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## Transatlantic Intercultural Legal Communication in the 19th Century: K.J.A. Mittermaier and the Schmidt Brothers, Carl and Gustavus

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**TRANSATLANTIC INTERCULTURAL LEGAL  
COMMUNICATION IN THE 19<sup>TH</sup> CENTURY:**

**K.J.A. MITTERMAIER AND THE SCHMIDT BROTHERS,  
CARL AND GUSTAVUS**

Kjell Å Modéer\*

I. Prologue. A Letter to the German Comparatist of Law K.J.A. Mittermaier.....	410
II. The End of a Life-Long Relationship Between Two Brothers .....	412
III. Biographies of the Brethren .....	413
IV. Comparative Legal Cultures of the Time .....	418
A. The Vision of a National Codification.....	418
B. Concept of Constitutions.....	419
C. Comparative Legal Science.....	419
V. A Deeper View into the Biographies of the Schmidt Brothers .....	420
VI. Liberal Lawyers in Early 19 <sup>th</sup> Century Sweden.....	422
VII. The Correspondence Between the Two Schmidt Brothers .	425
VIII. The Law Journals as Comparative Law Journals.....	426
IX. Distribution to Europe of The Civil Law of Spain and Mexico .....	433
X. The End of Their Life-Stories.....	436
XI. Bibliographical Note.....	439

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I. PROLOGUE. A LETTER TO THE GERMAN COMPARATIST OF LAW  
K.J.A. MITTERMAIER

In the huge collection of letters to and from the famous German law professor and law-journal editor, Karl Joseph Anton Mittermaier (1787–1867),<sup>1</sup> there is one letter dated from Stockholm, the 7<sup>th</sup> of April, 1852. The letter is brief and written in French. It is a missive, *un billet*, in which the Swedish Supreme Court Justice, *le Conseiller de Justice*, Carl Schmidt includes a book, upon the request of his brother, Gustavus Schmidt, who was an attorney in New Orleans, Louisiana, in the United States. The book, *The Civil Law of Spain and Mexico*, was written and published by Gustavus in Louisiana. Respectfully, Carl Schmidt asked Mittermaier for his opinion about his brother's book, and further asked Mittermaier if a review of the book could appear in one of Mittermaier's law journals or, perhaps, in a letter.

Among the numerous letters in Mittermaier's correspondence, this one is by no means unique.<sup>2</sup> However, behind this letter hides a fascinating context and this article serves to further develop that context. An important part of the contextual research, which relates to courts and judiciaries, is about judicial networks, *bricolage*, and jurist families. In the early-modern period there existed many examples of such important family relations. They were not only essential for the understanding of the structure of the contemporary legal profession; they were also significant for the view of the legal profession in a wider diachronic perspective.

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1. Mittermaier's archive in Heidelberg University Library.

2. Barbara Dölemeyer, *Wissenschaftliche Kommunikation im 19. Jahrhundert: Karl Josef Anton Mittermaiers juristisch-politische Korrespondenz* in 24 IUS COMMUNE 285-98 (1997) [hereinafter *Wissenschaftliche Kommunikation im 19. Jahrhundert*]; Dölemeyer, *Transfer juristischen Wissens - Wissenschaft und Rechtspolitik in K. J. A. Mittermaiers Werk und Korrespondenz* in WISSENSKULTUREN. BEITRÄGE ZU EINEM FORSCHUNGSSTRATEGISCHEN KONZEPT (WISSENSKULTUR UND GESELLSCHAFTLICHER WANDEL, BD.1) 73-85 (Johannes Fried & Thomas Kailer eds., Berlin 2003).

This paper is about members of a Swedish jurist family named Schmidt, whose roots were in Scania, in the south of Sweden. The patriarch of the family, Hans Christian Schmidt (1756–1822),<sup>3</sup> finished his judicial career as an appellate court justice at Göta Court of Appeals (*Göta hovrätt*). He had four sons, three of whom became lawyers. Hans Isak Schmidt (1786–1826) ended up as a *fiscal*, which is an assistant to the judiciary in the Göta Court of Appeals.<sup>4</sup> The other two brothers in the legal profession became well-reputed jurists, Carl Christian Schmidt (1792–1872) ended his career as a Swedish Supreme Court Justice,<sup>5</sup> and Gustaf Adolph Schmidt (1795–1877) became a well-known lawyer in New Orleans, Louisiana. Hans Christian, the father, as well as two of his sons, Hans and Carl, received their legal education and degrees at the Lund University Faculty of Law. Further, Carl and Gustavus played a pivotal role in the increasingly boundless intercultural communication and transatlantic legal transfers of the 19<sup>th</sup> century.

In 19<sup>th</sup> century European legal culture, first France and later Imperial Germany played a dominant role and served as models for legal reforms. Swedish legal culture from 1870 to 1939 was to a great extent dominated by influences from Germany in legal scholarship, as well as in legislative matters. In this case, the interactive legal communication took place between two Schmidt brothers and jurists, Carl, a judge from Sweden, and Gustavus, a lawyer from the United States.

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3. Carl Sjöström, BLEKINGSKA NATIONEN 1697-1900: BIOGRAFISKA OCH GENEALOGISKA ANTECKNINGAR JEMTE HISTORIK [*Blekinge Nation 1697-1900. Biographical and genealogical notes with a history*] 191 (Lund University 1901).

4. Carl Sjöström, SMÅLANDS NATION, i LUND 1668–1921: BIOGRAFISKA OCH GENEALOGISKA ANTECKNINGAR [*Smålands nation in LUND 1668-1921: BIOGRAPHICAL AND GENEALOGICAL NOTES*] 237 (Lund University 1922).

5. *Id.* at 260.

## II. THE END OF A LIFE-LONG RELATIONSHIP BETWEEN TWO BROTHERS

On July 31, 1872, another Swedish Supreme Court Justice in Stockholm, Christian Naumann (1810–1888), wrote a letter to an American lawyer, Gustavus Adolphus Schmidt, located at 26 Camp Street, New Orleans, Louisiana. Naumann wrote:

This morning I was told that God late yesterday had decided to call your dear brother, the Supreme Court justice Carl Christian Schmidt etc. to his final rest. With heartfelt sympathy I (being his friend and by him appointed executor of his house and will) am hurriedly giving you and those closest to you this sad information. Where you will find the right comfort it is not for me to say. May peace be with the remembrance of this departed honest man! - - -The passing occurred [on] the above-mentioned day of the 30th of July, at 9:30 p.m. The memorial service will be held on the 5th of August followed by the burial at the Church of St. Clara at 5 pm. Before long, I will have more to tell. These lines are written in great haste.

Humbly,

Chr. Naumann

Supreme Court Justice, Doctor of Law, Professor Emeritus of Law at Lund University.<sup>6</sup>

The passing of Carl Schmidt marked an end to the career of one of the 19<sup>th</sup> century's most significant Swedish jurists. It also ended a very interesting correspondence between two jurist brothers, one in Sweden and one in the Francophone state of Louisiana in the United States. Through correspondence, for over forty years, they had informed each other of mutual family relationships, as well as passed on information about their respective countries' customs of law.

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6. Letter from Christian Naumann to Gustavus Schmidt (July 31, 1872) (on file with Tulane University Special Collections).

## III. BIOGRAPHIES OF THE BRETHREN

Carl Schmidt enjoyed a successful career as a judge. He began his career as a judge in a clerk position in the newly founded Court of Appeals for the two southern provinces in Sweden, *Hovrätten över Skåne och Blekinge*. He ended his judicial career as a Supreme Court justice, *justitieråd*, in the Swedish Supreme Court, having been appointed in 1845. His younger brother Gustav, who later named himself Gustavus, became a successful and prominent lawyer in New Orleans. Both of them were pioneers as editors of law journals. Carl Schmidt was the founder of *Juridiskt Arkiv (Legal Archives)*, the first modern law journal in Sweden.<sup>7</sup> He was the journal's editor from 1830–1862. Carl was also active in Juridiska Föreningen (The Swedish Law Society), founded in 1850, and was the founder and publisher of *Juridiska Föreningens Tidskrift (The Journal of the Swedish Law Society)* from 1850–1862.<sup>8</sup> His colleague and executor of his estate, Christian Naumann, became his successor in this field. Between 1864–1888, Naumann published another important law journal, *Tidskrift för lagstiftning, lagskipning och förvaltning, (Periodical of Legislation, Practice and Administering of Laws)* popularly known as “Naumanns tidskrift” or “Naumann’s Journal.”

Gustavus Schmidt was three years younger than his brother Carl. He enlisted in the Swedish navy as a teenager, and around the age of 25 (in the 1820s) he caught the “Wanderlust” and immigrated to America. He arrived in New York, but traveled south along the east coast and stopped in Richmond, the capital of Virginia. There he took up an apprenticeship with a judge of the Virginia Court of Appeals, William Brokenbrough (1778–1838). Gustavus was subsequently admitted to the bar and worked for several years as a lawyer in Richmond.

