

The Use of Force Beyond the Liberal Imagination: Terror and Empire in Palestine, 1947

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The question of the use of force and its relation to political power has resurfaced in an era of terror attacks and wars against terror. The liberal conceptualization of this relation is limited by the bipolar understanding of force as either legitimate or illegitimate. Turning to the history of the Irgun, a Jewish underground movement, and its struggle against the British Empire in 1947 Palestine, this article seeks to expand the understanding of force beyond the liberal paradigm. The article offers a new model for understanding the use of force by the liberal nation-state and distinguishes between four different modes of force: violence, legality, terror, and empire. Whereas the liberal paradigm is limited to a conception of force as either justified and, hence, just (legality), or unjustified and, hence, unjust (violence), one may think of two additional forms of force, which, at first, may seem paradoxical: the unjust but justified force of terror and the force of empire, which is just but not in need of justification. Rather than using these forms as stable categories, the article seeks to understand

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the ways in which the uses of force became destabilized in times of political contestation. The article concludes by pointing out the broader implications of this model for the political analysis of the liberal nation-state and its use of force.

INTRODUCTION

Must the use of force play an essential role in establishing, preserving, and overturning political power? In an era of world wars, cold wars, terror attacks, and wars against terror, the question seems rhetorical and the answer quite trivial. Can one seriously doubt the necessary role that force plays in our political world? Is force not the primary guarantor as well as the ultimate liquidator of political power? It should come as no surprise that moral, political, and legal inquiry often begins not with regard to the very use of force itself but, rather, with its excessive and violent use, as though the preliminary matter has already been settled. But has it?

This article revisits the question of the use of force and its relation to political power. Force is used here as an overarching term signifying a wide spectrum of means by which human beings exercise their domination over others. Force, defined in this broad sense, includes both violence and legal rule, as well as other means of domination. Power, unlike force, has a more limited scope and signifies only those forms of domination that appeal to notions of justice and do not entail the *bare* use of force. For this reason, violence, which constitutes bare physical might, is not a form of political power, and conversely any use of forceful means that is grounded in a reasonable appeal to justice, as bloody as it may be, will not be regarded here as violence.

The central argument of this article is that our understanding of political power and its relation to force is limited by the liberal paradigm and that we may better grasp this relation if we extend our understanding of force beyond the liberal conception. Liberalism, in the sense used here, is a descriptive theory that seeks to understand the political power of liberal regimes through the notion of the rule of law. Thus, the critique of liberalism offered in what follows is not a normative critique of the liberal State, but primarily a conceptual critique of liberalism as a descriptive theory of the political power of the liberal State.

Liberalism conceptualizes the use of force within a legalistic framework and thus recognizes only two modes of force: legal or legitimate and illegal or illegitimate. The political power of the liberal State is identified with and thus limited to the legitimate use of force. Moreover, the State, under

the liberal view, holds a monopoly on the legitimate use of force. Weber has famously argued that this monopoly is not merely a characteristic of the modern State, but its ultimate *raison d'être*.¹ It follows, therefore, that only the State may use force legitimately and that any non-State use of force is illegitimate, with perhaps the sole exception of individual self-defense, the scope of which has gradually diminished in recent times.² Since there are only two forms of force under this approach, liberalism, in effect, equates all non-legal uses of force, whether practiced by the State itself or by others, with violence. In particular, excessive use of force is no more than an instance of illegal violence. The paradigm for this bipolar understanding of force within the liberal tradition is crime and punishment. Under liberalism, crime is illegal force, or violence, whereas punishment is the legal application of force, or justice. Punishment is legitimate because it is practiced by the State in accordance with the law,³ whereas private punishment is denounced as illegitimate revenge, or violence.⁴

The liberal paradigm conceptualizes the use of force in times of political upheaval in bipolar categories similar to those it applies under ordinary circumstances.⁵ To the extent that the State perceives political opposition as non-threatening to its political existence, it will treat such opposition as crime. But even when political opposition is viewed as a threat to the foundations of the State, liberalism, at least in theory, continues to pay tribute to the rule of law. Liberal scholars insist on maintaining the distinction between legal and illegal uses of force, and use this criterion to describe the constraints imposed on the liberal State under emergency conditions.⁶ What the struggle against

1 2 Max Weber, *Economy and Society: An Outline of Interpretive Sociology* 314 (Guenther Roth & Claus Wittich eds., 1978). In what follows, I use legitimacy and legality interchangeably. While it is true that Weber distinguishes between different kinds of legitimacy, he too equates legality with legitimacy in the context of the modern liberal State.

2 Walter Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings* (1st ed. 1978).

3 See Georg W.F. Hegel, *Hegel's Philosophy of Right* (T.M. Knox trans., Oxford University Press 1967) (1952). See also Dudley Knowles, *Hegel on the Justification of Punishment*, in *Beyond Liberalism and Communitarianism*, *Studies in Hegel Philosophy* 125 (Robert R. Williams ed., 2001).

4 See Shai Lavi, *Imagining the Death Penalty in Israel: Punishment, Violence, Vengeance and Revenge*, in *The Cultural Lives of the Death Penalty* 219 (Austin Sarat et al. eds., 2005).

5 See Hans Kelsen, *Introduction to the Problems of Legal Theory* (B.L. Paulson & S.L. Paulson trans., Oxford University Press 1992) (especially pages 99-101).

6 For a similar critique, see Nasser Hussain, *The Jurisprudence of Emergency, Colonialism and the Rule of Law* (2003).

crime is for day-to-day political existence, the struggle against terror is in times of emergency — namely, a problem that should best be viewed and treated within the confines of the rule of law (at least in the formal sense). According to this account, the liberal State uses its political power only when it acts legally and acts violently when it fails to meet this standard. In short, under the liberal paradigm, political power is equated with legality, political violence is equated with illegality, and the two spheres are viewed as mutually exclusive.⁷

To understand the limits of the liberal conception of force, one must first distinguish what is sound in the liberal view from what is questionable. The core truth that will remain undisputed in what follows is the clear distinction that liberalism draws between political power and violence. If a political regime does not wish to ground its domination solely on the use of violence, it must found its political power on some claim to justice.⁸ Only political order, but not political power, can be grounded in the use of bare force, as indeed is the case in totalitarian regimes.⁹ Furthermore, and as a consequence of the above, there is also truth to the liberal claim that legality, as a form of political power, and violence are mutually exclusive.

