In the beginning of the 19th century, law journals became an important instrument for improving the discourse of international jurisprudence and supporting the development of comparative law. Shortly after the Historical School of Law was established in 1814 and its founder Friedrich Carl von Savigny’s *Zeitschrift für die geschichtliche Rechtswissenschaft* [Journal of Historical Jurisprudence] appeared, the need to raise the standard of jurisprudence in Sweden became increasingly obvious. In 1829, H. Samuel Collin and Carl Johan Schlyter, both ‘doctores iuris’ and former students of Lund University law professor Johan Holmbergson (1769-1842), surveyed the lamentable state of Swedish jurisprudence in the first volume of the German law journal *Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung des Auslandes* (Critical Review of Foreign Jurisprudence and Legislation), edited by the Heidelberg University law professors K.J.A. Mittermaier and K.S. Zachariae.

There is contempt of learnedness and of basic education which shows itself in very many of the interns, and most decisions of the court reveal a lack of legal insight more complete than that which could be attained.

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through casual observance. These are fruits in which one unmistakably recognizes the dried-up roots . . . .

In 1830, when Carl Schmidt founded the first Swedish law journal, *Juridiskt Arkif*, he was an Appellate Court Assessor at the Court of Appeal of Scania and Blekinge (newly erected in Kristianstad in 1821). Carl edited 34 volumes of this journal from 1830 to 1862. Carl belonged to an influential network of liberal and reform-minded Swedish jurists of the 19th century, and was one of the most important and influential Swedish jurists of his generation. Between 1845 and 1858 he served as a Justice of the Swedish Supreme Court in Stockholm. In 1845 he also became a member of the legislative commission (*Gamla lagberedningen*), which had the aim of reviewing drafts of the newly planned Swedish codification. He was a founder of the Swedish Law Society, *Juridiska Föreningen*, and from 1850-1862 was the editor of the Society’s journal, *Juridiska Föreningens Tidskrift*.

Carl was born in 1792 in Jönköping, the son of a judge on the Göta Court of Appeal. He studied law at the University of Lund, and belonged to the first generation of students of professor Holmbergson. He was a jurist familiar not only with Swedish law but also with contemporary international legal developments. He subscribed to a plethora of international legal and cultural journals. There were many German legal scholars who edited law journals, but the international and comparative approach of law professors K.J.A. Mittermaier and K.S. Zachariae became manifestly important to him.2

*Juridiskt Arkif* was not the only project he was working on. Together with some intellectual friends in Kristianstad, he founded a publishing and printing house for books, *C. Schmidt & Co.*, of which he was the managing director until his move to Stockholm as a Supreme Court Justice in 1845. The publishing house specialized in the publication of novels for the bourgeoisie, *Bildungsromanen*, in Swedish and also foreign languages.

On March 27, 1830, Carl received a letter that would be of decisive importance for his future. The writer was his younger brother, Gustavus, who had immigrated to the United States ten years earlier and had not yet been heard from. The letter was sent from Richmond, Virginia, where Gustavus had trained as a lawyer but was

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preparing for a move to New Orleans, which was one of the greatest trade and business centers in the country at that time. In 1808, the French-inspired Code civil had been established in Louisiana (the “Louisiana Civil Code”), presenting new challenges to Louisiana lawyers working on interstate and international legal matters with Louisiana’s common law neighbors. This environment set the stage for Gustavus’s forthcoming spectacular legal career, and he is an outstanding example of his generation of American lawyers.

On the 28th of March, the day after receiving the letter, Carl responded to his brother, initiating an intense correspondence between them that would continue for more than forty years, until Carl’s death in 1872. In his first letter, Carl informed his brother that an English law journal to which he subscribed, The Jurist, had already made him aware that Louisiana had established a codification. He also indicated that beginning in the summer of 1830, he wanted to publish a law journal, together with a few good “theoretici and practiciti.” This journal was to contain the “best and the latest” of legal literature, and Carl asked his brother for recommendations from the American legal field. “That which comes from the native land of liberty,” he wrote, “is of interest to every friend of Enlightenment.”