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7. Among Swedish jurists the journal was called “Schmidt’s Archive.”

8. In addition, he was the co-editor of *Skånska Posten* and was the chief editor at *Christianstads läns hushållstidning* (1838–43).

While Schmidt lived and practiced in Richmond, one of the most famous U.S. Supreme Court Justices of the 19<sup>th</sup> century, Chief Justice John Marshall (1755–1835), frequently visited the home of Judge Brokenbrough. Chief Justice Marshall took notice of Gustavus, which later landed Gustavus a clerkship with Chief Justice Marshall. Gustavus Schmidt later made the following statement about his employer: “Mr. Marshall can hardly be regarded as a learned lawyer. His acquaintance with the Roman jurisprudence as well as with the laws of foreign countries was not very extensive. He was what is called a common lawyer in the best and noblest acceptation of that term.”<sup>9</sup> In 1827, John Marshall also appointed Schmidt, together with the esteemed lawyer Benjamin Watkins Leigh (1781–1849), to represent three Spaniards charged with piracy and murder onboard the ship *Crawford* en route between Matanzas, Cuba, and New York. The Spaniards were convicted and executed. Gustavus Schmidt wrote a 51-page publication about the criminal case, which became well-disseminated throughout the country.<sup>10</sup>

Chief Justice John Marshall, along with other esteemed lawyers, wrote Gustavus’ letters of recommendation when he left Virginia for New Orleans, Louisiana in 1829. His move to New Orleans was well-chosen. The Louisiana Civil Code of 1825 was heavily influenced by French civil law and its customary law was distinctly Francophone. In Louisiana, French as well as Spanish were spoken, and contacts with Mexico and the West Indies were

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9. Gustavus Schmidt, *Reminiscences: Of the Late Chief Justice Marshall*, 1 LA. L.J. 81–82 (May 1841). See also ALBERT J. BEVERIDGE, *THE LIFE OF JOHN MARSHALL VOLUME II: POLITICIAN, DIPLOMAT, STATESMAN 1789–1801*, at 178 (Houghton Mifflin Co. 1919) (1916).

10. BY A MEMBER OF THE BAR, *A BRIEF SKETCH OF THE OCCURRENCES ON BOARD THE BRIG CRAWFORD ON HER VOYAGE FROM MATANZAS TO NEW YORK: TOGETHER WITH AN ACCOUNT OF THE TRIAL OF THE THREE SPANIARDS, JOSE HILARIO CASARES, FELIX BARBEITO, AND JOSE MORANDO, IN THE CIRCUIT COURT OF RICHMOND BEFORE CHIEF JUSTICE MARSHALL, FOR PIRACY AND MURDER COMMITTED ON BOARD SAID BRIG: WITH OTHER CIRCUMSTANCES CALCULATED TO ILLUSTRATE THOSE TRANSACTIONS* (Samuel Shepherd & Co 1827).

conducted in New Orleans. The city offered antebellum America unparalleled legal opportunities in the frontier West. “New Orleans, with its port, its banks, its railroads, its steamboats, and its commerce . . . became a magnet for a disproportionate share of bright legal talents.”<sup>11</sup> Gustavus Schmidt was one of them. In December 1829, he opened a law firm and was established as a lawyer,<sup>12</sup> and he soon became a successful one. Another famous lawyer of the same generation in early-1830s New Orleans was Judah Benjamin. Benjamin was an ambitious New Orleans attorney who specialized in civil and commercial law.<sup>13</sup> Gustavus Schmidt was also nominated as a candidate for the Louisiana Supreme Court.<sup>14</sup>

Gustavus Schmidt also became a leading member of the “little colony of Swedes,” who settled in New Orleans around 1830. Additionally, Gustavus hosted more established Swedes, like Olof Wijk from Gothenburg in 1830 and André Oscar Wallenberg from Stockholm in 1833, who later became famous merchants and bankers.<sup>15</sup>

Gustavus Schmidt married Melanie Seghers in 1831. His wife was the daughter of one of the most well-reputed lawyers in New Orleans, Dominique Seghers (1767–1848). They had four children. When she died in September of 1836, Gustavus Schmidt was left with the young children and the youngest, an infant, also subsequently passed away. In his second marriage, this one to Estelle Marie Mascey, he had four sons. Gustavus Schmidt also

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11. Warren M. Billings, *A Course of Legal Studies: Books That Shaped Louisiana Law* in *A LAW UNTO ITSELF?: ESSAYS IN THE NEW LOUISIANA LEGAL HISTORY* 25, 39 (Warren M. Billings & Mark F. Fernandez eds., 2001) [hereinafter *A LAW UNTO ITSELF?*].

12. Minutes from the Supreme Court of Louisiana Minute Books, vol. 4, 58 (Dec. 23, 1829) (on file with Law Library of Louisiana Special Collections).

13. Michael B. Chesson, *Benjamin, Judah Philip* in 2 *AMERICAN NATIONAL BIOGRAPHY* 568 (John A. Garraty & Michael C. Carnes eds., 1999).

14. *Vox Populi*, *TIMES-PICAYUNE*, February 9, 1853, at 3.

15. ALLAN KASTRUP, *THE SWEDISH HERITAGE IN AMERICA: THE SWEDISH ELEMENT IN AMERICA AND AMERICAN-SWEDISH RELATIONS IN THEIR HISTORICAL PERSPECTIVE* 211 (Swedish Council of America 1975).

worked as a law teacher, and he founded the Louisiana Law School in 1844—often referred to as “Schmidt’s Law School”—which later merged into the law department of the University of Louisiana, which eventually became Tulane University of Louisiana.<sup>16</sup> Gustavus Schmidt is therefore considered as one of the founders of the contemporary law department at Tulane University School of Law.<sup>17</sup>

Moreover, he published the first law journal in Louisiana, the *Louisiana Law Review*, which was praised by authorities, such as Judge Joseph Story (1779–1845) and Chancellor James Kent (1763–1847). Because the publishing house closed down in 1842, only one volume with four numbers was ever published. However, he published several articles in judicial magazines, the last one—about the federal courts—when he was more than 80 years old.<sup>18</sup> When he died in 1877, he was one of the most prestigious and respected lawyers in Louisiana.<sup>19</sup> He was the last link:

which connected the present with the Augustan era of the New Orleans bar. Without, perhaps, possessing the brilliancy of Mazureau,<sup>20</sup> Preston,<sup>21</sup> or Grymes,<sup>22</sup> or the

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16. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 5, 33 (Univ. of N. Carolina Press 1983).

17. Mark W. Lambert, *The Trinity University School of Law 1873–1878, and the Jurisprudence of Texas*, THE HOUSTON LAWYER, Nov./Dec. 2003, at 34, available at [http://www.thehoustonlawyer.com/aa\\_nov03/page34.htm](http://www.thehoustonlawyer.com/aa_nov03/page34.htm).

18. Gustavus Schmidt, *The Federal Courts*, 2 SOUTHERN L. REV. 140 (1876); see also Gustavus Schmidt, *Presumption of Survivorship When Several Persons Perish by a Common Calamity*, 2 SOUTHERN L. REV. 594 (1876).

19. Handwritten biography, Schmidt Collection, Tulane University [55–59].

20. Étienne Mazureau (1777–1849), a distinguished French and later Louisiana lawyer, serving three times as Attorney General of Louisiana and as a Secretary of State of Louisiana. He was a law partner with Edward Livingston and practiced law in New Orleans.

21. Isaac T. Preston (1793–1852) graduated from Yale College in 1812. He worked as a judge of the First District Court of New Orleans, and then as the state’s Attorney General from 1823–29 and again from 1842–45. He was a member of the constitutional convention of 1844 and served as a Supreme Court Justice from 1850–52. Sheridan E. Young, *Louisiana’s Court of Errors and Appeals, 1843–1846* in *A LAW UNTO ITSELF?*, *supra* note 11, at 107.

22. John R Grymes (1786–1854), a Virginian lawyer who had moved to New Orleans in 1808:

[W]as an eminent practitioner of the law, engaged in almost every case of importance in the courts of New Orleans and the surrounding

eloquence of Soulé,<sup>23</sup> he was equal, if not superior to, any of these great men in learning. Gustavus' place in the esteem of the world was at an all-time high in a career at the Bar, which extended a period of over half a century.<sup>24</sup>

Another obituary noted: "For a thorough knowledge of legal lore he had no peer in Louisiana, and scarcely in America. His books were his companions in season and out of season, though he served his clients with unflattering perseverance."<sup>25</sup>

The Schmidt brothers were both pioneers as publishers of law journals, in the old world, as well as in the new. Their law journals carried significant importance due to their international and comparative approach.