Thus, the argument advanced in what follows has little in common with the familiar critique of liberalism for drawing a clear distinction between political power and violence.¹⁰ The problem with liberalism is, rather, its equation of political power with legality. In so doing, liberalism limits the use of force to two forms, legal and violent, and ignores other forms of force soon to be discussed. Similarly, the present critique of liberalism is not aimed at the liberal opposition between violence and legality, but rather asks whether this opposition covers the entire array of uses of force. Or put simply, is it possible to conceive of a use of force that deviates from the liberal conception? The more familiar critique, common as it may be, is both misplaced and mistaken. It is misplaced because it ignores the ultimate problem of liberalism, which lies in its failure to recognize forms of force that are neither violent nor legal, and it is mistaken for failing to perceive the complex ways in which legality truly is at odds with other forms of force.

7 See, e.g., Judith N. Shklar, *Political Theory and the Rule of Law*, in *The Rule of Law: Ideal or Ideology* 1 (Allan C. Hutchinson & Patrick Monahan eds., 1987).

8 See, e.g., Hannah Arendt, *On Violence* (1970).

9 See, e.g., Hannah Arendt, *The Origins of Totalitarianism* (1951).

10 Even Walter Benjamin, *Critique of Violence*, in *Reflections*, *supra* note 2, at 277, upon which the present article is based, has been mistakenly read in this manner. See Derrida's classic interpretation in Jacques Derrida, *Force of Law: "The Mystical Foundation of Authority,"* 11 *Cardozo L. Rev.* 920 (1990).

The more poignant critique of liberalism, which seeks to expand the way we think about force, was formulated almost a century ago by Walter Benjamin. After pointing out the relationship between violence and political power within the liberal tradition and after rejecting the possibility of political power absent the use of force, Benjamin posed the following challenge:

Since ... every conceivable solution to human problems, not to speak of deliverance from the confines of all the world-historical conditions of existence obtaining hitherto, remains impossible if force is totally excluded in principle, the question necessarily arises as to other kinds of force than all those envisaged by legal theory.¹¹

Benjamin developed his critique of force in the aftermath of the First World War and on the backdrop of the struggle between labor unions and the State. Yet his text transcends its original historical and political context and can serve as a more general critique of force under modern liberal conditions. In particular, Benjamin's insights into the political significance of force may shed light on the more contemporary political tension between terror and empire, understood here in a broad sense as signifying not only the power of empires but all forms of political power that terror seeks to undermine, especially the power of sovereign states.

In this respect, the rebellious acts of the *Irgun* ("The Organization", also known as *Etzel*, "The National Military Organization"), a dissident Zionist underground movement in pre-statehood Palestine, can serve as an important case study. What makes the *Irgun* an interesting test-case is the organization's surprising commitment both to the liberal tradition of the rule of law and to a militant vision of national liberation backed by terror.¹² Just as

11 Benjamin, *supra* note 2, at 293 (translation modified). "Force" has been substituted for "violence," in accordance with the original German that speaks of *Gewalt*. The German word has a broad sense and could signify both force and violence. Unlike Benjamin's translator, however, this essay distinguishes between violence and other forms of force and makes use of violence in a strict sense as unjust and unjustified use of force.

12 This case-study is based on numerous accounts of the use of force and its significance to *Irgun* members. See, e.g., Menachem Begin, *The Revolt* (rev. ed. 1977); Bowyer J. Bell, *Terror out of Zion: Irgun Zvai Leumi, Lehi and the Palestine Underground, 1929-1949* (1977); 3(2) *The Book of the History of the Hagana* (Dinur Ben-Zion et al. eds., 1954) (Hebrew); Arye Eshel, *The Cheated Hangman* (1990) (Hebrew); Josef Evron, *Gidi: The Jewish Insurgency against the British in Palestine* (2001) (Hebrew); Yitzhak Guryon, *The Victory over the Gallows* (1963) (Hebrew); Haviv Kanaan, *Gallows in Nathania* (1976) (Hebrew); Josef Kister, *The National Military Organization in Israel* (1993) (Hebrew); Shlomo Lev-Ami, *The Influence of the Irgun*

intriguing is the British response to Jewish terror, for it too had a dual nature. On the one hand, the British were strongly committed to the rule of law; on the other hand, they applied the unwavering brutality of imperial power. The use of force by both sides is irreducible to the simple opposition of violence and legality. An analysis of the nature of the force employed by the two sides will expand our understanding of the use of force beyond the spectrum of the liberal theory to include terror and empire in addition to violence and legality.

Within the liberal tradition and perhaps more generally, we assume that an act is just if and only if it can be justified and, conversely, that it is unjust if and only if it cannot be justified. Thus punishment is justified and just, whereas violence is unjustified and unjust. The possibility of a justified yet unjust act or, conversely, of an act that is unjustified but just seems paradoxical. But it is precisely such paradoxes that can illuminate the use of political force.¹³

Benjamin's important insight is that within the liberal tradition, force is understood as a means to an end. Force is deemed legal when the end justifies the means,¹⁴ that is, when the means are proportional to a just end that they serve; force is illegitimate, or violent, when the end is unjust or the means are disproportionate to the given just end.¹⁵ For a critique of force to surpass the limits of the liberal paradigm, it must conceive of a force that does not serve as a means to an end. Such a force can be properly characterized as pure means.¹⁶ Following Benjamin, we can think of two different ways in which such a force can be applied. First, force is pure means when it is used not in order to achieve a given result, but, rather, as an end in itself. Certain acts of terror carried out by the *Irgun*, as will be shown, were just such uses of force. Characteristically, terrorist groups such as the *Irgun* have limited means, which always fall short of achieving the desired end of political transformation. The use of force in such circumstances is not

and the "Revolt" on British Policy and the Evacuation of Palestine, in Struggle, Revolt, Resistance: British and Zionist Policy and the Struggle against Britain, 1941-1948, at 349 (Jacob Shavit ed., 1987) (Hebrew) [hereinafter Struggle, Revolt, Resistance]; David Niv, The Battles of the National Military Organization (1965) (Hebrew).

13 Niklas Luhmann, *The Third Question: The Creative Use of Paradoxes in Law and Legal History*, 15 J.L. & Soc'y 153 (1988); Gunther Teubner, *Law as an Autopoietic System* (Zenon Bankowski ed., 1993).

