

Gustavus Schmidt: His Life & his Library

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Gustavus Schmidt, like so many of the great nineteenth century lawyers of the Old South, is little remembered today. Yet, in his day, Schmidt was a man whose professional reputation extended from New Orleans to Boston and on to Stockholm. He was blessed with a long life and great energy, which was turned to a series of successful professional endeavors. He was the son and brother of Swedish judges, the son-in-law of a great Civil lawyer, a protégé of Chief Justice John Marshall, the founder of the first law journal in Louisiana, one of the most successful advocates in Louisiana legal history, and a founder of what has become the Tulane Law School.¹ He was also an extraordinarily sophisticated man of the world, a connoisseur of books and art and of wine and food.

Gustavus Schmidt was born in Sweden in 1795. His father was a successful government official and, eventually, judge. He had an older brother Christian, born in 1792, whose career in Sweden paralleled his own in the United States. Gustavus received a classical education in Sweden. In 1811 he joined the Swedish navy, in what must have been a response to a young man's *Wanderlust*. Four years later, he left the navy and made his way to the United States. He arrived in New York, but spent little time there, opting, instead, to go to Maryland's eastern shore. He remained there, as a teacher, until 1820 when he again relocated to Richmond, Virginia. Here, at the age of twenty-five he discovered his life's calling. He read law with a Virginia judge and was admitted to the Bar. He was also introduced to Chief Justice John Marshall through the graces of his elder brother, whose own judicial career was already underway in his native Sweden. The connection to Marshall was a fruitful one and resulted in an appointment as counsel in a highly publicized case of piracy. Still, the young Gustavus could not settle down. In 1829 he left Virginia and moved to New Orleans. At that time, New Orleans was an international

¹ Biographical details are taken from documents contained in the Schmidt Family Papers now at Tulane University. These consist of 1,274 pieces dated from 1816. An index is available. Special Collections.

port and a city of great culture. It offered vast opportunities to energetic and qualified young men.

Gustavus and New Orleans were made for each other. He spoke a number of languages fluently, including French and Spanish, the two languages crucial to the success of any New Orleans lawyer of the period. He also made a good matrimonial match. Soon after moving to New Orleans, he met and married Melanie Seghers, the daughter of a prominent New Orleans attorney. Gustavus' relocation to New Orleans and his marriage to Miss Seghers marked a turning point in his life. From this time forward, he was to become a fixture of new Orleans society and the New Orleans Bar. His practice grew rapidly. Henry Clay, perhaps the greatest of all antebellum Southern lawyers, associated Schmidt with himself in an important case in New Orleans.² In 1835, Gustavus was sent to Mexico on business and, a short time later, to Havana, Cuba, to assist James Robb, a New Orleans financier and banker with his interests there.³

In 1841 Gustavus Schmidt undertook to establish the first legal periodical in Louisiana, which he called the *Louisiana Law Journal*.⁴ Although this periodical was published for only a brief period, during the two years of its life it shone as a beacon of legal scholarship. By contrast with many of the law journals published in other parts of the United States, which were often quite parochial in scope, Schmidt's journal was very clearly an *international* journal.

The first issue also very much reflected Schmidt's own interests. It opened with his own account of Louisiana legal history and then moved on to reviews of works by Savigny and Story. These reviews were followed by a memoir of Schmidt's own mentor, Chief Justice Marshall, which, in turn were followed by reports of cases from France, Scotland, Spain, and Louisiana, as well as a report on Russian law reform. The second issue is perhaps the best known, for it is in this issue that one finds Schmidt's own account of the infamous *Batture* controversy between Edward Livingston and Thomas Jefferson.⁵

² Id.

³ Id.

⁴ Gustavus Schmidt, ed., *The Louisiana Law Journal Devoted to the Theory and Practice of the Law* (New Orleans: E. Johns & Co., 1841-42). This has been reprinted by Dennis & Co., 1964.

⁵ Id., vol. 1, no. 2, pp. 84-151.

This issue also contains laudatory letters from both Justice Joseph Story and Chancellor James Kent. Of course, the issue continues to report notable Louisiana cases and reprints, as well, a speech by Christian Roselius from one case.

The third issue of the *Louisiana Law Journal* continues the pattern set in the first two. There is a major article by Schmidt on the *Code Napoleon*, feature articles on Louisiana laws, and reviews of two new legal works. The fourth and final issue of the journal was published in April, 1842. Here, again, we find feature articles on Louisiana law, reports of recent Louisiana cases, and a feature article by Schmidt, this time an "Outline of the History of the Roman Law." The journal ceased publication with this issue as a result of the liquidation of its publisher.

