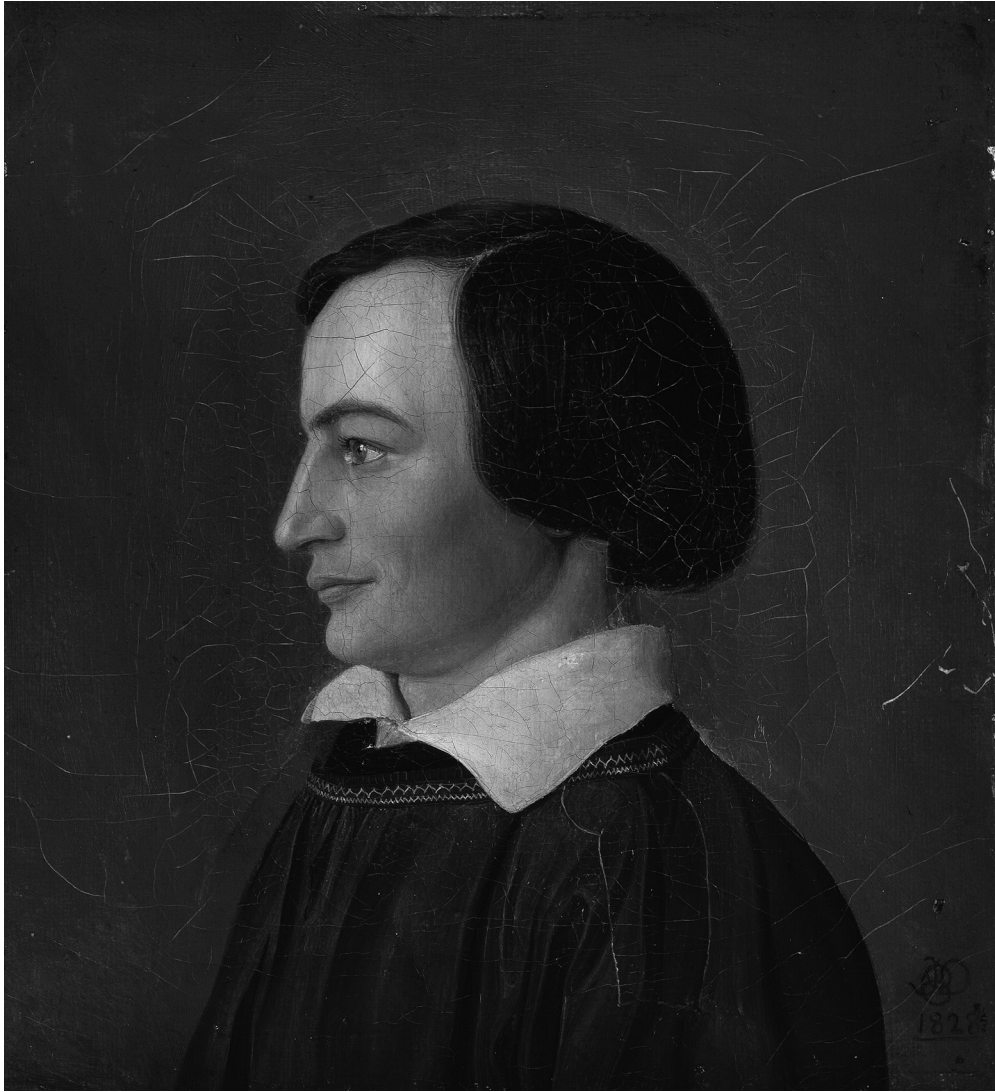


Sir Robert Richard Torrens

Image courtesy of the State Library of SouthAustralia.
SLSA: B 10232 Sir Robert Richard Torrens, ca. 1880



'Der Freund, Ulrich Hübbe'

Hamburger Kunsthalle, painted 1828 in Hamburg
by Julius Oldach.

Size of original: 16.1×15 cm.

ULRICH HÜBBE AND THE TORRENS SYSTEM

Hübbe's German background, his life in Australia and his contribution to the creation of the Torrens system

ABSTRACT

Dr Ulrich Hübbe was a jurist from Hamburg and one of South Australia's early German migrants. The extent of his contribution to the creation and to the subsequent refinement of the Torrens system of land title registration has been debated for many decades. In recent years the controversy has been conducted with renewed vigour. About eight years before he died, Hübbe dictated to his grandson a statement in which he claimed that he, Hübbe, had produced the final draft of the *Real Property Bill* using as his model the law of Hamburg. If so, the Torrens system would be a transplant of the system which had, it appears, existed in Hanse towns for centuries, and should be renamed the 'Hübbe system' after its supposed main architect. Supporters of this view have relied on Hübbe's own claim as a major piece of evidence. A review of Hübbe's early years in Germany, of his decision to migrate to Australia and of his life in Adelaide leads one to conclude that his claim should be treated with caution. On the other hand, the available evidence, if placed in the context of the political controversy surrounding Torrens's campaign, shows that Hübbe played a significant and perhaps even a decisive role in the creation of the Torrens system. This article will, it is hoped, also shed new light on the early history of German migration to South Australia and the importance of the Hamburg–Adelaide connection.

I INTRODUCTION

Ulrich Hübbe was born in Hamburg on 1 June 1805. On 13 October 1842 he arrived in Port Adelaide on the passenger ship *Taglione*, which had sailed from London on 20 June 1842. He was then 37 years old. Having spent almost 50 years in South Australia, he died at Mount Barker on 9 February 1892, aged 86, and was buried two days later in the Hahndorf cemetery.

* Professor Emeritus, University of Adelaide; Honorary Professor, TC Beirne Law School, University of Queensland. I am very grateful to Dr Greg Taylor who has made important German documents available, to Ms Lee Kersten who has drawn attention to advertisements by Hübbe in the Adelaide press and has given other useful advice, to Dr Jürgen Hübbe who has made available documents and books from the Hübbe family archives, to Mrs Judith Frenda who has allowed the author access to the material she has collected concerning her ancestor Ulrich Hübbe and to Professor Peter Rawert who has kindly donated German books with invaluable information about the Hübbe family.

In 1884, after he had already lost his eyesight, Hübbe dictated to his grandson, Samuel Hood, a statement concerning the South Australian system for the registration of real estate.¹ This system, though fiercely opposed by the legal profession when it was introduced in the 1850s,² had proved very successful. It has been adopted by numerous jurisdictions around the world.³ Hübbe claimed in his statement: that early in 1857 Robert R Torrens had discussed with him the ‘embryonic’ bill then before the general public (which had been prepared by Torrens and some of his helpers); that it had been based on the ‘British Shipping Transfer Act’ (the British *Merchant Shipping Act 1854*); that he, Hübbe, had given Torrens an account of the history of the various Continental systems, especially the French and German; that, at Torrens’s request, he had published this account in the form of a book⁴ which had helped later to persuade members of the House of Assembly and the public of the good sense of enacting reforming legislation; that the idea of adopting the Merchant Shipping Act as a model had been found unworkable and had been dropped; that he, Hübbe, had translated the system used in Hamburg and other Hanseatic cities; that Torrens had adopted this system; and that he, Hübbe, had

drafted the Bill finally on those lines which Mr. Torrens piloted through the House of Assembly and it was taken through the Legislative Council successfully and became the law of the land.

It has never been doubted that Torrens provided the initiative, energy, political skill and the influence needed for the revolutionary *Real Property Act 1858* (SA) to be enacted. No one has questioned that Hübbe played some role in the introduction and defence of the Torrens system, but the extent of that role is controversial. Hübbe’s statement and other indicators have persuaded some scholars that he contributed the essential ideas and did much of the final drafting.⁵ Others have seen his contribution to the introduction of the system as no more than ‘minimal to

¹ ‘The Real Property Act’ in *Proceedings of the Royal Geographical Society of Australasia, South Australian Branch (Incorporated)* vol XXXII, 109, 111–2.

² R M Hague, *Hague’s History of the Law in South Australia 1837–1867* (written in 1936, published in 2005) 253–318, 793–4.

³ A comprehensive list is yet to be compiled. Concerning the adoption of the system in Canadian provinces, see Greg Taylor, *The Law of the Land, The Advent of the Torrens System in Canada* (2008).

⁴ Ulrich Hübbe, *The Voice of Reason and History Brought to Bear Against the Present Absurd and Expensive Method of Transferring and Encumbering Immoveable Property* (1857).

⁵ Antonio K Esposito, ‘Ulrich Hübbe’s role in the creation of the “Torrens” system of land registration in South Australia’ (2003) 24 *Adelaide Law Review* 263–303; Antonio K Esposito, *Die Entstehung des australischen Grundstücksregisterrechts (Torrenssystem) — eine Rezeption des Hamburger Partikularrechts?! [The development of the Australian law relating to the registration of real estate (Torrens System) — a transplant of the law of Hamburg?!]* (2005); Murray Raff, *Private Property and Environmental Responsibility: A Comparative Study of German Real Property Law* (2003) 25–60.

moderate'.⁶ The controversy would hardly be pursued with such zeal if it involved nothing more than the respective merits and reputations of persons who died long ago. What is of greater interest, particularly to comparative lawyers, is the closely related question whether the South Australian system is a transplant of the Hamburg legal precedent.⁷

Whatever the outcome of the controversy, there can be no doubt that, in this and other areas of endeavour, Hübbe was an important figure in early South Australia and that he made a varied, significant and largely unremunerated contribution to the early life of the Province. His life in South Australia and some of the bare facts of his German background are well documented,⁸ making extensive footnoting of that part of this account unnecessary. His family background, his academic and professional beginnings, his activities in northern Germany and his reasons for leaving his homeland should be no less interesting to Australian readers than the Australian part of his existence.

II HÜBBE'S LIFE IN GERMANY

A Family background

Ulrich Hübbe's paternal grandfather, a wigmaker from Mecklenburg, settled in Hamburg with his family. One of his eight children, Johann Heinrich, Ulrich's father, studied languages in Erlangen and served briefly as an academic assistant to Johann Georg Büsch, founder of the Hamburg Commercial Academy.⁹ By 1795, as a result of the occupation of the Netherlands by French revolutionary troops and the consequent decline of Dutch shipping, Hamburg had become the leading harbour in Europe. In view of ever-increasing trade, the Hamburg Admiralty needed a second shipping registrar (*Schiffsregistrator*) and appointed Johann Heinrich, then aged 24. This involved the keeping of records during investigations of maritime accidents

⁶ Greg Taylor, 'Hamburger to go? The German contribution to the Torrens System examined' (Paper presented at the conference, 'The German Presence in South Australia', the University of Adelaide, 30 September and 1 October 2005) 8; see also Greg Taylor, *A Great and Glorious Reformation. Six Early South Australian Legal Innovations* (2005) 14–49; Greg Taylor, 'Is the Torrens system German?' (2008) 29 *Journal of Legal History* 253; Hague, above n 2, 789–93.

⁷ Concerning the theory of legal transplants, see Alan Watson, *Legal Transplants. An Approach to Comparative Law* (1974); see also Alan Watson, 'The Importance of Nutshells' (1994) 42 *American Journal of Comparative Law* 1.

⁸ *Australian Dictionary of Biography* (4) [1851–1890] 436–7; Horst K Lücke, 'Ulrich Hübbe or Robert Torrens? The Germans in early South Australia' (2005) 26 *Adelaide Law Review* 211, 236–9; Esposito, above n 5, 135–7; Hans Schröder, *Lexikon der hamburgischen Schriftsteller bis zur Gegenwart* [Lexicon of Hamburg writers up to the present time] (1857) vol 3, 408–9.

