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MARCELI CHLAMTACZ – LVIV-BASED ROMAN LAW PROFESSOR OF THE TURN OF THE 19TH AND 20TH CENTURY

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The article offers an insight into the life of Marcelli Chlamtacz (1865-1947), one of the Lviv-based Roman law scholars living at the turn of the 19th and 20th century. In addition to being a professor of Roman law at the University of Lviv, Chlamtacz was also a deputy-mayor for the city, as well as a councillor on the Lviv City Council. Despite his above-average activity combining two strands, he has attracted not nearly as much attention in literature as his fellow faculty members, including Leon Piniński and Ignacy Koschembahr-Łyskowski. The article features a brief outline of the scholar's biography, covering his major scholarly and political accomplishments. Also discussed are the most important events in the life of Marcelli Chlamtacz, including his scholarship in Vienna, the award of *venia docendi*, and the conferral of professorship. Next, the article covers his relations with the academia, and presents his most important publications, as well as the corresponding reviews. I demonstrate that Roman law was the key area of scholarly interests of Marcelli Chlamtacz and stress that the scholar well aware that the study of classical Roman law, without an extensive reference to contemporary law, would not make it possible to make a full use of the achievements of the science of Roman law. It is beyond any doubt that Chlamtacz made a significant contribution to the development of this discipline, even though his scholarly potential was not fully utilized and he is unfairly marginalized today. The article furthermore presents hypotheses as to why Chlamtacz was overshadowed by his fellow scholars. The reason why he somehow stayed in the background is certainly not the quality of his scholarly output, which corresponded to the style of his times. Esteemed in the community, Chlamtacz was keen to play an active part in the discussions therein. Instead, his being overshadowed was largely due to his involvement with local government during the World War II, which not only affected how his previous social activity was perceived but may also have left a mark on his prestige as a scholar.

The above brief biography of the Lviv-based scholar, offering an insight into all fields of his activity, shows that Marcelli Chlamtacz was, without a doubt, a multidimensional and extraordinary person, and Roman law was the key area of his scholarly interests.

Keywords: Marcelli Chlamtacz, Lviv, University of Lviv, Roman law.

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One of the universities operating at the turn of the 19th and 20th century was the Emperor Franz I of Austria University in Lviv, which since 1918 operated as Jan Kazimierz University. The University had two, and at times three, departments that concentrated on the study of Roman law [31, p. 415–416]. The scholars who worked there were interesting personas, both from the perspective of their research accomplishments and diverse biographies. Researchers such as Leon Piniński [21, p. 169–192], Ignacy Koschembahr-Łyskowski [24, p. 191–207] or Waclaw Osuchowski [33, p. 167–176] received considerable attention in literature. An exception among the Lviv-based Roman law professors is Marcelli Chlamtacz, who attracted less interest in literature than other Roman law scholars of his times. It is indeed puzzling why this was and is the case. A

question arises in this regard as to whether Marcelli Chlamtacz's input into the development of the study of Roman law was actually considerable and important enough to mention the scholar. Another crucial issue is how his career in local government affected his academic career. As he was the deputy-mayor of Lviv, perhaps he dedicated himself more to politics than he did to Roman law which, as a result, led to his marginalization as a scholar?

Marcelli Chlamtacz was born on 26 April 1865 in the village of Szarpańce in the region of Galicia [1, p. 575]. Having graduated from the community school in Belz, he went on to continue his education in the Lviv-based Franz Josef I Gymnasium [1, p. 575; 34, p. 169]. After successfully passing his matriculation examination, in 1885 he enrolled as student at the Faculty of Law and Political Skills at the Franz Josef I University of Lviv. As he was most likely planning to become a barrister, during the years 1890–1891 he completed a criminal court placement at the Imperial-Royal National Court at the I Instance Tribunal in Lviv [28, p. 4v]. During the same period of time he successfully passed the *rigorosa*, or qualifying examinations, and was awarded the degree of doctor of laws at the Imperial-Royal University of Lviv [1, p. 575]. The freshly-minted doctor in 1891 embarked on his barrister training at barrister Dr. Paweł Dąbrowski's law firm in Lviv. Less than half a year into the training, he decided to terminate it and head to Vienna to pursue studies [28, p. 52].

