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The Torrens System in Singapore: 75 Years from Conception to Commencement

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ABSTRACT

This article tells the story of how the Torrens system of land titles registration came to be adopted in Singapore. From conception to commencement, the entire process took over 75 years, far longer than any other law reform the country has experienced. Particular attention is paid to why the Australian model was preferred despite the significant influence of English law in colonial Singapore. Although as with anything, much of what happened could be attributed to chance, a great deal can be learned from this story, which details the socio-economic and political forces that have shaped the law into what it is, as well as the considerations that have influenced the choices regarding legal transplant.

I. INTRODUCTION

Singapore ranks at the very top on the World Bank's *Doing Business* index.[1] Among the indices used to measure the ease of conducting business is the ease of registering property. The relationship between land registration and economic prosperity is well recognized. Land registration allows the conclusive ascertainment of land rights from a public record, which in turn promotes the security of land rights, a crucial element of any successful capitalist economy.[2] Where ownership of a parcel of land is clear and secure, its owner will be able to deal with it more easily—through selling, letting, or mortgaging—to generate income as capital for the development the land or to fuel other business activities. The goal of every system of conveyancing is to facilitate such dealings, and a system of title by registration is often regarded as the epitome of such an endeavour.[3]

* Associate Professor of Law, Yong Pung How School of Law, Singapore Management University. I would like to thank Tang Hang Wu and Martin George for their helpful comments, and the teams at the Lee Kong Chian Reference Library, the National Archives of Singapore, and the Kwa Geok Choo Law Library, for their assistance in retrieving old records needed for this research. I'm especially grateful to the The Honourable Judge of Appeal Justice Andrew Phang for his encouragement. All errors are my own.

1 Since the inception of the index in 2004, Singapore has never fallen outside of the top three.

2 Hernando de Soto, *The Mystery of Capital* (Black Swan, London 2001); Tom Bethell, *The Noblest Triumph: Property and Prosperity Through the Ages* (St Martin's Press, New York 1998).

3 Under a system of title by registration, title is acquired by the very act of registration. As titles recorded in the land register are guaranteed by the state, any person intending to deal with land may confidently rely on the land register as reflecting the true state of ownership. In contrast, the old deed registration system merely records title established from application of general property law. This often entailed expensive and

In celebrating the success of Singapore's land administration today, it is easy to overlook the fact that its modernization has been a relatively recent affair. Having introduced the Torrens system of land titles registration only in 1956,[4] Singapore was in fact a latecomer among the Commonwealth countries to have done so.[5] However, it is little known that a proposal to introduce the Torrens system into Singapore was made as early as 1880. Between conception and commencement, which took over 75 years, there are untold stories that shed important light on the legislative process and external factors—social, economic, and political—that drove and obstructed the legal transformation. As to why such information might be useful, Phang explained in his seminal work:

> [T]o understand how the Singapore legal system became what it is and what it might become, one would have to attempt, no matter how potentially difficult and/or speculative, to link the law and legal system to its wider socioeconomic as well as political context.[6]

This would require the historical events to be examined at a sufficient level of granularity. By approaching the topic from the perspectives of the different actors—the government, the draftsman, and the legal profession—we will be able to observe how the lawmaking process had been, and will continue to be, influenced by competing motivations and considerations that go beyond matters of black-letter law.

The difficulty with any legal and historical research of this nature is well known. As much as one hopes to present the historical events and their triggers in simple causal term, it is always important to bear in mind that real-life events, especially those as significant as law reform, will often be influenced by a multitude of factors that may be interconnected in complex ways. Where the relevant actors do not speak directly about their motivations and intentions, or where there were gaps in the historical records, it will be inevitable that inferences be drawn from whatever circumstantial evidence are available. But this is not inherently problematic because, beyond the faithful reproduction of objective truths, historical research also includes putting forth tentative interpretations of historical events. As White explained, '[h]istorians cannot avoid interpretation, and "successful" interpretations become, through the process of provisional acceptance of their explanations by a professional community, surrogates for truth'.[7] Indeed, even a sufficiently grounded hypothesis is valuable if it engages its readers and provokes further interrogation of the proposed interpretations.[8]

time-consuming investigation into the documentary history of past dealings, to ensure that the title chain was unbroken.

4 Land Titles Ordinance 1956 (Ordinance 21 of 1956); re-enacted as the Land Titles Act 1993 (rev ed, 2020).

5 See generally Ernest Dowson and VLO Sheppard, *Land Registration* (2nd ed, HMSO, London 1968).

6 Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Butterworths, Singapore 1990) 9. For works of such nature on the topic of land law, see Avner Offer, *Property and Politics 1870–1914: Landownership, Law, Ideology and Urban Development in England* (CUP, Cambridge 1981); J Stuart Anderson, *Lawyers and the Making of English Land Law 1832–1940* (OUP, Oxford 1992).

7 G Edward White, 'Truth and Interpretation in Legal History' (1981) 79 Michigan L Rev 594, 607.

8 ibid 598.

Beyond providing a purely descriptive account of the events leading up to the introduction of the Torrens system in Singapore,[9] this article approaches the matter from the lens of legal transplant, asking a question that has yet to be answered: why did Singapore base its registration system on the Australian model instead of the English model? This is a matter of some curiosity considering that the general property law of Singapore, which forms the foundation of its registration system, continues to be based on the old English law. The major property law reform in England that took place in mid-1920s did not appear to have tipped the balance in favour of the English model. As the literature does not supply an answer, solving this mystery provides a greater sense of purpose to our journey of historical discovery. This inquiry will be of particular interest to comparatists and sociologists seeking to understand the factors that drive legal transplant.[10] The rest of this article tells the story of the reception of the Torrens system in Singapore in mainly chronological order but with occasional flashbacks and evaluative insights where appropriate.

II. THE FOUNDATIONS WERE LAID

Soon after the founding of colonial Singapore by Stamford Raffles in 1819, it was joined, with Malacca, to the Presidency of the Prince of Wales Island (Penang) to form the Straits Settlements in 1826.[11] The Second Charter of Justice laid down the framework for a new legal system,[12] by providing for the reception of the then existing English law[13] but conferred no general legislative power on the local government.[14] In 1830, Governor in Council Robert Fullerton purportedly passed the Singapore Land Regulation[15] to provide for the registration of grants, transfers, and mortgages in Singapore.[16] However, in *Sassoon v Wingrove*, the regulation was held to have been enacted outside of the authority conferred by the Second Charter of Justice.[17] With the relegation of the Straits Settlements to a Residency in June 1830, the power to legislate for the Straits Settlements become vested in the Bengal Presidency in India. Thereafter, the 1930 regulation was officially repealed by the Indian Act No X of 1837, although the effect of existing grants was preserved.[18] The gap was soon plugged by the enactment of the Indian Act No XVI of 1839, which

9 For a good descriptive account, see Lo Wai Peng and Lim Jen Hui, 'The Development of Land Registration in Singapore' in Kevin YL Tan (ed), *Essays in Singapore Legal History* (Singapore Academy of Law and Marshall Cavendish 2005) ch 9.

10 Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2nd ed, U of Georgia Press, Athens, Georgia, 1993) 103: 'Comparative Law as here understood is unthinkable without history, even if only very modern history'.

11 The three settlements, scattered along the west coast of the Malay Peninsula, were several hundreds of kilometres apart from each other. Singapore is located at the southern tip.

12 Letters Patent Establishing the Court of Judicature at Prince of Wales Island, Singapore and Malacca in the East-Indies (27 November 1826).

13 According to Maxwell R's interpretation in *R v Willans* (1858) 3 Ky 16.

14 GW Bartholomew, 'The Singapore Statute Book' (1984) 26 Malaya L Rev 1.

15 Regulation I of 1830.

16 See JT Thomson, 'General Report on the Residency of Singapore' (1850) 4 J of Indian Archipelago and Eastern Asia 206, 214–215.

17 *Sassoon v Wingrove* (1834) Leic 388. Consequently, the mortgage in question was declared to be valid notwithstanding that it was not registered.