⁹ *Hamburger Handelsakademie*. Much of the information about Johann Heinrich Hübbe's personal and professional life and his family is based on R Postel, 'Johann Heinrich Hübbe' 1771–1847 in R Postel and H Stubbe-da Luz (eds), *Die Notare* [The notaries] (2001) 18–43.

by the Hamburg Admiralty Court.¹⁰ Eight children were born to Johann Heinrich's marriage to Maria Christine Heyer, celebrated in 1797: Hans (1800), Wilhelmine (1801), Heinrich (1803), Ulrich (1805), Agathe (1807), Mathilde (1809), Amalia (1811), and Hugo (1813). In 1797 Johann Heinrich was appointed an Imperial Notary and he practised that profession (from 1806 without the 'Imperial' in the title) until his death in 1847. One of Johann Heinrich's Erlangen teachers had referred to him as 'industrious, well-organised and skilful',¹¹ qualities which he exhibited in his professional and his personal life. As a result, the family enjoyed increasing prosperity.

The Napoleonic years (1806–1813) were difficult for them at times, as they were for most of Hamburg's inhabitants. In December 1813 the city of Hamburg, occupied by Napoleon's army since 1806, was under siege by German, Swedish and Russian forces. Marshal Davout, the French Commander, appointed Johann Heinrich to a Commission which was to draw up a list of persons to be expelled from the city on the ground that they lacked provisions and were in danger of starving. Johann Heinrich is said to have done his best to undermine these plans and to truly assist the needy in other ways. This must have taken great courage, for Davout was a stern disciplinarian. Ulrich, only eight years old at the time, could not have remained untouched by the anguish the family would have felt when his father was exposed to this dangerous predicament.¹²

Ulrich grew up in a family which encouraged professional aspirations, success in life and public service. Johann Heinrich, his brother Karl and some of Johann Heinrich's children rose to prominence in Hamburg and are well-remembered in Germany even to this day. The notariate he founded, now known as the *Notariat Ballindamm*, is one of the most prominent in Hamburg. In 1997, the *Notariat Ballindamm* celebrated its 200th anniversary by establishing a charitable foundation, calling it the *Notar Johann Heinrich Hübbe-Stiftung*, thus honouring its founder. The foundation supports national and international legal research, in particular in the field of prophylactic legal services (*vorsorgende Rechtspflege*).¹³

¹⁰ A *Schiffsregistrator* was concerned with the paperwork connected with *Schiffsverklarung*, an institution known in English-speaking countries as 'ship's protest', 'captain's protest' or 'sea protest'. See *Sea Protest* (2008) Wikipedia <http://en.wikipedia.org/wiki/Sea_protest> at 11 June 2008. The functions of Johann Heinrich's office are described in detail in Postel, above n 9, 20.

¹¹ *Fleißig, ordentlich und geschickt* — Postel, above n 9, 19.

¹² The episode has been described in detail by Hermann Viktor Hübbe, a descendant of Johann Heinrich, in a statement in the possession of Mrs Frenda (copy to be placed in the archives of the State Library of South Australia) and has been immortalised in a *Kupferstich* by the German artist Otto Spekter, see *Seiflow Family Origins* (2008) <<http://www.seiflow.co.uk/FamilyOrigins/All-individuals/d1.htm#P33>> at 11 June 2008.

¹³ For an explanation of the concept (of which the Torrens system itself is an outstanding example), see Howard D Fisher, *The German Legal System and Legal Language* (3rd ed, 2002) 217–8. The Foundation also offers a prize for professional excellence in the field of *vorsorgende Rechtspflege*.

Johann Heinrich's brother Karl, a Lutheran theologian, established himself as a writer, becoming a successful author of books and essays on a wide variety of subjects. His book, *Views of the Free and Hanse City of Hamburg and Environs* (1824–1828),¹⁴ still commands hundreds of Euros in the antiquarian book trade. Some of Ulrich's siblings are known to have been high achievers. Hans emigrated to Mexico, married a Spanish woman and became a medical practitioner in the city of Merida, Yucatan. Ulrich's sister, Wilhelmine, married the successful Hamburg merchant Ernst Ferdinand Mutzenbecher who had links to London and South America. After his death she established a foundation to assist children and young girls living in poverty. The foundation is still active in Hamburg and is now known as the *Martha Stiftung*.¹⁵ Heinrich graduated from a building and construction academy in Berlin and thereafter occupied leading positions in the Cuxhaven and Hamburg public service with special responsibility for the construction of harbour installations, a field in which he achieved, through his publications and his practical work, professional success and national and international prominence. From 1863 until his death in 1871 he occupied a leading position in the Prussian Ministry of Public Works. As recently as 1974 a Hamburg tugboat was named after him. Ulrich's sister Amalia married Johann Friedrich Voigt, a successful Hamburg lawyer who rose in the German judicial service and became a judge of the highest all-German commercial appeal court in Leipzig in 1870. Hugo, the youngest of the Hübbe children, assisted his father and, in 1836, was appointed *Schiffsregistrator* like his father and occupied that position until his retirement in 1891. Ulrich chose to study law and had made a promising start as a writer, when his German career was cut short by his migration to South Australia.

B *Schooling and early childhood experiences*

At the age of five, young Ulrich lost his right eye when he and a friend were playing with sticks.¹⁶ Glass eyes were not developed for some decades and Ulrich had to do much of his growing up knowing that he was disfigured. That must have affected his self-esteem and perhaps even his emotional balance. He received his schooling at Hamburg's renowned humanistic school, the *Johanneum*, which had been founded in 1529 by Johannes Bugenhagen, an associate of Martin Luther. The fame of the school, where well-known enlightenment scholars had taught, and where Telemann and Carl Philipp Emanuel Bach had been cantors, had spread to England. Young Thomas Wilson, in later life the second of Adelaide's Lord Mayors, was a pupil in Hamburg for a number of years, almost certainly at the *Johanneum*, studying Latin and other foreign languages. Wilson, though 13 years older than Ulrich Hübbe, is said to have become one of his friends in Adelaide.¹⁷ The *Johanneum* must have paid much attention to the employment of truly competent

¹⁴ *Ansichten der freien Hansestadt Hamburg und ihrer Umgebungen*. The book was co-authored by Johann Christian Plath.

¹⁵ *Martha Stiftung* (2008) <<http://www.martha-stiftung.de/>> at 9 September 2009

¹⁶ 'Pioneers Honored. Mayor of Clare Receives Huebbe Photographs at Town Hall', *Blyth Agriculturist*, 12 April 1940, 3. Ulrich's accident is reported by Mrs Edith Hübbe, Ulrich's daughter-in-law.

¹⁷ S C Wilson and K T Borrow, *The Bridge over the Ocean* (1973) 233.

language teachers. Edward Sinnett, the father of Adelaide author Frederick Sinnett (see below), was an English journalist associated with *The Hamburg Reporter* and *The Gleaner*. He taught English at the *Johanneum* in the 1830s. Ulrich Hübbe's command of English left little to be desired, as is shown by his English-language publications. He also knew Latin and Ancient Greek and acquired a (probably exaggerated) reputation in Adelaide for being fluent in 11 languages.¹⁸

While at school, young Ulrich made friends with Meyer Isler, a Jewish boy from an orthodox background who had been sent to the *Johanneum* at a time when Jews were becoming integrated into the general Hamburg community. Meyer Isler reports that Ulrich tended to neglect his schoolwork and that he conducted his own historical studies instead.¹⁹ Another of Hübbe's friends was the well-regarded Biedermeier painter Julius Oldach, a perfectionist and, judging by the poetry he wrote, a man with a melancholy disposition who avoided social contact, but was close to the few friends he chose to make.²⁰ The friendship is likely to have developed when they were children²¹ and seems to have lasted until Oldach's early death in February 1830. Two Oldach paintings, both in the *Kunsthalle* in Hamburg, show the 23-year old Hübbe: *Mephisto und der Schüler*, a famous scene from Goethe's *Faust* with Hübbe in medieval dress as the student, and *Der Freund Ulrich Hübbe*, a portrait.²²

¹⁸ *Australian Dictionary of Biography*, above n 8.

¹⁹ 'Erinnerungen des hamburgener Bibliothekars Meyer Isler (1807–1888). Nach der Bearbeitung von Helene Lilien'. Herausgegeben von Erich Zimmermann [Recollections of the Hamburg librarian Meyer Isler. Based on the document produced by Helene Lilien. Edited by Erich Zimmermann] 47 (1961) *Zeitschrift des Vereins für hamburgische Geschichte* [Journal of the Hamburg History Society] 45, 64. Helene Lilien was Isler's granddaughter — *ibid* 46. I am grateful to Greg Taylor for having drawn this publication to my attention. The Journal has been fully digitized, see Bibliothekssystem Universität Hamburg *Zeitschrift des Vereins für Hamburgische Geschichte* (2008) <<http://agora.sub.uni-hamburg.de/subhh/digbib/view?did=c1:16225&p=78>> at 11 June 2008.

²⁰ This characterisation is based on a discussion between Alfred Lichtwark and Oldach's brother, J F N Oldach — Alfred Lichtwark, *Julius Oldach* (1899) 15. See also the following characterisation: 'Immer unzufrieden mit sich selbst und allem was er vornahm und ausgeführt hatte, von Natur still und in sich gekehrt, gar keinen Antheil nehmend an Freude und Vergnügungen ...' [Always dissatisfied with himself and with all he was planning or had carried out, quiet and introspective by nature, never taking part in things which are joyous or amusing ...] — *Neuer Nekrolog der Deutschen* [New necrology of the Germans] (8th series, 1830, Part I, Ilmenau 1832) 161, 162. Expressions such as 'melancholy' and 'hypochondriacal' are also used in this obituary.

²¹ They were almost the same age and may both have been pupils at the *Johanneum*. Oldach's brother Matthias attended the *Johanneum*, so it is likely that Julius did too, although his name does not appear in the school records — *Neuer Nekrolog der Deutschen*, vol 9, 204; see also *Die Geschichte der Familie Oldach* (2008) <<http://www.oldach-vita.de/verweise/04.html>> at 11 June 2008.

²² Lichtwark, above n 20, 111–14, 119–20. Lichtwark, director of the *Hamburger Kunsthalle* from 1886–1914, did not regard the Hübbe portrait as one of Oldach's

Growing up in Hamburg, Hübbe would have been exposed to a cosmopolitan and anglophile environment. Hamburg had been a free city-republic since the Middle Ages. English merchants, Huguenot refugees, Dutch Calvinists and Mennonites, Sephardic Jews and others had been welcomed in Hamburg and had found it a place in which to live, work and prosper. One of the great shipping companies had been founded by Johan Cesar Godeffroy, an entrepreneur of Huguenot extraction. Another shipping company, like the Godeffroys heavily engaged in the Australian trade, had been established by William Sloman, an Englishman. The English influence in Hamburg had been particularly pronounced, due perhaps to the presence there since the late Middle Ages, of the Merchant Adventurers. An English church, founded in 1612, still flourishes there today.

