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Searching for the Roots. *Vis vi depulsa* in the Concept of Cicero

Summary

Searching for the Roots. *Vis vi depulsa* in the concept of Cicero

The jurist Cassius is believed to be the author of the brocard Vim vi repellere licet . However, in Cicero's speeches the are many fragments concerning repelling force by force. It therefore seems that it might have been him who had first made the rule common, maybe as vim vi depellere licet. The context in which the orator placed it, implied restoring order in the state, in which violence ruled. Cicero claimed that – in order for the law to prevail – it was first necessary to fight force with force. Only later was the rule transferred by the jurist into private law.

Key words: Self defence, force, Roman criminal law, Cicero

Roman criminal law has recently become a very popular research theme in Poland. There is, therefore, nothing strange in a quite vivid discussion on the acceptability and possible scope of self-defence in Roman law. Special emphasis should be placed on papers concerning this theme by Elżbieta Loska[1] and Krzysztof Amielańczyk[2]. Also on various meetings concerning ancient Rome,

1 Cf. E. Loska, *Zbrodnicze zamiary a obrona konieczna*, „Zeszyty Prawnicze" 5.1/2005, p. 61–82; eadem, '*Insidiatorem iure interfici posse*'. *Kontratypy jako sposób obrony w procesie* – '*Pro Milone*' *Cycerona*, „Zeszyty Prawnicze" 8.1/2008, p. 63–79; eadem, *Zagadnienie obrony koniecznej w rzymskim prawie karnym*, Warszawa 2011.

2 Cf. K. Amielańczyk, '*Vim vi repellere licet*'. *Kilka uwag na temat genezy prawa do obrony koniecznej w prawie rzymskim*, „Palestra" 53.11-12/2008, p. 109–119; idem, *Czy kontratyp obrony ko-*

many questions have arisen concerning the existence of this institution in various periods of the Roman history. These questions usually provoked an intensive exchange of opinions[3].

One of the layers, on which a battle has been waged, is the issue of the terminology used, and namely the problem of extrapolation of the modern conceptual network – in this case of the term "necessary defence" – into the Roman conditions, where the term *defensio legitima*, most wanted by the researchers, had never appeared. This problem is always current in the studies of Roman law. Quite undoubtedly, the use of modern terminology puts a significant limitation on scholars, because it provokes, or even *a priori* assumes, searching of specific solutions and implies the risk of bending the source material.

However, I have been inspired to consider this theme by another aspect of those discussions, namely searching for the roots of the known brocard illustrating an ability to exercise self-defence: *Vim vi repellere licet*. It is worth noting that this rule has been put on the 54th pillar of the Supreme Court building in Warsaw, adjacent to the Warsaw Uprising Monument, which seems to be the most appropriate place for it[4].

The text perceived as a source of the above-mentioned rule[5], (and thus it appears there literally), has been included by the compilers in the forty-third book of the *Digest* in the sixteenth title *De vi et de vi armata*.

> D. 43,16,1,27 (Ulp. 69 ad ed.): *Vim vi repellere licere Cassius scribit idque ius natura comparatur: apparet autem, inquit, ex eo arma armis repellere licere*.

In the commentary to the edict Ulpianus referred to an opinion of Cassius, who affirmed that force could be repelled by force and that this rule derived from nature. Hence it seemed admissible to repel an armed attack with arms. The usage of the verb *licere* in an infinitive form should be explained here.

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niecznej ma rzymską tradycję? W poszukiwaniu przesłanek dopuszczalności prawa do samoobrony w rzymskim prawie karnym, [w:] *'Quid leges sine moribus?' Studia dedykowane Profesorowi Markowi Kuryłowiczowi w 65. rocznicę urodzin oraz 40-lecie pracy naukowej*, red. K. Amielańczyk, Lublin 2009, p. 51–72.

3 A discussion arose during the public PhD-thesis defense of Elżbieta Loska, and also during the VII Scientific Symposium on Roman Criminal Law in Lublin, dealing with *The Protection of Security and Public Order in Roman Law* (Lublin, 20th–22nd May 2010). Cf. my report, "KPP" 10.1-2/2010, p. 298.

4 Cf. W. Wołodkiewicz, *Łacińskie paremie prawnicze w polskiej praktyce prawnej*, [w:] *Europa i prawo rzymskie. Szkice z historii europejskiej kultury prawnej*, Warszawa 2009, s. 387; *'Regulae iuris'. Łacińskie inskrypcje na kolumnach Sądu najwyższego*[3], red. W. Wołodkiewicz, A. Kacprzak, J. Krzynówek, Warszawa 2010, p. 100.