14 Benjamin also notes the possibility that the use of force can be justified when the means justify the ends, to which Benjamin refers as positive law in counterdistinction to natural law described above.

15 See, Benjamin, *supra* note 2, at 277-79.

16 See *id.* at 293.

instrumental but rather symbolic. It establishes within the political sphere the group's existence and its political cause. Terror makes excessive use of force because it must rely on localized intensity to compensate for its overall impotency. Terror is not rational, if by rationality we mean the employment of the optimum means required for achieving a given end. But terror is not irrational if irrationality signifies senselessness. Terror has political sense, but its logic cannot be derived from means-end rationality. It is not the instrumentality of force but rather its very use, its symbolic power, that is operative in terror. It is precisely for this reason that terror is terrorizing. It is unpredictable and cannot be understood or deterred by means-end rationality. Moreover, terror, as defined here, is a response to the already-existing ruling force of the State or empire. As an act of resistance, terror is unjust yet justified. It is unjust because it employs disproportional means, but justified as a response to a perceived injustice, thus differing from the totally arbitrary and irrational use of violence.

Second, force is pure means when it serves an absolute end that justifies all means and is not itself in need of justification. As we will see, this form of force as pure means characterizes, in part, the British Empire's response to Jewish terror. Imperial force, unlike terror, has at its disposal an unlimited arsenal of means. The excessiveness of the use of force lies not in concentrated intensity but, rather, in overwhelming extensity. If terror is known through its power to create fear, imperial force commands awe. But, like terror, imperial force does not adhere to the means-end logic.

To be sure, the force of empire characterizes not only empires but, also and more generally, all forms of sovereign power. The sovereign has an undeniable and unlimited prerogative to use force, a prerogative that is in no need of justification. Weber's understanding of the State's monopoly over the legitimate use of force is thus rejected. The true power of sovereignty lies in its monopoly on the use of force that is just but not in need of justification. This form of force manifests itself most pointedly when the sovereign confronts political resistance implementing a state of emergency.

One further clarification is necessary: the use of the attributes "just" and "justified" in what follows is descriptive or interpretative, not moralistic. Designating the force of empire as just does not imply a moral sanctioning of this use of force, but rather a description of the way in which this form of force is operative in our world. One may deny the justness of the force of empire and still acknowledge that its public perception as just is not merely an epiphenomenon (in the Marxist sense of ideology) but also belongs to the operative mechanism of this use of force. Similarly, designating terror as justified but unjust should not be understood morally, but instead as a

description of the way terror employs force as a justified response to existing political power but cannot itself found a just political regime.

In what follows, I expand on the bipolar conceptualization of force and propose four different modes of force: legality, violence, terror, and empire. The relationship amongst these four different modes is summarized in the table below. My objective certainly is not to present ultimate truths regarding these categories, but, rather, to apply them in a historical context. Clearly, legality, violence, terror, and empire have much broader and varying application and significance than what will be discussed here.¹⁷

Four Modes of Force

	Just	Unjust
Justified	Legality (means-end proportionality)	Terror (intensive means)
Unjustified	Empire (extensive end)	Violence (means-end disproportionality)

Even within the limited historical framework of British Mandate in 1947 Palestine, it is important to emphasize that the relationship amongst the different forms of force was seldom stable. My hypothesis is that in times of political contestation, as during the last years of British imperial rule, the seemingly stable liberal dichotomy of legality and violence is destabilized. Briefly, the *Irgun's* acts of terror sought to expose the British rule of law as an unjustifiable use of imperial force, whereas the British sought to represent the *Irgun's* use of force as bare unjust violence. While terror and empire are clearly antithetical, this relationship, too, was destabilized during the

17 On violence, see Arendt, *supra* note 8; Georges Sorel et al., *Reflections on Violence*, Cambridge Texts in the History of Political Thought (1999); Frantz Fanon, *Black Skin, White Masks* (1st Evergreen ed. 1968). On terror, see Giovanna Borradori et al., *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (2003); Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror*, (2004). On empire, see Michael Hardt & Antonio Negri, *Empire* (2000); Sankar Muthu, *Enlightenment Against Empire* (2003). On legality, see Jürgen Habermas & William Rehg, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (1996).

Irgun's struggle against British power. And though the force employed by terror is characterized by its intensity whereas the force employed by empire by its extensity, it is hard to tell the two apart using criteria of legality and the proportionate use of force. It is due to this affinity between the two that imperial force may collapse, as it in fact did, into the use of terror.¹⁸

I. THE *IRGUN'S* LAW OF TERROR

On February 1, 1944, the *Irgun* declared a revolt against the British Mandate rule in Palestine. The mandate over Palestine was offered to the British by the League of Nations following the First World War and the British and French victory over the Ottoman Empire. Nearly thirty years later, the British, who had promised to create a Jewish national home in Palestine, were still rulers of the land, imposing heavy constraints on the development of the Jewish community. The *Irgun* revolt was aimed to undermine the British rule and continued until the last day of British occupation in May 1948. The revolt involved numerous attacks on British targets, leading to the killing and wounding of dozens of soldiers and civilians. The uprising was declared by Menachem Begin, the new leader of the *Irgun* and later Israel's first right-wing prime-minister, and marked an important shift in the organization's strategy: from a struggle against the Arabs to a revolt against the British.¹⁹

Since the 1930s, and especially following the end of World War II, the Jewish community in Palestine (the "*Yishuv*") was divided in attitude towards British rule. The mainstream Zionist organization, *Ha'Histadrut Ha'Ziyonit* ("The Zionist Organization"), was determined to replace British rule and found a Jewish State, but limited its struggle to diplomatic tactics rather than combat. Military force was used, at least in theory, only for defense against Arab attacks, as implied by the name of the organization's underground military unit the *Hagana*, which means literally "The Defense."

The *Irgun*, which broke away from the *Hagana* as early as 1931, took a more militant approach. Prior to the outbreak of World War II, and especially after the Arab Revolt of 1936, the *Irgun*, along with other Jewish paramilitary groups, was immersed in its struggle against the Arabs. Growing limitations

18 Not only does the zone of indistinction created in the intersection between terror and empire cause empire to appear as terror, but also terror to claim the most essential trait of empire, that is, being just without need of justification.