C *Academic development*

Ulrich Hübbe enrolled in the Law Faculty of the *Christian-Albrechts-Universität* in Kiel in 1826. One of his teachers there was Professor Niels Nikolaus Falck, the very same jurist who, in a book edited by William Jethro Brown, Professor of Law in the University of Adelaide from 1906 to 1916, is described as one of the ‘most eminent jurists of modern times’.²³ It appears that when he was still at the *Johanneum*, Hübbe had already developed a relationship with the historian Professor Friedrich Christoph Dahlmann, who taught at Kiel before he was called to Göttingen in about 1829. Meyer Isler reports that Hübbe’s essay on Dithmarschen, ‘Relations between the people of Dithmarschen and the people of Hamburg from the year of our Lord 1265 to 1316, based on documents’,²⁴ was completed while he was still at school. Dahlmann would have supplied the documents and Hübbe’s task would have been to translate them from Latin and the regional written German of the period, interpret their contents and produce a plausible account of the historical events. The result was a lively account of the robberies, murders and revenge killings which marked this flawed relationship and of the repeated attempts to restore peaceful conditions by treaties, accompanied by promises

to suppress all old-standing or newly created hatreds against each other, whether based on quarrels, enmities, wounds or murders, all of which is to be reduced to peace, so that the parties and their descendants never again think of such events with hatred in their hearts.²⁵

best works, but was full of praise for the *Mephisto* painting.

²³ William Jethro Brown, *The Austinian Theory of Law, being an Edition of Lectures I, V and VI of Austin’s ‘Jurisprudence’, and of Austin’s ‘Essay on the Uses of the Study of Jurisprudence’ with Critical Notes and Excursus* (1906) 249.

²⁴ *Verhältnisse der Dithmarschen mit den Hamburgern, vom Jahre Christi 1265 bis 1316. Aus Urkunden.*

²⁵ *Die Geschlechter sollten mit Eiden schwören, allen alten oder auch neu entstandenen Haß wider jene in sich zu tödten, was geschehen ist, es seyen Zwiste, Feindschaften, Wunden oder Totschläge, das soll für ewig still und zum Frieden gebracht seyn, daß sie und ihre Nachkommen des nie im Bösen wieder denken.*

Hübbe's essay seems like a well-written and surprisingly mature piece of historical writing, explaining doubts and providing possible explanations when the sources were inconclusive. In Kiel, Hübbe became Dahlmann's assistant and Hübbe's essay was published as Appendix XVIII in the 1827 edition of the *Dithmarschen Neocorus* when Hübbe was only in the second year of his law studies.²⁶ Dahlmann noted that he had excluded some contributions, but that Hübbe's contribution should have been published in a more prominent position in the book. He also complimented Hübbe on having resolved a question concerning the status of the town of *Meldorf*, which had caused him some difficulty.²⁷ The connection with Dahlmann would have been seen by Hübbe as a great honour, for Dahlmann was a formidable scholar whose works are still extant in relatively recent editions. Later Dahlmann also became an influential and courageous liberal politician.

In the winter semester of 1826, Dahlmann offered a course of lectures on the history of Dithmarschen.²⁸ The fascination of Dithmarschen for liberal intellectuals of the post-Napoleonic era is easy to understand. Its medieval citizens had bravely fought domination by the Princes of Holstein and the Kings of Denmark, and Dithmarschen had, until the mid-16th century, been an independent, democratically organised yeoman republic. These were ideals enthusiastically embraced in various ways by academics and students alike. Liberals like Falck and Dahlmann agitated for a new political order based on the principles of the English constitution.²⁹

Some of the students had fought Napoleon in the Royal Prussian Free Corps von Lützow.³⁰ Upon their return to university they joined the *Burschenschaften*,³¹ groups of students who were unhappy with some of the semi-absolutist German principalities and kingdoms, and demanded freedom of thought and of the press, democratic reforms and the unity of the German fatherland. They harked back

²⁶ *Johann Adolphi's, genannt Neocorus, Chronik des Landes Dithmarschen. Aus der Urschrift herausgegeben von F. C. Dahlmann. Erster Band. Mit einer Karte des Freistaats.* [Johann Adolphi's, called Neocorus, chronicle of the Land of Dithmarschen. Based on the original book, edited by Professor F C Dahlmann. Volume 1. With a map of the free state] (1827). Hübbe's essay appears on 648–70 and the passage from the essay quoted above on 665. This was the second Dahlmann edition of the work. The first was published in 1818. The author is grateful to the Göttingen University Library for having supplied Hübbe's essay to him. The short title of the book is simply the *Dithmarschen Neocorus*.

²⁷ *Ibid*, 648.

²⁸ William Heinrich Kolster (ed), *Geschichte Dithmarschens, nach Friedrich Christoph Dahlmanns Vorlesungen im Winter 1826 mit Excursus* [The history of Dithmarschen, based on Friedrich Christoph Dahlmann's lectures held in the Winter of 1826] (1873). This book is available in the *Staats- und Universitätsbibliothek Hamburg*.

²⁹ Horst Dippel, 'Blackstone in Germany' in Wilfred Prest (ed), *Blackstone and his Commentaries: Biography, Law, History* (2009) 204–5.

³⁰ *Königlich Preußisches Freikorps von Lützow* — a kind of light infantry, which consisted of self-financing volunteers who had banded together to fight in the wars of liberation.

³¹ 'Young Men's Associations'. The word is difficult to translate.

with a sense of nostalgia to the supposedly proud, freedom-loving and valiant Germans of medieval times, and even to ancient Germanic heroes like Hermann the Cheruscan who had defeated the legions of Augustus.³² People of all shades of opinion were able to look back with approval to the brave people of the tiny republic of Dithmarschen. Although Kiel was Danish, many of the students and teachers were German and it was German affairs, including particularly political affairs, which were the focus of attention.

From this early literary venture, and from the cauldron of patriotic and political agitation which surrounded him, Hübbe seems to have distilled an abiding interest in the legal and general history of the German Middle Ages, for he chose, probably inspired, if not guided, by Dahlmann, the legal history of the ancient Margraviate of Brandenburg as the theme for his doctoral dissertation. He may not have been able to start work on this until he had completed his undergraduate studies. German students have tended to study at a number of universities in order to benefit from more than just one kind of intellectual stimulation. Hübbe changed from Kiel to Jena University, at the time one of Germany's best tertiary institutions and yet another centre of political agitation. From there he moved to Berlin, where he heard lectures given by Friedrich Carl von Savigny, the famous 19th-century German legal scholar who also made a significant impact in Britain.³³ Thereafter Hübbe entered the Prussian judicial service as a trainee-in-law (*Referendar*, then called *Auskultator*) at the *Kammergericht*, the highest Prussian Court in Berlin.

Hübbe's duties at the *Kammergericht* are likely to have been light enough to have allowed him sufficient time to make substantial progress with his doctoral thesis. It was titled, in his own translation, *The Customary Holdings in the Ancient Marquisate*.³⁴ A fuller translation would be:

‘Yeomen’s Laws and Court Systems in the Ancient Margraviate Brandenburg: A Resolution of the Representative Assembly of 1531. With Annotations and a Summary of the Court System from 1100–1806’.³⁵

This article of some 90 pages (including 30 pages of statutory text) was published in the 1835 (volume 45 issue (98)) of the *Year-Books of Prussian Legislation, Legal*

³² Immortalised in *Die Hermannsschlacht* by Heinrich von Kleist, written 1808–9.

³³ In a letter to the Council of the University of Adelaide written in 1874, Hübbe stated that he heard lectures by the ‘renowned Savigny’ in Berlin. For a list of those of Savigny’s publications which were translated into English, see Lücke, above n 8, 225 n 64.

³⁴ ‘Marquisate’ is acceptable, although ‘Margraviate’ seems preferable. Hübbe’s translation appears in correspondence with the University of Adelaide – see Lücke, above n 8, 236 n 130.

³⁵ *Bauernrechts- u. Gerichtsordnung der Alten Mark-Brandenburg; ein Landtagsschluß vom Jahre 1531. Mit Anmerkungen u. einer Übersicht des altmärkischen Gerichtswesens vom Jahre 1100 bis 1806.*

Science and Legal Administration.³⁶ It was also printed as a separate booklet. Dahlmann called Hübbe's work 'scholarly and, more importantly, showing understanding of the living reality of the time'.³⁷ Dahlmann also complimented Hübbe on having made accessible a previously unknown aspect of early Brandenburg law.³⁸ Coming from a man of Dahlmann's stature, this was high praise indeed. Although Dahlmann had left Kiel in 1829, the positive impression he gained of Hübbe's work might still have contributed to the acceptance of it for the doctorate. The *Doctor Utriusque Juris* was conferred on Hübbe on 10 March 1837 at the University of Kiel. Professor Falck was then Dean of the Law Faculty and participated in the ceremony.³⁹

D *An ambitious project*

Greg Taylor has discovered an undated 16-page pamphlet entitled:

Bibliothek for the Electoral and New Margraviate Brandenburg, history, antiquities, communities, especially ancient documents, chronicles, statutes concerning the nobility, the churches, foundations, towns and rural communes, edited in association with several persons by U. Hübbe.⁴⁰

³⁶ *Jahrbücher der Preußischen Gesetzgebung, Rechtswissenschaft und Rechtsverwaltung*. The Max Planck Institute for European Legal History in Frankfurt has made this and many other early legal journals fully accessible online <<http://dlib-zs.mpier.mpg.de/mj/kleioc/0010MFER/exec/search>> at 11 June 2008. Other essays published by Hübbe before his migration are 'Recensionen' [literary reviews] published in the *Litterarische und kritische Blätter der Börsenhalle* [Literary and critical pages of the Stock Exchange], a respected literary journal of the period – Schröder, above n 8. The publication dates of these are difficult to determine. The *Börsenhalle* in Hamburg housed the Chamber of Commerce. From there a number of political, economic and literary journals were published in the early part of the 19th century.

³⁷ *gelehrt und was mehr ist mit Einsicht in das Leben der Dinge erörtert – F C Dahlmann, Die Politik, auf den Grund and das Maß der gegebenen Zustände zurückgeführt* [Politics in the light of the reasons and the measure of existing condition] (3rd ed, 1847) vol 1, 267. These comments may have appeared in earlier editions, the first one having been published in 1835. At any rate, Hübbe's earlier contact with Dahlmann through the *Neocorus* makes it likely that Dahlmann told Hübbe of his favourable impression.

³⁸ *Die früher unbekannte Urkunde ... zeigt, welche schützende Ordnungen des altmärkischen bäuerlichen Familienrechtes ... noch bis zum dreißigjährigen Kriege walteten*. [This previously unknown document ... shows the benign nature of the protective institutions of the ancient Brandenburg yeomen family law ... which existed before the Thirty Years War.] — *ibid.* See also, Greg Taylor, 'Ulrich Hübbe's doctoral thesis — a note on the major work of an unusual figure in Australian legal history', *Legal History* (forthcoming).

³⁹ I am indebted to Greg Taylor for having discovered Hübbe's doctoral certificate. It is held by the State Library of South Australia (Document PRG 1242/5).

⁴⁰ *Bibliothek für die Chur- und Neumark Brandenburg, Geschichte, Alterthümer, Gemeinwesen, insbesondere Urkunden, Chroniken und Statuten des Adels, der Kirchen, Stiftungen, Städte und Gemeinden, herausgegeben im Verein mit Mehreren*

The likely date is 1836, for a librarian's note on the document states that as being the year of publication. Moreover, as Greg Taylor has pointed out, Hübbe did not use his doctoral title, which was bestowed in 1837, at which time he was probably back in Hamburg. The document is entitled: 'Introduction, also to serve as a prospectus',⁴¹ indicating that Hübbe was to be the general editor of a major publication. The pamphlet was addressed to 'our fellow Brandenburgers of all the estates',⁴² which implies that Hübbe and his collaborators saw Brandenburg as their home, and that Hübbe had forsaken Hamburg and adopted Berlin as his new domicile. Inspired no doubt by the great Dahlmann, he was apparently planning to become one of the leading authorities on the German Middle Ages.