During his first trip abroad, M. Chlamtacz studied Roman law and Austrian law [35, p. 183]. While at the University of Vienna, he encountered two jurists, Adolf Exner and Franz Hofmann, whom he later went on to extensively posthumously portray in «Law and Administration Review» [7; 8; 11]. In the obituary dedicated to the Exner, he sang praises of the scholar, comparing him to Rudolf von Jhering, Bernhard Windscheid and Johannes Kuntze, and stressed that if it hadn't been for the Austrian scholar's premature death, Exner could have filled the gap created after the death of Jhering, Windscheid and Kuntze [8, p. 949–950]. The other scholar, F. Hofmann, most probably had a considerably smaller impact on the academic activity of M. Chlamtacz and on Chlamtacz himself, as evidenced by a larger number of critical remarks formulated in the obituary dedicated to Hofmann [8, p. 949–950].

Thanks to the award of a two-year imperial scholarship, in 1892 M. Chlamtacz departed for Berlin, where he dedicated himself «almost entirely to the study of Roman law, with a special focus on its historic development» [34, p. 173; 22, p. 135]. He provided detailed coverage of his trip to Oswald Balzer [39]. His correspondence to Balzer reveals, for instance, that Chlamtacz was very fond of the extensive lecture offering in Berlin [28, p. 66; 37, p. 200]. Of all seminars available, on two occasions he enrolled in those taught by Alfred Pernice, where wrote his work entitled *Über die Vervirkung*. As Chlamtacz stressed, the work was «received positively» by his mentor [28, p. 66]. During his scholarship, he also attended Roman law lectures by professors Ernst Eck, Rudolf Gneist, Otto Gradenwitz, and Josef Kohler, as well as a Roman law seminar taught by Ernst Eck, commercial law seminar taught by Levin Goldschmidt, and civil law seminar taught by Adolf Stölzel [28, p. 52v, p. 66]. While in Berlin, he met Polish researchers: Ignacy Koschembahr-Łyskowski and Leon Petrażycki [37, p. 201–202]. When the German scholarship came to an end, Marcelli Chlamtacz's academic output totalled several publications, as in addition to the aforementioned obituary dedicated to A. Exner, he had authored several reviews and reviewed articles discussing e.g. the works of Ivo Pfaff [10] and Ignacy Koschembahr-Łyskowski [9].

Having returned from his scholarships, in the late 1894 Chlamtacz commenced, albeit for a brief period of time, professional practice as a barrister at Dr. Tadeusz Skalkowski's law firm [1, p. 576; 35, p. 183]. Shortly afterwards, he submitted his candidacy for the post

of secretary of the Imperial-Royal University of Lviv that was announced on 7 December 1894. Chlamtacz was hired and continued to work as a secretary for the University since 11 June 1895 until the end of February 1901 [35, p. 175].

While fulfilling his secretarial duties as well as notarial ones, Chlamtacz, in cooperation with Ludwik Finkel, took upon himself the task of editing the first volume of the chronicle of the University of Lviv [34, p. 174]. This did not hinder the development of his academic career. It was as early as 1897 that he undertook measures to earn his *venia docendi* at the University of Lviv [28, p. 31]. Chlamtacz planned a trip to the Berlin Royal Library to collect materials for his habilitation dissertation [34, p. 175]. He also stressed that, while abroad, he was keen to consult his dissertation with the Roman law scholars he had met in the course of his previous scholarship: A. Pernice and E. Eck [28, p. 31–31v]. On 5 March 1897, the University Senate expressed its consent to granting Chlamtacz a leave [28, p. 31]. However, the materials that are available do not make it possible to determine, whether he did actually go to Germany.

Irrespective of the above, on 22 September 1897 Marcelli Chlamtacz submitted a motion to the esteemed professors of the Faculty of Law and Political Skills, requesting initiation of habilitation proceedings, and submitted his habilitation dissertation [28, p. 52–52v]. The grounds for the award of the habilitation degree was supposed to be his dissertation entitled *Die rechtliche Natur der Uebereignungsart durch Tradition im römischen Recht* [6]. Therein, the scholar sought to demonstrate lack of grounds for the adoption of «the real agreement for the transfer of ownership through tradition» (*das dingliche Uebereignungsvertrag durch Tradition*) in Roman law [6, p. 18]. Therefore, in his work he formulated the definition of tradition as a type of the act of acquisition of ownership: «Tradition as an act of transfer of ownership is an actual enforcement of the will to alienate» [6, p. 55].