One of the first requests Carl made of his brother was that he might send him copies of “the Chancellor and, currently, Professor [James] Kent’s great work on American Law.” At the same time he asked Gustavus for an essay explaining American penal law through the illustration of a criminal prosecution from beginning to end, with all proceedings described. Carl wished to reciprocate: “For my part, I

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5 The Schmidt Brothers’ correspondence is held in the Tulane University Special Collection—The Louisiana Research Collection at the Howard-Tilton Memorial Library. I’m very thankful to Mr. Louis V. de la Vergne who brought this correspondence to my attention. A couple of letters from Carl to Gustavus Schmidt are held at the Smithsonian Library, Washington D.C. I thank Louisiana Supreme Court law librarian Georgia Chadwick, who obtained copies of those letters for me. Cf. Reidar Norby, 8 Forskjutne Skillingar [8 Advance Skillings]: Letters from Out of the Past and What They Tell Us, American Swedish Historical Foundation Yearbook, Philadelphia 1968, pp. 51 ff.

6 Letter from Carl Schmidt to Gustavus Schmidt (Mar. 28, 1830) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).

7 Id.

8 Id.

9 Letter from Carl Schmidt to Gustavus Schmidt (Oct. 20, 1830) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).

10 Id.
will produce an article about Sweden, either for Juridiskt Arkif, or for you personally, which you could send to one of your law journals. If you could also supply me with such a journal from which I could take certain articles to reproduce in Arkif, the legal community of Sweden would be deeply obliged to you.” Upon the arrival in Sweden of the book shipment containing Kent’s Commentaries, Carl recommended it to the liberal judge Johan Gabriel Richert, an active member of the Swedish legislative commission that had the task of producing the drafts of a Swedish Code. Carl even asked his brother to secure a second copy for him as well, “seeing as how [Judge Richert] won’t let the work out of his sight.”

An article on capital punishment reform by Edward Livingston had been published in the very first volume of Juridiskt Arkif. It detailed how capital punishment was to be abolished by Louisiana’s penal code. Carl took this article from the Revue Encyclopedique in July and August 1830. At the time, the publication of the article was of heightened importance due to the political climate of the law in Sweden. The Swedish legislative commission (Lagkommittén) was drafting a penal code, which would be published in 1832. Carl sent his brother a copy of the journal Juridiskt Arkif as a tool for Gustavus to use to encourage Livingston to write more extensively on the subject for the Swedish publication. It may seem audacious to you, but I very much want you to attempt to convince Livingston to write an article for Juridiskt Arkif, particularly concerning penal legislation in Louisiana. One must have that which is good from other countries, and, I can infer from Livingston’s article on the death penalty, that there is much to be had in Louisiana from a more humane legislation in the spirit of our times.

Carl emphasized in his letter that Livingston contributed not only to the Revue Encyclopedique, but also to Mittermaier’s and Zachariae’s Kritische Zeitschrift für Rechtswissenschaft und Gesetzgebung, lamenting: “And, for goodness’ sake, he could certainly allow a few drops from the well of his wisdom to fall on Sweden. There are many of the Arkif’s readers here who desire more articles written in the same spirit, and, most importantly, written by the same pen.”

The Schmidt brothers began exchanging books and journals in 1830, and many crates crossed paths during transit across the Atlantic over the next four decades. From their correspondence, we can see that, beginning in 1831, Gustavus regularly sent his brother copies of the American Quarterly Review, North American Review, Southern Review, United States Law Intelligencer and Review, and others from

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11 Id.
12 Letter from Carl Schmidt to Gustavus Schmidt (Dec. 29, 1831) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).
13 Eduard Livingstons yttrande om dödsstraffet [Eduard Livingston’s Remarks on the Death Penalty] (an Excerpt from Livingston’s work, which presents an introduction to the penal system of the State of Louisiana), JURIDISKT ARKIF vol. 1 (1830-31), pp. 218 ff. Livingston’s reform regarding penal law was never adopted but was, as we observe, of great importance for the legal discourses in this field. Edward Livingston, in 13 American National Biography 763 (John A. Garraty & Mark C. Carnes eds., Oxford Univ. Press 1999).
14 Letter from Carl Schmidt to Gustavus Schmidt (Sept. 23, 1831) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).
15 Id.
Providence, Rhode Island. As for Carl, he sent a few copies of the latest volume of his journal with each correspondence to New Orleans. The first volume of *Juridiskt Arkif* included a full bibliography of contemporary legal writings, most of which were in German. This comprehensive catalogue documents the journals with which Carl was familiar. A common trait of these journals was that many essays that had previously appeared only in German were now being printed in Swedish.