The new publication, to be issued in *Lieferungen* (instalments), was intended to be broadly historical rather than purely legal. Five parts were envisaged: the history of the Brandenburg wars; matters concerning the cities; family histories and reports concerning famous Brandenburgers; Brandenburg legal history; and church history and history of the sciences in Brandenburg. As if this had not been enough, the introduction made it clear that other segments concerned with art history, antiquities and noteworthy monuments might be added. At least one volume per year was planned. We do not know how advanced the preparations for this project were; however, it appears from the pamphlet that Hübbe had persuaded *AW Hayn's Buchhandlung*, a financially solid Berlin publishing firm, to back the publication.

We can only speculate why the project was abandoned, but *AW Hayn* are unlikely to have been responsible for they continued to prosper — in the 1850s they published Schopenhauer's works. The causes are more likely to lie in the combination of Hübbe's unrealistic aspirations and his personal problems and limitations. Hübbe's attempt to rise to the status of a Dahlmann was doomed, for he lacked the extraordinary intellectual firepower which enabled Dahlmann to achieve success with his broad-ranging and panoramic historical projects. Judging by the failure of so many of his later initiatives in South Australia, Hübbe also lacked the persuasive power and strength of personality to bend others to his will, in this instance to impose the necessary discipline on his Berlin collaborators.

E *The monster of the deep*

If the great publishing project had been conceived in a fit of unrealistic enthusiasm, after its failure and his return to Hamburg in late 1836 or early 1837, Hübbe is likely to have succumbed to numbing despair. Like his friend Julius Oldach, he seems to have been affected by *Weltschmerz*: philosophically tinged despair at the tears of this world and anguish of the soul (*Seelenbeklemmung*) when contemplating the depth of one's past failings and the supposed paucity of one's prospects. If unrequited love did not cause this melancholy outlook, it often deepened it.

von U. Hübbe. A copy of this document exists in the *Landesamt für Denkmalpflege und Archäologie, Sachsen-Anhalt*.

⁴¹ *Einleitung, als Prospektus*.

⁴² *ihren märkischen Landsleuten aller Stände*.

Nipperdey has aptly spoken of the many Hamlets of the period.⁴³ As a difficult developmental stage affecting a part of the population, this is hardly unique, but it was a world view much debated and expounded in the literature of the *Biedermeier* period⁴⁴ and that may have intensified the problems experienced by some culturally sensitive individuals.

Oldach's hymn to love, to the happiness it can bring and the despair felt at its loss, his only remaining poem, speaks of 'a thousand miseries, the wild steeds of despair and my desolate existence'.⁴⁵ Lichtwark calls this, Oldach's one remaining poem, 'the cry of an imprisoned, lonely, despairing soul, staggering under an unbearable burden'.⁴⁶ Suicide is one extreme reaction to such an existential crisis, more commonly one seeks escape from it, perhaps by developing an overheated ambition, by creating an artificial aura of extraordinariness around oneself⁴⁷ or by becoming overzealously religious. It can also be the path to remarkable achievement, or, with increasing maturity, to a more or less ordered, normal existence. Oldach found relief in painting and pursued his career so single-mindedly that, as his family thought, it cost him his life. Their death notice reads: 'His all-too-keen striving after extraordinary success as a painter undermined his health and he died of exhaustion.'⁴⁸

The friendship between Hübbe and Oldach was hardly an accident, for they were similar personalities. Meyer Isler, another of Hübbe's school friends, described Ulrich as 'a highly talented but somewhat eccentric person'.⁴⁹ In his own family, Ulrich was considered 'highly talented, but, perhaps because of his great talent, unsteady in his aspirations'.⁵⁰ The family's anxiety about Ulrich's personality is expressed most explicitly in a letter Dr Wagner, brother-in-law of Ulrich's cousin

⁴³ Thomas Nipperdey, *Deutsche Geschichte 1800–1866, Bürgerwelt und starker Staat* [German history – the people and a strong state] (1998) 576.

⁴⁴ Ibid; Nipperdey mentions Lord Byron, Lenau, Grabbe, Heine and Büchner in this context. There is no more effective expression of *Weltschmerz* than Hamlet's words: 'How weary, stale, flat and unprofitable seem to me all the uses of this world.' — William Shakespeare *Hamlet* 1.2.133–5.

⁴⁵ *Auf der Verzweiflung wilden Rossen,
Wirst du durchs öde Leben hingejagt.*

⁴⁶ *Aufschrei einer verschlossenen, einsamen, verzweifelten Seele, die sich unter einer unerträglichen Last dahinschleppt* – Lichtwark, above n 20, 28.

⁴⁷ Ernst Rietschel, one of the greatest German sculptors and a much greater artist than Oldach, has stated that, when he was at art academy in Dresden with Oldach, he and his fellow students tended to regard Oldach as 'one of the greatest of the coming period' — Lichtwark, above n 20, 15.

⁴⁸ *Sein allzugroßes Streben, in der Malerkunst etwas Außerordentliches zu leisten, untergrub seine Gesundheit, und er starb an Entkräftung.* – *Neuer Nekrolog*, above n 20.

⁴⁹ *Ferner befreundete ich mich bald mit Ulrich Hübbe, einem talentvollen, aber etwas exzentrischen Menschen . . .* — *Erinnerungen*, above n 19, 64.

⁵⁰ '... hochbegabt, aber, wohl gerade dadurch in seinen Bestrebungen höchst zersplittert.' — Reinhold Hübbe, *Der hamburgische Wasserbaudirektor Heinrich Hübbe und seine Familie*, private pamphlet compiled by Dr Jürgen Hübbe in 1990

Wilhelm, wrote to his wife on 13 June 1842 when he had been told that Ulrich was on his way to Australia:

I have always expected that our eccentric Ulrich would one day take an extraordinary step and I am pleased that he has hit upon this idea; one sees clearly that our loving God looks after each of his children, if only the child will follow the Father. Had this human being not been seized by Pietism, his inner restlessness and never-ending emotional turmoil would have broken through and taken a very unfortunate course, and, in my opinion, suicide might have been the outcome, for he was quite unable to adjust to the conditions of our civil society as they are, perhaps unfortunately. Now, however, his piety is sustaining him and in Australia people of high intelligence, which he undoubtedly possesses, will find their place, or should I say, their occupation (for, wherever he may be, in one position, in one place, this individual will never find himself). May God be with him and bestow upon him peace and happiness. Perhaps the passing of the years will supply what has not developed because of lack of self-control which has been his problem since childhood.⁵¹

In January 1883, when he was 77 years old, Ulrich Hübbe composed the poem 'Rescue', which recalls the agonies he had suffered as a young man and his salvation.⁵² It speaks of 'the wild sea', the 'monster of the deep' and his 'dying soul'⁵³ and recalls the 'word from above'⁵⁴ which had saved him. The third verse sums up the message of the poem:

Never, oh soul, allow the flood to carry you away,

and kindly made available to the author. This comment reflects the judgment of Ulrich's brother Heinrich.

⁵¹ *Daß der exzentrische Ulrich noch einmal einen außerordentlichen Schritt thun würde, habe ich immer erwartet u. freue mich, daß er auf diese Idee gekommen; und so sieht man einmal wieder deutlich, wie der liebe Gott doch für jedes seiner Kinder sorgt, wenn das Kind sich nur zum Vater halten will. Wäre dieser Mensch nicht vom Pietismus ergriffen worden, so hätte seine innere Unruhe und das beständige Überkochen seiner Gefühle sicher sich eine schlimme Bahn gebrochen, u. nach meiner Meinung wäre, da er sich in den einmal bestehenden Verhältnissen der bürgerlichen Gesellschaft, durchaus nicht zu finden wußte, vielleicht ein Selbstmord sein Ende gewesen. So aber hält ihn seine Frömmigkeit, u. dort in Australien werden Köpfe von Geist, der dem Seinigen doch nicht abgesprochen werden kann, ihren Platz, ich will sagen ihre Thätigkeit, (denn in einer Stellung, in einem Platze wird sich dieser Mensch sich nirgend finden) wohl finden. Gott sey mit ihm u. gebe ihm dermaleinst Ruhe u. Glück. Vielleicht thun die Jahre endlich das, was ein Mangel an Selbstbekämpfung von Jugend auf bisher nicht gethan hat. – Die zehn Geschwister Wagner. Eine Hamburger Familiengeschichte aus alten Briefen und Überlieferungen, zusammengestellt von Amalie Wagner, 222 (Document kindly supplied by Dr Jürgen Hübbe).*

⁵² State Library of South Australia (Document PRG 1242/7).

⁵³ *Wüstes Meer, Ungeheuer der Tiefe, der Seelen Sterben.*

⁵⁴ *Wort von Oben.*

Never venture into the darkness of the deep:
 Night and terror cover the raging of the abyss
 Light, life and salvation come from above.⁵⁵

The poem confirms Dr Wagner's judgment of Hübbe.

F *Activities after the return to Hamburg*

His family may have expected that, after the failure of his great publishing project, Ulrich would settle down in Hamburg, establish a legal practice, marry and found a family. However, he does not seem to have viewed such prospects with much enthusiasm. Representing ordinary Hamburg clients could not have taken too much of his time for he was busy with non-legal activities and with publishing ventures, some with a religious rather than legal orientation. His family judged him as *'zersplittert'* (splintered),⁵⁶ a word which, in its figurative use, describes someone who lacks, intellectually and/or emotionally, a secure anchor and orientation. They might have overlooked the fact that, even after the disappointment with his grand project, he never abandoned his literary and editorial interests or indeed his interest in the law of the German Middle Ages, nor did he try to avoid contact with those who might help him pursue such interests.

Not long after his return from Berlin, Hübbe was made aware of the fortunes of the colony of South Australia, for he met Captain Hahn who had returned to Hamburg on 11 September 1839 after having taken the Hahndorf Germans to South Australia on his Danish ship, the *Zebra*. Hahn's story aroused great interest in Hamburg and Hübbe assisted him with having an account of his experiences in South Australia printed.⁵⁷ Hahn would have told Hübbe of his impressions and might have passed on some of his enthusiasm for the beauty of the Adelaide Hills, so vividly described in Hahn's book.

When the *Verein für hamburgische Geschichte* was founded in 1839,⁵⁸ Ulrich, together with his cousin Wilhelm, another lawyer and the son of his uncle Karl, was amongst the first to join. Ulrich's school friend Meyer Jsler was also a member; contact between these two obviously still existed 10 years after they had

⁵⁵ *Nie laß, Seel, die Strömung Dich forttragen,
 Auf die finsternen Tiefen Dich zu wagen:
 Nacht und Grauen bedeckt des Abgrund's Toben
 Licht, Lebens-Muth, Errettung sind von Oben.*

⁵⁶ Rainhold Hübbe, above n 50, 11.

⁵⁷ F J H Blaess and L A Triebel (transl), 'Extracts from the Reminiscences of Captain Dirk Meinertz Hahn, 1838–1839' [1964] III *South Australiana* 97, 100.

⁵⁸ *Bericht über die Gründung des Vereins für hamburgische Geschichte* [Report concerning the formation of the Hamburg History Society] 1 (1841) *Zeitschrift* — above n 19, 1. <<http://agora.sub.uni-hamburg.de:8080/subhh/digbib/toc?did=c1:44166&sdid=c1:44167>> at 11 June 2008.

left the *Johanneum*.⁵⁹ The membership of the *Verein* reads like a *Who's Who* of the Hamburg intelligentsia of the time. The president was a Hamburg archivist, J M Lappenberg, who, having studied in Edinburgh, London, Berlin and Göttingen, became an author of renown.⁶⁰ Senator Hudtwalcker, a friend of Osmond Gilles, and other senators were members, as were leading members of the various professions.