The brothers are important examples of the intercultural communication process during the 19<sup>th</sup> century. German legal scholars and professors of law, K.J.A. Mittermaier and K.S. Zachariae, influenced the Schmidt brothers' ideals on comparative

counties, acted in the capacity of counsel for Gen. Jackson in the United States bank case, and opposed Daniel Webster in the city of New Orleans against Mrs. Myra Clark Gaines; he held at different periods the offices of United States district attorney and attorney general of Louisiana, served in the legislature several terms, and was a member of the state constitutional convention;

Lyon Gardiner Tyler, LL. D, [Art.] *John R. Grymes, Jr.*, ENCYCLOPEDIA OF VIRGINIA BIOGRAPHY: VOLUME II (Lewis Historical Pub. Co. 1915). *See also* Elizabeth Urban Alexander, NOTORIOUS WOMAN: THE CELEBRATED CASE OF MYRA CLARK GAINES 60 (La. State Univ. Press 2004).

23. Pierre Soulé (1801–1870), French-born American politician, lawyer, and diplomat, active in Louisiana politics and pre-Civil War diplomacy. He finally settled in New Orleans.

Soulé became an active criminal lawyer, orator, financier, and Democratic politician. In 1846 he was elected to the Louisiana Legislature; at the end of the year he went to the U.S. Senate to fill an unexpired term. Elected to a full term in 1848, Soulé became the leader of the Southern faction of the Democratic party. . . . Between 1854 and 1861 Soulé practiced law. He advocated a canal project across the Isthmus of Tehuantepec in Mexico and was a leader of the Democratic party in Louisiana. A unionist during the secession crisis of 1861, Soulé supported Louisiana during the Civil War.

*Pierre Soulé*, ENCYCLOPEDIA OF WORLD BIOGRAPHY 2004, Encyclopedia.com (May 15, 2015), <http://www.encyclopedia.com/doc/1G2-3404706067.html>. *See also* CATHERINE CHANCEREL, L'HOMME DU GRAND FLEUVE (CNRS ed. 2014).

24. *Gustavus Schmidt*, NEW ORLEANS TIMES, September 27, 1877, at 3.

25. *One by One*, NEW ORLEANS ITEM, September 26, 1877, at 2.

law. The concepts and the ideas in the German legal periodicals were used by the brothers and were adapted to the Swedish and American legal cultures.

#### IV. COMPARATIVE LEGAL CULTURES OF THE TIME

One important context to the period is how the law was received and distributed over the international border during the period of 1830–1870. Three examples of such transcontinental legal discourses can be observed in this section.

##### *A. The Vision of a National Codification*

In the early 19<sup>th</sup> century, there was a classic *Schul-Streit*, or school rivalry, between the Heidelberg Law Professor Anton Friedrich Justus Thibaut (1772–1840) and the law professor at the Reform University in Berlin, Friedrich Carl von Savigny (1779–1861). This dispute was in regards to the role of codification in a modern nation. In Germany, one discussed whether to identify its own national customs and laws, or to use foreign models (like the French *Code civil*), and introduce a legal transplant into German legal culture.

In 1811, in Sweden, a law commission was appointed following the constitutional reform in 1809. The task for the commission was to produce a draft of a civil code and a criminal code. Carl Schmidt was engaged in this work in his capacity as a liberal judge in the Court of Appeals in southern Sweden. When the draft of the civil code was presented in 1826, and that of the criminal code in 1832, the drafts were sent to various legal authorities for comments, including the Court of Appeals where Carl Schmidt served as a judge. Most of the comments were reluctant and critical to such a reform, but Carl Schmidt's liberal-orientated court advocated for the codification reform.

Gustavus Schmidt moved to Louisiana after the French inspired Civil Code had been introduced in 1825. Louisiana was

the only state in the United States that chose this continental European legal tradition. The struggle for a modern codification occurred as an important scholarly and practical debate, not only in Germany, but also in Sweden and the United States. Gustavus Schmidt believed that in the USA science is of no value unless it can bring in money. “As a result they study law as a profession, as an art, and you only need a certain mechanical knowledge and little or no scientific insight.”<sup>26</sup>

### *B. Concept of Constitutions*

The United States Constitution became an important model in 19<sup>th</sup> century Europe. The Norwegian Constitution of 1814 is one example of a constitution influenced by the United States Constitution.<sup>27</sup> Later, the French political scientist Alexis de Tocqueville’s work *De la démocratie en Amérique*, published in the 1830s, played an important role in German, as well as Swedish, constitutional discourses. Several Swedish intellectual liberals traveled to America in the early 1850s. The law professor Pehr Erik Bergfalk (1798–1890) from Uppsala was one of them. He made the trip together with author Fredrika Bremer (1801–1865).<sup>28</sup>

### *C. Comparative Legal Science*

The third legal discourse of this period was about comparative law. In Germany and France, professorships and institutes for comparative law were introduced. The first chair in comparative law was established at the *Collège de France* in 1832 for Eugène

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26. Letter from Gustavus Schmidt to Christian Naumann, (June 30, 1873) (on file with Tulane University Special Collections).

27. KONGERIGET NORGES GRUNDLOV [CONSTITUTION] May 17, 1814 (Nor.). WRITING DEMOCRACY: THE NORWEGIAN CONSTITUTION 1814–2014 (Karen Gammelgaard & Eirik Holmøyvik eds., Berghahn, New York 2014).

28. FREDRIKA BREMER, THE HOMES OF THE NEW WORLD: IMPRESSIONS OF AMERICA (Mary Howitt trans., Harper & Brothers Pubs 1853).

Lerminier.<sup>29</sup> Additionally, Gustavus Schmidt's works can be found in the library of the Paris *Institut de Droit Comparé*, founded in 1931. In Germany, Professor Mittermaier was one of the most important catalysts of comparative law development. He collected legal materials from all over the world and published them in the law journals he edited.<sup>30</sup>

#### V. A DEEPER VIEW INTO THE BIOGRAPHIES OF THE SCHMIDT BROTHERS

This section returns to the biographies of the Schmidt brothers, so that their lives may be explored in depth. Their parents were from the province of Scania, in southern Sweden. Their father grew up in Sövestad, received his law degree in Lund, and defended his thesis on “house arrest” (*De arresto civil*) in 1772. His career as an appeals court judge started at Göta Court of Appeals in Jönköping.<sup>31</sup> Later, he came to Mariestad for a high position within the regional government administration. His son Carl was born in 1792 and Gustav[us] was born in 1795. They had only two sisters who survived into adulthood, Sofia Ulrika (1787–1854) and Sigrid Fredrika (born 1798).<sup>32</sup> Mariestad, by Lake Vänern, was a more important regional and strategic place in the early 1800s than it is today. When the liberal Swedish author, Carl Jonas Love Almquist (1793–1866), wrote his novel “It can be done!” (*Det går an*) in 1838, he placed the plot in the surroundings of Mariestad. Almquist, who spent time with his generation's liberal jurists, pointed out the importance of focusing on legal

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29. Mireille Delmas-Marty, *Comparative Law and the Internationalization of Law in Europe* in *EPISTEMOLOGY AND METHODOLOGY OF COMPARATIVE LAW* 247 (Mark van Hoecke ed., Hart 2004).

30. Dölemeyer, *Wissenschaftliche Kommunikation im 19. Jahrhundert*, *supra* note 2, at 285–98.

31. Enrolled as an auscultator in the court on March 23.1773. Barbro Edlund, *Göta hovrätts auskultanter. Matriklar 1635–1804*, *Acta Societatis Juridicae Lundensis*, Nr 69, Lund 1984, 147.

32. Letter from Carl Schmidt to Gustavus Schmidt (March, 28 1830) (on file with Tulane University Special Collections).

problems. “The [pen] is the sword of today and the *law* [from the basic law down to the smallest ordinance] represents the *shield*. . . . Justice must be included in the world of poetry. . . .”<sup>33</sup>

Almquist’s novel “It can be done!” is about an emancipated young woman, Sara Widebeck, who makes a trip with her friend Sergeant Albert on the Göta Canal from Stockholm to Mariestad. They are in love, but Sara does not want to get married. It is a modern reform novel, with the liberated woman as its theme. The novel was violently criticized due to the narrative of the unmarried couple. Almquist was even prosecuted in Uppsala because of this blasphemous work.<sup>34</sup>

In the novel, when Sara Widebeck and Albert arrive in Mariestad they walk to Lidköping, where Sara was born, and she shows Albert the sandy road leading up to the mansion of Trufverö, where she used to walk “every morning in the summertime.” Almquist used her morning walk at sunrise as a metaphor for a modern reform toward a visionary future. At that time a famous Swedish jurist, Johan Gabriel Richert lived in the mansion Trufve. He trained at Lund University, was a pioneer of Swedish liberalism, and was also a friend from his youth to the Schmidt brothers.<sup>35</sup>

Carl Schmidt remembered in a letter to Gustavus the memory from their childhood of “the nice mansion of Trufve on the road between Lidköping and the hill of Kinnekulle, filled with natural beauty, whose peak we often regarded from the windows in the

33. C.J.L. Almquist, Letter from C. J. L. Almquist to O. P. Sturzen-Becker, 1840 in 1 DET GAR AN: UN TAVLA UR LIVET 47 (P.A.Norstedt & Söner Förlag, Stockholm 1911).