The professorial committee of the Imperial-Royal University decided to appoint L. Piętak and L. Piniński as reviewers for the dissertation. The former emphasized that Marcelli Chlamtacz's dissertation is a «strictly scientific work» [29, p. 150–155]. According to the review, Chlamtacz had carefully interpreted difficult fragments of sources and formulated correct conclusions based thereon. The degree of precision of these conclusions is indicative of a «thoughtful and deeply analytical mind» [29]. Although the thesis formulated in the dissertation had previously been thoroughly analysed in the scholarly writings, L. Piętak concluded that Chlamtacz's work was an «independently conceived and comprehensively executed» dissertation [29]. The other reviewer, Leon Piniński, formulated a complaint that Chlamtacz's research work was not novel [28, p. 56–65]. He remarked that similar research had previously been conducted by e.g. J. Bremer, whose work largely contributed to explaining the issue of *traditio* [5]. L. Piniński then went on to argue that «as far as the key assumptions of the dissertation are concerned, (...) [Chlamtacz] misses the mark» [28, p. 59]. The reviewer also maintained that Chlamtacz «fails to prove what he wants to prove». Nevertheless, «some of his views» presented in the dissertation can be considered valid and well-founded. Piniński concluded that «despite major flaws, both with respect to the general assumptions, and detailed considerations, the dissertation can be considered as sufficient to award [Chlamtacz] the *venia legendi* in Roman law» [28, p. 59–65].

On 2 March 1898, Marcelli Chlamtacz delivered his habilitation lecture entitled *Conventional penalty in relation to interesse for failure to perform or improper performance of the contract* [12] and, following a resolution of the professorial community of the Faculty of Law and Political Skills, on 22 March 1898 was appointed as a *docent* (reader) in private law at the University of Lviv, thus earning his *venia docendi* [28, p. 37, 37v, 38]. The Minister of Religious Affairs and Public Education

validated the resolution by a rescript of 19 April 1898 [28, c. 51]. Shortly afterwards, the scholar was appointed *professor extraordinarius* of Roman law, effective since 1 October 1900 [35, p. 186]. Less than three years later, on 23 July 1902, a motion was submitted to appoint Marcelli Chlamtacz *professor ordinarius* of Roman law at the University of Lviv [28, p. 6–22]. The argumentation put forward in the motion was that ever since his appointment as *professor extraordinarius*, Chlamtacz has become very «meticulous» in his work, as evidenced by his study entitled *On the acquisition of fruit by the holder in classical Roman law in the light of Austrian and German civil law* [17]. Therein, the scholar expressed regret as to the number and scale of interference on the part of Justinian's compilers made in the classical texts, which led e.g. to distortion of the principle of *bonae fidei possessor fructus suos facit*. In doing so, he attempted present its interpolation, consisting in the insertion of the word *consumptos* [17, p. III–IV]. The dissertation was received positively by some members of the professorial committee and its reviewers: S. Wróblewski [38] and F. Zoll [41]. At the time, the scholar's interests concentrated on property law; his habilitation dissertation is reflective of those interests, too. He was also very active in the field of reviewing, publishing numerous reviews and reviewed articles. After his appointment as *professor ordinarius*, Marcelli Chlamtacz was appointed the dean of the Faculty for the academic year 1905/1906, and in the following year – the deputy dean [28, p. 44]. In 1908, he became involved in local government, having been elected member of the Lviv City Council [34, p. 176]. Chlamtacz was initially able to successfully reconcile his new duties with his academic work, and not only lectured at the University of Lviv, but also published two extensive works entitled *On the extension of charge on fruit in Roman law and German civil law* [15] and *On the acquisition of fruit by the holder in Austrian civil law* [16].

Since the year 1911 and for a longer period of time, the scholar did not produce a major publication dedicated to Roman law. This was most probably due to the fact that he was increasingly occupied with his local government work. He channelled his time and energy into the 1911 Imperial Council election in Vienna, running, albeit without a success, for a spot on the ballot [14]. This is not to say, however, that he did not enjoy a considerable support from the general public, as in the next election, held in 1913, he was re-elected as Lviv councillor [34, p. 176; 25, p. 16]. During the World War I Chlamtacz was very active in local government. Not only did he not leave the city, he was also involved in various academic affairs. He worked tirelessly towards receiving consent to hold exams during the occupation period [2, p. 3, 58]. In the aftermath of Chlamtacz's activity, president Tadeusz Rutowski submitted to the governor-general a memorial earlier prepared by the scholar. As a result, Chlamtacz became the chair of examination boards functioning at the Faculty [2, p. 58]. That said, he was accused of pursuing positions in leadership and eating out of the hand of the master, as on the one and, he managed to negotiate exempting Lviv professors from having to leave the city during the retreat of Russian troops, and on the other one, a mere several days later, he delivered expressive and fervent speeches to welcome Austrian troops entering Lviv [25, p. 207].