As pointed out by Dr Wagner, Hübbe embraced *Pietismus* (pietism), then a leading strand of the Lutheran religion, with much emphasis upon personal piety and its practical application in charitable works and missionary activities. He joined the Hamburg Association of Lutheran Friends of Missionary Activities,⁶¹ and, in due course, became its secretary. It was in this capacity that he arranged for the publication of 'The Lutheran pilgrim from the north in defence of truth and justice',⁶² which appeared in 1841. This was accompanied by 'News of missionary activities from foreign parishes and colonies, collected in Hamburg'.⁶³ In his capacity as secretary, he may also have made his first contact with George Fife Angas, the 'father of South Australia',⁶⁴ who took a keen interest, not only in the spiritual well-being of the migrants who went to South Australia, but also in what was then considered the spiritual well-being of the Australian natives. In 1836 or 1837 Angas and Pastor Ludwig Christian August Kavel approached the Evangelical Lutheran Mission Society of Dresden⁶⁵ to recruit missionaries for this purpose. The Society sent to Adelaide two recently ordained Lutheran pastors, Christian Gottlob Teichelmann and Clamor Wilhelm Schürmann, who arrived there from London on 12 October 1838 in the *Pestonjee Bomanjee*, which also carried Governor Gawler. Kavel had moved to Hamburg at the time and Angas had his most important German contacts there, so it seems likely that Hübbe was involved in these negotiations.

Hübbe also came into contact with groups of Lutherans from eastern Germany, who were seeking to find a new home overseas where they could practise their faith freely. In 1840 he assisted Pastor Gotthard Daniel Fritzsche to obtain a police permit for his stay in Hamburg. They then travelled to England together and negotiated successfully with George Fife Angas to arrange for Fritzsche's group of some 270 German migrants from Posen and Silesia (the Lobethal Germans)

⁵⁹ Ibid, 23–7. See the membership list.

⁶⁰ A list of his books, which includes his two-volume history of England, may be found at Open Library *J M Lappenberg* <<http://openlibrary.org/a/OL2136377A/J.-M.-Lappenberg>> at 11 June 2008.

⁶¹ *Verein lutherischer Missionsfreunde*. Heinrich Sieveking, *Karl Sieveking 1787–1847, Lebensbild eines Hamburgischen Diplomaten* [Biography of a Hamburg diplomat] (1928) 518.

⁶² *Der lutherische Pilger aus dem Norden für Wahrheit und Recht* — listed in Schröder, above n 8.

⁶³ *Missions-Nachrichten nebst Berichten von auswärtigen Gemeinden u. Colonieen, Gesammelt in Hamburg*. —ibid.

⁶⁴ Edwin Hodder, *George Fife Angas, Father and Founder of South Australia* (1891).

⁶⁵ *Evangelisch-Lutherische Missionsgesellschaft zu Dresden*.

to migrate to Adelaide.⁶⁶ Hübbe's interest in pietism throws new light on his relationship with George Fife Angas, a devout Christian, a philanthropist, a good organiser and a successful businessman. Hübbe must have been very positively impressed when he met Angas in England. In the book he published in Adelaide in 1857, Hübbe spoke of the 'debt of gratitude' of 'those whom you first invited and enabled to come here' (that is, to South Australia),⁶⁷ and one might conclude that Angas's personality and his persuasive powers played a part in Hübbe's own decision to follow the Lutheran migrants to South Australia.

G *Hübbe's decision to migrate to South Australia*

There has been much speculation concerning the reasons which prompted Hübbe to emigrate, for he has left no accessible written explanation. The fire of Hamburg, which raged from 5 to 9 May 1842⁶⁸ and, alternatively, his religious convictions⁶⁹ are mentioned in the literature as possible reasons. The year 1842 turned out to be disastrous for the Hübbe family. Ulrich's mother died on 5 January 1842. Ulrich's father lost his professional rooms in the fire and only three weeks later Ulrich's brother Hans died in Mexico.⁷⁰ Whether Ulrich's mother's illness and death influenced his decision, we do not know. However, the fire and the death of his brother Hans occurred after Ulrich was already on his way.

The impact of religious considerations is more difficult to assess. There were no obstacles to the free practice of the Lutheran religion in Hamburg, but his pietism and his association with Angas are not unlikely to have been influential factors. In view of the unsettled life he had been leading in Germany, it is not surprising that he was looking for a new beginning. Being of Hamburg origin, the thought of living overseas held no more terror for him than it did for the English, Scots or Irish of the time. There were good reasons for feeling uncomfortable about the political situation in his homeland.

As a student in Kiel, Jena and Berlin, Hübbe could hardly have escaped the tensions of the post-Napoleonic era. The political aspirations of liberal academics and of the more radical students organised in the *Burschenschaften* came into conflict with the official policy, designed by the Austrian statesman Metternich, and aimed at the re-establishment of the pre-Napoleonic order in Central Europe. This period

⁶⁶ The group left Altona on the Danish ship, the *Skjold*, on 3 July 1841 and arrived at Holdfast Bay on 27 October, having tragically lost 41 passengers, mostly children, to dysentery.

⁶⁷ Hübbe, *The Voice of Reason*, above n 4, 1 (the dedication).

⁶⁸ Lutheran Church of Australia Archives, Adelaide, Hübbe file, document ACC no 69/32 — 8 May 1969, R 483, p 3. Written by David St L Kelly, this is a more detailed version of the Hübbe entry in the *Australian Dictionary of Biography*. See also F J H Blaess, 'One hundred and twenty-five years ago' [1968] *The Lutheran Almanac* 28, and 'A worthy colonist', *The South Australian Register* of 4 October 1884 (State Library of SA Document PRG 1242/3).

⁶⁹ Esposito, *Entstehung* above n 5, 136 n 888.

⁷⁰ These events are related by Postel, above n 9, 40.

is often referred to as the *Vormärz* (pre-March), that is the time which led to the unsuccessful revolution of March 1848. Methods used by governments to defeat the liberal forces included censorship, dismissal of liberal professors and prosecutions of agitators. This is not the place for a detailed account. One need only mention one event which affected Hübbe to illustrate the enormity of these political upheavals.

On 4 August 1836 the *Kammergericht* in Berlin, the very same Court which had looked after Hübbe's training, found 39 members of the *Burschenschaften*, including five from Jena, guilty of treason and sentenced them to death.⁷¹ They were spared the gallows in the end, but the emotional impact of these events on a young man from cosmopolitan Hamburg (even if he had already returned to Hamburg at the time) must have been severe.

A newly established colony of the British Empire might have seemed to Hübbe to combine a number of advantages. He was already familiar with the language spoken there. Falck and Dahlmann would have convinced him that the British Constitution promised political stability and a more tender concern for the rights of the individual than was available in his turbulent homeland. German fellow-Lutherans were moving to South Australia in significant numbers. Finally, he was aware of the close links which were developing between Hamburg and the new colony. Two Hamburg shipping companies had included Adelaide in their schedules. Moreover, Hübbe is likely to have known that some of his fellow-Hamburgers of British nationality had decided that the opportunities awaiting them in the antipodes were even better than the very promising ones which had lured them to Hamburg. If Hübbe wanted to attend a church service in the main Lutheran Church, St Michaelis, he had to make his way there via the *Englische Planke*, a nearby street and playground, where English residents used to play their favourite games. Some of these, like Osmond Gilles and Philip Oakden, had contact with Angus and his associates and so did Hübbe.

III LIFE IN SOUTH AUSTRALIA

A Prospects after arrival in Adelaide

When Hübbe arrived in Adelaide the colony was barely six years old. The early German migrants, farmers and craftsmen, built their simple hamlets on the model of rural Prussian villages of the pre-industrial age and gave them German names such as *Klemzig*, *Hahndorf*, *Bethanien* (now Bethany) and *Lobethal*. It was only after 1848 that significant numbers of Germans with academic training arrived, often disaffected by the failure of the liberal revolution. Intellectuals who were part of the first wave of German migrants, like Johannes Menge, a German geologist and linguist employed by the South Australian Company, the Lutheran pastors Kavel and

⁷¹ W Schmidt, *Die vom preußischen Kammergericht am 6. August 1836 zum Tode verurteilten Burschenschaftler* [The *Burschenschaftler* condemned to death by the Prussian *Kammergericht* on 6 August 1836] (2006), accessible under *Burschenschaft Schmidt Kammergericht* (2008) <http://www.burschenschaft.de/pdf/schmidt_kammergericht_1836.pdf> at 11 June 2008.

Fritzsche or the early missionaries were exceptions. Ulrich Hübbe was yet another such exception, but, unlike the others, he came with neither a clearly defined function, nor an appropriate means of making at least a modest living.

At a meeting with Mr Justice Cooper, arranged by Advocate-General Smillie, Hübbe presented his Doctor of Laws Diploma from Kiel, no doubt in the hope of attracting legal employment. The Judge would have read it with interest and courtesy, however this remained Hübbe's only reward. He had to accept that the British settlers had no use for his exotic legal talents. To say that he was stranded is no exaggeration. Before he came, he should have asked George Fife Angas for employment. Perhaps he failed to do so because he could not see himself in the role of a humble clerk in the South Australian Company. He paid for his failure to do so with setbacks, misfortunes and financial difficulties. As David St L Kelly has said 'he never freed himself from the financial difficulties which plagued him from his earliest years in the colony'.⁷²

Hübbe arrived in the colony, probably with a little capital, at a time when land speculation was making some of the early arrivals rich, while ruining others. The cultural sophistication which his schooling and his academic endeavours had given him was useless in the rough and tumble of the colony. To become financially successful, one needed ruthlessness in business dealings, a quick eye for one's own advantage, the commercial experience of an Osmond Gilles, and perhaps even readiness to use one's fists if necessary. If, in addition, one had connections like those of which Robert R Torrens could boast, success was assured. Hübbe was not equipped to cope with a world dominated by men of this calibre. Only eight months after his arrival, unsuccessful land dealings in the Barossa Valley landed him in the debtors' prison. He was forced to surrender, in legal fees to the Government, his last £25 sent by his father, even though his more merciful creditors had agreed that he should keep this money for his own use. The Adelaide Gaol, now a museum, had already been built at the time⁷³ and one can only imagine Hübbe's anguish in that dismal place. He must have wondered whether he had made a bad mistake when he decided to leave the relative certainty and comfort of his home town.

After his release from prison, Charles Flaxman, Angas's South Australian agent, made a section of Angas Park land available to Hübbe for farming purposes. Leading the hard life of a farmer at least relieved him of the task of sorting out his priorities, for providing food for himself was now the unchallenged requirement. He lived in what he called a 'hut'. In 1843, this humble abode caught fire and he lost his papers including his doctoral certificate as well as the library of classical, legal, and historical standard works which he had brought with him from Hamburg. The pain he felt at losing part of his identity with these beloved objects must have been intense, but he may also have wondered what earthly use they could have been to him in this hostile environment. There is no indication that he ever attempted to return to Hamburg. With George Fife Angas as his champion, he might have hoped for better things.

⁷² *Australian Dictionary of Biography*, above n 8. See also Blaess, above n 68.

⁷³ Hague, above n 2, 798–809.

The difficulties of his first five years in South Australia had obviously not deprived him of all hope and courage, for on 18 November 1847 he married Martha Grey of Glasgow in the Congregational Chapel in Adelaide. The Hübbes had four children. One of their sons, a captain in the South Australian forces, was killed in action in the Boer War in 1899.