5 Cf. K. Amielańczyk, *'Vim vi repellere licet'*..., p. 109–113, who considers Cassius the author of the brocard. Similarly E. Loska, *Zagadnienie obrony koniecznej*..., p. 159.

Ulpianus, quoting the thought of Cassius after the verb *scribit*, had to use the *accusativus cum infinitivo* (ACI) grammatical construction. In the direct speech, this sentence would have exactly the following form: *vim vi repellere licet*[6].

First of all, it should be underlined that the whole chain of thought shown by Ulpianus should be attributed to Cassius, which is indicated by the verb *inquit*. Therefore it can be said that this jurist, who lived in the first half of the 1st century A.D., referred to the rule, that he knew, and on its basis interpreted other implications.

The context, in which the pronouncement of Cassius was referred to by Ulpianus, concerned private law. The problem he considered was the execution of interdicts: *unde vi and de vi armata*. It seems that the problem to be solved by jurists was as follows: is the possession of someone who defends his possessions by force a *possessio vitiosa*?

> D. 43,16,1,28 (Ulp. 69 ad ed.): *sed qui per vim possessionem suam retinuerit, Labeo ait non vi possidere*.

In the subsequent fragment of the *Digest*, from the same book of Ulpianus' commentary to the edict, the jurist cited an opinion by Labeo, who stated that the person who had retained his possession by force did not possess *vi*. The situation was as follows: a possessor had been attacked, repelled the attack and, then, the attacker wanted to gain an interdict granting him possession.

The rule in this form appeared in the sources once again[7].

> D. 4,2,12,1 (Ulp. 11 ad ed.): *Quaeri poterit, an etiam ei qui vim fecerat passo vim restitui praetor velit per hoc edictum ea quae alienavit. et Pomponius scribit libro vicensimo octavo non oportere ei praetorem opem ferre: nam cum liceat, inquit, vim vi repellere, quod fecit passus est. quare si metu te coëgerit sibi promittere, mox ego eum coëgero metu te accepto liberare, nihil esse quod ei restituatur*.

Here Ulpianus commented the edict *quod vi metusve causa gestum erit*[8], deliberating if a praetor should grant protection to someone, who had first

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6 That is why opinions according to which the brocard *Vim vi repellere licet* has never appeared in the sources in its exact form and has been formulated only in the Middle Ages seem out of place. So G. Diösdi, '*Vim vi repellere licet*'. *A Contribution to a Study of the Question of Self-Defence in Roman Law*, "Acta Universitatis Wratislaviensis" 11/1963, Antiquitas 1, p. 187. Cf. E. Loska, *Zagadnienie obrony koniecznej...*, p. 94–95.

7 Cf. also D. 9,2,45,4 (Paul. 10 *ad Sab.*).

8 The edict in the period of classical law concerned only threats, but the commented fragment is a clear reference to its former wording, which also took force into account. Cf. D. 4,2,1; G. Cervenca, *Per la storia dell'editto 'quod metus causa'*, "SDHI" 31/1965, p. 312-318; U. Ebert, '*Vi metusve causa*', "ZSS" 86/1969, p. 403–415.

used force or threats and then experienced them himself. The jurist quoted the statement of Pomponius, who said that – if force could be repelled by force – the party would suffer what it had done before itself[9]. In this case, the rule also was quoted literally, but the verb *liceat* was used in the form of *coniunctivus praesentis activi*. What is interesting, Ulpianus extended operation of this rule to later, not only immediate, use of threat against the threatener, and to threats made by third parties.

It was already Cassius who stated that an armed attack could be repelled by arms, what – in Ulpianus' opinion – implied retention of possession by the attacked, who had managed to defend himself. However here a question arises, if the original rule *vim vi repellere licet* was developed on grounds of the private law. We cannot be sure in what circumstances Cassius had expressed his opinion. We only know in which context Ulpianus quoted it. In addition, Cassius clearly referred to an already existing rule.