19 A similar shift in approach occurred within the military arm of the mainstream *Yishuv* organization, the *Hagana*.

on Jewish immigration to Palestine imposed during World War II by the British led to a gradual rise in hostility toward the British occupation. Parts of the *Yishuv* increasingly viewed the British as an alien occupier rather than as a friendly and temporary caretaker. At first, these anti-British sentiments did not lead to action,²⁰ mainly due to the broad consensus within the *Yishuv* that British forces should not be diverted from the war against Nazi Germany. The change in strategy occurred only once the Axis forces began to lose the war, first in El Alamein in late 1942 and, later, across Europe.²¹ In addition, *Irgun* members, along with other sectors of the *Yishuv*, were outraged by the British limitation of Jewish immigration to Palestine, denying European Jewry a place of refuge even after the news of the systematic extermination by the Nazis became public knowledge.²²

The military force employed by the *Irgun* had a clear political goal: to undermine the political power of the British, in the hope that this would drive the British out of the land. But the organization's effective means were limited. The *Irgun*, in 1944, was relatively weak. It had roughly six-hundred members, but weapons for fewer than a hundred; by 1947, the organization had expanded its overall strength to two-thousand, but still had ammunition for only seven-hundred.²³ Furthermore, during the years of the revolt, the *Irgun* broke all connections with its ideological base,²⁴ the Revisionist Movement, a right-wing ideological movement, and thus could no longer count on the automatic support of Movement members. Matters worsened even further when *Irgun* members were persecuted by the mainstream Zionist establishment, due to the latter's belief that the *Irgun*'s terrorist attacks threatened to aggravate relations between the British and the Jews.²⁵

Nevertheless, the *Irgun* believed it could play a central role in the defeat of the British forces. Under the *Irgun* approach, it was not violent force that would overturn British rule, but, rather, a more nuanced use of force that would undermine the power of British empire. For the *Irgun*, the turn to arms

20 Anita Shapira, *Land and Power: The Zionist Resort to Force, 1881-1948*, at 336 (1992) (Hebrew).

21 Tom Segev hints at a different explanation for the timing of the revolt, namely, the wish to shatter the socialist left's monopoly on national heroism. See Tom Segev, *Yamei Kalanyot [Palestine under the British]* 369 (1999) (Hebrew).

22 See Kister, *supra* note 12, at 97.

23 See Bell, *supra* note 12, at 109-10.

24 See Esther Stein-Ashkenazy, *Betar in Eretz-Israel, 1925-1947*, at 295 (1997) (Hebrew).

25 See Niv, *supra* note 12, at 163-76.

was an end in itself, crucial for the national revival of the Jewish People and thus outside the means-end framework. Reflecting on this underlying motivation, Begin explained,

When Descartes said: "I think, therefore I am," he uttered a very profound thought. But there are times in the history of peoples when thought alone does not prove their existence. A people may "think" and yet its sons, with their thoughts and in spite of them, may be turned into a herd of slaves — or into soap. There are times when everything in you cries out: your very self-respect as a human being lies in your resistance to evil: *we fight, therefore we are!*²⁶

Begin was expressing here a view of force not as a means towards a given end, but as an end in itself. The use of force was important for political existence itself, beyond any specific political aim. Central to Zionist ideology, and in particular to the Revisionist Movement from which the *Irgun* had sprung, was the rebirth of a new Jewish identity, one that would be distinctly opposed to the powerlessness of Jewish passivity in the Diaspora.²⁷ Its signatory mark would be the active use of force and, particularly for the *Irgun*, a military response to British power. Zeev Jabotinsky, the head of the Revisionist Movement and the ideological leader of the *Irgun* in its earlier years, pronounced this idea unequivocally: "The bleakest of all the characterizations of the Diaspora is the traditional neglectfulness of Jewish blood; the blood is drawn, and its spilling is not forbidden, nor taxed."²⁸

Thus, for the *Irgun*, the use of force was not measured by its effective end, but rather by its inherent symbolic power. The resistance of the Jewish People to the British occupation was a sign of political strength and national pride and would have precisely the opposite effect on those attributes of the British Empire, which, as empire, depended on its perceived omnipotence. "History and our observation persuaded us," wrote Begin, "that if we could succeed in destroying the government's prestige in *Eretz Yisrael* [the Land of Israel], the removal of its rule would follow automatically. Thenceforward we gave no peace to this weak spot. Throughout all the years of our uprising, we hit at the British government's prestige, deliberately, tirelessly, unceasingly."²⁹

Begin's words were translated into action. The concrete manifestation

²⁶ Begin, *supra* note 12, at 46.

²⁷ See David Biale, *Power and Powerlessness in Jewish History* (1986); Amos Funkenstein, *Perceptions of Jewish History* (1993).

²⁸ Shapira, *supra* note 20, at 329 (author's translation).

²⁹ Menahem Begin, *quoted in* Bell, *supra* note 12, at 103.

of this eruption of political violence was well-planned. Several months before the revolt was declared, Begin met with Arieh Ben-Eliezer, a leading member of the *Irgun*, to discuss their strategy. The challenge was to choose the response that would best fit their limited resources and their political worldview. Begin was well-acquainted with the IRA's guerrilla strategy, as well as the tactics of nonviolent civil disobedience in India, but rejected the former as requiring the use of force beyond the *Irgun*'s existing resources and the latter for avoiding the use of force altogether. In their stead, he devised a novel strategy of political violence, which can best be characterized as *aventura*, Latin for a novel or exciting incidence.³⁰

Here, too, Begin was following in the footsteps of his great mentor, Zeev Jabotinsky. As early as 1932, Jabotinsky had written,

History teaches that often even when an *aventura* does not succeed, it can be a combative means. Specifically, when it is not the *aventura* of one, but of many. There would be no evil, not at all, if the British were forced to hunt young Jews daily, to place them in prison houses and even to expel them from the Land, when the same spectacle repeats itself tomorrow and the day after.³¹

Reflecting on the strategy of the revolt, Begin wrote, "[there were] events and actions, great and small, not strictly speaking military, which struck at the roots of the Government's prestige perhaps even more than successful military operations."³² Begin goes on to list some of these non-combative yet essential acts in the framework of the *Irgun*'s uprising. These episodes were described by Begin as

harsh, even in our own eyes, but inevitable ... [and they] not only challenged British prestige but really destroyed it [O]ne may say, with no fear of exaggeration, that since the British Empire rose to power and the power of revolt has challenged its rule, there has never been such an assault against its prestige as it received in our country.³³

The *Irgun*'s use of force has been characterized as an attempt to flee the world of politics into the irrational and romantic world of violent force. Anita Shapira, a leading historian of the Zionist movement, has commented,

³⁰ *Id.* at 111.