Inspired by the regular delivery of Carl’s Swedish law journal *Juridiskt Arkif*, Gustavus began to edit and publish a similar journal in New Orleans. In 1841, the first volume of *Louisiana Law Journal* appeared, with Gustavus as its editor. He described his plans for the journal in the foreword “To the Public”:

> The Journal, as its title indicates, will be devoted exclusively to subjects connected with the science of jurisprudence, including every thing, which has a tendency to illustrate its progress; and to exhibit its present condition.

> In a field so vast, it is not however the intention of the editor to wander at random; but to select by preference whatever is best calculated to throw light on the present state of the law in Louisiana, and to point out in the next place, the analogies and contrasts between our legislation and that of the other States of the Union.

Gustavus also found it useful to compare jurisprudence in Louisiana with that in foreign countries. Such a comparison, he maintained, would allow various improvements to come to form in legislation as well as in the living practice of the law.

Additionally, *Louisiana Law Journal* was to present theoretical perspectives on the law alongside the practical: “Jurisprudence, like every other science, embodies theoretical as well as practical doctrines, the former of which, when based upon a sufficient number of accurately observed facts, afford the jurist great aid in determining the general principles of the science; and must therefore not be disregarded.” It was the practical side of the law, though, that was to be portrayed “in the columns of the journal,” because the institutions were oriented practically at their roots, and the journal was intended, above all, for practicing lawyers. Gustavus intended to refer in each issue to the latest decisions of the Louisiana Supreme Court that were of general interest.

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17 E.g., in volume 5, Zachariae’s article from Polite’s *Jahrbücher der Geschichte und Staatskunst, 1834*, *Juridiskt Arkif* vol. 5, p. 129), and Mittermaier’s excerpt from *Neues Archiv des Criminalrechts, 1834*, *Juridiskt Arkif* vol. 5, p. 161).
19 Id.
20 Id.
21 Id.
22 Id. at iii-iv.
23 Id. at iv.
Gustavus also invited “the members of the bar of Louisiana” to contribute to the project and thereby help him to realize his goal.\(^\text{24}\) It is most likely that Gustavus intended to give the lawyers of Louisiana a law journal similar to his brother’s, and other contemporary European law journals.\(^\text{25}\) Not only was his journal one of the first law journals in the United States,\(^\text{26}\) but its intentions were also quite unique, considering their strong international and comparative orientation.

Gustavus pledged to produce one issue of *Louisiana Law Journal* per quarter. Each issue was to be around 150-160 pages. Despite his ambitions, though, only 4 issues appeared in the years 1841-1842.

The contents of the first volume (1841) give a clear expression of Gustavus’s programmatic approach. In it, Gustavus published a “History of the Jurisprudence of Louisiana,” which he based upon European (mostly French) literature.\(^\text{27}\) Following that came a lengthy discussion of the French translation of Savigny’s “The Law of Property.”\(^\text{28}\) Gustavus had wandered into the field of contemporary German jurisprudence, and presented a brief summary of the Savigny essay in his journal: “Such is a brief outline of the work of Mr. Savigny, which to be properly understood requires a much more extensive and accurate analysis; a task, that we may perhaps attempt at some future period; and which, no matter with what care it may be executed, can only furnish an imperfect idea of the work itself; which in order to be properly appreciated must be carefully studied.”\(^\text{29}\) Despite his sincere, in fact

\(^{24}\) *Id.*

\(^{25}\) For a list of themes Gustavus Schmidt proposed for the law journal, see *id.* at iv-v:

1. The history of general jurisprudence, the jurisprudence of Louisiana and of other countries and states. 2. The doctrines of the civil law of Louisiana on any of the topics embraced by our Codes and legislation. 3. The criminal jurisprudence of the State, viewed either by itself, or in connection with that of the other States of the Union, or of foreign countries. 4. The practical administration of the law in Louisiana, as compared with that of other countries. 5. The principles of pleading and practice in civil and criminal suits, together with the theory on which they are founded, &c. 6. The doctrines of commercial and maritime law adopted in Louisiana and elsewhere, including questions of insurance, average, bottomry, &c. 7. Important decisions of the tribunals of Louisiana, as well as elsewhere. 8. Questions depending on the conflict of the laws of different countries, and the principles applicable to their solution. 9. Doctrines and questions depending on the law of nature, nations, and public law. 10. Police regulations and laws of foreign countries, which may affect the rights and interests of our citizens holding intercourse with such countries. 11. Questions of evidence. 12. Reviews and critical notices of foreign and domestic law publications. 13. Biographical notices of distinguished jurists. 14. And generally all other communications coming within the scope of the Journal, and which may be deemed of general utility.


\(^{29}\) *Id.* at 56.
practically obsequious, respect for Savigny’s work, Gustavus still asked the question whether it would be popular “in an English dress.” He felt that generally, American lawyers were practically oriented people, and Savigny was far too historically oriented and philosophical for American tastes:

Indeed the labors of Mr. Savigny appear to us somewhat analogous to those of certain celebrated anatomists, who from an attentive examination of the mutilated bones of some antediluvian animal, have been able to give a satisfactory account of its osteology. The result of their labors is at most a perfect skeleton, which affords but little information as to the functions, habits and utility of the living animal.

All told, he regretted that it was, for the most part, impossible to promote the original works of German jurists in the United States. Only a few such works were known there at all, and those predominantly through French, and seldom through English translations.

Next followed a discussion of the second edition of Joseph Story’s famous work *Commentaries on the Conflicts of Laws, Foreign and Domestic* 1841, the first edition of which achieved immediate international fame in 1834. Gustavus contended that Louisiana had every reason to be thankful for this work because many decisions of the Louisiana Supreme Court were quoted by Story with great reverence. In addition Gustavus claimed:

[W]e may assert, without fear of contradiction, that Louisiana has contributed more largely than any other State in the Union, to settle the principles of international law which ought to govern questions growing out of the contrariety of laws; and that her bench and bar have brought to the examination of this subject great industry, learning and research, which have mainly contributed to fix the principles of this portion of jurisprudence. . . .

The next article, also from Gustavus’s own pen, is of interest in this respect. Chief Justice of the U.S. Supreme Court, John Marshall, died in 1835, and Gustavus thought it was important to honor his life and character in the journal. During the 1820s, Gustavus lived for “about eight years in the City of Richmond, where [he]
had frequent opportunities of seeing him both in public and private life.” 38 His memories of Marshall now serve as an important source for many Marshall biographies.39

Next came articles taken from international law journals describing well-known trials in France,40 Scotland,41 and Spain42 and also an overview of the developing Russian legal reform of 1835.43 Carl wrote that Russia and the United States were political opposites: “In the former, all power centers, at least in theory, in the hands of the monarch; in the latter, in the people.”44 There were also great differences in the legislation of the two countries, but when one compared Russia and Louisiana with one another, one saw that the two entities did in fact, have something in common—the Code civil. Russia’s modern civil legislation, initiated by Czar Alexander I in 1804, was based upon extensive historical inquests (although the Code civil was never actually adopted).45 Gustavus emphasized his point by reference to an article by his brother from Juridiskt Arkif 1834-35 which itself referred to an article published in St. Petersburg in 1833, and which Carl had discovered in Kritische Zeitschrift, Vol. 6, edition 2.46 Here was a Russian account in French, reported upon in a journal in German, then translated into Swedish, and then finally presented to an English-speaking community in an American law journal. An outstanding example of transnational legal communication, instrumented by the law journals of the 19th century!