Somewhat provokingly I want to search for sources of the brocard *vim vi repellere licet* more deeply, and, in addition, within a more natural layer for the rule, that is within public law, and, contrary to the *opinio communis*, try to find its less legal and more rhetorical beginnings. *Nihil hoc ad ius; ad Ciceronem...*[10]

The curse of living in interesting times undoubtedly affected Cicero and his contemporaries. The reality, in which they existed, though so colourful and interesting for us, seemed for certain for them rather mournful and dreary. The Republic was on the edge, which in turn resulted in many actions aimed at saving it. Because the measures put to achieve this goal were controversial, concepts, which could justify their application, were of great value. And here, in my opinion, the ideas of Cicero get near to the discussed legal institution of self-defence. This view has been already discussed in much detail in the literature, although it still remains controversial. Nevertheless I want to argue that the thoughts of Cicero resulted not only in development of ideas, but also in articulation of the rule.

Firstly it should be analysed what place force took in Cicero's point of view.

> Cic., *Pro Sest. 92: atque inter hanc vitam perpolitam humanitate et illam immanem nihil tam interest quam ius atque vis. Horum utro uti nolumus,*

9 Cf. E. Loska, *Zagadnienie obrony koniecznej...*, p. 95–96.

10 Cic., *Top.* 51. It is worth noticing the context of this fragment, perceived as ironical and unfavorable to Cicero. Its meaning seems however different. The jurists occupied themselves only with legal questions and were not competent about setting facts or the sequence of events. That, on the contrary, was the strong point of Cicero. It does not in any way implicate that he was not an expert in law, which was certainly known to Aquilius Gallus, the author of this statement, whom Cicero called *noster*, marking their friendly relationship. Cf. O. Tellegen-Couperus, J. W. Tellegen, *'Nihil Hoc ad Ius, ad Ciceronem'*, "RIDA" 53/2006, p. 381–408.

> *altero est utendum. vim volumus exstingui, ius valeat necesse est, id est iudicia, quibus omne ius continetur; iudicia displicent aut nulla sunt, vis dominetur necesse est*.

In the quoted fragment of the speech *Pro Sestio* delivered in 56 B.C., the Arpinate listed two factors, which had an influence on human life: *ius* and *vis*. One could be distinguished from another through *humanitas*, and that is why for a man the situation, when the law prevailed over the force, was desirable. If one wanted to eliminate force, the law-that is the courts – where all the law is contained – should govern. Whereas when there were no courts, force had to prevail. For Cicero the terms *ius* and *vis* were irreconcilable contradictions. The orator persuaded with confidence that in the state law should prevail over force[11]. However, the interesting times in which he lived urgently required an answer to the question of what to do if force began to dominate in the Republic.

An incarnation of *vis* for Cicero became Clodius, a man, who had made him go into exile, and who had ordered to destroy his house and to erect in its place a temple of Libertas. The cancellation of these decisions required proving that the tribunate of Clodius, and, by implication, the decisions made in its course, were illegal. The techniques used by Cicero are a very extensive and graceful research theme. However it befits us to discuss here only the mentioned question of force and to search for the roots of the discussed brocard.

> Cic*., Red. sen. 19: ...vim vi esse superandam...*

In the speech made in the senate after returning from the exile Cicero tried to convince the senators of advantages of Milo, who fought Clodius. It was Milo who saw that force should be won by force. This expression is very similar to the searched for rule.

Other signs can be found in the speech *Pro Sestio*[12] made a few months later, in March of 56 B.C.

> Cic., *Pro Sest. 39: ...non verebar ne quis aut vim vi depulsam reprehenderet ...*

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11 That is also the spirit in which Cicero (*De rep.* 1,25,39) defined the state, underlining the consciousness of law uniting the citizens: *Est igitur (...) res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus*.

12 On the concept of *vis pro republica* in this speech cf. E. Loska, *'Contra tribunum plebis furiosum et audacem'. Spory między urzędnikami zagrożeniem dla bezpieczeństwa Republiki? (Na przykładzie mowy w obronie Sestiusa)*, [in:] *Ochrona bezpieczeństwa i porządku publicznego w prawie rzymskim*, Lublin 2010, p. 173–182.

Cicero declared he would not fear that someone might condemn repelling force by force.

> Cic., *Pro Sest. 92: Milo et vidit et fecit, ut ius experiretur, vim depelleret*.

In the same oration the Arpinate persuaded that Milo had repelled force in order that law could be exercised.

Cicero returned to this theme once again in the speech *Pro Milone*, which, in spite of the fact that it had never been delivered, was published after the trial against Milo, who had been accused of killing Clodius[13].

> Cic., *Pro Mil. 9: Atqui si tempus est ullum iure hominis necandi, quae multa sunt, certe illud est non modo iustum, verum etiam necessarium, cum vi vis inlata defenditur*.