The *Louisiana Law Journal* was both a major service to the New Orleans and Louisiana Bar as well as a vehicle for Schmidt's own scholarship. The quality of the articles and reviews contained in the journal was uniformly high. Schmidt's own articles established him as a serious scholar of both Louisiana Civil law and of the history of European law stretching as far back as the Romans. The journal is particularly important not only because it provided a service to the Civil law Bar, but also, as the letters of Story and Kent attest, because it was a vehicle by which to educate the common lawyers of the other states of the union about Roman and Civil law.⁶ Indeed, it is not unimportant that

Justice Story arranged for Harvard to subscribe to the *Louisiana Law Journal*.⁷

The end of his journal did not mean the end of Schmidt's scholarly activities. Two years after the final issue of the journal was published, Schmidt began a series of lectures on the Civil law for the young men of New Orleans, lectures which may be fairly counted as a precursor of the Tulane Law School. In 1851 he published his *Civil Law of Spain and Mexico*, which continues to be of scholarly value one hundred and fifty years

⁶ Id., vol. 1, no. 2, pp. 158–160; see, on this subject, M. H. Hoeflich, *Roman and Civil Law & the Development of Anglo-American Jurisprudence* (Athens, Ga.: Univ. Ga. Pr., 1997).

⁷ Id., vol. 1, no. 2, p. 158

later. ⁸Indeed, Schmidt continued to do scholarly work throughout his long life. As late as the 1870s, Schmidt, in his eighth decade, contributed a major article on the federal court system to the *Southern Law Review*.

One of the ways one can gain an insight into a man's true interests — if not his soul — is through an examination of his library. Gustavus Schmidt possessed one of the most remarkable libraries of his age, a library clearly in the same league as Story's, Kent's, or even Thomas Jefferson's. Although no contemporary catalogue of the library is known, a printed post-mortem sales catalogue was saved in the probate documents (the succession) and is known through the efforts of Richard Kilbourne and Gustavus' descendant, Louis de la Vergne. Gustavus' library was sold by catalogue by a St. Louis bookseller, Soule, Thomas, and Wentworth in 1877 after his death.⁹ Why it ended up with this particular bookseller is unclear, but that it was not sold in Louisiana may be due to the fact that Gustavus spent his last years in West Virginia for health reasons.

The booksellers knew that they had something quite special in the Schmidt library. Its linguistic range alone was extraordinary. The library had books in English, Swedish, Latin Greek, French, German, and Italian. Over 1,000 titles are listed; since many of these were, in fact, multi-volume sets, the whole of the library consisted of several thousand volumes. The booksellers priced the volumes by reference to the condition and rarity of the volumes, as well as market price when known. In all, the library was valued by the booksellers at more than \$4,300, a substantial amount of money in 1877.

When one reads the Schmidt library catalogue and compares it to other lawyers' libraries of the day, one is immediately struck by the breadth of the Schmidt library. It

⁸ G. Schmidt, ed., *The Civil Law of Spain and Mexico. Argued on the principles of The Modern Codes...* (New Orleans: T. Rea for the author, 1851).

⁹ Catalogue of the large and Valuable Library, containing a very full line of Foreign Books on Science, History, Biography, Poetry, and the Civil Law. The collection as Formerly the Property of a Lawyer of New Orleans. (St. Louis: Soule, Thomas & Wentworth, 1877). (herein "Catalogue") The auctioneers were also well known as a St. Louis legal bookseller.

was rich in law books, particularly Roman and modern civilian books, but it was equally rich in both classical and modern literature. There is an extraordinarily large section of foreign books as well. The Swedish books, of course, both law and otherwise, reflect Gustavus' continuing interest in his home country. The selection of books in other European languages reflects, as well, Gustavus' own formidable linguistic skills. Particularly interesting are the number of books in German, a language seldom encountered when looking at American lawyers' libraries until late in the nineteenth century.