18 Indian Act No X of 1837, s 2.

made the registration of a deed a condition for its admission as evidence in court. However, as it does not accord priority in a title contest, there was little incentive to register, and thus the land records failed to keep pace with the actual occupation of land.[19] In 1867, the Straits Settlements was detached from the Presidency of Bengal and became a Crown Colony directly overseen by the Colonial Office in London.[20] The establishment of the Legislative Council of the Straits Settlements with full legislative power paved the way for the era of local ordinances.[21]

However, the matter was not revisited until the early 1880s, when Governor Frederick Weld, upon the urging of Colonial Engineer and Surveyor-General John McNair, took an interest in the 'Land Question'.[22] The attention was primarily on the significant loss of land revenue owing to inadequate land survey and ill-maintained records of Crown grants. Importantly, Weld viewed the introduction of the Torrens system to be 'the obvious remedy' to many of these problems.[23] Considering his prior administrative experience in the Antipodes, this was unlikely to be a casual remark. Originally from Dorset, England, Weld migrated to New Zealand in 1844, eventually climbing the political ladder to become its sixth Premier (1864–65). Thereafter, Weld was appointed the Governor of Western Australia (1869–74), during which he gave his assent to the Transfer of Land Act 1874 which introduced the Torrens system into the colony.[24] Between 1875 and 1880, he was the Governor of Tasmania, where the Torrens system had been in operation since 1862.[25] Against this background, it could be seen that Weld was well placed to tackle the Land Question in the Straits Settlements.

Having failed to engage someone from Australia to assist in this matter, in 1882, Weld dispatched the newly appointed Commissioner of Lands, William Maxwell, to study the workings of the Torrens system in Australia. A lawyer by profession, Maxwell was suitably equipped to lead this law reform.[26] He set off from Singapore in September 1882 and arrived in Adelaide, the birthplace of the Torrens system, on 17 October 1882.[27] After nearly a month in Adelaide, he spent the next two and a half months visiting Melbourne, Sydney, Hobart, and Brisbane. He studied the practices of each land office and collected all the necessary documents. The wealth of his learning while in Australia was clearly reflected in his report tendered before the

19 Roland John Braddell, *The Law of the Straits Settlements: A Commentary* (Kelly & Walsh, Singapore 1915) 54–5.

20 Straits Settlements Act 1866 (29 & 30 Vic c 115).

21 Letters Patent, dated 4 February, 1867. Singapore was governed directly by the Governor of the Straits Settlements, whereas Malacca and Penang were governed by Resident Councillors who reported to the Governor of the Straits Settlements. Much of the action, unless otherwise specified, occurred in Singapore, where the seat of the government had been located since 1832.

22 Governor Frederick Weld to Secretary of State for the Colonies Earl of Kimberley (15 December 1880); fully reproduced in 'The Land Question in the Straits Settlements' *Singapore Daily Times* (2 May 1882) 2–3.

23 'Land Question in the Straits Settlements' (n 22) 3.

24 38 Vic No 13.

25 Real Property Act 1862 (25 Vic, No 16). See Stefan Petrow, 'Knocking Down the Houses? The Introduction of the Torrens System to Tasmania' (1992) 11 U Tasmania L Rev 167.

26 His father was Peter Maxwell, the Chief Justice of the Straits Settlements from 1867 to 1871.

27 Straits Settlements Government Gazette (1883) 291–2.

Legislative Council on 5 April 1883.[28] The 55-page report was remarkably detailed, from describing the general principles of the Torrens system down to the most specific aspects of implementation such as the operation, the manpower cost, and even the layout of a land office. However, Maxwell recognized that the plan would be greatly impaired by the existing problems the Governor had identified.[29] In addition to urging the devotion of more resources to land survey, he also recommended that priority be given to improving the existing deeds registration system, which he considered 'necessary pending the application to all lands of the Torrens system of registration of title'.[30] In a separately published booklet, which was offered to the public at a price of 50 cents per copy, he explained:

> [T]he registration of deeds is an unsatisfactory system as compared with the registration of title, but, as I shall show, the latter system can only be introduced in the colony after a re-survey of the whole of the occupied land, the recall and cancelment of the present grants and leases, and the issue of new grants or certificates. It has been necessary to explain how essential it is, for the protection of the more ignorant portion of the community, to reform the registry of deeds in the meantime.[31]

In the following year, Maxwell was appointed Commissioner of Lands Titles and was specifically tasked with implementing his proposed measures.[32] Under his leadership, the government enacted the Boundaries Ordinance 1884 to facilitate a systematic survey of land.[33] Three other important ordinances soon followed: the Crown Lands Ordinance 1886 to introduce uniformity in Crown grants,[34] the Conveyancing and Law of Property Ordinance 1886 to simplify the conveyancing process,[35] and the Registration of Deeds Ordinance 1886[36] to incentivize deed registration by making it relevant in a priority contest. Although the latter two ordinances were modelled on English legislation, they were modified for simplicity and to suit local circumstances.[37] For example, on the registration of deeds, the deposit of a duplicate was preferred over a simple entry to prevent mistakes. To mitigate the more cumbersome procedure, the conveyancing ordinance, through the implication and

28 WE Maxwell, 'Report on the Torrens System of Conveyancing by Registration of Title' (5 April 1883) in Straits Settlements Government Gazette (1883) 293–348.

29 On the deplorable state of the survey department in the early 1880s, see 'The Revenue Survey of the Settlements', *Straits Times Weekly Issue* (30 April 1883) 6.

30 Maxwell, *Report* (n 28) 238.

31 WE Maxwell, *Present and Future Land Systems* (Government Press, Rangoon 1883) 13. See also WE Maxwell, 'Annual Report on the Land Department of the Straits Settlements, for the Year 1885' (19 March 1886) in Straits Settlements Government Gazette (1886) 365–73.

32 This was a temporary position lasting no more than three years: 'The Land Question in the Straits Settlements', *Singapore Daily Times* (2 May 1882) 3.

33 Ordinance VIII of 1884.

34 Ordinance II of 1886.

35 Ordinance VI of 1886.

36 Ordinance XIII of 1886.

37 The Conveyancing and Law of Property Ordinance 1886 drew primarily on the Conveyancing and Law of Property Act 1881 (44 & 45 Vic c 41). The Registration of Deeds Ordinance 1886 drew from the Yorkshire Registries Act 1884 (47 & 48 Vic c 54).

definition of standard terms, avoided the need for lengthy formulas, which in turn encouraged the use of shorter deeds.

Unfortunately, Maxwell was unable to complete what he had started in Singapore following his appointment as the Acting Resident Councillor of Penang in May 1887.[38] However, he was able to retain supervision of the Land Office in Singapore until the end of December 1887, which enabled him to have some oversight over the establishment of the Registry of Deeds on 1 July 1887.[39] The new registry was eventually headed by Registrar of Deeds TH Kershaw. Before Kershaw left Penang for Singapore, he had the opportunity to meet Maxwell, who gave detailed instructions and suggestions on matters pertaining to indexing of land records. The early operation of the Registry of Deeds was not exactly smooth sailing, but that was to be expected, given that both the registry staff and the legal professionals were still adjusting to the new system.[40] Although the new conveyancing law encouraged the use of shorter deeds, the registry still had to deal with older deeds, which were lengthier and more complex. This resulted in a backlog of applications for registration; however, the legislative goal of uncovering secret dealings was achieved. As the applications to register older deeds gradually decreased to a trickle, the deeds register was brought up to date, and by July 1889, it was available for public inspection for a small fee.

At this juncture, it would be helpful to dispel any misconception that there was no English legislation on title registration that could serve as a template for the proposed law reform in Singapore. A system of title registration was introduced in England following the enactment of the Land Registry Act 1862,[41] just four years after the first Torrens legislation.[42] The system of deed registration, introduced later and only in the counties of Yorkshire and Middlesex, was not a priority in the law reform agenda.[43] Yet, when Maxwell looked towards English law for inspiration, the deed registration system caught his attention while the title registration system did not. The latter was not even considered as a possible alternative to the Torrens system. The likely reason was the failure of the English system for a variety of reasons.[44] The voluntary system proved to be unpopular among landowners due to the high threshold for first registration, in particular the need to prove good root title and defined boundaries.