When count Karl Huyn in 1918 reinstated the municipal government suspended in 1915, Tadeusz Rutowski became the city's commissar, and M. Chlamtacz became one of his deputies [18, p. 114]. In February 1919, when Jozef Neumann became Lviv mayor, Chlamtacz was reappointed as the city's deputy mayor. He continued to occupy this position uninterruptedly until the year 1927 [34, p. 177]. When in 1927 a draft version of the law on the system of education, developed by a committee appointed by the Minister of Religious Affairs and Public Education, was presented, the scholar published his opinion on the draft [19]. His opinion was consistent with the views held by the Jan

Kazimierz University Faculty of Law Council. Chlamtacz made it clear that he was sceptical about the proposed changes, and expressed a view that the draft submitted by the Minister is not only poorly planned, but also irrational, in that in its wording it makes references to not-yet-existing detailed statutes. He also deemed provisions laid down in the statute to be contrary to provisions of the Constitution [19].

Chlamtacz also participated in the session of the Supreme Administrative Tribunal concerning a complaint filed by the Interim Lviv City Council against the minister of internal affairs, or the voivode of Lviv due to the dissolution of the Council [3, p. 479]. The Lviv City Council had been dissolved by a rescript of 31 August 1927 [30]. The rescript was challenged in its entirety and R. Sokal and M. Chlamtacz delivered speeches before the Tribunal. In his speech, Chlamtacz made references to Roman law, invoking Ulpian and Julius Paulus. On 28 November 1929, the Supreme Administrative Tribunal repealed the decision dissolving the Lviv Interim City Council, although the grounds for the Tribunal's decision was an erroneous statement of unappealability laid down in the rescript [3, p. 499]. M. Chlamtacz served as a councillor until 1934. While acting in this capacity, he became one of the candidates for the 1931 city mayor election. However, the Interim City Council appointed his competitor, Waclaw Drojanowski, as the mayor [3, p. 596].

After a long break in his research activity (he had continued his didactic work throughout the entire period of time in question), when his career in local government was increasingly diminishing, Chlamtacz resumed his study of Roman law with magnified intensity. Before World War II broke out, he published several dissertations. His interests increasingly concentrated on the law of liabilities and obligations. One of the issues he studies was real contracts [13]. In the dissertation dedicated to real contracts, not only did he skilfully combine his research into Roman law and contemporary civil law, but he also strived to demonstrate superiority of the real construction of the loan contract over the consensual construction. In doing so, he criticized those legislatures that adopted a consensual construction of this contract. As far as this dissertation is concerned, it is legitimate to invoke the words of its reviewer – Franciszek Bossowski [4, p. 267–268]. Bossowski wrote that the very name of Professor Chlamtacz is a guarantee of precision and accuracy of reasoning. It is beyond any doubt that these words prove how esteemed Marcelli Chlamtacz was. Equally interesting are his works on suretyship. The reason he wrote them was probably the ongoing discussion on the shape of this institution in the Code of Obligations. Back then, Chlamtacz was not a member of the Codification Committee and by taking a stance in the discussion that was taking place he wanted to voice his opinion on this institution as well as suggest that he was keen to join the Committee. The scholar also published reviews and reviewed articles, as well as works dedicated to his other area of interest – local government.

In the academic year 1929/1930, Chlamtacz turned 65 and was supposed to step down as Department Head. However, measures were undertaken to ensure that he could keep the post. The minister expressed his consent and agreed to extend Chlamtacz's tenure until the year 1933 [35, s. 48–49]. It was in the same year that he was elected the rector of the University of Lviv, however then incumbent Minister of Religious Affairs and Public Education did not accept this choice [34, p. 180]. Less is known about Chlamtacz's life between 1934 and 1939. During the World War II, he maintained his ties with the University. When Kazimierz Przybyłowski organized the secret Faculty of Law in Lviv in 1941, Chlamtacz became one of the lecturers [32, p. 254]. He became so invested in the secret classes that he organized lectures in his own home. During the German occupation, in 1943, together with Teofil Zalewski and Zdzisław Stroński, Marcelli Chlamtacz took part in talks between representatives of the Polish intelligentsia

and the Germans. When in 1943 the occupying authorities established the so-called *Beirat* – a sort of a special advisory body for the municipal starost in Lviv, Chlamtacz was among the five representatives of the Polish side [26, p. 361; 40, p. 86–87]. While on this advisory board, he signed invitations to participate in a rally of thanks organized to mark the German entry into Lviv; he also delivered a speech during said rally [41, p. 232]. As a result, the Judicial Commission of the Directorate of Underground resistance sentenced him to a reprimand for transgressing the boundaries of contact with the occupant [23, p. 247]. Chlamtacz remained faithful to his beloved city to his final days, and did not leave Lviv after the war ended. He died in Lviv on 7 January 1947 and was buried at the Lychakiv Cemetery. Unfortunately, the details of his life in his final years are unknown. As R. Wiaderna-Kuśnierz points out, there are also no data available as to him being a subject of interest for the Soviet secret service [34, p. 182].