Cicero stated that – if only there were any circumstances under which it was legal to kill a man – certainly when it was done while defending oneself against force by force, it was not only just, but also necessary.

> Cic., *Pro Mil. 30: Insidiator superatus est, vi victa vis, vel potius oppressa virtute audacia est*.

Then he argued that the one, who had been lurking in a hideout, had been won, the force won by force, or even better the arrogance tamed by virtue. Once again Cicero used expressions denoting fighting force by force. Then the Arpinate compared Clodius with Milo.

> Cic., *Pro Mil. 52: consuetudinem illius perpetuam in vi inferenda, huius tantum in repellenda*.

In the orator's opinion, Clodius used it to commit violence, whereas Milo only repelled it. It should be noted here that the expressions: *vim inferre* and *vim repellere* are clearly opposed. The audience is persuaded that *vis illata*, which was used by Clodius, was by consequence *repulsa* by Milo.

An especially controversial point of the oration are the words, which – as Cicero said – might have been cried out by Milo.

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13 On Milo's trial see A.W. Lintott, *Cicero and Milo,* "JRS" 64/1974, p. 62–78; K. Amielańczyk, *Milo's Criminal Trial*, "OIR" 3/1997, p. 5–17; E. Loska, '*Insidiatorem iure interfici posse*'..., p. 63–79.

> Cic., *Pro Mil. 77: Quam ob rem si cruentum gladium tenens clamaret T. Annius: 'Adeste, quaeso, atque audite, cives: P. Clodium interfeci; eius furores, quos nullis iam legibus, nullis iudiciis frenare poteramus, hoc ferro et hac dextera a cervicibus vestris reppuli (...)!'*

The speaker declared that even if Milo, holding in his hand a bloody sword, had cried out "Come hither, I beg of you, and listen to me, o citizens: I have slain Publius Clodius; with this sword and with this right hand I have turned aside from your necks the frenzied attacks of that man whom we were unable to restrain by any laws, or by any judicial proceedings whatever", nobody would object to it. Cicero used the verb *repellere*.

A similar thread appeared also in the treatise *De legibus*.

> Cic., *De leg. 3,20: Quid iam de Saturnino, Sulpicio, reliquis dicam? Quos ne depellere quidem a se sine ferro potuit res publica*.

Once again Cicero emphasised that in some circumstances it was necessary to use force in order to save the state. He gave an example of Saturninus[14] and Sulpicius[15], the tribunes of the plebs who had been revolutionary and whom the Republic could not repel in any other way than with iron. The Arpinate used the verb *depellere* once again.

Recapitulation of these deliberations seems to be the treatise *De officiis*, in which Cicero explained that one should not passively watch unlawful acts and violence, but rather fight them, even if they concerned other people.

> Cic., *De off. 1,23: Sed iniustitiae genera duo sunt, unum eorum, qui inferunt, alterum eorum, qui ab is, quibus infertur, si possunt, non propulsant iniuriam*.

The Arpinate distinguished two types of inequity: the first one concerned those, who brought it, the second one – those who, if they could, did not repel unlawful acts from those, who suffered them. The used verb *propellere* derives from the same semantic family.

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14 L. Appuleius Saturninus was a tribune of the plebs, against whom the senate issued a *senatusconsultum ultimum*. Cf. T. R. S. Broughton, *The Magistrates of the Roman Republic*, I, Atlanta 1951 (reprint 1986), p. 575–576. Half a century later Rabirius was accused of murdering Saturninus. Defending him in court, Cicero also argued that this murder was advantageous for the state. He denied that Rabirius actually killed him, but he did admit that the accused took, a weapon in order to kill. Cf. Cic., *Pro Rab.* 18-24.

15 P. Sulpicius Rufus was a plebeian tribune in 88 B.C. and he acted against the consuls, Sulla and Q. Pompeius. Sulla made sure a *senatusconsultum ultimum* was voted against him. Cf. T. R. S. Broughton, op. cit., II, New York 1952, p. 40–41.

> Cic., *De off. 3,74: Etenim si is, qui non defendit iniuriam neque propulsat a suis, cum potest, iniuste facit, ut in primo libro disserui, qualis habendus est is, qui non modo non repellit, sed etiam adiuvat iniuriam?*

He added also that a man who did not protect other people against unlawful acts and did not repel them from his familiars, did wrong and then asked how one should assess someone who did not repel, but rather supported unlawful acts. In the last question the verb *repellere* appears.