A good comparison may be made to the library possessed by one of Schmidt's contemporaries in New Orleans, Henry Adams Bullard, lawyer, scholar, and justice of the Louisiana Supreme Court, who died in April 1851. Again, no contemporary catalogue of Bullard's library exists, but a list of the books was made for probate purposes and the manuscript of this list has recently been brought to light by Robert Karachuk.¹⁰ Bullard's library, or at least the law portion thereof, consisted of 411 volumes which sold for a total of just under \$363 in 1851. Bullard's library consisted of several volumes on Roman law, a substantial collection of French legal works, a few Spanish law books, Louisiana and United States reports, and a selection of American and British legal treatises. Bullard had no German, Italian, or Swedish legal works and no serious works on legal history. It was, as Karachuk claims, an excellent library for its time and place. However, it pales before Schmidt's library.

The chronological distribution of books in the library is also worth noting. This was a library that was assembled over more than fifty years and it reflects the ability of its owner to obtain both antiquarian as well as modern volumes.

By no means, however, do I wish to give the impression that Schmidt was an ascetic jurist dedicated only to the law and impervious to more worldly pleasures. It is very clear that Schmidt was a most sophisticated and cosmopolitan individual, with far-ranging interests. This comes out forcefully, as we

¹⁰ On Bullard and his library, see, Robert F. Karachuk, "A Workman's Tools: The Law Library of Henry Adams Bullard," in *America Journal of Legal History*, vol. 42 (1998), pp. 160-189; cf. Henry Planché Dart, "The Law Library of a Louisiana Lawyer in The Eighteenth Century," in *Loyola Law Journal*, vol. 6 (1924), pp. 1-18 and Mitchell Franklin, "Library of Edward Livingston and of Moreau Lislet," in *Tulane Law Review*, vol. 15 (1941), pp. 401-414.

shall see, when we examine his library, but there is other evidence as well. In 1826, John James Audubon began publication of his great folio printing of his *Birds of America*. This monumental book took twelve years to complete and consisted of 435 individual plates. The set cost \$1,000 in the United States, the equivalent cost of a complete law library. No more than 200 sets were published. Of these, three were sold in Louisiana, one to the Legislature, one to a wealthy cotton broker, and the third to Gustavus Schmidt.¹¹

We may begin this examination of Gustavus Schmidt's library by looking at his law books. It is not surprising the least that the library is quite rich in Louisiana law books and books dealing with French and Spanish law which would have been of use to Gustavus both as a jurist and as a practicing lawyer. We find, for instance, a number of individual printed works by Pothier as well as the 1821 Paris edition of the complete *Oeuvres*.¹² We find, as well, Ferriere's *Dictionary* and a complete set of the *Themis*.¹³ But Schmidt's interests went far beyond the purely practical. We find also a large number of Jeremy Bentham's works in their French versions in his library.¹⁴ And we find Goguet's historical works as well.¹⁵ We also find a French translation of Christian Wolff's *Institutes on the Law of Nature*, testifying to Schmidt's interest in this area of jurisprudence.¹⁶

Amongst Schmidt's Spanish legal holdings we find a particularly rich collection of works on early and colonial Spanish Law, not at all surprising given the then current [and still lively] debate on the historical sources of Louisiana law, brought to the fore by the great *Batture* debate between Thomas Jefferson and Edward Livingston, upon which Schmidt commented in his *Louisiana Law Journal*. Thus, Schmidt owned a set of the 1815 Madrid printing of the *Fuero Juzgo*, the

¹¹ Audubon in Louisiana (New Orleans: Louisiana State Museum, 1966), p. 2. Interestingly, the set is not listed in the 1877 Catalogue of his library.

¹² Catalogue, p. 23, no. 383

¹³ *Id.*, p. 12, no. 200; p. 28, no. 454

¹⁴ *Id.*, p. 4, nos. 32–35

¹⁵ *Id.*, p. 13, no. 221

¹⁶ *Id.*, p. 30, nos. 502–503

great accomplishment of the Real Academia.¹⁷ He also owned a copy of the 1789 Madrid edition in four folio volumes of the *Siete Partidas*.¹⁸ He also owned the twenty-four volume set of the Madrid edition of the *Teatro de la Legislacion Universal de Espana e Indias* by Perez y Lope and the 1831 *Novissima Recopilacion de las Leyes de Espana*.¹⁹

In short, Schmidt's holdings in the modern and historical laws of France and Spain were those one would expect a scholar and practicing lawyer of the highest attainments to own. Many were then and are now quite rare and must have been both costly and difficult to attain. The size and scope of his holdings in these areas are such as to place his library amongst the very best of those extant during his life.