Hübbe had sympathised with the plight of the Kavel and Fritzsche Lutherans who left Brandenburg to escape religious restrictions and would have accepted Angus's assurances that they would be free to worship as they wished in South Australia. If so, there is some irony in the fact that he found he had infringed the ban on mixed marriages imposed by the Lutheran congregations in the colony. As a result, he did not join a Lutheran congregation until 1855. Eventually he became one of the leading members of the Bethlehem Church in Adelaide.

Hübbe had some experience in publishing, and it comes as no surprise that reporting for *The South Australian Register* was one of the first things he tried, albeit without lasting success. In the early 1850s he reported for *The South Australian Observer* and in 1874 he became the editor of the *Neue Deutsche Zeitung* but left almost immediately because of political and religious differences with the proprietors. None of these occupations gave him more than very temporary satisfaction and they did not solve his financial dilemma.

Had Hübbe been able to build a legal career, it would have given him an acceptable living and also a sense of self-worth. In 1846, when living in Grenfell Street, he found quasi-legal employment as a law clerk in the chambers of the barrister John Warner Nicholls of Gawler Place. This must have been poorly paid, and it did not last long.

School teaching would not have been too painfully distant from his chosen calling. He opened a German school in Kensington in 1847 and another in *Buchfelde* (the name changed to 'Loos' in 1917), which he had to close when the Wesleyans set up a rival school there. His hope that he might find employment as a teacher in *Hoffnungsthal*⁷⁴ was disappointed. His wife became a school teacher too, and both may have found some success and satisfaction in instructing the young.

In 1857 Hübbe was appointed by Attorney-General Richard Hanson to the government position of German interpreter. His annual salary of £100 would have sustained him and his family, if only just,⁷⁵ during the period of his intense activity as an agitator for the new conveyancing system. To earn a little extra money, he tried his hand as a land agent and also published advertisements in the *Adelaides Deutsche Zeitung*, offering consultation on contracts, wills, naturalisations,

⁷⁴ The name was changed to Karawirra in 1917, and then again to *Hoffnungsthal* in 1975.

⁷⁵ Johannes Menge, an unmarried man, was paid an annual salary of £300 by the South Australian Company. Judge Benjamin Boothby's many complaints about the inadequacy of his annual salary of £1000 are well recorded; admittedly, he had to feed a wife and 15 children.

powers of attorney and mortgages.⁷⁶ The Law Society, which had been established in 1851,⁷⁷ must have seen this as an infringement of the monopoly of the legal profession and may well have forced him to stop. It must have come as a blow when the Government abolished his position as German interpreter in 1866. One wonders why such a step was considered necessary. German/English interpreters had been needed from the very beginning of the colony and were no less needed in 1866 when the German population exceeded 11 000.⁷⁸

Hübbe's last attempt to achieve employment appropriate to his academic and professional achievements occurred in December 1874, when he applied to the Council of the recently founded University of Adelaide for the position of 'Professor or Lecturer docens in the Faculty of Law', emphasising his knowledge of 'the ancient Saxon and Feudal laws, the true foundations of English jurisprudence'. He mentioned that he had lost his doctoral certificate and offered to obtain an 'Exemplification' (a certified copy) from Kiel.⁷⁹ Alas, no one had ever heard of Dithmarschen or of 16th-century Brandenburg laws, and Hübbe, the legal historian, was of even less interest to the University or to any other potential employer than was Hübbe the lawyer. When, in 1883, the Faculty of Law was established, the University Council appointed a Cambridge graduate, Walter Ross Phillips, as Lecturer-in-Charge. Hübbe's approach, made eight years previously, had been forgotten. Whatever career as a lawyer or historian was awaiting him in Hamburg when he took his plunge into the unknown, his prospects there were much better than those in South Australia.

During the elections for the House of Assembly in 1875 Hübbe stood as a candidate for the Barossa District, but was unsuccessful.⁸⁰ Before 1887 a seat in Parliament was unremunerated, but it might have opened doors. Again, this was not to be.

B *Hübbe and the Torrens system*

In Germany, Hübbe may have fallen short of his own expectations, but he had shown unusual skill as a lawyer, historian, publicist and perhaps also as a negotiator. His failure to achieve a suitable position in South Australia must have been a source of frustration and self-doubt. Once he began to involve himself in matters of law reform, he had found an outlet for his creative energy, a way of making his knowledge and his skills useful to the community. He deserves credit for having become, in modern parlance, a 'public citizen'. It turned out to be the way to lasting fame, if not to fortune.

⁷⁶ *Adelaidier Deutsche Zeitung* of 27 July 1860.

⁷⁷ Hague, above n 2, 734–5.

⁷⁸ Frederick Sinnett, *An Account of the Colony of South Australia, Prepared for Distribution at the International Exhibition of 1862* (1862) 75.

⁷⁹ Above n 33. Fortunately he seems to have done so, otherwise there would be no copy in Adelaide. Due to misleading information supplied by the *Landesarchiv Schleswig Holstein*, unjustified doubt (now dispelled) had arisen about Hübbe's doctorate. See also Lücke, above n 8, n 130.

⁸⁰ Lücke, above n 8, 238.

By early 1857 Robert R Torrens had been working for some time seeking to bring about the reform of the very expensive legal arrangements for transferring and encumbering real estate. Hübbe's letters to the *South Australian Register*, published in early 1857, supported law reform in this area and suggested that the laws in force in Hamburg and in other Hanse towns were superior to the South Australian system. Having read the letters, Torrens sought discussions with Hübbe and tried to enlist his assistance. Hübbe did not need much prompting and involved himself with great energy and enthusiasm, assisting Torrens wherever he could. He sought information about the Hamburg system by corresponding with his brother-in-law, Johann Friedrich Voigt.⁸¹

In 1857 Hübbe published, at the request of Torrens and at the expense of the ever-helpful George Fife Angas, a book in support of the Torrens reform plans.⁸² He considered that the book (or 'pamphlet', as he modestly called it) had been pivotal to the success of the reform measure:

A copy of the pamphlet was laid on the table of each member of the House of Assembly while the principles of the Bill were pending before the House. The pamphlet was eagerly perused by members as well as by the outside public, all of which did much to strengthen the belief in the safety of the proposed measure. I received ample proof that even the legal profession found themselves at a loss to resist the overwhelming weight of evidence adduced.⁸³

Hübbe must also have been very pleased that after a break of 15 years this project gave him a chance to advance his literary ambitions. Although it was of only marginal relevance to the reform plans, he even indulged himself in his love of ancient law and included a brief account of the ancient Saxon law of landed property.

Hübbe played a role not only in the preparation of the draft legislation but also in the parliamentary process itself. It appears that when Torrens was steering the Bill through the House of Assembly, Hübbe held himself in readiness and Torrens consulted him on a number of occasions. The *Real Property Act 1858* (SA), which established the Torrens System of land registration, came into effect on 1 July 1858. This event did not mark the end of Hübbe's involvement with the new system. As his daughter Isabella later explained, he became its 'watchdog'.⁸⁴ In connection with the 1884 petition to the Parliament for a pension for Hübbe, he explained that Torrens had persuaded him to assist without recompense with the drafting of

⁸¹ Text, above II B. There is also correspondence, still preserved in part in the Hamburg city archives, with his cousin Wilhelm, Karl Hübbe's son, who had been Ulrich's fellow law student in Jena and Berlin — Esposito, *Entstehung*, above n 5, 137–8.

⁸² Hübbe, above n 4.

⁸³ Real Property Act, above n 1, 112.

⁸⁴ Summary of Notes on the recent controversy re Author of the R P Act of 1858, South Australian State Library, PRG 2558 (new call number: 1242/8). These notes are based on what Isabella had been told by her father.

the legislation and had promised that he would later be appointed to a position in the Registry Office. For reasons we do not know, this did not occur, but Torrens arranged for Hübbe to be given a desk in the Registry Office. From this vantage point he followed the progress of the new system and perhaps continued to offer advice to Torrens, who had become the Registrar-General. In early January 1861 the Attorney-General withdrew this minor privilege. Hübbe's expulsion from the office caused great indignation in the German community. Torrens was not responsible for what must have seemed like a mean-spirited act. According to the *Süd-Australische Zeitung* of 12 January 1861, the Attorney-General had expected Torrens's opposition and had used the opportunity of Torrens's absence from South Australia to expel Hübbe. Perhaps Hübbe had been too forthright in his criticism of leading personalities of the period. In 1857, he had publicly criticised Richard Hanson, who was then Attorney-General. In a Parliamentary debate about the land fund, Hanson had opposed its future use for the support of German migration with the argument that limiting it to migrants from the British Isles did not involve inequality, for those Germans who could not bring over their relatives were in the same position as British colonists like himself, who had no relatives to bring over. Hübbe regarded the argument as rather cynical and, in a letter published in the *South Australian Register* of 6 June 1857, he accused Hanson of 'marble-hearted coldness':

a most essential ingredient of [true sound-hearted liberality] is humanity; and humanity is not the character of the sentiments thus expressed determinedly by the Attorney-General this night. *Dixi et animam salvavi* ('I have spoken and have saved my soul').

It was not Hanson who caused Hübbe to lose his place in the Registry Office, for he had been deposed as Premier and Attorney-General in May 1860 and had become leader of the opposition, so it would seem that the reasons for Hübbe's expulsion are likely to remain unknown.

Not surprisingly, there were difficulties with the administration of the legislation and amendments became necessary. The *Real Property Law Commission*, established in 1861 to examine the shortcomings of the system, had been told by a witness who knew the Hamburg system that it was less productive of litigation than its South Australian counterpart, and the Commission requested Hübbe to provide information. Hübbe's detailed response was printed as a parliamentary paper and was no doubt helpful when amendments were formulated.

In 1872 a further Commission was established to consider the need for further amendments.⁸⁵ Hübbe prepared another opinion and was questioned extensively by the Commission at three sittings during the period from February to April 1873.

The legal profession was hostile to the new system, and many lawyers, including James Hurtle Fisher, one of South Australia's most prominent lawyers who had

⁸⁵ Commission appointed to inquire into the Intestacy, Real Property and Testamentary Causes Acts.

initially supported Torrens, considered that it was repugnant to the law of England and thus null and void under Imperial legislation. This became a serious problem when the same view was voiced by Justices of the Supreme Court. Hübbe reacted to these ominous developments by establishing an association for the defence of the *Real Property Act* with a view to bringing pressure to bear upon politicians to come to its rescue if necessary.

C Other activities as a public citizen

Hübbe's contribution to the debate on the reform of the conveyancing system was not the only law reform measure which engaged his interest. As Frederick Sinnett had pointed out in his 1862 account of the progress of the colony, although the population only numbered 135 000 souls, the Parliament was responsible for a complete legal system, many facets of which needed reform.⁸⁶ Hübbe argued for the abolition of primogeniture (achieved in 1869), gave evidence before a Royal Commission on the reform of inheritance law and drafted a bill on this subject. He also proposed a consolidation of statute law and formulated a plan for an index of all the laws of the colony. His success with such proposals was very modest, partly because the time for such useful measures had not yet come; there were more pressing problems.

Although the 1884 petition did not result in Hübbe being awarded a pension, the Parliament decided that a once-only payment of £200, a considerable sum, be made. One wonders whether the recognition of his services which this implied would not have been even more important to him than help with his finances, although that must have been more than welcome in view of his modest circumstances. In the same year, or even earlier, Hübbe lost his eyesight and during the last few years of his life he lived with his daughter, Mrs Isabella C May. His Lutheran religion must have been a source of comfort. His mind remained clear to the end. He is said to have tried to learn the Gaelic language and taught himself to read Dr Moon's raised script. He acquired the four gospels and the psalms in Moon script for his own use and for that of his blind fellow Lutherans.