Therefore it seems that Cicero thought over the issue of repelling force and any unlawful acts very deeply. He thought that a *non scripta sed nata lex*[16] allowed a man to defend himself against an attack, hence he justified the right to repel an attack with natural law. But he transposed the question of self-defence into his deliberations over the state, proving that if the force prevailed in it, then it could be repelled by force in order to reinstitute the rule of law. Finally, he also came to the conclusion that a just man should within the limits of his abilities defend other people against unlawful acts.

In these deliberations, the following the expressions denoting repelling force by force appear: *vis vi superanda est*, *vim vi defendere*, *vim vi depellere*, *vim repellere* and *repellere iniuriam*. Generally, each of those expressions has huge power and could be regarded as a brocard. However, because the version which came to the common legal language was *vim vi repellere licet*, we should examine in much detail its nearest collocation – *vim vi depellere*. It is, therefore, necessary to think of the difference between the verb *repellere* found in the wording of the rule known to us and the Ciceronian *depellere*.

The word *pellere*[17] means "strike, expel", but also "repulse"[18]. The prefix *de-* adds to the verb a meaning of turning back, reversing, so *depellere*[19] means repulse.

Whereas the prefix *re-* is a syncopated form of *retro*, that is, it adds a meaning of doing something in a reverse order or back. Therefore *repellere*[20]

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16 Cf. Cic., *Pro Mil.* 4,10: *Est igitur haec, iudices, non scripta, sed nata lex; quam non didicimus, accepimus, legimus, verum ex natura ipsa adripuimus, hausimus, expressimus; ad quam non docti sed facti, non instituti sed imbuti sumus, – ut, si vita nostra in aliquas insidias, si in vim et in tela aut latronum aut inimicorum incidisset, omnis honesta ratio esset expediendae salutis*.

17 Cf. M. de Vaan, *Etymological Dictionary of Latin and the other Italic Languages*, Leiden – Boston 2008, s.v. *pello*. The author explains *depellere* as „to drive off, repel" and adds that the verb is confirmed since Cato. He translates *repellere* as „to push away, drive back" – used since Plautus. Cf. J. Sondel, *Słownik łacińsko-polski dla prawników i historyków*, Kraków 2006, s.v. *pello*.

18 Cf. Caes., *De bell. gall.* 1,7,4; 2,24,5.

19 Cf. H. Merguet, *Lexicon zu den Reden des Cicero*, Jena 1882, s.v. *depello*. *Thesaurus Linguae Latinae*, V, Lipsiae 1910, s.v. *depello* gives the verb *repellere* as a synonym. Cf. J. Sondel, op. cit., s.v. *depello*.

20 Cf. H. Merguet, op. cit., s.v. *repello*, who gives only one example of the usage of the phrase *vim repellere* in Cicero's speeches, that is the above cited fragment *Pro Mil.* 52. A. Forcellini (ed.), *Totius Latinitatis Lexicon*, Patavii 1805, s.v. *repello* gives as a synonym the verb *depello*. Cf. J. Sondel, op. cit., s.v. *repello*.

means repulsion with emphasis on mutuality or the similarity of the measure, which has been used. Both verbs were used alternatively, and there is not much difference between them. In legal texts *repellere* appears frequently in the collocation with *exceptione*[21], *ab accusatione*[22], that is in the context of proceedings meaning dismissal, and with *legatum*[23], meaning rejection. In the context of repelling, the verb was used by Paulus, when he wrote about force majeure[24]. The verb *depellere* appears much less often[25]. It was used in the meaning of averting a danger[26], damage[27], removing the plaintiff's hand[28] and dismissal of an action[29]. Also use of the expression *vi depellere*[30] occurs.

When in Cicero the use of both verbs in connection with the word *vis* can be seen, the verb *depellere* is used exactly in the expression *vim vi*. I think that it does not exclude the possibility that the Arpinate is the author of the brocard, which maybe initially existed in two versions, one of which prevailed.

In the 16th century Philipp Melanchthon, while commenting on the speech in behalf of Milo, made a conclusion on the ability to exercise self-defence in case of an attack.

> Ph. Melanthon, In Cic. pro Mil. in pr.[31]: *Est igitur hoc propositio principalis huius orationis, et status totius negotii: Milo iure interfecit Clodium. Principalis syllogismus huius causae est: Vim vi depellere licet; Milo vim a Clodio illatam vi depulit: igitur Milo iure interfecit Clodium*.

