and dissatisfaction with injustice led to law reform. The Torrens system is only one example of major law reform in early South Australia, although it is certainly the most significant of the examples.

We do Dr Hübbe no honour, and we do the German contribution to the Torrens system, Australian law and legal progress throughout the world no favours, by ignoring the evidence in order to exaggerate that contribution.

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[22] *"A Great and Glorious Reformation" : Six Early South Australian Legal Innovations* (Wakefield Press, Adelaide 2005).