



**The University of Adelaide
School of Law**

**Dissertation for the degree of Master of Laws
(by Research)**

**The History of the Torrens System of Land Registration
with
special reference to its German Origins**

**by
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This dissertation is submitted in fulfilment of the requirement for the degree of the Master of Laws in the Faculty of Law at the University of Adelaide, in September 1999. I, Antonio Esposito, declare that this dissertation contains no material which has been accepted for the award of any other degree or diploma in any other university and, to the best of my knowledge and belief, it contains no material previously published or written by another person, except where due reference is made.

If this dissertation is accepted for the award to me of the degree of Master of Laws, I consent to its being made available for photocopying and loan.

**(Antonio Kurt Esposito)
January 2000**

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ABSTRACT

The origins of the Torrens System of land registration are not yet clear. Whilst Sir Robert Richard Torrens maintained that he drafted the Act alone, along the lines of the Imperial Shipping Act 1854, certain comparative analyses have shown that this could not have been the case. This thesis examines the claim of Torrens' contemporary, Dr. Ulrich Hübbe, a colonist and lawyer from Germany. He asserted that he collaborated with Torrens to bring about the adoption of the land law of his hometown Hamburg in the form of the Real Property Act 1858 (SA). Even though there is strong evidence which supports this claim, there has been no systematical examination of it.

The approach to the problem is two-fold. First, historically, collecting and analysing all relevant historical sources and second, comparative legal, contrasting Hamburg's land law at the beginning of the 19th Century with the first bill of the Real Property Act 1858 (SA). The historical approach categorizes the material systematically. All relevant sources have been incorporated. In particular, material from German colonists in South Australia in the form of statements or newspaper articles have been included. The historical analysis is supplemented by a legal comparison between the original Torrens System and Hamburg's land law which is fundamental to the solution of the possible German origins of the system. Furthermore, the comparative part provides a basic description of Hamburg's land law at the relevant time, which has not yet been available in this context. Regarding the comparative analysis, the author elaborates the particular processes which govern the adoption of foreign laws. In particular, processes of adaptation to which a legal transplant is inevitably subject prove to be important in relation to the possible relationship between the Torrens System and Hamburg's nineteenth Century land law.

The results of the historical examination show that it is likely that Ulrich Hübbe was the actual draftsman of the first bill. The legal analysis, on the other hand, demonstrates two things: first, that there is a strong similarity between Hamburg's land registration system and the original Torrens System; second, that the outstanding differences between the systems can be explained by the natural adaptation processes which are implied by the adoption of laws.

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