³¹ Zeev Jabotinsky, *Al Ha'Aventurism* [On Adventurism], in *Parties and Political Movements in the National Home Period: 1918-1948*, at 225 (Baruch Ben-Avraham ed., 1978) (Hebrew) (author's translation).

³² Begin, *supra* note 12, at 52-53.

³³ Begin, *supra* note 12, at 70.

For the *Irgun* members, life did not take place within the real world, with its limitations and constraints, but rather far out in the twilight world, where the word determines the weight of the deed and the symbols prevail over the facts. In this world, higher significance was given to the "how" on account of the "what."³⁴

While Shapira correctly emphasized the *Irgun's* giving precedence to means over ends, one should not conclude that its strategy was less-grounded in worldly politics. It is precisely the binary opposition between rational and irrational uses of force that underlies liberalism's opposition between legitimate and illegitimate uses of force. The main objective of the *Irgun* terrorist attacks was to challenge the British use of force, by undermining the British attempt to distinguish legality from violence, and to expose the existence of alternative forms of force: terror and empire. Thus, it should come as no surprise that leaders of the *Irgun* planned their operations in such a way that their use of force could not be easily interpreted either as violence or as legality.

How precisely *aventura* functions will be at the center of our inquiry as we focus on two such incidents that Begin mentions in his biography. The first involved the kidnapping of British officials in order to save an *Irgun* member from a death sentence; the second revolved around the mock trial and subsequent hanging of two British sergeants. Though a detailed discussion will follow, a few preliminary observations can already be made. Not every terrorist attack can be thought of as an *aventura*, nor were all of the *Irgun's* operations of this nature. The use of *aventura* was central to the *Irgun*, and its political logic was central to the *Irgun's* resistance to empire. It is through *aventura* that force can have political power, which, in the form of violence, it cannot have. But to achieve this goal, an *aventura* must have some public claim to justice: it must be performed as a public spectacle, and it must be enacted by a group or by an individual in the name of a worthy cause.³⁵

Irgun members viewed the strategy of *aventura* as a struggle for freedom from British rule. For many bystanders, however, both within and outside the Jewish population, the *Irgun* was a violent terrorist organization. As a contemporary historian of the Zionist underground movements noted,

34 Shapira, *supra* note 20, at 331 (author's translation).

35 For an elaborate discussion of what makes an action an element of political power, see Hannah Arendt, *The Human Condition* (1959).

The *Yishuv* had suffered through Stern's [the leader of another right-wing organization, known also as the *Lehi* (*Lohamei Herut Israel* — "Freedom Fighters of Israel")] gun battles in 1942; and now in 1944 the madmen of the right were at it again. This time the provocation might well alienate the British, who ultimately would decide the fate of the Mandate, might alienate the other allies, who could urge a Zionist solution, and would in no way open the gates. Only Zionist logic, world opinion, and diplomatic pressure would persuade Britain to take action in the face of the Holocaust.³⁶

Not surprisingly, Begin rejected this depiction of the *Irgun* as a terrorist organization. More importantly, Begin dubbed as terrorism not the acts of national resistance, but those of sovereign governments. He more than hinted at the possibility that terror lay in British imperial force rather than in his own resistance organization:

The historical and linguistic origins of the political term "terror" prove that it cannot be applied to a revolutionary war of liberation. A revolution may give birth to what we call "terror," as happened in France. Terror may at times be its herald, as happened in Russia. But the revolution itself is not terror, and terror is not the revolution. A revolution, or a revolutionary war, does not aim at instilling fear. Its object is to overthrow a regime and to set up a new regime in its place.³⁷

Here we encounter the transformative power of *aventura* and its strategic use within the *Irgun* revolt. Begin and his brothers-in-arms planned a series of spectacular underground operations that would undermine the British authority and force the British to resort to repressive measures. These measures would antagonize and alienate the *Yishuv*, along with Britain's anti-imperialist allies, Russia and the United States, and, even more importantly, would undermine British support at home due to the British recourse to counter-terror. Begin's plan was that "the [British] security forces would become involved in repression — internment, mass interrogation, martial law, executions — violating the British sense of justice.

³⁶ Bell, *supra* note 12, at 117.

³⁷ Begin, *supra* note 12, at 59.

The army, police, courts and administration would be damned if they reacted strongly, and damned if they permitted the *Irgun* free reign."³⁸

II. THE IMPERIAL FORCE OF LAW

The year 1947 was an eventful one for the British Mandate in Palestine. These were the last days of the great British Empire. In less than a year, the United Nations would revoke the British mandate in Palestine, divide the land between its Jewish and Arab inhabitants, and recognize the new Zionist State along with the independence of India and Egypt. But though the British Empire was destined, as most empires are, to collapse internally rather than be vanquished by an external foe, the British would not disappear from Palestine before a fierce struggle for independence took place, a struggle that created a zone of indistinction between the four modes of force that I presented above: violence, legality, terror, and empire.

The attacks against British military targets that began with the 1944 *Irgun* revolt reached ever-higher peaks of ferocity. The *Irgun* launched numerous assaults against the British civil administration, sabotaging train stations, oil pipelines, and communications facilities, leading to the perhaps unintentional but surely unavoidable killing of British officials and innocent bystanders. Some attacks were jointly planned, or at least coordinated, with the larger and more mainstream *Hagana* during a short period of cooperative effort known as *Tnuat Hameri* ("The United Resistance Movement").³⁹ This cooperation, which began in 1945, ended ten months later in July 1946 with the *Irgun*'s attack on the King David Hotel in Jerusalem. One wing of the hotel served as the headquarters of the British military and civil government in Palestine. The *Irgun*, in arguably its most dramatic operation, planned to blow up the entire wing, hoping to warn all residents in advance to evacuate the hotel.⁴⁰ Though a warning was given, the evacuation was not carried out properly, and dozens of soldiers and civilians were killed. The Jewish establishment, shocked by the magnitude of the destruction and fearful of the British response, severed all contact with the *Irgun*, bringing to an end all forms of cooperation.