III. RENEWED INTEREST AFTER A LONG SLUMBER

Despite initial momentum, the proposal to introduce the Torrens system was allowed to sleep for the next several decades. At least two factors were likely to have contributed to this long slumber. First was the lack of leadership continuity due to

38 This was a high-ranking administrative position reporting to the Governor of the Straits Settlements.

39 The date the Registration of Deeds Ordinance 1886 came into effect in the Settlement of Singapore.

40 TH Kershaw, 'Report of the Working of "The Registration of Deeds Ordinance 1886" During the Six Months Ending 31st December, 1887' (8 March 1888) in Straits Settlements Government Gazette (1888) 525–47.

41 25 & 26 Vic c 53.

42 Further legislation followed in 1875 and 1897 prior to the major reform in 1925.

43 Jean Howell, 'Deeds Registration in England: A Complete Failure?' (1999) 58 CLJ 366.

44 Anderson (n 6) ch 3; Elizabeth Cooke, *The New Law of Land Registration* (Hart, Oxford 2003) ch 2.

the nature of colonial administrative postings. Within a span of 50 years, between 1880 and 1930, the governorship of the Straits Settlements was occupied by 12 different individuals, of whom three were temporary appointees. Clearly not every governor was equally enthusiastic about the Land Question. Of even greater significance was the fact that the position of Commissioner of Lands was left vacant after Maxwell's departure from Singapore in 1887. The Singapore Land Office fell within the purview of the Collector of Land Revenue whom, at various points, also performed the role of Registrar of Deeds. As the focus was on land revenue, the grand vision of introducing a new system of land titles registration was gradually forgotten. This situation persisted until August 1922 when the title of Collector of Land Revenue, Singapore, was altered to that of Commissioner of Lands, Straits Settlements.[45]

The second likely reason was that the progress of land survey had for many years been hampered by insufficient manpower and expertise. As Maxwell's plan depended heavily on adequate land survey, the government was essentially waiting for the nod from the Survey Department. Prior to 1920, the Survey Department fell within the purview of the Public Works Department headed by the Colonial Engineer for the Straits Settlements. However, in 1920, the administration of the Survey Departments in the Straits Settlements and the Federated Malay States were brought together under the leadership of a single Surveyor-General.[46] The most illustrious Surveyor-General for both territories was arguably Victor Lowinger who was appointed to the role in 1922.[47] It was under his 'strongest representations' that the proposal to introduce the Torrens system into the Straits Settlements was reopened in 1930.[48] Unlike the Colonial Engineer and the Commissioner of Lands, who had their eyes firmly on the affairs within the Straits Settlements, Lowinger also had sight of the developments in the Federated Malay States. Of particular significance was the enactment of a new Torrens Land Code in 1926.[49] When viewed alongside the major reform of English land law that occurred just a couple of years earlier, which also introduced a system of title by registration, it was of little surprise that the absence of an equivalent system in the Straits Settlements gave rise to a renewed interest in the matter. Perhaps, more importantly, the year 1930 was 'noteworthy for the virtual disappearance of [survey] arrears in Singapore'.[50] There was every reason for Lowinger to give the long-awaited nod.

The matter was taken up by Governor Cecil Clementi, eventually leading to the drafting of a Registration of Titles Bill by the Commissioner of Lands Francis Tree

45 Straits Settlements Government Gazette (1922) 1171.

46 The Federated Malay States consisted of four protected states in the Malay Peninsula: Negeri Sembilan, Pahang, Perak, and Selangor.

47 'Personalia' (1933) 2 Empire Survey Rev 126–7.

48 Ernest M Dowson and VLO Sheppard, 'Some General Notes on the Land Tenure and Land Record Problem in Singapore, 1883–1947' (1947) 3, National Archives (UK) CO 953/1/11.

49 Federated Malay States Land Code 1926 (c 138). This land code was traceable to the Selangor Registration of Titles Regulation 1891 drafted by Maxwell when he served as the British Resident of Selangor. The 1891 enactment was in turn based on the Fijian Real Property Ordinance 1876 (Ordinance No VII of 1876).

50 MB Shelley (Acting Colonial Secretary), 'Annual Report on the Colony of the Straits Settlements for the Year 1930' (Government Printer, Singapore 1931) 73, 147.

in 1932.[51] The bill was referred to a committee in 1933, only to be abandoned by the Executive Council in the following year. As the draft bill was not tabled before the Legislative Council, little is known about its precise content except that it was based on the relevant legislation in New Zealand and the Federated Malay States. The exact reason for its rejection was unknown, but it likely had to do with the matter of initial registration.[52] Thereafter, Arnold Robinson, a lawyer at Drew & Napier and an unofficial member of the Legislative Assembly, offered to come up with an improved draft bill but failed to revert as he retired two years later.[53]

Despite this setback, the matter continued to attract interest within the Legislative Council. In a meeting on 30 August 1937, unofficial member Eric Newbold asked if the government had any interest in introducing title registration, to which the government answered in the affirmative.[54] As Governor Shenton Thomas keenly observed, there was significant industry support for the proposal:

> [I]t appears that the advantages of the reforms, especially the facilities which it offers in all dealings with land and the savings of a great deal of unnecessary legal expense to the public, are now more generally recognised. The consensus of opinion of the banking and mercantile communities is in favour of the system and the Singapore Ratepayer's Association, a virile and vocal body of landowners and ratepayers . . . has also expressed its support of the principle.[55]

Riding on the momentum, Surveyor-General John Dewar gave assurance that the Survey Department was well prepared to assist in the inauguration of the new system.[56] And thus the matter was reopened. Help was initially sought from Her Majesty's Land Registry in London, but it was suggested that the task be entrusted to an experienced local conveyancer. Charles Miles, then joint managing partner at Rodyk & Davidson, rose to the challenge. A committee was soon constituted, the two other members being Commissioner of Lands Willies Ebden (Chairman) and acting Deputy Surveyor-General Charles Husband. The Ebden Committee submitted its report to the Governor on 26 July 1939. Thereafter, Husband and Miles returned to England for a short while, during which they had the opportunity to visit Her Majesty's Land Registry and to acquaint themselves with the English system of land registration.[57] Upon their return to Singapore, Miles was instructed to prepare a draft bill. This draft bill was completed and submitted to the Governor towards the

51 WS Ebden, 'Annual Report on the Office of the Commissioner of Lands, Straits Settlements for 1932' (Government Printer, Singapore 1933) 73, 74.

52 Governor Shenton Thomas to the Colonial Office (London) (12 May 1938), National Archives (UK), CO 273/648; JW Dewar to the Colonial Secretary, Straits Settlements (4 September 1937), National Archives (UK), CO 273/648; Ernest M Dowson and VLO Sheppard, 'The Bill to Establish Registration of Title to Land in Singapore' (1947) 5, National Archives (UK) CO 953/1/11.

53 JW Dewar to the Colonial Secretary, Straits Settlements (4 September 1937), National Archives (UK), CO 273/648.

54 Supplement to the Straits Settlements Government Gazette (No 70), Friday, 24 September 1937, 61.

55 Governor Shenton Thomas to the Colonial Office (London) (12 May 1938), National Archives (UK), CO 273/648.

56 JW Dewar to the Colonial Secretary, Straits Settlements (4 September 1937), National Archives (UK), CO 273/648. See also 'Registration of Land by Compulsion', *The Straits Times* (28 July 1936) 16.