CONCLUSION

One of the objectives of this study has been to throw some further light upon an aspect of the early history of German migration to South Australia, a subject of growing interest among historians and lawyers in recent years.

Another is to help determine whether Ulrich Hübbe or Robert R Torrens deserves to be called the 'father of the system', and whether the system is a legal transplant of the registration system known to have existed in Hamburg. There are many older contributions to the debate, but none based upon a greater wealth of evidence

⁸⁶ Sinnett, above n 78, 14.

than those produced in recent years by Antonio K Esposito⁸⁷ and Greg Taylor,⁸⁸ the former regarding the system as German in origin and the latter as English/Australian. These dramatically different conclusions cannot both be correct.

Esposito considers that Hübbe contributed the essential ideas and that he was responsible for all of the drafting. Hübbe's statement mentioned earlier⁸⁹ is indeed open to the interpretation that he was claiming sole authorship. This is how Esposito has understood Hübbe's claim and he has seen no reason to doubt it. One, and by no means the only reason for doubt, arises from the fact that Hübbe had joined, some 12 years earlier, in the large chorus of voices which praised Torrens not only as the promoter but also as the author of the system.⁹⁰ In a pamphlet he published in 1872, Hübbe deplored the multiplicity of Acts and government departments existing in South Australia, some with divergent disciplines and some 'with no discipline at all' and continued:

it is not every Act and department that is blessed with a Richard Robert Torrens for its author and disciplinarian. ... The Real Property Act was the work of an independent member, and that member (Mr. Torrens) shaped and secured, in and with the Act itself, the necessary forms and appliances for the Act, and the people stand by it, and it prospers.⁹¹

This is hardly the voice of someone smarting under sentiments like those engendered by copyright infringement. Had praise been heaped upon the wrong man, Hübbe would have reacted quite differently, for, as shown by his religious dispute with the hapless Pastor Adalbert Fiedler, he was capable of forms of invective which would have made even Jeremy Bentham blush.⁹²

The element of exaggeration in Hübbe's account is not difficult to identify. Torrens, nicknamed the 'Crown Prince of the colony' and a wealthy man, emerges from the literature as disrespectful of authority, ambitious and aggressive. If there was one capacity which he altogether lacked, it was that of ever accepting the futility of anything which he had been doing for a sustained period. It is surely safe to assume that all suggestions for drafting changes would have been scrutinised critically by Torrens for their legal content, for which he might have required some explanation, and also for their political significance and acceptability. After all, he knew that the draft was intended for submission to Parliament under his responsibility and

⁸⁷ Esposito, *Entstehung*, above n 5.

⁸⁸ Taylor, 'Is the Torrens system German?', above n 6.

⁸⁹ Above, n 1.

⁹⁰ For a detailed account, see Taylor, 'Is the Torrens system German?', above n 6, 263–8.

⁹¹ U Hübbe, *Letters to a Countryman on Intestate Estates, Acts, Judges, and Things in General* (1872) 18, 20.

⁹² *Kirchen- und Missions- Blatt für Deutsch-Australische Gemeinen*, published in Tanunda during the 1860s. The exchanges are published in each of the monthly issues from February to November 1862. For a collection of the choicest of Hübbe's insults, see the collection by Fiedler, *ibid*, September issue, 66–7.

he was determined to achieve success. It is surely fantasy to suggest that he might have uttered a sentence such as: ‘Ulrich, I have failed, please take over the drafting under your sole responsibility.’

The version of the story contained in the 1884 statement seems to have grown in Hübbe’s mind for understandable (and entirely forgivable) reasons. Who does not crave recognition and who does not see his or her own achievements in a golden glow? Who, when giving an account of such achievements will understate their significance? If Hübbe, during the last years of his life, suffered from this common weakness, who would throw the first stone? The community in which he had chosen to live had denied him material rewards for the hard work invested in his study and training for a higher calling. He had salvaged his self-esteem by becoming a hard-working and unpaid public citizen. How reasonable is it to expect from him a coldly objective account of the impact he had made? Whatever the mitigating circumstances, one cannot escape the conclusion that Hübbe’s claim to sole authorship is unreliable. If so, the same applies to Esposito’s reception theory, for he has conceded that it must stand or fall with the correctness of Hübbe’s claim to total authorship.⁹³

Once Hübbe’s statement has been discounted for its ‘golden glow’ content, there is much purely factual material left which need not be doubted. For example, when he says about his book⁹⁴ that ‘the legal profession found themselves at a loss to resist the overwhelming weight of evidence’, one is faced with an exaggeration. It does not follow that his further statement that each member of the House of Assembly received a copy of the book⁹⁵ should also be doubted. Such a discriminating approach to his statements and also to the notes written in 1932 by his daughter, Mrs Isabella C May,⁹⁶ ensures that valuable historical evidence is not ignored. If the pure facts in these statements are helpful pointers for an assessment of the extent of Hübbe’s contribution, so is the political context in which the relevant events unfolded.

Anthony Foster, the publisher of *The South Australian Register*, and Richard R Torrens spearheaded the movement for the creation of an effective real estate register. Their campaign enjoyed considerable public support, for the public hated the cost, insecurity and delay associated with traditional conveyancing practices. Nevertheless, the arguments arrayed against the reform plans were formidable.

⁹³ ‘The assumption that the third draft, which later became law, amounted to a reception of Hamburg law cannot be separated from the fact that Dr. Ulrich Hübbe — as he has asserted — was given responsibility for the final work of drafting. It is only if Hübbe was free to mould the third and final version of the draft in accordance with his own conceptions, that it is conceivable that he was able to give effect to the idea of a reception of the Hamburg land law as he had suggested it in his book, *The Voice of Reason*’. — Esposito, *Entstehung*, above n 5, 163 (translation Horst K Lücke).

⁹⁴ Hübbe, above n 4.

⁹⁵ Real Property Act, above n 1, 112.

⁹⁶ Summary of Notes, above n 84.

Charles Fenn, a leading Adelaide conveyancer, warned that no system of public registration had ever worked anywhere and that land titles and mortgages would be less safe under the system planned by Torrens than under existing arrangements.⁹⁷ Edward Castres Gwynne, later to become a Supreme Court Judge, advised his clients not to lend money on the strength of Torrens's new-fangled arrangements. What right did he, Torrens, a non-lawyer, have to meddle in a legal subject when one of the best legal minds in the colony, Richard Hanson, had felt overawed by its complexity?⁹⁸ Successive commissions in England, the centre of legal manpower, had grappled with the subject and had not yet managed to resolve it. Yet another commission was at work there; why not wait for their recommendations? Torrens's over-ambitious presumption would surely increase complexity, uncertainty and litigation! How dare he interfere with well-established banking practices by changing the legal nature of mortgages? A huge bureaucratic apparatus would have to be established at excessive public expense and, as Hanson feared, would ultimately collapse under its own weight! Was Torrens not seeking to oust the jurisdiction of the Supreme Court over disputes concerning title to land? Was he not seeking to disadvantage landowners who happened to reside in other parts of the Empire? Early supporters of Torrens like J H Fisher, a prominent lawyer who had been the first Registrar-General, turned against the plan⁹⁹ and finally, there was the guardian of the superior wisdom of the law of England, Benjamin Boothby, waiting in the wings to strike down yet another colonial legislative folly with the thunderbolt of repugnancy. One must admire Torrens's boldness in confronting such opposition. Little wonder that there were periods during which he failed to make much progress.¹⁰⁰

Hübbe knew Charles Fenn's claims, made in his letters to *The South Australian Register*, to be untrue. An efficient and inexpensive system, similar to the one which Torrens was proposing, had existed in Hamburg since time immemorial and had brought certainty of title, reducing litigation to a trickle and resulting in charges which were no more than a tiny fraction of what the people of South Australia were paying to their local conveyancers! Feeling disgusted by the blatant self-interest, hypocrisy and insincerity of Fenn's position, Hübbe countered it with his own letters to the editor in support of Torrens.¹⁰¹ Embattled as he was, Torrens did not miss the good news in Hübbe's letters. After discussions with Hübbe, he realised that his plan had suddenly turned from the product of an incompetent dreamer likely to worsen the existing mischief into a failsafe path to the very

⁹⁷ Real Property Act, above n 1, 111.

⁹⁸ Hague, above n 2, 788.

⁹⁹ J H Fisher, *The Real Property Act, as Passed by the Parliament of South Australia, Session 1857–8: with Analytical and Critical Notes* (1858).

¹⁰⁰ Hague, above n 2, chapter 5.2 (253–310).

¹⁰¹ Real Property Act, above n 1, 111. 'Then I, **disgusted at the ignorance and selfishness of such assertions**, replied to the letters — and I then assured all proprietors and lenders of the vast superiority of the Continental systems.' The highlighted words were not printed; they are only to be found in Hübbe's manuscript and also in the version of the document published much earlier in the *The South Australian Register* (see the undated article entitled 'Authorship of Real Property Act' – State Library of SA Document PRG 1242/3).

same advantages which existed in Hamburg! The public deserved to know, so Torrens asked Hübbe to reduce his information to writing and arranged for it to be published in the form of a book.

That it was Germans who had created such an excellent system did not diminish its attractiveness to Torrens, for he was free of anti-German xenophobia: ‘the German race [is] congenital with ourselves, and their habits [are] similar to those of the Anglo-Saxon’.¹⁰² Moreover, he had no reason to fear that arguments derived from the Hamburg system would be smothered by anti-German feeling. The German migrant population was respected and Hamburg in particular enjoyed considerable popularity. Some of South Australia’s most influential early English colonists had come from the harbour city where they had lived for years and where the quality of the educational, legal and commercial arrangements had enabled them to prosper. Osmond Gilles, the first treasurer, had made his fortune in Hamburg and used to describe himself as ‘half-German’, Francis Stacker Dutton, hailing from Cuxhaven (which was part of Hamburg) and a member of the Legislative Assembly, translated important legislation into German for the benefit of ‘my German fellow-colonists’.¹⁰³ Thomas Wilson, second Lord Mayor of Adelaide, had been educated in Hamburg and was one of Hübbe’s friends, and John Hector had been an English merchant in Hamburg and later became the manager of the South Australian Savings Bank.¹⁰⁴ These are perhaps the most important examples, but they are by no means the only ones.¹⁰⁵

The Hamburg argument became a major plank in Torrens’s political case for change. Accordingly Torrens announced in the House of Assembly in support of his plan: ‘No one in this House will assert that this which is accomplished by Germans in Hamburg cannot be accomplished by German and English colonists in South

¹⁰² Torrens in a parliamentary debate in June 1857 — reported in *The South Australian Register* of 6 June 1857.

¹⁰³ *meinen deutschen Mitcolonisten*.

¹⁰⁴ Hector appears to have been a director of Osmond Gilles’s Glen Osmond Mining Company as well. A V Bailey, (2008) *Launceston Wesleyan Methodists 1832–1849: contributions, commerce, conscience*. PhD thesis, University of Tasmania <<http://eprints.utas.edu.au/8996/5/05chapter3.pdf>> at 11 June 2008.

¹⁰⁵ A probably incomplete list is as follows: Philip Oakden (Gilles’ brother-in-law and his business partner in Hamburg; resident in Van Diemen’s Land, but with landholdings in South Australia); Robert Leake (large-scale grazier in the southeast of South Australia — his family had migrated to Van Diemen’s Land from Hamburg); Frederick Sinnett (publicist — son of Edward Sinnett, a teacher at the *Johanneum*); William Dutton (resident in Sydney but with large landholdings in South Australia, assisted with the establishment of Hahndorf as a German settlement); Frederick Hansborough Dutton (grazier, founder of Anlaby near Kapunda); Alfred Swaine (employee of the South Australian Company — nephew of Edward Swaine of Hamburg, an English associate of George Fife Angas). Edward Swaine’s wife was the daughter of a colleague of Goethe’s in Weimar and a life-long friend of Lotte Schiller, wife of Friederich Schiller, one of Germany’s foremost poets. See also Lücke, above n 8, 228–35.