The British response to the King David Hotel attack was not as fierce as

38 Bell, *supra* note 12, at 106. For a somewhat different account, see Lev-Ami, *supra* note 12.

39 See The Book of the History of the Hagana, *supra* note 12, at 854-88.

40 See Begin, *supra* note 12, at 212-30.

might have been expected. Several arrests took place immediately following the explosion, but none of the *Irgun* members involved was caught. The military curfew was soon removed. An official proclamation was published by the British authorities, declaring, "The British Government have stated and stated again they will not be deterred by acts of violence in their search for a just and final solution to the Palestine problem."⁴¹

Surprisingly — not only to the British, but to *Irgun* members as well — it is not the bombing of the King David Hotel that came down in history as the definitive blow to British rule in the land. The *Irgun* (at least publicly) also was hesitant to celebrate such excessive use of force. It tended to reserve its self-satisfaction for more limited acts of *aventura*. The first of the two events to be discussed concerns *Irgun* member Dov Gruner.⁴² On April 23, 1946, the *Irgun* infiltrated the heavily guarded police station in Ramat-Gan. Dov Gruner, a recent immigrant from Hungary, was one of the participants in the operation, the purpose of which was to steal from the station armory ammunition, a valuable and scarce resource for the organization. A group of *Irgun* members disguised themselves as British soldiers bringing into custody Arab criminals, also disguised *Irgun* members. As soon as they were let into the police station, they raced to the armory and blasted its doors open. A gunfight erupted, but most of the attackers managed to flee with ammunition in hand. Gruner, who was hit by a bullet in his jaw, lost consciousness and was left behind. He was arrested by the British and kept under detention in different hospitals until he was brought to trial seven months later.

Gruner's trial began on January 1, 1947, in the military courthouse in Jerusalem presided over by Colonel Fell.⁴³ The charges against Gruner were based on two principal sections of the Emergency Regulations — 1945: section 58(a), prohibiting discharging any firearm at any person, and 58(b), prohibiting throwing or depositing any bomb, grenade, or other explosive or incendiary article with intention to cause death or injury to any person.⁴⁴ After the charges were read, Gruner refused to plead either innocent or guilty, denounced the authority of the court to try him, and did not further participate in the trial proceedings. This declaration came as no surprise to either the

41 Quoted in Bell, *supra* note 12, at 173.

42 The forthcoming documentation of the Gruner affair is based on newspaper reports and on the following secondary literature: *id.*; Eshel, *supra* note 12; Yosef Nedava, 105 Days of Dov Gruner (1965) (Hebrew); Niv, *supra* note 12.

43 See Niv, *supra* note 12, at 79; *Dov Gruner Nishpat La'Mavet* [*Dov Gruner Sentenced to Death*], Haaretz, Jan. 2, 1947, at 4.

44 1442 Palestine Gazette 2d Supp. 862 (Sept. 27, 1945).

judges or the large audience that filled the courtroom that day. Since the early days of the *Irgun* revolt, this had been the official strategy of the organization in its struggle against British authority.⁴⁵ Indeed, *Irgun* members demanded to be treated as prisoners of war rather than as criminals; with few exceptions, they refused the services of defense lawyers or to bring defense witnesses and, consciously aware of the implications of their actions, would deliver political statements that clearly aggravated the court.⁴⁶ This strategy was very different from that of the mainstream *Hagana*. When members of the latter were arrested by the authorities for either purchasing or carrying arms, they would pursue a juridical defense and either deny the charges or ask for clemency.⁴⁷ Unlike the *Hagana*, however, the *Irgun*'s primary strategy was to challenge the legitimacy of British rule as arbitrary violence.

These were precisely the ideas expressed by Gruner in his opening statement at his trial:

I do not recognize your authority to judge me. This court lacks any legal grounds, because it belongs to a regime that is lacking legal grounds. You have come to this country on the basis of an obligation that you have taken upon yourself from the hands of all nations of the world, to correct the biggest wrong caused to any nation in human history, the wrong of the exile of the Jewish People from its land and its conversion into a universal victim of endless persecution and slaughter. This obligation — and only this obligation — was the grounds for your legal and moral presence in this land But you have breached it maliciously, brutally, with devilish cunning From the lawful foundation of your rule nothing therefore has been left; and only one ground exists to your rule: the force of arms, bayonet and terror, camouflaged by "laws," which holders of bayonets formulate, publish and enforce against international law And when a given regime in whatever country is not legal, when it turns to a rule of oppression and tyranny, it is the right of its citizens, more so their duty, to fight this rule and overthrow it.⁴⁸

Gruner's speech was not simply a political statement concerning the Jewish

45 A similar strategy was employed by members of the *Lehi*.

46 See Shimon-Erez Blum, *Arichat-Din L'Maan Matara Leumit B'yemei "Ha'Mered"* [Lawyering for a National Cause in the Days of the Revolt] 26-42 (2005) (unpublished M.A. thesis, Tel Aviv University) (on file with Tel Aviv University Library).

47 See Nedava, *supra* note 42, at 62.

48 Niv, *supra* note 12, at 80-81 (author's translation).

People's right to a homeland. The speech was as much legal as it was political in that it attacked the political legitimacy of the British rule in legal terms. This was Gruner's attempt to expose the illegitimacy of the trial, to present punishment as violence and violent resistance as justified use of force.⁴⁹ Other *Irgun* members gave very similar speeches, and there is good reason to believe that they were probably not all written by the defendants themselves. These speeches, as much as the use of force itself, were planned down to the last detail by the *Irgun* leaders, quite likely by Menachem Begin himself.

Gruner's trial lasted only a few hours. He refused to defend himself. In an unusual move, the prosecutor pointed out several factors in favor of the accused, evidently a final attempt to maintain the appearance of justice: "his five years' service in the British army, his good conduct during his service, his participation in fighting on the Italian front and the severe injury he suffered, which left him disabled."⁵⁰ This statement had no effect on the judges, however, who, after brief consultation amongst themselves, found Gruner guilty on both charges. For the first charge, he was sentenced to be hung. The court reserved the right to determine the punishment for the second charge. Immediately after the reading of the sentence, Gruner rose to his feet and declared, "In blood and fire Judea fell, in blood and fire Judea will arise again," signifying the apparent continuity between his legal arguments and the use of force.⁵¹

Concern for Gruner's fate was shared by large segments of the *Yishuv*. Requests for lenience towards him poured in to the Chief Governor and to the General Commander from many mainstream individuals, leaders, and institutions, including the Jewish Agency, the international Zionist organization. The *Irgun's* response was different and echoed Gruner's own statement:

In the shadow of the gallows was placed a Hebrew soldier, who served his people and country with the blood of his heart and fell captive in enemy hands. Officers of the occupying British army who presume to

49 In other cases, the attack was launched not only against British rule in general but also against the legitimacy of the emergency law as in the Eshbal and Simchon case (see text at *infra* note 74). See Yitzhak Guryon, *The Counsels of the Fighters for Freedom* (1973) (Hebrew).