57 CTM Husband to Colonial Office (London) (18 October 1939), National Archives (UK), CO 273/657.

end of 1941 but was lost during the Japanese occupation of Singapore in the following year.[58]

After the Second World War, the Straits Settlements were dissolved, and Singapore's status reverted to that of a Crown Colony. Miles returned to Singapore in 1946 and was asked to prepare a new draft bill. Miles's draft Land Registration Bill,[59] which contained 151 sections, was based heavily on the English Land Registration Act 1925.[60] This was not all too surprising considering the relatively successful legal reforms introduced by the English Parliament in the mid-1920s, which was in stark contrast to the series of failed attempts at reform in the late 1800s. Unlike Maxwell, the Ebden Committee had more than one option. The committee justified its choice on the basis that 'the local system of conveyancing [was] based on English law'.[61] However, this was to approach the matter in a rather superficial manner, without appreciation of the relevant legal histories. In truth, the English conveyancing statutes of the late nineteenth century were designed to improve the old scheme of private conveyancing, with the agenda of resisting a system of title registration.[62] Interestingly, in Singapore, Maxwell did the opposite by overlaying the Conveyancing and Law of Property Ordinance 1886 with the Registration of Deeds Ordinance 1886 in preparation for the eventual adoption of the Torrens system. This was an excellent example of innovative legal transplant. In other words, although the Conveyancing and Law of Property Ordinance 1886 had its origin in English law, in Singapore, it was intended to serve as the foundation for the Torrens system.

As it happened, the Ebden Committee did not have the final say in the matter. Just a year prior, in 1945, the Colonial Office in London established a Land Tenure Advisory Panel under the chairmanship of Lord Hailey to provide advice on land tenure matters in the British colonies. The government of Singapore took this opportunity to refer Miles's draft bill to the panel for its comments.[63] Delivered to London in August 1948, the draft bill was scrutinized by two land administration experts, Ernest Dowson and Victor Sheppard.[64] Their report focused almost entirely on the specifics of implementation, in particular how land would be brought within the registration regime.[65] The procedures proposed by Miles, which do not compel registration, were thoroughly criticized for being 'in direct opposition to competent Malayan opinion of the past 60 years'.[66] Although Dowson and Sheppard refrained from

58 Governor Shenton Thomas to Colonial Office (28 April 1947), National Archives (UK), CO 953/1/11.

59 National Archives (UK) CO 953/1/12.

60 15 & 16 Geo 5 c 18. See CV Miles, 'Comparative Table: The Land Registration Bill' (1947), National Archives (UK) CO 953/1/12; CV Miles, 'Explanatory Notes on a Draft Ordinance to Make Provision for the Registration of Title to Land in Singapore' (1947), National Archives (UK) CO 953/1/12.

61 As referred to in Dowson and Sheppard (n 52) 5.

62 Anderson (n 6) 150.

63 Governor Shenton Thomas to Colonial Office (28 April 1947), National Archives (UK), CO 953/1/11.

64 They were joint curators of the Cadastral Survey and Land Records Office in Her Majesty's Land Registry. For their representative work, see Ernest Dowson and VLO Sheppard, *Land Registration* (HMSO, London 1952).

65 Dowson and Sheppard explained their views in two notes submitted to the panel: Dowson and Sheppard (n 48) and (n 52).

66 Dowson and Sheppard (n 52) 7.

commenting on the substantive merits of the draft ordinance, their disappointment with Miles's modelling of the draft bill on the English Land Registration Act 1925 was apparent.[67]

Part of this could be attributed to a betrayed expectation. When Husband and Miles visited London in 1939, they consulted Dowson and Sheppard about the matter and indicated their intention to base their draft ordinance on the legislation in New Zealand.[68] This proposal was well received as it accorded with the 'local tradition'.[69] Although they did not elaborate, this was most likely in reference to the adoption of the Torrens system in the neighbouring Malay States. The Federated Malay States had been operating under a uniform land code since 1911.[70] This was followed by similar enactments in some of the Unfederated Malay States.[71] As one scholar observed, this 'reflected the tendency of British policy towards uniformity'.[72] Although not apparent from Dowson and Sheppard's report, it was likely that they were viewing the matter through the lens of colonial administration considering that the Land Tenure Advisory Panel was formed under the Colonial Office. Prior to the Second World War, although the Federated Malay States and Singapore were separate entities, their administrations were fused to a significant degree. Since 1896, the Governor of the Straits Settlements also occupied the highest administrative position, the High Commissioner, in the Federated Malay States. Moreover, as highlighted earlier, a single Surveyor-General was shared between the territories. There is every reason to believe that Sheppard, who had visited Singapore in 1931, was cognizant of the general situation in British Malaya. Post-war, despite Singapore's exclusion from the Malayan Union in 1946,[73] there remained high hopes for an eventual merger[74] as this was viewed by the Singapore government as essential for the colony's long-term survival.[75] Against this background, it is easy to see why Miles's draft bill was inconsistent with the prevailing political climate.

The issue of uniformity aside, the suitability of the English Land Registration Act 1925 as a template for legal transplant was also called into question. Towards the end of their report, Dowson and Sheppard urged the Singapore government to 'seriously reconsider the principles and measures recommended by Sir William Maxwell in 1883 instead of replacing these ... by a model enacted for a radically different population and conditions'.[76] Echoing their view, the Land Tenure Advisory Panel 'felt that the principles underlying the Draft Bill were undesirable in many respects

67 ibid 5.

68 ibid.

69 ibid.

70 Federated Malay States Land Enactment 1911 (No 11 of 1911).

71 For an overview, see David SY Wong, *Tenure and Land Dealings in the Malay States* (Singapore U Press, Singapore1975) ch 6.

72 HE Wilson, 'The Evolution of Land Administration in the Malay States: A Survey of British-Inspired Changes' (1975) 48 J Malaysian Branch of the Royal Asiatic Society 120.

73 A merger of the Federated Malay States, Unfederated Malay States, Malacca, and Penang.

74 Singapore eventually joined the Federation of Malaysia in 1963.

75 Tan Tai Yong, *Creating 'Greater Malaysia': Decolonization and the Politics of Merger* (ISEAS, Singapore 2008) ch 2.

76 Dowson and Sheppard (n 52) 8. The question of suitability was also alluded to by Maxwell from the very beginning, prior to the 1925 reform in England. See WE Maxwell, *Present and Future Land Systems* (n 31) 13–4: 'It surely is an extraordinary anomaly, a monstrous growth resulting from the unreasoning

and the Bill itself, over elaborate and complicated'.[77] Although none of them went into the details, the complexities of the English property legislation of 1925 were well known. In the first place, the great land reform was embodied in multiple interrelated statutes, of which the Land Registration Act 1925 was merely one.[78] Focusing on one piece of the puzzle risks losing sight of the broader socio-economic and political considerations that drove the reform.[79] In any event, any attempt to understand the background to the reform is often hampered by the excessively formulistic and at times cryptic drafting style. As one scholar lamented about the lack of transparency during the legislative process:

> Tracking down the reasons for particular textual formulations is a frustrating process; it is rare that one finds chapter and verse explaining the niceties of particular sections. Before the war, texts of proposals to make major change to land law or to title registration had been given wide public exposure. Even when the situation was charged with political or professional conflict, consultation was the norm. But the process from 1919 to 1925 was far more private . . . The 1924 Act, critical in the legislative development of the project, had virtually no public input. It was drafted by Benjamin Cherry and his team, in private. Only they could have said why changes were made—and they did not. Nor did the planning and drafting teams often leave detailed accounts of their choices and values. A lot was left unsaid, or, at least, unrecorded, by men used to each other's way of thinking and confident in their shared objectives.[80]

If this was a difficult matter even to the Englishmen, it would likely have been even more so to the inhabitants of Singapore, whom one could reasonably expect to be relatively ignorant of the background leading up to the English property legislation of 1925. Insofar as legal transplant is concerned, simplicity is the foremost virtue, as Dowson and Sheppard were quick to recognize. Unsurprisingly, for a combination of reasons, they recommended the rejection of Miles's draft bill. Endorsing their view, the Land Tenure Advisory Panel officially 'recommended abandonment of Miles's draft Bill and preparation of [a] fresh bill based on the Torrens system'.[81]

acceptance of inapplicable theories, this planting of the English system of conveyancing among Malay and Chinese peasants in the Straits Settlements!'