But, of course, Schmidt's legal holdings went far beyond those just noted. Schmidt also had a good collection of books on Roman law, volumes in French, German, Spanish, Italian and Latin. His collection of Latin texts on Roman law was particularly strong. He owned two copies of the *Corpus Iuris Civilis*, the nineteenth century Leipzig edition by J.L.G. Beck and the eighteenth century edition of Gebauer and Spangenberg.²⁰ It is interesting to note here that it is somewhat surprising that he did not own any of the sixteenth or seventeenth century humanist editions, which were then available for sale in the United States. Given his scholarly and historical interests, one would have expected Schmidt to own one of the Gothofredus editions of the *Corpus*, for example. He did, however, own several humanist legal works. For instance, he owned the 1743 edition of Brissonius' *De Verborum ad Jus Civile Pertinent Significatione*, one of the best known and most widely distributed humanist dictionaries of Roman law.²¹ He

¹⁷ Id., p. 34, no. 540. The literature on the debate over the sources of the Louisiana Code is enormous, see, especially, John Cairns, "The 1808 Digest of Orleans and 1866 Civil Code of Lower Canada: An Historical Study of Change," (PhD. University of Edinburgh, 1980) and A. Levasseur, *Louis Casimir Elizabeth Moreau Lislet* (Baton Rouge: LSU, 1996).

¹⁸ Id., p. 36, no. 573.

¹⁹ Id., p. 37, no. 590 and p. 35, no. 568.

²⁰ Id., p. 65, nos. 956–957.

²¹ Id., p. 64, no. 947.

owned the Leiden 1710–44 edition of Bynkershoek's *Opera Omnia* as well as a set of Casaregis' *Discursus Legales*.²² His ownership of these works may well attest to their importance in early American maritime law. New Orleans was then a major commercial port and admiralty would have been an important area of legal practice. In this vein, it is also worth noting that he owned one of Heineccius' rarest volumes, the 1740 edition of his *Scriptorum de Jure Nautico et Maritimo Fasciculus*.²³ He also owned the 1659 Amersterdam edition of Vinnius' commentary on Justinian's *Institutes*, a work found in many American law libraries.²⁴

It would not be fair to suggest that Schmidt's Roman law library was devoted only to works necessary to a high level admiralty practice. In fact, he owned a number of volumes which have been of use mainly for historical and scholarly pursuits. For instance, he owned a copy of Gustav Haenel's *Dissensiones Dominorum*, a study of the medieval glossators of Roman law.²⁵ He also owned a Spanish translation of the Verona manuscript of Gaius' *Institutes* published at Madrid in 1845.²⁶ Here again, the depth of his holdings would suggest that his was the library of not simply a practicing lawyer, but, rather, of a serious legal scholar. Books like Haenel's were not inexpensive nor terribly easy to obtain in the United States. Many of these would have had to have been directly imported from Europe. That Schmidt went to such pains and expense to add these volumes to his library strongly attests to his seriousness of purposes as a legal scholar.

That section of Schmidt's law library which is most surprising and notable, however, are those books published in German on Roman and modern civil law. For the most part, American jurists in the antebellum period were least conversant

²² Id., p. 64, no. 948 and p. 64, no. 951.

²³ Id., p. 66, no. 974.

²⁴ Id., p. 69, no. 1012; see, M.H. Hoefflich, "Vinnius at the Anglo-American Legal World," in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*. Röm. Abt., Bd. 114 (1997), pp. 345–368.

²⁵ Id., p. 66, no. 972.

²⁶ Id., p. 34, no. 542. This was the first Spanish edition of this text first published at Berlin in 1870, see, M.H. Hoefflich "Savigny and his Anglo-American Disciples," in *American Journal of Comparative Law*, vol. 37 (1989), pp. 17–37 at pp. 21–22.

with German language scholarship. A few scholarly jurists like Joseph Story and Hugh Swinton Legare attempted to keep up with German scholarship [Story, however, could not read German], but it was really not until some years after the Civil War that we begin to find men like William Gardner Hammond who are comfortable with these works.²⁷ Though he continued to do scholarly work until his death in 1877, Schmidt was also active during the antebellum period and it is most likely that many of his German volumes date from this time. His acquisition of German juristic works was not necessary to his practice the way French or Spanish books may have been. Yet, he spent the time and money to acquire works of contemporary German legal scholarship. He was, for instance, one of the few American jurists we know of who owned a copy of Savigny's *Geschichte des römischen Rechts im Mittelalter* [he owned the 1834 second edition printed at Heidelberg].²⁸ He also owned a copy of the work of Savigny's great rival, A.F.J. Thibaut, the *System des Pandekten-Rechts* as well as a copy of Engelmann's *Bibliotheca Juridica* and Feuerbach's *Lehrbuch*.²⁹ All of these volumes were standard works which would have been found on the library shelves of any continental jurist. But they were exceptionally rare in American law libraries, even the best. That Schmidt possessed them indicated both a deep interest in legal scholarship as well as linguistic abilities far beyond the ken of most of his American contemporaries.