Australia.¹⁰⁶ Who knows whether the determined opposition of the lawyers could have been overcome without the demonstration that there was a living example of a successful registration system in Hamburg? Seen in this light, there is much plausibility in Anthony Forster's statement that, without Hübbe, the Torrens system might never have come to fruition.¹⁰⁷

As Greg Taylor has shown, the second draft of the legislation already existed when the two men met.¹⁰⁸ Hübbe, no doubt at Torrens's request, spent many days examining it critically,¹⁰⁹ compared it with the Hamburg system and suggested improvements. Even if he had reported to Torrens that the second draft was already perfect, it would have been of great value to Torrens. However, Hübbe did become involved in the drafting process and it might be useful to ask what might have guided him. In a memorandum which he submitted to the Parliament in 1884 he listed the 'four great principles [of] the German system': publicity, speciality, inscription and 'registration of title or interest'.¹¹⁰ The most important of these is surely the last, for as Hübbe stated, 'the indefeasibility of titles or interests flows from this.'¹¹¹ He would have read s 68 of the second draft with a sense of satisfaction, for it already enunciated the registration principle: 'no instrument shall be valid to pass the property in any lands under the operation of the Act, until after entry in the register book.'¹¹² The absence of some such provision would have been strange, for this 'key principle' of the Torrens system, as Greg Taylor has fittingly called it,¹¹³ was the essence of the reform project. It gives parties to real estate transactions the strongest possible inducement to register and thus makes the information contained in the register highly reliable, if not correct *ex hypothesi*.

The merits and demerits of such an innovation had been under discussion at least since the Brougham Commission sat in England in the late 1820s. That Commission had recommended against its adoption,¹¹⁴ perhaps because privacy in

¹⁰⁶ *Speeches of Robert R Torrens Esq, Explanatory of his Measure for Reform of the Law of Real Property: to which is Appended Copy of the Bill, as Passed by the House of Assembly of South Australia* (1857) 11 (held by the State Library of South Australia).

¹⁰⁷ Lücke, above n 8, n 6.

¹⁰⁸ Taylor, 'Is the Torrens system German?', above n 6, 258–63. Esposito considers that their cooperation commenced very much earlier — Esposito, *Entstehung*, above n 5, 139–40. Greg Taylor's refutation of Esposito's suggestion seems convincing.

¹⁰⁹ Summary of Notes, above n 84.

¹¹⁰ Memorandum of Service Rendered in Connection with the Real Property Act, 2 October 1884; for a brief account, see Esposito, *Entstehung*, above n 5, 176. See also the attempt made by F Jones to explain the extent of Hübbe's contribution in *The South Australian Register* (see the undated article entitled 'Torrens title and its author' — State Library of SA Document PRG 1242/3).

¹¹¹ *Ibid.*

¹¹² Taylor, 'Is the Torrens system German?', above n 6, 261. This wording is taken from the account of the section as it appears in *The South Australian Register*.

¹¹³ *Ibid.*

¹¹⁴ K J A Mittermaier, 'Englische Verhandlungen über Einführung von Grund- und Hypothekenbüchern' (1832) 4 *Kritische Zeitschrift für Rechtswissenschaft und*

relation to real estate holdings was still seen as an important value. However, in the following decades the idea gained growing support in England.¹¹⁵ Whether to provide for the invalidity of unregistered transactions was part of the lively debate about registration arrangements conducted in South Australia during the earliest days of the colony.¹¹⁶ In 1839 an Adelaide solicitor, W A Poulden, stated in a letter to Mr Justice Cooper:

‘I would make it imperative, that every transfer of land in this Province, be the same by Conveyance, Lease, Assignment, or Mortgage, should be registered or inrolled within a certain period after sale&c upon payment of a certain fee, *or else to be void* (emphasis supplied).¹¹⁷

Although it did not become part of the *Act to Provide for the Registration of Deeds, Wills, Judgments, Conveyances and other Instruments 1841* (no 8) that vital principle was not forgotten. In 1853 Richard Hanson, though sceptical of the practicality of administering a land register, considered that, should one be established,

the direction of the legislature should be to make the Register the sole evidence of title, and to provide that no deed shall have any validity for any purpose until registered.¹¹⁸

In his campaign for the introduction of legislation which would be more effectual than the Act of 1841, Anthony Forster, the editor of *The South Australian Register*, also stressed the importance of this vital idea.¹¹⁹ The entry of the principle into the debate might have been the result of the extensive comparative researches conducted by the Brougham Commission, but Hübbe could not claim to have been the first to have introduced it *de novo* into the draft legislation, although he may have suggested improvements to its wording and positioning.¹²⁰

Hübbe explained what he meant by ‘inscription’, the third of his ‘great principles’ (a ‘most distinctive and useful feature’): in none of the German systems did mortgages (‘inscribing sums of money on real property’) interfere with the mortgagor’s title to the property. Hübbe did not approve of the mortgage provisions in the second draft which were based upon the common law mortgage concept

Gesetzgebung des Auslandes 253, 253, referring to pp 35–40 of the report of the Commission. The Commission was well informed for they heard evidence about land registers existing in some English counties, in Scotland and Ireland and also in France, Bavaria, Prussia, Austria, Norway, Sweden, Switzerland, Italy, North America and Nova Scotia.

¹¹⁵ Esposito, *Entstehung*, above n 5, 54–76.

¹¹⁶ Hague, above n 2, 779–84.

¹¹⁷ *Ibid* 781.

¹¹⁸ *Ibid* 788. Hanson was concerned with the problem because in 1851 he was asked by the Legislative Council to prepare a bill providing for registration.

¹¹⁹ Esposito, *Entstehung*, above n 5, 93–4.

¹²⁰ *Ibid* 107–8, 119–20.

with its out-and-out transfer of title to the mortgagee. Hübbe is often and probably rightly given credit for having persuaded Torrens to reverse course. There are two reasons why he would not have found this difficult.

Under the *Merchant Shipping Act 1854* a ship mortgage was merely a charge or encumbrance, not a full transfer of the right of ownership, and Torrens had adopted this for mortgages over land in his first draft. Critics wondered whether he was not thereby weakening lenders' security and had persuaded him to reinstate the common law concept in his second draft.¹²¹ The concession was made to silence critical voices rather than from conviction, for, as he was later to point out in his speeches, a mortgage by way of charge gave mortgagees all that they could reasonably require.¹²² He must have been receptive to Hübbe's argument that he had been right in the first place.

Moreover, the common law mortgage was quite incompatible with Torrens's pet concept: a transfer of title should take the form of a surrender of the title by the transferor to the Crown, followed by a fresh Crown grant of the land to the transferee.¹²³ The virtue of the idea was more political than legal; it rendered transfers immune from weaknesses in any earlier chain of title and thus consigned the much-hated practice of title search to the scrapheap. Torrens put this concept forward again and again in his speeches and it found its way, in a limited form, into s 29 of the *Real Property Act 1858*. Whatever the nature of the benefits implied in the idea, they could hardly have been extended to mortgagees.

Not a great deal needs to be said about the remaining two 'great principles', publicity and speciality. As for the first of these, s 116 of the *Real Property Act 1858* provided for general access to the register book. Its inclusion might have been the result of Hübbe's intervention. The need for it is so obvious, that any such improvement would have been merely of a minor order.

The virtue of 'speciality' (not to be confused with 'specialty'), according to Hübbe's memorandum is said to be that it 'secures accuracy and certainty of titles and interests',¹²⁴ but its meaning is not clear.¹²⁵ One wonders whether Hübbe had in mind a concept which in German law has become known as the *numerus clausus* of interest in land — the idea that in order to make a registration system effective, the types of interest in land which can be created must be limited to a few clearly defined types.

¹²¹ Ibid 108–9.

¹²² *Speeches of Robert R Torrens*, above n 106, 16.

¹²³ Greg Taylor has suggested that this was 'perhaps Torrens's original brainwave' — Taylor, *Great and Glorious Reformation*, above n 6, 27. However, the idea was not new; Hague has found it suggested in a letter to the *Southern Australian* in 1843 as a possible solution to the problem of insecurity of title — Hague, above n 2, 790.

¹²⁴ Esposito, *Entstehung*, above n 5, 176.

¹²⁵ The definition of the legal meaning of the term which one finds in the OED ('a Bond or Bill or such like instrument') does not seem very helpful.

Not all of Hübbe's contributions can be explained as consequences of the four 'great principles'. In his conversations with his daughter he also claimed credit for having drafted the 'very effective repealing clauses which formed part of the Bill'.¹²⁶ This appears to be a reference to s 1 of the Act which reads as follows:

All Laws, Statutes, Acts, Ordinances, rules, regulations, and practice whatsoever, relating to freehold and other interests in land, so far as inconsistent with the provisions of this Act, are hereby repealed, so far as regards their application to land under the provisions of this Act, or the bringing of land under the operation of this Act.

There is no express mention of inconsistent common law rules, although one might be able to subsume those under 'rules' or 'practice whatsoever'. Whatever the weaknesses in the wording of the section, there is no reason to quibble with Esposito's suggestion that it was very significant, for it turned the Act into a true codification of its subject matter.¹²⁷

The second draft consisted of 79 sections. Another 44 sections were added to the third draft which became law.¹²⁸ This is not the place to seek to identify all the additions and other changes which might have flowed from Hübbe's pen. Suffice it to say that his contribution to the drafting process seems to have been significant. Of equal, if not greater significance, was the added impetus which his intervention gave to Torrens's campaign. Torrens owed the Hamburg argument, the new weapon in his armoury, to Hübbe's act of courage in speaking up against hypocrisy and falsehood, an act which would win him no friends in the legal profession; it may well have been the cause of some of the reverses which he suffered.

Torrens's enduring claim to fame was well summed up more than 70 years ago by Ralph Hague:

The real services rendered by Torrens were not that he was the actual inventor or first discoverer of the principles of the Real Property Act but that he took the matter in hand when others shrank from it, that he went to considerable trouble to embody the principles in a bill, and that he persisted with the Bill in the face of great opposition until he forced it through Parliament. He had assistance all the way through — he could not have succeeded without it, nor did he ever attempt to conceal it. Dr Hubbe sat outside the House during the consideration of the Bill and was frequently consulted by Torrens.¹²⁹

Torrens would hardly have sought Hübbe's advice when things became difficult during the parliamentary process if he had not credited him with special insight into the principles of the legislation. It would be churlish for us who are so remote

¹²⁶ Summary of Notes, above n 84.

¹²⁷ Esposito, *Entstehung*, above n 5, 105–7.

¹²⁸ Taylor, Torrens system, above n 6, 272.

¹²⁹ Hague, above n 2, 792.

from the events to credit him with less. Australians whatever their background should view Hübbe's decision to seek a new life in South Australia with a sense of satisfaction, and the members of the Hübbe family, whether they belong to the Australian, German, American or Mexican branch,¹³⁰ have reason to remember Ulrich Hübbe with a sense of pride.

¹³⁰ B Koerner, E Strutz and M Strutz-Ködel (eds), *Deutsches Geschlechterbuch. Genealogisches Handbuch bürgerlicher Familien* [German family book. Genealogical Handbook of Untitled Families] vol 205 (1997) 353–429.