The humanist, who was using the language of Cicero and repeated his expressions, made a syllogism related to Milo's case: force can be repelled by force – Milo repelled the force used by Clodius – so Milo killed Clodius legally. The third sentence is obviously true only when both premises are true. In this case one could state that Milo killed Clodius *iure*, if repelling force by force would be in fact allowed, including killing the attacker, and if Milo was actually defending himself against an attack. Precisely in this way Cicero constructed his speech. He implied the rule of the acceptability of the self-defence from natural law, and,

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21 Cf. e.g. D. 9,4,27,1 (Gai. 6 *ad ed. prov.*); D. 13,7,23 (Tryph. 8 *disp.*).
22 Cf. e.g. D. 5,2,31,4 (Paul. l.s. *de sept. iud.*).
23 Cf. e.g. D. 17,1,32 (Iul. 3 *ad Urs. Fer.*).
24 D. 4,2,2 (Paul. 1 *sent.*): *Vis autem est maioris rei impetus, qui repelli non potest*.
25 The base *Bibliotheca Iuris Antiqui* (BIA) gives only 19 results for the question *depel** and as many as 206 for *repel**.
26 D. 29,5,1,36 (Ulp. 50 *ad ed.*): *manu depellere a domino periculum*.
27 D. 39,1,1,16 (Ulp. 52 *ad ed.*); D. 39,1,1,19 (Ulp. 52 *ad ed.*).
28 G. 4,21; G. 4,24; G. 4,25.
29 D. 48,10,19,1 (Paul. 5 *sent.*): *accusatio suppositi partus nulla temporis praescriptione depellitur...*
30 D. 43,16,1,46 (Ulp. 69 *ad ed.*): *Idem Vivianus refert: servos quosdam vi depulit, alios retinuit et vinxit aut etiam eis imperavit: vi te deiectum intellegi.*
31 I am quoting after *Corpus reformatorum*, ed. H. E. Bindseil, XVI, Halis Saxonum 1850, p. 975–976.

at the same time, he presented evidence that Clodius had waited for Milo in a trap. It cannot be concealed that the truthfulness of the later premise was a weak point of the speech *Pro Milone*[32].

We can assume that giving the rule: *vim vi depellere licet* by Melanchthon in the light of Cicero's works was absolutely justifiable. We can even risk more: such a wording of the brocard seems to come directly from the quoted fragments. It may be supposed that there is no reason for doubting that the rule *vim vi repellere licet*, cited by jurists, comes from Cicero, and substitution of the used verb was aimed only at emphasising the requirement of using adequate countermeasures, for example: *arma armis*.

I am convinced that Cicero could be regarded as the author of the rule *vim vi depellere licet*. The context, in which the Arpinate referred to it, was quite broad and covered not only the self-defence *sensu stricto*, but also taking action in the public interest, when force prevailed over the law, as well as the obligation to defend other people against unlawful acts, clearly to the extent reasonably possible. The jurists extended application of this rule to the private law, in particular, accepting retention of one's possession by force. In a natural manner they transposed it into the ground of the *lex Aquilia*, because – if a man could defend himself against a bandit lurking in a trap[33] – there was no reason that someone, who had repelled an attack of a slave[34], was then persecuted for *damnum iniuria datum*. It should be underlined, however, that even in a strictly legal meaning the rule *vim vi repellere licet* was not always employed to illustrate the right to repel a direct attempt. Ulpianus, for example, justified with it the lack of legal protection for someone, who was threatened but who himself had committed a threat before.

The discussed rule had no such a definitive connotation for the ancients, as it has for us. With it one could justify his right of self-defence, but also use it in a broader context.

32 Cf. A. W. Lintott, *Cicero as Evidence. A Historian's Companion*, Oxford 2008, p. 33–34, 119–120.

33 Cic., *Pro Mil.* 4,11: *Quapropter hoc maneat in causa, iudices, non enim dubito quin probaturus sim vobis defensionem meam, si id memineritis quod oblivisci non potestis, insidiatorem iure interfici posse*. Cf. I. 4,3,2; A. Stankiewicz, *De homicidio in iure poenali romano*, Romae 1981, p. 94; E. Loska, '*Insidiatorem*', op. cit., p. 70–77.

34 D. 9,2,4 pr. (Gai. 7 *ad ed. prov.*): *Itaque si servum tuum latronem insidiantem mihi occidero, securus ero: nam adversus periculum naturalis ratio permittit se defendere*.

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