It would be unfair not to mention Schmidt's Swedish legal holdings. Although Schmidt's legal training was American not Swedish, he always remained interested in the country of his birth. Further, his elder brother Carl Christian was one of the most successful lawyers of his age; he edited a major legal periodical and, eventually, came to sit on the Swedish Supreme Court. As a result both of nationalism and familial correspondence, Schmidt was able to acquire a serious collection of Swedish law books in far off New Orleans.³⁰

²⁷ M.H. Hoeflich, *Op. Cit.*, vol. 7, above, at pp. 91–97.

²⁸ Catalogue, p. 44, no. 664.

²⁹ *Id.*, p. 44, no. 669; p. 43, no. 646; p. 43, no. 647.

³⁰ *Id.*, pp. 46–49, nos. 678–756. The correspondence, as well as an obituary of Carl Christian Schmidt, is to be found in the Schmidt Family Papers at Tulane University Library; see, no. 1 above.

Although, Schmidt's library is rich in law books it is not simply a law library. Like his contemporaries Joseph Story and James Kent, Schmidt built a library to match his wide-ranging intellectual interests. It is a library particularly rich in classical and modern literature. It is a library rich in history, as well. But it is also a library which reveals Schmidt the non-lawyer, non-scholar. Schmidt's library catalogue indicates, for instance, an interest in phrenology. Phrenology, or the science of judging character though cranial and facial structure, was one of the most popular "sciences" of the nineteenth century. A vast literature on the subject was published in England, France, and the United States and copies of books on phrenology are found, for instance, in Justice Joseph Story's library.³¹ Works on the subject are also found in Schmidt's library catalogue. He owned, for instance, Azais' *De la Phrenologie, du Magnetisme et de la Folie*, published at Paris in 1839.³² He also owned a copy of George Combe's *Notes on the United States of North America during a Phrenological Visit in 1838–9–40* [it was during this visit that Justice Story may have attended Combe's Boston lecture].³³ He also owned a copy of O.S. Fowler's *Practical Phrenology* and of the Fowler Brother's *Illustrated Self-Instructor in Phrenology*, one of the most popular American books on the subject.³⁴ His scientific interests, apparently, extended beyond phrenology, however. For instance, he owned a copy of Condorcet's essay on probability and of D'Aviler's treatise on architecture and hydraulics as well as Hodge's *On the Steam Engine*.³⁵

But Schmidt also had a lighter side. From his purchase of Audubon's *Birds* we know he appreciated art. He also appreciated good food, for in his library was a copy of Brillat-Savarin's *Physiologie du Gout*, one of the first great expositions of the art and science of French cooking.³⁶ And he also had a sense of humor. He owned a copy of Gilbert A'Beckett's *Comic*

³¹ See, M.H. Hoefflich, *Lawyers & Phrenology* forthcoming in *The Green Bag* (2003).

³² Id., p. 3, no. 10

³³ Id., p. 54, no. 810.

³⁴ Id., p. 55, nos. 826–827.

³⁵ Id., p. 8, n. 110; p. 9, no. 139; p. 56, no. 841.

³⁶ Id., p. 22, no. 308

Blackstone as well as of Bigelow's humorous *Bench and Bar*.³⁷ And he was, although of foreign birth, a patriotic American citizen, as witnessed by his set of Jared Sparks' *Library of American Biography*.³⁸

Gustavus Schmidt was a remarkable individual even in an era of great men and women. He was a multi-lingual polymath, a master of law and legal science, who appreciated science, art, and food and drink. He had great success at the Bar, made and lost a fortune, was a central figure in New Orleans life for three quarters of a century, and built a library of international importance. His name and his career should not be left to be lost in the mists of uncaring time. Rather, we should recognize him as one of our great professional forebears, worthy of mention in the same breath as Moreau-Lislet, Francois Xavier Martin, Joseph Story, James Kent and other great nineteenth century jurists and scholars. It is my hope that this brief introduction to Schmidt's life and library may spur further research.

³⁷ *Id.*, p. 53, n. 785

³⁸ *Id.*, p. 61, no. 906