77 'Minutes of the 9th Meeting of the Colonial Land Tenure Advisory Panel' (30 October 1947), National Archives (UK), CO 953/1/11.

78 See generally John H Johnson, 'The Reform of Real Property Law in England' (1925) 25 Columbia L Rev 609; GC Cheshire, 'The Recent Property Legislation in England' (1926) 74 U Pa L Rev 767; Arthur Underhill, 'Lord Birkenhead's Law of Property Bill' (1920) 36 LQR 107.

79 See discussion in Section IV.

80 J Stuart Anderson, 'The 1925 Property Legislation: Setting Contexts' in Susan Bright and John Dewar (eds), *Land Law: Themes and Perspectives* (OUP, Oxford 1998) ch 4, 123. See also AF Topham, *The Law of Property Acts, 1925: Series of Lectures* (Solicitors' Law Stationery Society, London 1926) 43: 'That was an Act with a great number of schedules, and one which it was almost impossible to understand, and I do not think that anybody except those who drew [it] up ever read it' (commenting on the Law of Property (Amendment) Act 1924 (15 & 16 Geo 5 c 5)).

81 Colonial Office to the Government of Singapore (7 July 1949), National Archives (UK) CO 953/1/13.

However, work did not restart immediately, as the Land Office in Singapore was preoccupied with remedying the disruptive effects of the war on the Registry of Deeds, such as the loss of deeds. When the war ended, the government imposed a moratorium on 2 November 1945, that prevented most dealings from being registered at the Registry of Deeds. This moratorium was relaxed on 1 November 1946 and repealed on 1 October 1949, and the number of deeds presented for registration increase significantly thereafter. Although the situation appeared to have stabilized by 1951, Commissioner of Lands JA Harvey continued to lament the lack of progress in introducing a system of title registration.[82] The matter appeared so hopeless that it was altogether omitted from his 1952 report.[83] When he retired on 11 July 1953, little did he know that the long-awaited miracle day was soon to come.

IV. THE LAND TITLES BILL

The Land Titles Bill was introduced shortly after the general election of 1955 which paved the way for greater of internal self-governance and local politics in Singapore. Under the new system of internal governance led by Chief Minister David Marshall, the Land Office came within the portfolio of the Minister of Local Government, Lands and Housing, and the Commissioner of Lands became the Permanent Secretary to the Minister. This explains why the Land Titles Bill, tabled for its first reading on 25 May 1955, was introduced by Minister Abdul Hamid Bin Haji Jumat rather than Commissioner of Lands JE Pepper. The Minister expounded on the benefits of the Torrens system by quoting from the Privy Council's judgment in *Gibbs v Messer*.[84] No lengthy explanation was required, as the benefits of such a system were by then universally recognized. Just over a year after its introduction, the Land Titles Ordinance, which was modelled on the Real Property Act 1900 of New South Wales, was passed on 12 June 1956.

However, the foundation was in fact laid prior to this new system of governance. In 1954, the government, presumably through the Land Office led by JE Pepper, succeeded in inviting John Baalman, Senior Examiner of Titles with the Office of the Registrar General in New South Wales, to advise on the possibility of introducing the Torrens system in Singapore.[85] Little was known about why Baalman was chosen, but existing record shows it was done under the persuasion of Chief Surveyor Ivan Booth, who was also from New South Wales.[86] Regardless of whether the geographical connection had any bearing on the choice, it was a compelling one as Baalman was more than just a regular land administrator. His mastery of the Torrens system was evident not merely from his wealth of practical experience at the Sydney land office but also from his academic and professional writings.[87] Following his

82 JA Harvey, 'Annual Report of the Commissioner of Lands 1951' (Government Printer, Singapore 1952) 7.

83 The matter was mentioned in passing in the four previous annual reports (1948–51).

84 [1891] AC 248 (PC) 254.

85 JE Pepper, 'Annual Report of the Commissioner of Lands and Registrar of Deeds 1954' (Government Printer, Singapore 1955) 5.

86 'Personalities of the Profession: I. C. Booth' (1981) 30 Australian Surveyor 544.

87 See, notably, John Baalman, *The Torrens System in New South Wales* (Law Book, Sydney 1951); John Baalman and Theodore Le Mare Wells, *The Practice of the Land Titles Office (New South Wales)* (3rd ed, Law Book, Sydney 1952).

month-long visit to Singapore, Baalman submitted a positive report to Governor John Nicoll.[88] Having agreed to prepare draft legislation at the Governor's request, Baalman suggested that a local officer be sent to study the administrative workings of the Torrens system at the Sydney Land Titles Office and to assist in the drafting of the legislation.[89] Hon Sui Sen, the Senior Collector of Land Revenue at the Singapore Land Office, was chosen for this task and his visit to Sydney was made possible under the Colombo Plan.[90]

On the face of it, the enactment of the Land Titles Ordinance 1956 was exceedingly smooth when compared to the multiple setbacks encountered over the past two and a half decades. There was little debate about the content of the bill within the Legislative Assembly. The full story, however, was to be found within a lesser-known report by the Select Committee tasked with examining the bill.[91] The committee's three-page report, dated 14 March 1956, recommended some amendments of a technical nature that did not depart from the substance of the bill.[92] However, the report also included a number of important documents—that is, the meeting minutes and records of correspondence with consulted stakeholders—which reveal that the consultation process was anything but uneventful. The highlight was a heated exchange between Baalman and the Singapore Bar Committee triggered by the latter's severe condemnation of the Land Titles Bill .[93] The Bar Committee's representative, JH Withers-Payne, also appeared before the Select Committee to provide oral representation, during which he tendered an additional memorandum to amplify the points made in the Bar Committee's main report.[94] The thrust of the Bar Committee's objection was that before introducing a registration system, the real property law of Singapore must first be updated, preferably in line with the English property legislation of 1925. If this were not done, the proposed legislation would be 'doomed to failure'.[95] These objections were met with a convincing point-by-point rebuttal by Baalman in his commentary submitted to the Select Committee.[96]

From the minutes of the Select Committee's oral examination of Withers-Payne, it was apparent that its members had difficulty discerning what precisely the Bar Committee's objections and recommendations were. As alluded to earlier, the English land law reform of 1925 was, after all, a project of unprecedented magnitude and complexity. Could Baalman's Land Titles Bill, which was in a much-simplified form, be suitably amended to meet the specific concerns of the Bar Committee?

88 Baalman's visit, which took place between 27 March and 30 April 1954, received a brief mention in at least one news report: 'They Have a Mission', *Sunday Standard* (28 March 1954) 14.

89 JE Pepper, 'Annual Report of the Commissioner of Lands and Registrar of Deeds 1954' (Government Printer, Singapore 1955) 5.

90 ibid.

91 The Select Committee members were George Oehlers (Chairman), Abdul Hamid bin Haji Jumat, AJ Braga, JM Jumabhoy, R Jumabhoy, Lee Kuan Yew, RCH Lim, Mak Pak Shee, and William Tan.

92 Sessional Paper No LA 3 of 1956 (hereafter, 'Select Committee Report').

93 Report on the Land Titles Ordinance by the Singapore Bar Committee (29 September 1955) (hereafter, Bar Committee, 'Main Report'). The main report was accompanied by two additional reports, both providing clause-by-clause comments and queries, prepared by two subcommittees. Unlike the Main Report, the subcommittee reports examined the bill from a more technical angle.

94 Hereafter, Bar Committee, 'Supplementary Memorandum'.

95 ibid 3.