34. KJELL Å. MODÉER, *Carl Jonas Love Almquist och juristerna. En första skis*, in JUSTITIA OCH CLIO. ÅRETS SKÄRVOR FRÅN SKRIVBORD OCH KATEDRAR 151 ff. (Corpus Iuris Förlag, Lund 1990).

35. C. J. L. Almquist, Det går an. En tavla ur livet [Can It Really Be Done: A Picture Out of Life] in SAMLADE VERK 21 43 f. (Svenska Vitterhetssamfundet, Stockholm 1993). In English: SARA VIDEBECK AND THE CHAPEL (Aldolph Bennet Benson trans., American-Scandinavian Foundation 1919).

nursery in the stonehouse at the Mariestad's bridge."<sup>36</sup> Thus, law, literature and the Schmidts' biographical reality are weaved together.

In 1802, the Schmidt family moved to Jönköping, where the father Hans Christian was appointed Appeals Court Assessor in the Göta Court of Appeals.<sup>37</sup> In 1818, Hans Christian became an Appeals Court Justice, and died in 1822. The sisters always lived nearby and played an important part in the correspondence between the brothers.

#### VI. LIBERAL LAWYERS IN EARLY 19<sup>TH</sup> CENTURY SWEDEN

Carl Schmidt had an interesting law career in 19<sup>th</sup> century Sweden, similar to that of his famous countryman Johan Gabriel Richert (1784–1864). Richert studied at Lund around the turn of the century, and Carl Schmidt went to Lund in 1811—the same year the law professor Johan Holmbergson (1764–1842) was appointed professor at the Lund law faculty. One of his famous students, the professor of a history of laws, Carl Johan Schlyter (1795–1888), wrote in Holmbergson's obituary that when Holmbergson left Uppsala for Lund, the lantern of legal science was extinguished in Uppsala and was lit in Lund.<sup>38</sup> From the Lund perspective it is a nice metaphor. Johan Holmbergson was an extraordinary law professor who had high standards for legal education, while also insisting it be for practical use.<sup>39</sup> The result of his work can be observed in the development of the law faculty. When he came to Lund he was the only law professor on the

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36. Letter from Carl Schmidt to Gustavus Schmidt (July 23, 1852) (on file with Tulane University Special Collections).

37. The assessor Schmidt was one of the examiners at S.A. Leijonhufvud's examination to become a clerk in the Göta Court of Appeal 1803. *PRESIDENTEN S.A. LEIJONHUFVUDS MINNESANTECKNINGAR* 44 f. (H.L.von Dardel ed., P.A.Norstedt & Söners Förlag, Stockholm 1919).

38. Kjell Å Modéer, *Schartau och juristerna* in *HENRIC SCHARTAU 1757–1825*, at 58 (Anders Jarlert ed., Lund 2005).

39. Jan Eric Almquist, *Examen juridicum i Lund 1749–1812* in *SVENSK JURIDISK LITTERATURHISTORIA* 232 (P.A.Norstedt & Söners Förlag 1946).

faculty; when he passed away in 1842, there were four professors of law, among them Carl Johan Schlyter for legal history and Christian Naumann for constitutional and criminal law. Carl Schmidt belonged to the first class to be examined by Holmbergson, and the two men kept in close contact over the years.<sup>40</sup>

Carl Schmidt followed his fathers and older brothers' law career footsteps to the Göta Court of Appeals. He got a position at the new Court of Appeals for Southern Sweden when it was inaugurated in 1821 and moved to Kristianstad. At that time, Kristianstad was a colorful town with counts, barons, and artillery officers living in the surrounding mansions.<sup>41</sup> The new French-born King Charles XIV Bernadotte wanted to "hold the flag for the liberal ideas,"<sup>42</sup> and the liberal Johan Gabriel Richert was appointed the teacher of Crown Prince Oscar.<sup>43</sup> Part of the future legislative reform plans followed the French model of introducing the oral process and efficient principles of action. Carl started his career at the new Court of Appeals, in 1821, as a prosecutor; he advanced to an assessor in 1823, and to an appellate judge in 1843.<sup>44</sup> As an appellate judge, he appeared in another of Carl Jonas Love Almqvist's novels, *Amalia Hillner* (1840). Almqvist used real, as well as fictional characters, in his novel to tell a story about life among the judges in the Court of Appeals in Kristianstad. Carl Schmidt, as well as his friend and colleague at the bench, Peter Quiding, appeared in this novel.<sup>45</sup> In the novel the following

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40. Holmbergson published several articles in Carl Schmidt's *Juridiskt Arkiv* in the 1830s; see *infra* note 51.

41. Kjell Å Modéer, *Från Helgeå til Öresund. Om Skånska hovrätten kring sekelskiftet*, 67 SVENSK JURISTIDNING 273 ff. (1982).

42. TORVALD T:SON HÖJER, CARL XIV JOHAN, KONUNGATIDEN 127 (P.A. Norstedt & Söners Förlag, Stockholm 1960).

43. JOHAN GABRIEL RICHERT, HANS LEFNAD OCH UTTALANDEN 86, 88 (P.A. Norstedt & Söners Förlag 1905).

44. KJELL Å. MODÉER, HOVRÄTTEN ÖVER SKÅNE OCH BLEKINGE. EN ÖVERRÄTTS TILLKOMSTHISTORIA 95 (P.A. Norstedt och Söner Stockholm 1971).

45. C. J. L. ALMQUIST, AMALIA HILLNER [SAMLADE SKRIFTER, Del. 23] 102 (Fredrik Böök ed., Albert Bonniers Förlag, Stockholm 1932).

statement was made regarding his abilities as a judge: “Ask Judge Schmidt in this case! Everybody tells me, he is the most excellent and clever judge in this country.”<sup>46</sup>

Carl Schmidt was regarded as a liberal jurist in his time. The law committee’s bills were remitted to the three courts of appeals for their opinion. Most of the upper courts were critical of the reform bills, but in Kristianstad, judges gave a very positive response to these bills.<sup>47</sup> Several of the comparative legal references made by his court of appeals demonstrate that Carl Schmidt made use of the books and magazines his brother Gustavus had sent him over the years.<sup>48</sup>

Carl Schmidt became an important figure in the aristocratic and social life in Kristianstad: his colleague at the court, Peter Quiding, Peter’s wife Charlotte (Fredrika Bremer’s sister), and his principal Per Johan Böklin, was Fredrika Bremer’s friend and mentor.<sup>49</sup> In 1830, Carl Schmidt, along with some friends, became the co-founder of a printer’s office in Kristianstad, C. Schmidt & Co. They published educational novels in Swedish and in other languages. Fredrika Bremer showed her loyalty to them by publishing a novel at: “Misters Smith & Co—at the good printer’s office in Kristianstad.”<sup>50</sup>

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46. *Id.* at 32.

47. *Hofrättens öfver Skåne och Blekinge underdåniga utlåtande jemte anmärkningar i anledning af Lagkommitténs Förslag till Kriminallag*, JURIDISKT ARKIF, Bd. 9 (1838–39), 1 ff.

48. “Livingstons Förslag til Brottmåls-Lag för Louisiana Staten i Norra Amerika” quoted in several cases. E.g. JURIDISKT ARKIF, Bd. 9 (1838–39), 20, 64, 110. One translated article from *The American Jurist and Law Magazine* was published in *Juridiskt Arkif*, Vol. 3, pp. 358–398. *Författaren ogillar på flera, som det synes, antagliga skäl bestämmandet af rentefoten*, JURIDISKT ARKIF, Vol. 9 (1838–39), 179.

49. CARINA BURMAN, BREMER: EN BIOGRAFI 84 (Albert Bonniers Förlag 2001) [hereinafter BREMER].

50. FREDRIKA BREMER, *Letter from Fredrika Bremer to Per Johan Böklin, April 1834* in FREDRIKA BREMER. BREV. NY FOLJD I–II TIDIGARE EJ SAMLADE OCH TRYCKTA BREV UTGIVNA AV CARINA BURMAN 48 (Gidlunds Förlag 1996) [hereinafter BREV].