50 Nedava, *supra* note 42, at 55 (author's translation).

51 Gruner was quoting from a poem written by the poet Yaakov Cohen after the 1903 Kishinev pogroms (violent riots against Jews). These lines attained the status of a slogan for the Revisionist Movement.

be judges delivered a death penalty on Dov Gruner, trampling the laws of war accepted in the civilized world. The execution of a prisoner of war is first-degree murder. We hereby warn the bloody British government against executing this crime.⁵²

Gruner awaited the final authorization of the death penalty. Some hoped that the favorable words of the prosecutor might lead to a commuted life sentence. All such hopes were disappointed, however, when on January 21, 1947, the General Commander of the British Forces in Palestine, General Barker, affirmed the verdict against Gruner and set the execution for 8 a.m. Tuesday, January 28, 1947, in the central prison in Jerusalem.⁵³ Not many options were left open to Gruner. A great deal of pressure was placed on him to appeal to the Privy Council, both from his family and from the Jewish establishment, which knew his execution would enhance the already unstable relations between the *Yishuv* and the British authorities. Advocates were sent to Gruner to make him change his mind, but Gruner refused and was willing to suffer the consequences.

The *Irgun*, for its part, was determined to free Gruner from prison or at least save him from the gallows. Some mainstream Jewish leaders warned the *Irgun*, ahead of time, that such an act would endanger Gruner's life even more, since not all of the legal procedures had been exhausted. But by January 23, it became clear that the execution would take place at the end of the month.⁵⁴ Time was short, and the British, who had learned their lesson from previous kidnappings of hostages, were especially cautious. Soldiers and policemen were prohibited from mingling with the population and from leaving the safety zones except to perform their duties and, even then, only in well-armed groups. Government officials, however, were still permitted to walk about freely.

On Sunday, January 26, only two days before the planned execution, the *Irgun* took radical action, kidnapping in broad daylight British officials and threatening to execute them if Gruner's death penalty were carried out.⁵⁵ Unable to find a vulnerable British officer, three armed young men, one with a machine-gun and the other two with pistols, entered the Tel Aviv District Court in the middle of a civil trial. They turned to presiding Justice Windham and asked him to rise and join them quickly; they had no time to spare. In his dark cloak and wig, trembling in fear, the British judge accompanied his

52 Niv, *supra* note 12, at 88 (author's translation).

53 Nedava, *supra* note 42, at 73.

54 See Begin, *supra* note 12, at 190.

55 See the discussion of a similar case in *infra* Part III.

kidnappers to a back alley, where a car was waiting to take him to the *Irgun's* hideout. Later that day, another group of *Irgun* members managed to kidnap a British army colonel. The message was clear: the lives of the judge and colonel depended on Gruner's fate.⁵⁶

The British authorities, both in Palestine and in Britain, were caught by surprise by the kidnapping and threatened harsh response — military curfew and military rule. At first, it was not clear whether they would concede to the *Irgun's* ultimatum to free Gruner at once or bear the consequences. The British preferred, at first, a military response. It included the implementation of different measures, including limitations on movement and commerce and threats of additional collective punishment of the *Yishuv* as a whole. Very soon, however, it became clear that these efforts, aimed at pressuring the *Irgun* to release the hostages, were futile. The sanctions affected mainly the broader Jewish establishment, which was not in control of the *Irgun* and had little, if any, influence on its members.

Furthermore, information emerged that added to the pressure that eventually led the British to change their strategy. It turned out that Justice Windham was of noble descent and his family had great influence on political decisions. In light of this fact, the British government could not resist the pressure to capitulate to the demands of the *Irgun*. Less than twenty-four hours before the time set for Gruner's hanging, General Barker, with great reluctance, "surrendered" to the *Irgun*. That same night, with the intention of minimizing the damage to British pride, the Voice of Israel broadcasted an official statement declaring that the execution had been postponed indefinitely until an appeal was submitted by Dov Gruner to the King's Privy Council and decided upon. Since at that time, Gruner did not express any intention to appeal, the official announcement can only be understood as an attempt to cover up political weakness by a disingenuous appeal to the rule of law. In any event, following the British decision to postpone the execution, the judge and colonel were released.⁵⁷

On January 31, the British Parliament devoted a special session to discuss the developments in Palestine. "Let us imagine," suggested Churchill, Leader of the Opposition at the time, "that a mercenary group acts in England and that one of its members is caught and is about to be executed following legal procedures. If his friends at that time said that the verdict would lead to the murder of the interior minister, would anyone imagine that a British

⁵⁶ *Azharat Ha'Natsiv Ha'Elion [The Warning of the Chief Governor]*, Haaretz, Jan. 28, 1947, at 1.

⁵⁷ Bell, *supra* note 12, at 189.

minister would not continue the legal procedures?"⁵⁸ Churchill was reciting the accepted dogma of the rule of law, and he was holding the government to this rule. But the British rule in Palestine, facing acts of terror, could not depend solely on the use of legal means. This had already become clear to Churchill and would soon become evident to the authorities themselves.

The threat of Gruner's execution had not been removed, but merely delayed. Everything now depended on his willingness to appeal to the Privy Council as the last legal resort, for which only terror and counter-terror could serve as a substitute. As the days passed, the pressure on Gruner grew to submit an appeal. Asher Levitzki, an eager lawyer acting on behalf of Gruner's sister and encouraged by *Yishuv* leaders, managed to convince Gruner to sign a power-of-attorney authorizing him to appeal on his behalf to the Privy Council. Levitzki succeeded in this only after pressuring and somewhat manipulating Gruner: "You must understand, it is not only your life at stake here ... what if the British carry out the verdict ... then a chain of revenge will be set off, and the government might impose military law on the land ... and then the lives of thousands will be at stake!"⁵⁹ But this argument was futile for all that mattered to Gruner was his duty to the *Irgun* and to its values. Levitzki, knowing this, then led him to believe that the *Irgun* in fact wanted him to appeal. Gruner closely questioned the lawyer as to whether this was, indeed, the will of the *Irgun* and was responded to with the truth but not the whole truth. "I have been told that the organization does not command its members to become heroes. A warrior holds his life in his own hands, and therefore they will not tell you to sign or not to sign the power of attorney to appeal" ⁶⁰ Gruner, thus confused as to the true will of the *Irgun*, signed the document. The *Irgun*, however, had never endorsed this approach.