96 Hereafter, Baalman, 'Commentary'.

Having been pressed on the matter, Withers-Payne amplified two related recommendations. The first was to reform the law of co-ownership, specifically by abolishing tenancy in common at law and placing a limit on the number of joint tenants for each parcel of land.[97] By limiting the fragmentation of title, every certificate of title would be 'a simple certificate of title similar to a share certificate'.[98] The second recommendation was to introduce a 'curtain doctrine', behind which the interests of tenants in common would exist as equitable interests, and reinforce it with a curious legal device known as the statutory trust for sale. Although the Bar Committee did not elaborate, the function of the statutory trust for sale, being a central feature of the English Law of Property Act 1925, was by then well known but not necessarily well understood.[99] The goal, in short, was to underplay the doctrine of notice. Even if the interests of tenants in common were to be located off-register and confined to the realm of equity, a purchaser may still have notice of them upon inspection of the relevant documents. The statutory trust for sale allows such equitable interests to be overreached regardless of the purchaser's notice and simultaneously converts them into aliquot shares in the sale proceeds.

As ingenious as such a scheme might be in promoting free alienability of land, it is not always clear, even in England, why the law ought to go this far.[100] Relating to the first recommendation, at least one scholar lamented that it was 'extraordinarily difficult to pin down what it was about the law of co-ownership that was thought to need such drastic reformulation'.[101] Doubts have been raised over the existence of the supposed problem, although it was never adequately addressed.[102] Even if it did exist in England, no evidence was adduced by the Bar Committee to show that it was widespread in Singapore, except for an anecdotal observation that excessive title fragmentation may be common for land held by Muslims.[103] However, in contrast to the Malayan mainland, the population in Singapore was predominantly non-Muslim.[104] In any event, Baalman did not regard the fragmentation of title to be a substantive impediment to introducing a registration system.[105] Under the Land Titles Bill, both forms of co-ownership were registrable, and even if fragmentation of title were to occur, all the necessary details on shareholding would be clearly reflected in the land register.[106] In other words, the problem (if any) would be addressed by populating the land register with fragmented titles rather than keeping them off the land register. Crucially, Baalman clarified that the goal of the Land

97 Select Committee Report (n 92) 'Minutes' para 185; Bar Committee, 'Main Report' (n 93) 2.

98 Bar Committee, 'Main Report' (n 93) 2.

99 For a summary, see KJ Gray and PD Symes, *Real Property and Real People: Principles of Land Law* (Butterworths 1981) ch 7; Stuart Bridge, Elizabeth Cooke and Martin Dixon, *Megarry & Wade: The Law of Real Property* (9th ed, Sweet & Maxwell, London 2019) 476–7.

100 Anderson (n 6) ch 8.

101 Anderson, 'Setting Contexts' (n 80) 123.

102 Anderson (n 6) 286–90. But see Joseph Warren, 'The Law of Property Act, 1922' (1923) 21 Michigan L Rev 245, 256–9.

103 Bar Committee, 'Main Report' (n 93) 2.

104 The Malay-Muslim community constituted just 12–13 per cent of the population in Singapore based on the censuses conducted in 1947 and 1957.

105 Baalman, 'Commentary' (n 96) 40–1.

106 Select Committee Report (n 92) 'Minutes' para 191.

Titles Bill was not to simplify title per se but rather to simplify the investigation of title.[107] As the two matters can be kept separate, 'it would be a defeatist attitude to say that because these complexities occur in an insignificant minority of cases, there must be no improvement in the method of discovering whether they exist in the vast majority of non-complex cases'.[108]

Turning to the curtain doctrine, this was where the relevant actors appeared to have spoken at cross purposes. During the meeting with Withers-Payne, Attorney-General Charles Butterfield suggested that the Torrens system did in fact introduce a curtain doctrine.[109] Withers-Payne disagreed but did not elaborate. When the Attorney-General referred him to the principle of title indefeasibility that underpinned the Land Titles Bill, Withers-Payne reverted to the earlier problem of fragmented titles.[110] In response, Baalman explained:

> The Bar Committee has overlooked the fact that the Torrens System is a curtain in itself. And it is of a finer texture—that is, less transparent—than the English curtain which protects purchasers of unregistered land . . . And there is no more effective curtain known to modern law than that created by clauses 27-31 of this Bill. Therefore, wherever the Bar Committee's report applauds the curtain doctrine, it can be taken to have cast a vote (unwittingly perhaps) in favour of the Torrens System.[111]

Although it is true that the principle of indefeasibility introduces a form of curtain, it does not go quite as far as what is commonly referred to as the 'universal curtain' introduced by the English Law of Property Act 1925. As we have seen, in the context of the co-ownership law, the effect of the universal curtain was to relegate the status of tenants in common to that of beneficiaries under a trust for sale. In other words, they were forcibly swept behind the curtain. However, although most would agree that free alienability of land is essential to any exchange economy, there is also necessarily the question of how far that idea should be taken. The origin of the trust for sale is traceable to the Conveyancing Bill 1898, the objective being 'to make the title to land approximate as nearly as circumstances permit to the title to stock'.[112] As for why this should be so, the revolutionary scheme has commonly been seen as an embodiment of market liberalism[113] which likely began with the nineteenth-century efforts to dismantle landed aristocracy, a relic of feudal landholding.[114] In short, the

107 Baalman, 'Commentary' (n 96) 4.

108 ibid.

109 Select Committee Report (n 92) 'Minutes' para 190.

110 ibid para 191.

111 Baalman, 'Commentary' (n 96) 5. Specifically, clause 28 states that with certain exceptions, a registered proprietor 'shall hold th[e] land free from all encumbrances, liens, estates, and interests whatsoever, except such as may be registered or notified in the land-register'. This was amplified by clause 29 which states that, except in the case of fraud, a purchaser will be unaffected by notice of any unregistered interest.

112 John M Lightwood, 'Trusts for Sale' (1927) 3 CLJ 59, 64.

113 Gray and Symes (n 99) 70–72.

114 See WS Holdsworth, *Historical Introduction to the Land Law* (Clarendon Press, Oxford 1927) ch 4; FML Thompson, 'Land and Politics in England in the Nineteenth Century' (1965) 15 Trans R Hist Soc 23.

problem that the English reformers were at pains to address had little to no relevance in colonial Singapore, which started on a cleaner slate. The law reform agenda in Singapore was instead driven by straightforward pragmatism: to simplify the investigation of land titles.[115] If all that was hoped to be achieved was this more modest goal, the English model would clearly be overkill. From the perspective of legal transplant, the accompanying historical baggage, which was needed to make sense of the complexities of the English system, was simply hard to swallow.

Related to simplicity is coherence. The complexity of the English legislation is partly attributed to compromises that had to be made to ensure their safe legislative passage.[116] They were not the ideal products their drafters had hoped them to be. In contrast, Baalman appeared to have had a free hand in drafting his bill. Although modelled after the Real Property Act 1900 of New South Wales, the Land Titles Bill had been suitably modified not only to reflect what Baalman thought the conveyancing practice ought to be,[117] but also to address controversial aspects of the Australian Torrens statutes that had been the subject of much litigation.[118] In short, Baalman presented Singapore with something quite new, something that was relatively free of the historical baggage that usually accompanies legal transplant. There was no reason why Singapore had to settle for a compromised product, especially considering that the government had the ability to ensure the smooth legislative passage of the Land Titles Bill. In any event, even if the English model of title registration was comparable in substantive merits to Baalman's model, there was simply no incentive for the Singapore government to make a switch in defiance of the Land Tenure Advisory Panel's recommendation given less than a decade earlier.[119] On the whole, the balanced remained in favour of accepting Baalman's Land Titles Bill.

With most of the attention devoted to arguing about the general principles of property law, the only thing the Bar Committee said about title registration was that the Torrens system 'works satisfactorily for large concessions, farms and rubber estates' but less so in 'large cities and residential districts'.[120] The unsubstantiated claim was rejected by Baalman who said 'without hesitation that the Torrens System is no less successful in the closely settled districts than it is in the rural areas'.[121]

115 Unsurprisingly, even though Miles suggested that some aspects of the English Law of Property Act 1925 should be incorporated into Singapore law to complement his proposed Land Registration Bill, he said nothing about the need to overhaul the existing co-ownership law or to introduce the statutory trust for sale.