## VII. THE CORRESPONDENCE BETWEEN THE TWO SCHMIDT BROTHERS

The existing correspondence between Carl and Gustavus Schmidt begins in 1830. In his family, Gustavus had been regarded as the lost son. In his first letter to Gustavus, on March 28, 1830, Carl wrote that he had read Gustavus' letter with great happiness the night before. "You cannot imagine how happy I was last night when I received your letter . . . We haven't heard from you for over ten years and I understand from your letter that you never received our previous letters." Carl informed his brother about the tragic events in the family during the past years, that their father had passed away in 1822, and that two of their other brothers had died. The older brother Hans became an alcoholic and was fired from Göta hovrätt. He died a few years later. Additionally, his brother Adolf had died early in his life. "You are now my only brother," he wrote to Gustavus.<sup>51</sup> Both Carl and his sister kept asking Gustavus to return to Sweden. "If you can, please return to your homeland. With your knowledge you will find good work here if you want to."<sup>52</sup> However, by that time Gustavus was already well-established in New Orleans, so he remained there through two marriages and had a big family—whose descendants are still living in Louisiana.<sup>53</sup>

Already in his first letter, Carl spoke about his new printing house, saying "that it would probably be ready in May." The printers were all well-acquainted with the English language, and four of them "read Shakespeare, Byron, Moor, and Walter Scott in English."

If you decide, as is our wish, to return home, please bring me the newest, most liberal North American literature and if you could bring some law books, I would be most

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51. Letter from Carl Schmidt to Gustavus Schmidt (March 28, 1830) (on file with Tulane University Special Collections).

52. *Id.*

53. For example, Louis de la Vergne's grandmother's grandfather was Gustavus Schmidt.

thankful. In an English journal I have found that Louisiana has already adopted the Civil Code in 1824. [*sic*: should be 1825]—Furthermore, I intend to start a law journal next summer, with the best and the newest in legal literature, and that which comes from the native land of liberty must be of interest to each enlightened friend. If we can't have the pleasure of seeing you soon, at least send us a dear book of yours, and tell me how much you want for it.<sup>54</sup>

This was an invitation to fraternal intercultural collaboration. For more than forty years the brothers exchanged books, and their book parcels crossed the Atlantic Ocean, in times of peace and in times of war. Far from all of their book packets reached their addressees, but the correspondence between them tells us that the Schmidt brothers were following what was happening in the different legal cultures, with interest, on both sides of the ocean.

#### VIII. THE LAW JOURNALS AS COMPARATIVE LAW JOURNALS

This interest in North American democracy, and the construction of the growing federal North American Union, was an important theme of discussion among the liberal European intellectuals, especially in Sweden around 1830. The publishing of Alexis de Tocqueville's previously mentioned work, *De la démocratie en Amérique (1835-1840)*, translated into several languages, compelled legal political discourse among Swedish liberals on topics such as prisons, capital punishment, and the jury system.<sup>55</sup> Carl published several articles on these problems in the 1830s. Additionally, in Johan Gabriel Richert, Professor Bergfalk, and Fredrika Bremer we find further influence from the work of Tocqueville.<sup>56</sup> Bremer's interest in the United States grew because of Tocqueville's description of American prisons. "The prisons

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54. Letter from Carl Schmidt to Gustavus Schmidt (March 28, 1830) (on file with Tulane University Special Collections).

55. SHELDON S. WOLIN, *TOCQUEVILLE BETWEEN TWO WORLDS: THE MAKING OF A POLITICAL AND THEORETICAL LIFE* 383 (Princeton Univ. Press 2001).

56. Bremer read Tocqueville's work in the winter of 1836–37. See CARINA BURMAN, BREMER, *supra* note 49, at 147.

make me especially happy. It is nice to think about the silence and hard work of the prisoner, who after a day of quiet can open up to a priest that can give him solace—how nice, how lovely!”<sup>57</sup>

This liberal and progressive view, around the 1830s was, however, not the majority view in Sweden. In the first volume of *Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung des Auslandes* (1829) (*Critical Journal for Legal Science and . . . Abroad*), published by Mittermaier and Zachariae, two Swedish legal scholars, Carl Johan Schlyter and Hans Samuel Collin, wrote a very critical article about the current situation regarding jurisprudence and legislature in Sweden.<sup>58</sup> Swedish legal education was “in a terrible condition,” according to Schlyter and Collin.<sup>59</sup> Johan Holmbergson had indeed introduced a qualitative jurisprudence, but what about the future? Possibly their arrogant statements provoked Carl Schmidt, and when he founded *Juridiskt Arkif* in 1830, he wanted to demonstrate that there were jurists with ambitions to raise the standards of the Swedish legal tradition. He used a vignette that he had probably found in the German law journal, *Juristische Zeitung für das Königreich Hannover*. It showed the eye of the law, with its symbols of justice, the scale and the sword, laid crosswise on top of the law book and the olive branch.<sup>60</sup>

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57. BREMER, *Letter from Fredrika Bremer to Böklin, Tomb, May 21, 1837* in BREV, *supra* note 50, at 281, 361, 447.

58. H. S. Collin & C. J. Schlyter, *Kurze Uebersicht über den gegenwärtigen Zustand der Gesetzgebung und Rechtswissenschaft in Schweden [Aus dem Schwedischen einer brieflichen Mittheilung übersetzt und mit einigen Anmerkungen begleitet von Herr Professor Schildener in Greifswalde]* i: 1 KRITISCHE ZEITSCHRIFT FÜR RECHTSWISSENSCHAFT UND GESETZGEBUNG DES AUSLANDES 423 ff. (Mittermaier & Zachariae ed., Heidelberg 1829).

59. *Id.* at 429.

60. MICHAEL STOLLEIS, *DAS AUGE DES GESETZES. GESCHICHTE EINER METAPHER 10* (Verlag C.H. Beck, München 2004). *Juristische Zeitung für das Königreich Hannover* was mentioned in the index of German law journals published by C. Schmidt in JURIDISKT ARKIF, Vol. 1 (1830–31), 473.

Carl Schmidt had high ambitions for his journal. An extensive article by Mittermaier, about English criminal law,<sup>61</sup> was followed by a Scottish law report from the *High Court Justiciary* in Edinburgh.<sup>62</sup> Collaboration between Norwegian and Swedish law committees was reported,<sup>63</sup> and Professor Holmbergson contributed with several articles on jurisprudence in the first two volumes of *Juridiskt Arkif*.<sup>64</sup> The American legal scholar, Edward Livingston, wrote the most important legal political article published in the journal. It was about capital punishment and was an excerpt from the introduction to the proposed penal code in Louisiana. Even though Livingston's penal code never was adopted, it brought him widespread fame when it was published in 1824.<sup>65</sup> The reform-oriented law committee decided to keep capital punishment but also presented an alternative suggestion to abolish it. Carl Schmidt was against capital punishment. In September 1831, he enclosed in a letter to Gustavus two copies of the first issue of the second volume of *Juridiskt Arkif*—one issue for Gustavus' father-in-law and one for “the great lawmaker Livingston, who had an article about capital punishment in it. It might seem bold, but I would like you to persuade him to write an

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61. Mittermaier, *Engelska Criminalrätten i dess utbildning, hufvudsakligen genom nyare Parlamentsacter*, JURIDISKT ARKIF, Vol. 1 (1830–31), 1 ff., 161 ff.

62. *Ransakning angående Burke och M'Dougal [Hearing about Burke and M'Dougal]*, JURIDISKT ARKIF, Bd. 1 (1830–31), 41 ff., 184 ff.

63. *Svenska och Norrska förenade Lagkommitteernas protokoller, hållne i Stockholm år 1830 [Swedish and Norwegian united law committees' protocol, Stockholm 1830]*, JURIDISKT ARKIF, Vol. 1 (1830–31), 65 ff.

64. *Minderårighet såsom lagligt hinder mot Äktenskap*, JURIDISKT ARKIF, Bd. 1 (1830–31), 151 ff.; *Hvad förstås med hustruns hus och jord i staden i II kap. 1 § Giftermåls Balken?*, JURIDISKT ARKIF, Bd. 2 (1831–32) 72 ff.; *Utredning av 2 § 11 Kap. GB*, JURIDISKT ARKIF, Bd. 2 (1831–32), 80 ff.; *Om och hvilken inskränkning i bevisningen af ett skriftligt testaments verklighet medför den omständighet, att ena testamentsvittnet dött fore Testator och innan detsamma edeligen vitsordat der förhållande, dess underskrift å testamentet omfattar*, JURIDISKT ARKIF, Bd. 2 (1831–32), 85 ff.; *Om incestuösa giftermål m. m. i anledning af en i Lund år 1813 utgifven academisk afhandling: de connubiis inter cognatos & affines prohibitis*, JURIDISKT ARKIF, Bd. 2 (1831–32), 329 ff.