Marceli Chlamtacz was, without a doubt, a multidimensional and extraordinary person. Roman law was the key area of his scholarly interests. It was so important for him, that he abandoned his practice as a barrister to dedicate himself to the study thereof. He tried to use it as a key to a better understanding and better construction of contemporary law. He was well aware that the study of classical Roman law, without an extensive reference to contemporary law, will not make it possible to make a full use of the achievements of the science of Roman law. It is beyond any doubt that Chlamtacz made a significant contribution to the development of this discipline, even though his scholarly potential was not fully utilized and he is unfairly marginalized today. The reason why Marceli Chlamtacz somehow stayed in the background is certainly not the quality of his scholarly output, which corresponded to the style of his times. Esteemed in the community, he was keen to play an active part in the discussions therein. However, his prolonged involvement with the local government and the resultant investment of some of his research potential in this area certainly did not strengthen his position as a Roman law scholar. As a dedicated citizen of Lviv, he was ready to give a lot to the city. Everything seems to suggest, however, that Chlamtacz's involvement with the local government during the World War II left a mark not only on how his earlier social activity is remembered, but that it could also have affected his prestige as a scholar.

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МАРЦЕЛІЙ ХЛЯМТАЧ – ЛЬВІВСЬКИЙ ПРОФЕСОР РИМСЬКОГО ПРАВА НА ЗЛАМІ ХІХ–ХХ СТОЛІТЬ

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Висвітлено основні віхи життєвого шляху Марцелія Хлямтача (1865–1947) – одного з львівських дослідників римського права, який жив і працював на зламі ХІХ–ХХ століть. Працюючи професором римського права у Львівському університеті, М. Хлямтач був також заступником міського голови Львова і депутатом Львівської міської ради. Попри значну активність у кількох напрямках діяльності, він привернув не так багато уваги в літературі, як його колеги-викладачі, зокрема Леон Пініньський та Ігнацій Кошембар-Лисковський. У статті представлено короткий нарис біографії вченого, який висвітлює його основні наукові та політичні досягнення.

Окреслено найважливіші події в житті Марцелія Хлямтача, зокрема його стипендію у Відні, присудження *venia docendi* та присвоєння звання професора. Значну увагу присвячено захисту дисертаційних праць М. Хлямтача та їх оцінці тодішніми провідними вченими (Л. П'єнтаком, Л. Пініньським, Ф. Цоллем та ін.). Проаналізовано його відносини з науковими колами та представлено найважливіші публікації, а також відповідні огляди.

Показано, що римське право було основною сферою наукових інтересів Марцелія Хлямтача. Вчений добре усвідомлював, що вивчення класичного римського права без відповідних зв'язків і паралелей зі сучасним правом не дасть змоги повною мірою використовувати здобутки римської юриспруденції. Саме тому в його працях наявні чисельні порівняння інститутів римського права з тогочасним німецьким, австрійським і польським правом. Завдяки цим ґрунтовним дослідженням М. Хлямтач зробив вагомий внесок у розвиток юридичної науки.

Можна припустити, що його науковий потенціал не був цілком реалізованим у зв'язку з тим, що він виконував великий масив адміністративної роботи в органах місцевого самоврядування Львова, однак станом на сьогодні він невиправдано маргіналізований. У

статті також викладено гіпотези щодо того, що постать М. Хлямтача як знавця римського права було витіснено на другий план порівняно з його колегами з Львівського університету. Захищаючи інтереси громади, М. Хлямтач брав активну участь у громадському житті та в наукових дискусіях. Натомість применшення уваги до його постаті значною мірою було пов'язане з причетністю вченого до діяльності органів місцевого самоврядування під час Другої світової війни, що не тільки вплинуло на те, як сприймалася його попередня суспільна діяльність, але й залишило певний слід на науковій репутації.

Наведено коротку біографію львівського вченого, яка пропонує розуміння всіх сфер його діяльності, показує, що Марцелій Хлямтач був, без сумніву, багатовимірною та надзвичайною постаттю, а римське право становить центральний об'єкт його наукової спадщини.

Ключові слова: Марцелій Хлямтач, Львів, Львівський університет, римське право.

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