116 Anderson (n 80) 123–4; see generally Anderson (n 6) chs 7–8.

117 One of his goals was to make the draft bill 'judge-proof' and 'bumbledom-proof'. See Baalman's personal correspondence with Douglas Whalan: Douglas J Whalan, 'Options or Covenants to Purchase or Renew in Registered Torrens Title Leases' (1983) 5 Otago L Rev 208, 210. See also Theodore BF Ruoff, *An Englishman Looks at the Torrens System* (Law Book, Sydney 1957) 15: 'I cannot resist the temptation to quote an antipodean friend of mine who was sent far from his home to draft a new Torrens statute. After his task was done he told me—it is a most irreverent remark—"I hope I have succeeded in making the new law judge-proof and Bumbledom-proof"'.'

118 A prominent example would be the relatively long list of exceptions to indefeasibility set out in clause 28(2), most of which are not found even in the Torrens statutes in Australia.

119 If the focus is on the precise mechanics of each registration system, there were in fact more similarities than differences: see Ruoff (n 117) chs 3–5.

120 Singapore Bar Committee, 'Main Report' (n 93) 2.

121 Baalman, 'Commentary' (n 96) 6.

Indeed, on this matter, very few could claim to know better than Baalman, who was the Examiner of Titles in New South Wales.

V. POLITICS AND LAND LAW

Not unexpectedly, Baalman did not take the Bar Committee's attack of his draft bill kindly, as evident from the preface to his commentary:

> It can be said of the Bar Committee's report generally, that it is singularly unhelpful. The criticism is consistently, destructive, and not always rational. Some of the statements appear to have been made without due regard to that standard of accuracy which is required in evidence tendered to a Select Committee.[122]

Beyond an allegation of incompetency, Baalman went as far as to accuse the Bar Committee of a deliberate attempt to defeat the title registration proposal or at least to delay it.[123] This accusation was unsurprising, as this appeared to be yet another case of history repeating itself. When Robert Torrens first attempted to introduce the title registration system in South Australia, the proposal was met with unremitting hostility by the conveyancers.[124] The generally proffered explanation of such resistance was that it was motivated by self-interest, specifically to preserve the complexity of the conveyancing procedures from which conveyancers derived considerable profits.[125] In its defence, the Bar Committee stressed that it was not in principle opposed to a new title registration system but merely preferred the English model to the Australian model. In other words, considering that the vast majority of lawyers in Singapore at that time had obtained their legal education and training in England, this was simply a case of English-trained lawyers preferring English law.[126] While this might indeed have been a reason for the resistance, to say that it was the only reason would be unbelievable, as the Bar Committee had similarly objected to Miles's draft bill even though it was modelled almost entirely on the English Land Registration Act 1925.[127]

Regardless of what the motivations were, resistance was futile, as it was at odds with the prevailing political climate. As alluded to earlier, the 1955 general election marked the beginning of a new era of internal self-governance and local politics.[128] There was an important shift of governing mindset from colonial rule to nation-building, and the desire to improve the country's land administration became more

122 ibid 1.

123 ibid.

124 P Moerlin Fox, 'The Story behind the Torrens System' (1950) 23 ALJ 489; Douglas Pike, 'Introduction of the Real Property Act in South Australia' (1961) 1 Adel L Rev 169.

125 The asymmetry of information justified the charging of higher fees: see Avner Offer, 'Lawyer and Land Law Revisited' (1994) 14 OJLS 269. For a more sympathetic view, see Anderson (n 6) ch 9.

126 The pioneer class of the University of Malaya Faculty of Laws graduated only in 1962.

127 Dowson and Sheppard (n 52) 8: 'The only body which opposed the reform is the Singapore Bar Committee, this opposition can only be attributed to vested interests'.

128 Of the 32 seats in the Legislative Assembly, 25 were occupied by elected members. The remaining seats were reserved for the Chief Secretary, Attorney-General, Financial Secretary, and four Governor-appointed unofficial members.

closely tied to its economic progress. Interestingly, Baalman's first visit to Singapore in 1954 coincided with that of a delegation from the International Bank for Reconstruction and Development to study the economic development of British Malaya. The study was jointly requested by the governments of the Federation of Malaya, the Crown Colony of Singapore, and the United Kingdom, which again hinted at an anticipated merger of the two territories.[129] Although not explicitly stated, the harmonization of laws between the two territories was obviously an important consideration. Whether or not this political climate was appreciated by the delegation, it expressed its support for the introduction of a title registration system in Singapore: 'Complete and up-to-date survey records are now available and the government has received the report of an expert invited to study the legal and administrative problems. The mission shares his view that title registration should be introduced without delay.'[130] This lent credence to Baalman's proposal and justified the speed at which the government pushed it through.

Adding to the momentum was the introduction of party politics, which meant that it was now important for the government to appeal to public sentiment. During the opening of the Legislative Assembly, Governor John Nicoll expressed 'the firm intention of the Government to ensure that the land is used in the best interests of the people'.[131] Explaining the benefits of the new system, he stressed that it would be 'a boon to land owners, particularly the small land owner'.[132] Similarly, Chief Minister David Marshall said that the new system 'would be so simple that people would be able to dispense with the services of lawyers'.[133] On the whole, the news reports portrayed the reform in a positive light,[134] even going so far as to describe the new system as the government's way of assisting the poor.[135] Aware of the political climate, even Baalman was unhesitant in raising a political argument. In response to the Bar Committee's proposal to overhaul the law of co-ownership, Baalman cautioned:

> [I]f, as I have been given to understand, the reform would come into conflict with religious laws, it may be politically inexpedient to attempt it. However, that is a question on which I am not entitled to express positive opinions . . . The Land Titles Bill actually goes about half way towards effecting that reform, but without giving any possible sectarian offence. I find it hard to understand why the Bar Committee did not appreciate that point.[136]

Against this backdrop, it is easy to understand why neither the Select Committee nor the government paid much heed to the Bar Committee's objections despite its apparent expertise on conveyancing matters. There was clearly some urgency in the

129 The Federation of Malaya had, by then, initiated discussion about its independence.
130 Louis Chick and others, *The Economic Development of Malaya* (John Hopkins Press, Baltimore 1955) 88–9.
131 Singapore Parliamentary Debates; Vol 1, Sitting No 1; Column 10 (22 April 1955).
132 'Torrens System of Land Titles for Colony' *Sunday Standard* (25 April 1955) 3.
133 'Registering Land to Be Easy, Cheap' *The Straits Times* (30 August 1955) 7.
134 See also 'Fool-proof Land Title System for S'pore' *Singapore Free Press* (15 July 1955) 2.
135 'New Law Helps Poor' *Singapore Standard* (30 August 1955) 8.
136 Baalman, 'Commentary' (n 96) 40.

matter. Whatever the merits of the English model might be, to prefer it over Baalman's draft bill, which was very close to being finalized, would lead to inevitable delay. Even an officer had been sent to familiarize himself with the practical workings of the Torrens system. The momentum for reform was strong and irresistible, which ensured that the Land Titles Bill remained more or less in its original form when it was presented for its final reading.

Returning to the story of Baalman himself, it was through the news reports that he acquired semi-celebrity status.[137] Embracing the public attention, he used this opportunity to advertise the benefits of the new system, saying, 'Singapore has reason to be proud of its land laws which, in some respects are very modern'.[138] Even after the safe legislative passage of the enactment, Baalman continued to play an advisory role in its implementation. His final contribution was to publish a dedicated commentary on the Land Titles Ordinance 1956, for which he is best known today beyond his role as its drafter.[139] A subject of anticipation even prior to its completion,[140] Baalman's *Commentary* is still referred to, which is a testament to its authoritative value.[141] Although this was not his first commentary,[142] it is difficult to imagine that it was not at least partly influenced by his row with the Bar Committee, as hinted in the preface:

> In every country where the Torrens System has been introduced, it has encountered resistance by practising lawyers. Not unnaturally, they resent the travail of having to learn a new system of conveyancing. The lawyers of Singapore are not unique in this respect . . . This book is designed to soften the blow; to help practitioners to understand that their main problem will be, not how much new practice they will have to remember, but how much of the old practice they will be able to forget.[143]

In this regard, by playing the role of an antagonist, the Bar Committee had, even if inadvertently and indirectly, contributed to the advancement of the literature on the Torrens system.