65. Alexander DeConde, *Livingston, Edward*, 13 AMERICAN NATIONAL BIOGRAPHY 764 (Oxford Univ. Press 1999).

article about criminal legislation in Louisiana, or if you could send me the latest criminal case codex.”<sup>66</sup>

From Carl Schmidt’s letter to Gustavus, it is evident that their exchange of letters had become more extensive by the end of 1832. Carl also sent dozens of books that he considered to be remarkable, such as the Swedish poet Erik Johan Stagnelius’ collected works. Stagnelius died in 1823, at the age of 29. Carl also sent to Gustavus poems by Elias Tegner (“the most beloved poet of the time in Sweden”). All the books were “nicely bound and well written. They are from my own library; I don’t have time to procure other copies right now, but I can buy them over time later on.” He also asked to be sent the *American Quarterly Review*, the *North American Review*, the *Southern Review*, and the *United States Law Intelligencer Review* from Providence, Rhode Island. He received James Kent’s classic work, *Commentaries on American Law* (1826), in four volumes from Gustavus and sent them to Johan Gabriel Richert. “A letter from him tells me that he likes it so much that he would like to keep it, and I therefore ask you to send me another copy.”<sup>67</sup>

Carl Schmidt was appointed Associate Justice of the Supreme Court in 1845 and moved to Stockholm. He sold his printing office in Kristianstad, and in Stockholm, he was nominated by Richert to be a member on the legislative committee, which was to prepare the Swedish codification. He had been appointed to this task already in 1840 because of his positive statements on the original law committee’s propositions. Almost all nominated experts declined for political reasons,<sup>68</sup> but after King Oscar I had been inaugurated in 1844, he appointed a new law committee (*Gamla Lagberedningen*) the following year; and, Richert, Per Staaf, Carl Johan Schlyter, Pehr Erik Bergfalk, and Carl Schmidt accepted.<sup>69</sup>

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66. Letter from Carl Schmidt to Gustavus Schmidt (December 29, 1831) (on file with Tulane University Special Collections).

67. *Id.*

68. See RICHERT, *supra* note 43, at Part II, 83.

69. See RICHERT, *supra* note 43, at Part II, 227.

Pehr Erik Bergfalk, who was considered to be Uppsala's most liberal man of power, and Fredrika Bremer traveled to the United States around 1849 to 1851. Carl Schmidt informed Fredrika Bremer about his brother in New Orleans. During the Christmas and New Year's holidays of 1850 into 1851, Bremer visited Gustavus Schmidt in New Orleans while on her way to Cuba. Bremer had spent the first months of her trip to America on the east coast. In February of 1850, Gustavus wrote to her during her visit to Boston and invited her to come down to New Orleans. On her way down the Mississippi River on a paddle steamer (which she called Noah's Ark because of its colorful crowds of people: women smoking pipes and blowing their noses in their hands), she made a stop in St. Louis in November 1850, and from there she wrote to Gustavus—"My dear countryman!" She traveled from Minneapolis, Minnesota and estimated that she would be in New Orleans by the beginning of December.<sup>70</sup> She had written a letter to her friend Andrew Jackson Downing when she was in Cincinnati, writing, "From New Orleans you will hear from me. My address there will be in care of Mr. Gustavus Schmidt of Sweden."<sup>71</sup>

In her published accounts of her journey, also translated into English, *The Homes in the New World: Impressions of America* [*Hemmen i den Nya verlden*], published in three volumes from 1853-1854, she recounts her visit to the Schmidt family in New Orleans. She arrived on Christmas Eve in the harbor of "the Crescent City." Her "friendly countryman," who also provided her with someplace nice to stay during her visit, welcomed her.

I went to church on Christmas Day [she wrote,] in a church nearby, whose gloomy windows didn't let any light in, I listened to a dry, soulless sermon; thought New Orleans was a dry and boring city.

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70. BREMER, *Letter from Fredrika Bremer to Gustavus Schmidt & Letter from Fredrika Bremer to Andrew Jackson Downing*, in BREV, *supra* note 50, at 190.

71. BREMER, *Letter from Fredrika Bremer to Andrew Jackson Downing* in BREV, *supra* note 50, at 373.

—In New Orleans, Christmas is not Christmas. I seem to be in heathen country.<sup>72</sup>

Fredrika Bremer was able to observe slavery in New Orleans. She visited both a slave market and a slave auction. “I saw nothing too offensive there, except—the whole thing; and I feel a sense of amazement that such things are possible in a Christian society.”<sup>73</sup>

I had dinner today, December 30, in my countryman Gustavus Schmidt’s home. He wanted to treat me to a real New Orleans dinner and especially to my favorite soup in Louisiana, *gumbo*, made of some fairytale grain. Mr. Schmidt is a small, lively man, with a Creole charm in his being, very talkative and friendly. He is married (second marriage) to a French Creole woman from New Orleans and they have several little, dear, beautiful boys with dark eyes and curls, like little Frenchmen. The wife, too, was a beautiful, nice, simple woman, who had never seen a woman writer, and seemed surprised that a woman writer was just like any other. She seemed to believe that a person who writes books must talk like a book. The dinner was delicious, and *gumbo* is the tastiest of all soups in the world, a real life elixir in a substantial way. If you have eaten *gumbo* you can frown upon the most authentic turtle soup. After dinner the hostess, her sister, and I talked by the fireplace. I had the pleasure of speaking to this native woman, to hear her speak French, and to speak French myself, too. It is refreshing for the tongue and ear after speaking the unmelodic and troublesome English language.<sup>74</sup>

When the third volume of *The Homes in the New World* came out in 1854, *gumbo* soup became one of the topics of the day in Sweden.<sup>75</sup> In a post script to a letter written in May of 1855, Carl

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72. FREDRIKA BREMER, 2 HEMMEN I DEN NYA VERLLEN. EN DAGBOK I BREF, SKRIFNA UNDER TVENNE ÅRS RESOR I NORRA AMERIKA OCH PÅ CUBA [THREE VOLUMES] 507, 510 (P.A. Norstedt & Söner 1853).

73. *Id.*

74. *Id.* Vol. 3, at 7.

75. Gumbo is still a culinary specialty of the Creole kitchen in New Orleans. The recipe can be found at: EXPERIENCE NEW ORLEANS! “GUMBO! BY

sent Gustavus regards from Fredrika Bremer, “who now is the chairperson of a women’s association.” Her brother-in-law, the Associate Justice Peter Quiding, who had also been moved from the Scanian Court of Appeals to the Supreme Court,<sup>76</sup> had become very curious about the delicious soup called *gumbo*. Carl Schmidt continued to give information regarding the *gumbo*,

Which Ms. Bremer ate for dinner in New Orleans that he [Quiding] has asked to know what is in it and how to make it, so that even he can try the “real life elixir.” This is something I would like to trouble your wife with and ask for the eagerly awaited recipe with your next letter, which I am sure will cause a revolution in Stockholm’s most finest kitchens, after having been so highly spoken of by Fredrika Bremer, and be a dish eaten in a Swedish man’s house in the happy city. I hope that all the ingredients can be found here, or a surrogate at least, or else our hope will vanish in thin air.<sup>77</sup>

Two months later there was a reply from New Orleans: Gustavus’ second son, Albert, was on a boat to Sweden. On the ship there was a box of 55 books, forty-eight bound and seven unbound—12 of which are by Sp. & M. Lagen.<sup>78</sup> “There is also a box of 12 bottles of Gumbo, alias Gombo, and you will in due time get a ‘gastronomical description.’ The best ways to cook and eat this fine dish ‘it needs to be prepared by a distinguished artist from that town.’”<sup>79</sup> If these bottles ever made it across the Atlantic to Stockholm, we cannot tell from this correspondence.

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MOM,” <http://www.experienceneworleans.com/recipe2.html> (last visited Sept. 8, 2015).

76. A Borgström, Kongl. Hofrätten öfver Skåne och Blekinge 1821–1900. Biografiska anteckningar, Kristianstad 1901, 7.

77. Letter from Carl Schmidt to Gustavus Schmidt, (May 7, 1877) (on file with Tulane University Special Collections).

78. GUSTAVUS SCHMIDT, THE CIVIL LAW OF SPAIN AND MEXICO (Thomas Rea 1851).

79. Letter from Gustavus Schmidt to Carl Schmidt (July 15, 1855) (on file with Tulane University Special Collections).

## IX. DISTRIBUTION TO EUROPE OF THE CIVIL LAW OF SPAIN AND MEXICO

Gustavus Schmidt's knowledge of foreign languages included Spanish—and the Spanish law was commonly known in Louisiana. He was considered an expert on civil law systems both in Europe and Louisiana<sup>80</sup> and already in 1835, some successful businessmen in New Orleans had told him they would pay for his trip to Mexico if he would go. In connection with this trip, he also went to Cuba where he helped to create a treaty between Havana and the Spanish authorities. Schmidt was also engaged in the political situation in Texas. On October 13, 1835, he gave a speech in New Orleans, in support of the rebellion in Texas against the Mexican dictator Santa Anna.<sup>81</sup> After California and New Mexico were annexed by the U.S.A., Gustavus used this as a justification for going back to Louisiana's legal historical roots, where the Spanish laws had traditionally been used. He wanted to write a legal historical work about the laws in Mexico and Spain. This work, *The Civil Law of Spain and Mexico*, was published in New Orleans in 1851, and dedicated to his colleague, Professor Christian Roselius, a civil law professor at the University of Louisiana.