Although this first volume of Louisiana Law Review ended with local reports of trials of the Louisiana Supreme Court from the first three months of 1841, it should be noted that this law journal from the American South was very strongly influenced by the pen of its editor. His programmatic editorial approach, so particularly international and comparative, was already realized in this very first volume.

Through the efforts of Gustavus, the scholarly works of Americans became known in Sweden and other European countries. The works of Livingston have already been mentioned. James Kent’s Commentaries on the Law were also well known in Europe.47 In an April 1842 review of a work by Joseph Story, Gustavus wrote of Kent:

40 Murder Punished After the Lapse of Twenty Years (from L’observateur des Tribunaux), 1 L.A. L.J. 100 (1841-1842).
41 Murder from Envy (from L’observateur des Tribunaux), 1 LA. L.J. 104 (1841-1842).
42 The Cross of Murder (from L’observateur des Tribunaux), 1 L.A. L.J. 100 (1841-1842).
43 Gustavus Schmidt, Reform of the Law in Russia, 1 L.A. L.J. 117 (1841-1842).
44 Id. at 118.
45 Id. at 122.
46 Id. at 126 (referencing Carl Schmidt, Codification in Russia, Juridiskt Arkif vol. 5 (1834-35), p. 204, and discussion of St. Petersburg, Précis des notions historiques sur la formation du Corps des lois Russes. Tiré des actes authentiques deposes dans les archives de la 2:e section de la chancellerie particuliere de S.M. l’Empereur. Traduit du Russe 1833).
47 Schmidt, supra note 34, at 70.
Indeed, the “Commentaries” are now regarded as a classical treatise on jurisprudence throughout the United States, and they are frequently referred to by writers of continental Europe, where few jurists are to be met with, who are unacquainted with the name and reputation of the author.48

In a footnote he noted that he had personal experience with respect to Kent’s international influence on the study of American law.49 Responding to requests of distinguished jurists in Sweden and Russia, he sent them copies of Kent’s Commentaries and saw the work “quoted by German, French, and Italian authors.”50

Like his brother in Sweden, Gustavus wanted to use his journal to demonstrate to the educated American public the importance of the theoretical dimensions of the law—the jurisprudence. In January 1842, an extensive discussion of an English translation of the French Code civil afforded him the opportunity to highlight the differences between Anglo-American and continental European law:

We are persuaded that many of the defects of the Common Law, would soon disappear, if the British jurists would devote a little more attention than they have hitherto bestowed on the jurisprudence of foreign countries, because we hold, that the study of comparative jurisprudence is indispensable to a comprehensive and exact knowledge of the science of the law.51

At the same time, as Gustavus was promoting this scholarly position, the development of the field of comparative jurisprudence was at the forefront of legal thinking in Germany and France. His journal apparently had financial difficulties, however, and the publication ceased after only the fourth issue. Still, the Louisiana Law Journal had already become well known and was praised by such authorities as Joseph Story and James Kent, no small achievement.

The Schmidt brothers’ correspondence is an important example of the type of professional contact that existed between jurists in Europe and the United States in the 19th century. The continuous exchange of books and journals was apparent in articles and discussions of the time. A book on Mexican law published by Gustavus

49 Id. at 47-48.
50 Id. at 48.
in 1851, for example, prompted reactions in Swedish newspapers and journals.\textsuperscript{52} Gustavus was also active as a law professor. In 1844 he founded Louisiana Law School in New Orleans—“Schmidt’s Law School”—which later became part of the Louisiana University (Law Department). The Tulane University School of Law considers Gustavus to be one of its founders.\textsuperscript{53}

Carl dedicated a large part of his life to the publication of law journals. It was his life’s work, he wrote to his brother, “to be with my tomes and books, in my life’s element.”\textsuperscript{54} In August of 1862, he wrote that he had decided to cease production of both his journals. Up to that point he had edited and published 23 volumes of \textit{Juridiska Föreningens Tidskrift} and 34 volumes of \textit{Juridiskt Arkif}. All that remained to be published were the alphabetical indexes, which were published in 1863.\textsuperscript{55}