VI. LAND TITLES REGISTRATION ACHIEVED

From its conception to implementation, the Land Titles Ordinance 1956 passed through the hands of three different governments.[144] The 1959 general election saw

137 'Land Laws: Aussie to Advise Singapore', *The Straits Times* (11 June 1959) 2; 'Expert on Land Laws to Advise S'pore Govt', *The Straits Times* (June 17, 1959) 9.

138 'Land Laws: Aussie to Advise Singapore', *The Straits Times* (11 June 1959) 2.

139 John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance 1956 of the State of Singapore* (Government Printer, Singapore 1961).

140 'New System of Land Registration Saves Expenses—Expert', *Singapore Standard* (18 June 1959) 4: 'An Australian land expert and barrister, Mr John Baalman, is now in Singapore "to put the finishing touches" to a book dealing with the Land Titles Ordinances.'

141 It has been cited 22 times by the Singapore courts. The latest citation was by the Singapore Court of Appeal in *Singapore Air Charter Pte Ltd v Peter Low & Choo LLC* [2020] 2 SLR 1399.

142 John Baalman, *The Torrens System in New South Wales* (n 87).

143 See also Baalman, 'Commentary' (n 96) 38.

144 First and Second Legislative Councils (1948–51, 1952–55); First Legislative Assembly (1955–59); and Second Legislative Assembly (1959–63).

a shift in power in favour of the People's Action Party led by Lee Kuan Yew, who was appointed Singapore's first Prime Minister. Fortunately, as the focus remained firmly on nation-building, the political development did not become an obstacle to the introduction of the new system.[145] Just one week prior to the dissolution of the First Legislative Assembly (1955–59), on 24 March 1959, Part I of the Land Titles Ordinance came into effect with the establishment of the Land Titles Registry. DF Collins was appointed the first Registrar of Titles on the same day. An experienced searcher of titles at the Adelaide land office, he was seconded to Singapore for 10 months to help put the new system into operation.[146] Besides Collins, two other individuals deserve mention. One was Hon Sui Sen, who was sent to Sydney to study the workings of the Torrens system in 1954. In 1957, he was appointed the Commissioner of Lands, making him the first Asiatic person to assume this role. The other was Eu Cheow Chye, who succeeded Collins as the Registrar of Titles on 11 July 1960. Having also been sent to Sydney to learn about the Torrens system, Eu was tasked with the official launch of the new registry.[147] To allay any worries arising from unfamiliarity with the new system, he penned a short overview in the *Malayan Law Journal* just before the official launch.[148] Shortly after, on 1 December 1960, the substantive portions of the Land Titles Ordinance 1956 came into force. After the Land Registry was fully staffed, it went into full operation in September 1961.[149] In that year alone, 596 certificates of titles were issued, and 290 instruments of dealings were registered.[150] This truly marked the beginning of a new era for Singapore's land administration.

VII. CONCLUSION

The question posed at the outset—why Singapore adopted the Torrens system of land titles registration instead of the English model—is best answered by reference to the different time periods as the issue arose several times over the span of 75 years. Weld's preference for the Torrens system at the very beginning was of course by chance. But even as Maxwell was willing to look towards English law for inspiration, the early English attempts at introducing title registration had never presented itself as a viable alternative as they were poorly received. By the time English law began its formal transition to a system of title registration in 1925, the Torrens system had been in operation for over half a century and had been widely adopted throughout the Commonwealth. It was by then well tried and tested.[151] Although the new English model was a viable alternative to the Australian model, and despite the legal

145 The first amendment to the Land Titles Ordinance was introduced by Prime Minister Lee Kuan Yew in 1961 to address a transitional gap with respect to mortgages granted prior to first registration of the relevant land: Land Titles (Amendment) Ordinance (No 127 of 1961).

146 'Speed-up in Property Deals Soon under New Plan', *The Straits Times* (19 February 1959) 8. After his return to Adelaide, in 1961, Collins was promoted to Registrar-General, a position he held until his retirement in 1972.

147 Phyllis PL Tan, 'Reflections on Conveyancing Practice' [1979] Malayan LJ cxxviii, cxxix.

148 Eu Cheow Chye, 'Land Titles Registration in Singapore' [1960] Malayan LJ xliii.

149 The first Certificate of Title was dated 10 January 1961.

150 'Annual Report of the Land Titles Registry and Registry of Deeds for the Years 1960–61' (Government Printer, Singapore 1963).

151 S Rowton Simpson, *Land Law and Registration* (CUP, Cambridge 1976) 76–7.

profession's preference for the former, at least two factors have contributed to the government's decision to continue with Maxwell's plan.

The first relates to the post-war political climate. With the anticipation of a unified British Malaya, the harmonization of the laws of the two territories was naturally favoured by the administrators. There was every reason to believe that the Colonial Office in London was cognizant of the situation. Even from the very beginning, the British Parliament did not subject its colonies to full-scale legal transplantation of English law. The Second Charter of Justice, as judicially interpreted, did provide for the reception of English law into the Straits Settlements, although this could be explained by the need for the basic administration of justice during the early days. As legislative power was subsequently placed into the hands of the local governments, the British clearly understood the importance of enacting laws that suited local circumstances. Even if harmonization of law was not the foremost consideration, the dawn of internal self-governance in Singapore had shifted the attention towards nation-building and economic development, of which the introduction of a land registration system was an important contributor. In the absence of any serious defect in the Land Titles Bill, pragmatic consideration favoured its swift adoption. The legal profession's invitation for the matter to be considered afresh, while not entirely without merits, was in the final analysis unrealistic.

The second relates to the complexity of the English model owing to its excessively technical and formulistic drafting style, legislative compromises, and the accompanying historical baggage. Taken at face value, it is easy to overlook the fact that many of its peculiarities were aimed at addressing socio-economic and political concerns unique to nineteenth-century Britain. In the absence of evidence that colonial Singapore was suffering from the same problems, there was little incentive to adopt the same radical measures for the promotion of free alienability of land to the extreme. In comparison, what Baalman presented to the Singapore government was a simpler and more balanced model. More than merely a duplicate of the working model in New South Wales, he had taken pains to ensure, as much as he could, that all rough edges were sanded down. Having been given a free hand in its drafting, it was a materialization of his vision of an ideal Torrens statute.

And yet although it was the product of his draftsmanship, Baalman nonetheless stated, very aptly, that the Land Titles Ordinance 1956 was 'the culmination of seventy-five years of thought'.[152] The Bar Committee was sceptical of this description, but only because it held an overly narrow view of what law reform entailed.[153] Lawmaking is but a process in history, and in history, every participant plays an indispensable role. Even the failed attempts by Miles and the Bar Committee to introduce the English model into Singapore have shed valuable light on considerations that are important to legal transplant, not only in Singapore but elsewhere. They also illustrate the value of legal history and the pitfalls of ignoring it, which are important as land lawyers today continue to grapple with the relationship between the old and the new that collectively make up the land law of Singapore.

152 Baalman, 'Commentary' (n 96) 2.

153 JC Cobbett to the Select Committee (17 December 1955): 'If this were true it is the longest period of quotation I have heard of. But of course it is not true.'

The 1956 Ordinance has since been revised several times. Its modern re-enactment, the Land Titles Act 1993 has been imbued with many unique characteristics that would not be immediately familiar even to an Australian lawyer. While it would be tempting to suggest that the current state of the law would even surprise Baalman, one could not help but think that he might have anticipated these developments. More than just a new system tailored for Singapore, the 1956 Ordinance was a seed from which an autochthonous Singapore land law could be cultivated. And the crops did grow.