In the preface of this work, Gustavus Schmidt argues for the importance of the field of legal history, stating, "It is hardly an exaggeration to say that the history of the laws of a country is, in many respects, a complete history of the country itself, as a French writer [Granier de Cassagnac] maintains."<sup>82</sup> He also quotes Montesquieu in his preface to support the necessity of legal

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80. Rowena D. Richards, *Schmidt, Gustavus*, in A DICTIONARY OF LOUISIANA BIOGRAPHY 722 (Glenn R. Conrad ed., 1988). See also 2 LOUISIANA: COMPRISING SKETCHES OF PARISHES, TOWNS, EVENTS, INSTITUTIONS, AND PERSONS, ARRANGED IN CYCLOPEDIA FORM 125–26 (Alcée Fortier ed., 1914).

81. Eugene C. Barker, *The Tampico Expedition*, 3 Q. TEX. ST. HIST. ASS'N 169, 171, 169–86 (1903).

82. GUSTAVUS SCHMIDT, *THE CIVIL LAW OF SPAIN AND MEXICO*, at v–vi (Thomas Rea 1851) (citing GRANIER DE CASSAGNAC, *HISTOIRE DU DROIT FRANÇAIS* (Librarie de Firmin Didot Frères, Fils et Cie 1872)).

history: “The maxim of Montesquieu: *One has to clarify history by the laws and the laws by the history* cannot be too carefully adhered to by the lawyer, since, if he has failed to follow it, he will never deserve the title of jurist.” Schmidt was disappointed that legal history had not been observed as important enough. “Jurisprudence hardly deserves the rank of science until such a history has been written.” This project demands a model and knowledge, such that of Montesquieu and Savigny; “but the very existence of such men, and the nature of their juridical labors, prove the possibility of such a performance, which, in our age, has been greatly facilitated by the immense materials everywhere collected in aid of the reform of the law.”<sup>83</sup> Gustavus Schmidt was, thus, one of the early missionaries for the German Historical School on American soil—even though not observed in recent research.<sup>84</sup> His legal historical work was long considered the standard work in this area, and is still quoted—however, with some reservations.<sup>85</sup>

Gustavus Schmidt sent six copies of his work to Carl Schmidt. They arrived in Stockholm in July of 1852, and were distributed to several representative persons. Carl Schmidt delivered the first one personally to the Swedish King, Oscar I, at the royal castle. The king knew of Gustavus because he had previously received books from him,<sup>86</sup> and Carl Schmidt could later tell his brother that the King “had asked him to convey how grateful he was for the gift.”

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83. *Id.* at vii.

84. DAVID M. RABBAN, *LAW’S HISTORY: AMERICAN LEGAL THOUGHT AND THE TRANSATLANTIC TURN TO HISTORY* 15 (Cambridge University Press 2013).

85. Hans W. Baade, *The Formalities of Private Real Estate Transactions in Spanish North America*, 38 *La. L. Rev.* 665, 729 (1977–1978).

86. År 1844 översände han ett arbete av M<sup>r</sup>Kenney och James Hall författat arbete, [In 1844, Gustavus Schmidt sent a work authored by Thomas McKenney and James Hall] titled, *The History of the American Tribes of North America*. See THOMAS MCKENNEY & JAMES HALL, *THE HISTORY OF THE AMERICAN TRIBES OF NORTH AMERICA* (Philadelphia 1838–1844). See also Letter from King Oscar I to Gustavus Schmidt (October 2, 1844) (on file with Tulane University Special Collections).

The second copy was given to Johan Gabriel Richert at Trufve. Richert had been working on the codification work for over 40 years, but had now retired from that task and was serving as a lower court judge (*häradshövding*). Carl Schmidt had worked with him for 10 years. He was able to tell his brother that Richert had reviewed his book in an article that appeared in a liberal newspaper in Stockholm.<sup>87</sup> The third copy was sent to the Norwegian councilor of State, H.J. Vogt, a member of the Norwegian legislature, who had drawn up the proposal for a new criminal law of Norway, in which Carl Schmidt had taken part on the Swedish side. The fourth copy was sent to Professor *juris civilis et romani* Knut Olivecrona, in Uppsala, one of Mittermaier's most frequent correspondents. Olivecrona had promised to publish a review of the work in *Juridiska Föreningens Tidskrift*.<sup>88</sup> At Gustavus' suggestion, Carl sent the fifth copy to Professor Friedrich Carl von Savigny in Berlin, and the last copy was sent to Professor C.J.A. Mittermaier in Heidelberg. Richert suggested they should send a copy to Mittermaier, "if you can get a German review of the book, Mittermaier is the safest and most valuable bet," Carl wrote to Gustavus.<sup>89</sup> Six copies written and published by an author in Louisiana were supplied by Carl Schmidt to six prominent national and international recipients, all of whom were interested in legal affairs in the New World.

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87. AFTONBLADET (Swedish daily paper), March 23, 1852.

88. Knut Olivecrona, *Book Review of The Civil Law of Spain and Mexico, by Gustavus Schmidt, counsellor at law, New Orleans 1851*, 6 JURIDISKA FÖRENINGENS TIDSKRIFT 181 (1853). [6 Law Society Magazine 181 (1853)] "Ref. slutar denna anmälan med önskan att författerens arbete måtte finna läsare äfven i hans gamla fosterbygd. Åt de jurister, hvilka intressera sig för kändom af främmande länders lagar och rättstillstånd, tror sig Ref. med skäl kunna recommendera Hr Schmidts *The Civil Law of Spain and Mexico*." ["The reviewer wishes that this work may find readers in the countryside of Sweden where Gustavus grew up. To any jurists who want knowledge of foreign countries' law and legal states, the reviewer recommends Mr. Schmidt's *The Civil Law of Spain and Mexico*."] ]

89. Letter from Carl Schmidt to Gustavus Schmidt, (July 23, 1852) (on file with Tulane University Special Collections).

## X. THE END OF THEIR LIFE-STORIES

During the last years of his life, Carl concluded his life work. In 1858, he left the Supreme Court and moved to a small apartment “to spend my last days somewhere nice and quiet within Clara Parish.” He donated most of his library to the University Library at Lund and to the library of the Swedish Supreme Court “to be used in my memory.” Another part of the library was sold at an auction:

I still have a few hundred volumes of books, the ones you gave me, and the ones in Swedish, and others to be read in later days. I have also put aside books to be put in boxes and sent to you when the communications after the Civil War are safe and open again.<sup>90</sup>

As a bachelor, Carl Schmidt had long seen it as his responsibility to, “with the help of God—help his sisters be able to live among tomes and books, his life element.”<sup>91</sup> In November 1870, he wrote his will, having consulted Christian Naumann, who he also asked to be the executor of his will. Carl Schmidt went for daily walks, “between 12:30-2:00 p.m.—to get fresh air and eat dinner,” at Hotel de Suede.<sup>92</sup> It may not have been a surprise to Gustavus, in New Orleans, to hear of his brother’s passing and his will.

Christian Naumann reported in a letter that the burial on August 5<sup>th</sup> had passed according to the wishes of the deceased: “No invitations other than in the newspapers, no commemorative party afterwards, no it was formal, and well suited the deceased’s position in society. The decedent’s former brothers of office, higher and lower public officers, and civil servants attended the

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90. Letter from Carl Schmidt to Gustavus Schmidt, (March 24, 1862) (on file with Tulane University Special Collections).

91. Letter from Carl Schmidt to Gustavus Schmidt, (April 1, 1847) (on file with Tulane University Special Collections).

92. Letter from Carl Schmidt to Christian Naumann, (October 30, 1870) (on file in Christian Naumann’s Collection, Letters L–Z, at Riksarkivet [The Swedish National Archives]). *See also* Letter from Carl Schmidt to Gustavus Schmidt, (March 4, 1870) (on file with Tulane University Special Collections).

funeral” in St. Clara Church.<sup>93</sup> The vicar in Clara Parish, Frithiof Grafström (1827-1883), spoke of psalm 15 of David from the Book of Psalms, and of Johan Olof Wallin’s hymn 277, in 1819’s Swedish Hymnal.<sup>94</sup> The theme was well-chosen when the poetic and idealistic vicar Grafström spoke in memory of a liberal and idealistic judge.<sup>95</sup> In the language of Romanticism, Wallin spoke of the idealistic virtues of public officers as they had been adapted to the ideology of society that characterized the era of Carl Schmidt: who is the person, tired from fighting life’s war, which receives peace with the Lord? Wallin’s hymn was suitable for a politically engaged jurist who had served the liberal constitutional state.