There was no one who was prepared to take over the journals. Christian Naumann, a younger colleague of his on the Supreme Court,\textsuperscript{56} began, however, to publish a similar law journal, \textit{Tidskrift för Lagstiftning, lagskpinng och förvaltning} [Journal of Legislation, judicial jurisprudence and administrative law], in 1864.\textsuperscript{57}

Following Carl’s death in 1872, Gustavus asked Naumann, the executor of the will, what had become of the two law journals “in which my brother had an interest. It would be nice to know what arrangements have been made for these works, and whether a copyright exists for them.”\textsuperscript{58} He also inquired after the state of his own works in his brother’s library.

Seeing as how I, although already 78 years old, am in good health, and my ability to work has only lessened insignificantly, I have decided to publish a new Law quarterly. In this journal I intend to clarify the contemporary state of the law in the United States, and expose the disorder in the interpretation of the law as well as in the legislation itself.\textsuperscript{59}

He was well aware that it was bold to undertake such an endeavour at his age, and planned to work together with a line-up of capable jurists, who were “exceptions among the rising masses—over 50,000—of jurists.”\textsuperscript{60}


\textsuperscript{53} STEVENS, supra note 26, at 5 (“When Tulane wanted to establish a law school in 1847, it absorbed the Louisiana Law School, run by the Swedish Scholar, Gustavus Smith [sic].”).

\textsuperscript{54} Letter from Carl Schmidt to Gustavus Schmidt (Apr. 1, 1847) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).

\textsuperscript{55} Letter from Carl Schmidt to Gustavus Schmidt (Jan. 13, 1863) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).


\textsuperscript{57} “Naumann’s Journal” appeared in 25 volumes from 1864 to 1888.

\textsuperscript{58} Letter from Gustavus Schmidt to Christian Naumann (June 30, 1873) (on file with the Tulane University Louisiana Research Collection—Howard-Tilton Memorial Library).

\textsuperscript{59} Id.

\textsuperscript{60} Id.
“Scholarship is seen as worthless in this country if it cannot be used in praxis for making money.”\textsuperscript{61} “For this reason, one studies law as a profession, or really, as a vocation. For this, one must possess certain mechanical skill, but the work requires very little, or even no academic knowledge at all.”\textsuperscript{62} In spite of this general characterization of American jurists, Gustavus was aware that, in a country with “37 states and 11 territories,” there must be quite a few exceptions.\textsuperscript{63}

Although this journal project never did come to fruition, Gustavus at more than 80 years old did publish several additional articles in \textit{Southern Law Review} before his death in 1877.\textsuperscript{64}

The above examples of law journals from Sweden and the USA demonstrate a connection between the representatives of judicial culture in the two countries that was previously unknown. They also indicate how the plans of law journal editors were realized in their respective legal cultures. The German law journals of the early 19\textsuperscript{th} century quite obviously played an important role not only for the Swedish journal, but also for the American one; the content of both journals was of interest for theorists as well as practitioners.\textsuperscript{65}

Carl’s initiative met with a positive reception in Sweden. For more than thirty years (1830-1862), \textit{Juridiskt Arkif} contributed significantly to increasing the academic and scientific character of Swedish legal culture. Gustavus, however, had to give up his journal project in 1842 after only one year. Lawyers in New Orleans were not receptive to such a project, with its high ambitions in the continental European manner.

Both journals were of especially high importance because of their comparative approach to the law. But it was not only the international contributions to the journals that were of importance. The book reviews and commentaries are also proof that the Schmidt brothers saw the comparison of laws as an important dimension of the interpretation of the law. In this sense, it is possible to see the Schmidt brothers as forerunners of the late 19\textsuperscript{th} century, who advocated a modern and systemized professionalism of lawyers in Sweden as well as in the United States.

\begin{itemize}
\item \textsuperscript{61} \textit{Id.}
\item \textsuperscript{62} \textit{Id.}
\item \textsuperscript{63} \textit{Id.}
\item \textsuperscript{65} Mohnhaupt, \textit{supra} note 2, p. 285.
\end{itemize}