“Children sang carols and a cantata of grief. The departed was accompanied to the churchyard and put in a new grave,” which Christian Naumann, being his colleague and executor, had purchased.<sup>96</sup> In *Ny Illustrerad Tidning*, an illustrated weekly paper, nice words were written about Carl Schmidt. It is true that Carl Schmidt had not been a discernible figure in the political fights:

But seldom had a mind been more awake, a view more sharp, a pen used more than his; for over thirty years, during which he, with conscientious zeal and enlightened judgment, managed our biggest law journal. His name has been well known for a long time and his work acknowledged by the larger public. Lawmen have honored him as an advocate of their own development of knowledge, in legislature and justice, both in our own

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93. Letter from Christian Naumann to Gustavus Schmidt, (August 10, 1872) (on file with Tulane University Special Collections).

94. Letter from Carl Schmidt to Christian Naumann, (October 30, 1870 and November 11, 1870) (on file in Christian Naumann’s Collection, Letters L–Z at Riksarkivet [The Swedish National Archives]). *See also* Letter from Carl Schmidt to Gustavus Schmidt, (March 4, 1870) (on file with Tulane University Special Collections).

95. *Grafström, Thor(e) Frithiof*, SVENSKT BIOGRAFISKT LEXIKON, Bd. 17, 1967–69, 206 f. (1967–1969) [*Grafström, Thor(e) Frithiof*, 17 SWEDISH BIOGRAPHICAL LEXICON 206], available at: <http://sok.riksarkivet.se/SBL/Presentation.aspx?id=13130>.

96. Located at Norra Begravningsplatsen, Stockholm. Quarter 02, tomb 101.

country and in foreign countries.<sup>97</sup>

Gustavus Schmidt survived his brother by five years, but his ties to his homeland were weakened after Naumann finished dividing Carl's estate. His sister Sigrid, in Jönköping, no longer responded to his letters. In July of 1875—a couple of weeks after his 80<sup>th</sup> birthday—Gustavus wrote a third letter to his dear sister:

As I haven't heard from you, I know nothing of your health, etc. and I have assumed that the former unruly boy Gustaf, is no longer considered to belong to his old country, but has to be viewed a stranger, which, I assure you brings me discomfort and is also unjustifiable, "because coelom non animum mutant qui trans mare currunt,"<sup>98</sup> that is, "if you cross the sea you see a new sky but your heart stays the same."<sup>99</sup>

Gustavus was of good health until a few months before he passed away. He moved to his son's home in Old Sweet Springs, Monroe County, West Virginia, where he passed away at the age of 82 on September 20, 1877. Gustavus Schmidt was laid to rest in the New Orleans' St. Louis No. 2 cemetery.<sup>100</sup> In his obituary, it was noted that he was the most respected of the body of lawyers in the state, he had been a lawyer for 46 years, and had appeared before the State Supreme Court since the time it started. In another obituary, it was stated that: "He was more than a mere lawyer, and in his speeches, as well as private conversation, he expressed himself with a terseness and eloquence that indicated the sincerity and truth of his conviction on ethics and morals."<sup>101</sup> Thus, the two brothers from Mariestad became high ranked jurists of their generation in Sweden and in Louisiana. Their names are now to be remembered in the legal history books.

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97. Carl Christian Schmidt, *Ny Illustrerad Tidning*, Vol. 8 Nr 35 (31.8.1872).

98. Gustavus Schmidt to Sigrid Schmidt, New Orleans, July 3, 1875 (68–9).

99. HORACE, *EPISTLES*, 1, 11, 17.

100. Via Flickr Sabreur 76 User, *Gustavus Schmidt Tomb*, St. Louis No. 2, New Orleans, available at <http://flickrhivemind.net/blackmagic.cgi?id=6872595490&url=> (last visited Sept. 9, 2015).

101. Obituaries in New Orleans newspapers 1877. Clippings.

## XI. BIBLIOGRAPHICAL NOTE

Finally, a brief explanation of the background of this essay is needed. Toward the end of October 2004, at the annual meeting of the American Society for Legal History in Austin, I met a senior researcher, Louis de la Vergne, from New Orleans. He informed me that he had come to Austin to make contact with Swedish legal historians, who, according to the program, were participating. He is the great-great grandson of Gustavus Schmidt, and was participating in the publication of the Book Auction Catalogue concerning his ancestor's library.<sup>102</sup> Gustavus Schmidt's library was one of the 19<sup>th</sup> century's biggest, and most distinguished, private law libraries in the United States. He told me that Gustavus Schmidt's private archives were kept in the law school's archive at Tulane University in New Orleans,<sup>103</sup> and with the assistance of the co-workers at Tarlton Law Library at the legal faculty at the University of Texas (Austin), a few weeks later I received copies of Carl Schmidt's letters to his brother, Gustavus Schmidt, in New Orleans. The correspondence had been unknown to Swedish researchers for almost 130 years. Today we only have a smattering of Carl Schmidt's biography. *Svenskt biografiskt lexicon* (*Swedish Biographical Lexicon*) overlooked this well-merited 19<sup>th</sup> century jurist, when they passed the letter combination "Sch" a few years ago. This essay can be seen as a kind of acknowledgment, an *Ehrenrettung*, to the brothers.

At last, a comment about some of the research that this discovery has caused.<sup>104</sup> Of the six copies of *The Civil Law of*

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102. MICHAEL H. HOEFELICH, LOUIS V. DE LA VERGNE & KJELL Å. MODÉER, CATALOGUES OF EARLY AMERICAN LAW LIBRARIES: THE 1877 SALE CATALOGUE OF GUSTAVUS SCHMIDT'S LIBRARY (Michael Widener ed., Jamail Center for Legal Research 2005).

103. *TU Law School is Given Briefs: La Vergne Family Makes Gift to University*, TIMES-PICAYUNE, June 18, 1967, at 2.

104. The following citations are articles regarding the Schmidt Brothers that have already been published by Kjell Å Modéer: *Mittermaier och bröderna Schmidt—ett bidrag till 1800-talets interkulturella juristkommunikation* in FESTSKRIFT TILL HANS RAGNEMALM 233–256 (Göran Regner, Marianne Eliason

*Spain and Mexico* that Carl Schmidt distributed to famous jurists, one was for Richert. I assumed that later on he had given it to the library of Law Commission. The older parts of the extensive library that the Permanent Legislature of 1901 (*Lagberedningen*, Swedish Law Commission) created, consist of books from later Law Commissions' book collections. When the permanent Swedish Law Commission finished its work around 1980, these books were kept in the basement of Rosenbad (Swedish Government's headquarter in Stockholm). In the beginning of the 1990s, Anders Eriksson, the then-legal director of the Ministry of Justice, made an inquiry as to whether the law faculty in Lund would like to take over this library. Having consulted Professor Hans-Heinrich Vogel, the faculty's permanent library consultant, they decided to accept this treasure of books. The library is today kept on compact shelves in the basement of the Law School. When I was browsing through these shelves my hypothesis was confirmed. There, under the cellar vaults, I found the book in faded, yellow leather binding from Louisiana. The Schmidt brothers would have smiled down from heaven if they could have seen this happy Swedish legal historian, who with childish glee shouted, "Bingo!" then kissed the book, and lifted it up towards the ceiling, as if he had found, the never-found medieval law book,

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& Hans-Heinrich Vogel eds., 2005) (Swed.); See *Gustavus Schmidt's Library: The Swedish Connection* in THE 1877 SALE CATALOGUE OF GUSTAVUS SCHMIDT'S LIBRARY 95–107 (Michael Hoeflich, Louis de la Vergne, & Kjell Å Modéer eds., 2005); See *Carl und Gustavus Schmidt als Zeitschriftenherausgeber: Zwei schwedische Juristenbrüder als Pioniere juristischen Zeitschriften im 19. Jahrhundert* in JURISTISCHE ZEITSCHRIFTEN IN EUROPA 55–66 (Michael Stolleis & Thomas Simon eds., 2006) (Ger.); See *Carl Schmidt und die ersten juristischen Fachzeitschriften in Schweden: Juridiskt Arkiv und Juridiska Föreningens Tidskrift—Foren für die schwedischen rechtswissenschaftliche Diskurse des 19. Jahrhunderts*, 17 JURIDICA INT'L UNIV. OF TARTU 40 (2010) (Est.); See *The Law Journal Editors Carl and Gustavus Schmidt: Two Swedish Lawyers and Brothers as Law Journal Pioneers in the 19th Century* in CIVIL LAW COMMENTARIES 1, Summer 2011, available at [http://www.law.tulane.edu/uploadedFiles/Institutes\\_and\\_Centers/Eason\\_Weinnann/clc3modeer11.pdf](http://www.law.tulane.edu/uploadedFiles/Institutes_and_Centers/Eason_Weinnann/clc3modeer11.pdf).

always sought for, by my supervisor, Professor for legal history Gerhard Hafström, the copy of *Tiohäradslagen* (on the old Swedish county laws).

This is an example of what can happen, when the Holmbergson's lantern of legal science, in all its modesty still, tries to illuminate the fall darkness at Lund University in Southern Sweden.