Two days after he signed the power-of-attorney, Gruner found out that Levitzki, without explicitly lying, had misled him. He revoked the power-of-attorney and refused, even at the cost of his life, to take any action that might be interpreted as legitimizing British rule.⁶¹ The *Irgun's* reaction to his revoking of the power-of-attorney clearly indicated its stance:

Neither Dov nor any other prisoner of war was commanded to appeal

58 Nedava, *supra* note 42, at 121 (author's translation).

59 *Id.* at 101 (author's translation). The historical validity of this source is disputable, but it nevertheless captures the spirit if not the letter of the moral dilemma that Gruner was facing.

60 *Id.* at 103, 107 (author's translation).

61 *See id.* at 76.

to the "Privy Council" for clemency. There are things more important in life than life itself. However, we did not prohibit Dov from signing something that was offered to him. It is he who decided on his way, since the first day and till this very day, and his position does not arise from a "command" — which cannot be given in such circumstances — but rather from internal recognition, of which we are so proud. We will not abandon the right to be a freedom fighter.⁶²

In a letter to Menachem Begin, Gruner explained his motivation:

Sir, I thank you from the bottom of my heart for the encouragement I have received from you during these fateful days. You may rest assured that, whatever may happen, I will not forget the learning that I have absorbed from the movement, the learning of "[a] proud, charitable, and ruthless [people]," in the words of the hymn upon our lips, and I will know how to guard my honor, the honor of a Hebrew soldier.⁶³

With Gruner's decision not to appeal, his fate was sealed.⁶⁴ Though other appeals, submitted by his uncle and by Tel Aviv's mayor, were pending before the Privy Council, the British did not wait and used the emergency situation to ignore these appeals and move ahead with the execution. In fact the Emergency Regulations were amended to deny the right of appeal, but the amendment became valid only after Gruner's execution took place.⁶⁵ Thus, the British use of force to counter terror did not accord with the rule of law and was implemented as imperial force, as justice without a need for justification. The rule of law followed slowly behind and could not possibly justify what had already been done.

Up until the very last moment, so the legend of Dov Gruner goes, he refused to pay any tribute to the British government.⁶⁶ The prison commander in Acre⁶⁷ held out his hand to Gruner, inviting, not commanding, a handshake, following the tradition of British hangmen to offer this token of reconciliation

⁶² Niv, *supra* note 12, at 92 (author's translation).

⁶³ *Id.* at 79 (author's translation).

⁶⁴ For the sake of brevity, I have not detailed some later developments in the case, including the filing of an appeal by Gruner's uncle and one filed by the Mayor of Tel Aviv, Israel Rokach. For a closer account of the historical events, see Blum, *supra* note 46, at 132-54.

⁶⁵ *Id.* at 155.

⁶⁶ This is the version reported in Nedava, *supra* note 42, at 169, though this story cannot be found in other sources, such as Guryon, *supra* note 12.

⁶⁷ Gruner, along with three other *Irgun* death-row inmates, was transferred earlier that morning from the prison house in Jerusalem to Acre for security reasons.

to the death-row inmate, but, according to one version, Gruner refused. In the same way that he had refused to recognize their judges, he did not recognize the British hangman or his tributes. In the early morning of April 16, Gruner, along with three other members of the *Irgun*, was hung by the neck. His death, as his barrister had envisioned, set in motion a cycle of violence that ended only after the British left the land. Immediately after his execution, the *Irgun* published a communiqué announcing the establishment of a field-court-martial to be attached to every *Irgun* unit. "Should any enemy troops fall into our hands they will be liable to die — as our four comrades died."⁶⁸

III. THE TERROR OF IMPERIAL FORCE

In July 1947, only a few months after Gruner's execution, a second, more striking *aventura* was embarked on by the *Irgun*: the hanging of two British sergeants.⁶⁹ This act of resistance encapsulated the mind and spirit of the *Irgun*. Many years later, *Irgun* members were proud to quote a high British official who had served in Palestine during the last years of the Mandate, who declared in 1949 that "the hanging of the sergeants did more than anything else to accelerate our withdrawal from Palestine."⁷⁰ Whether this was truly the case is less significant than the fact that *Irgun* members perceived it as an event of historic proportions.⁷¹

The two British sergeants, Martin and Paice, were kidnapped by *Irgun* members while sitting in a coffee shop in Natanya, a small city north of Tel Aviv, on July 11, 1947.⁷² They were off-duty and in civilian dress.⁷³ The *Irgun*'s plan was not to harm British soldiers, but, rather, to deter the British authorities from executing three *Irgun* members who had been caught while breaking into the most heavily guarded prison in Acre to release Jewish

⁶⁸ Begin, *supra* note 12, at 275.

⁶⁹ A version of this part appears in Lavi, *supra* note 4. The present account differs both in that it offers a broader historical and theoretical context and provides more detailed historical evidence.

⁷⁰ Colonel Archer Cassett, *quoted in* Eshel, *supra* note 12, at 314.

⁷¹ Some British officials in Palestine may have overestimated the impact of terror on British decisionmaking. See Michael Y. Cohen, *Ha'Shpaat Ha'Meoraot B'Eretz Israel al Mediniut Britania Ba'Shanim 1945-1948 [The Impact of the Upheavals in Palestine on British Policy in 1945-1948]*, in *Struggle, Revolt, Resistance*, *supra* note 12, at 73.

⁷² Niv, *supra* note 12, at 161.

⁷³ *Lo Nimzeu Gviot Shnei Ha'Chatufim [The Bodies of the Two Hostages Were Not Found]*, Haaretz, July 31, 1947, at 1.

inmates.⁷⁴ The *Irgun* had good reason to believe that the British authorities would cave-in to the threat to kill the hostages if they did not release the *Irgun* members, as they had done in previous instances in the past, such as with the kidnapping of Justice Windham and the army colonel.⁷⁵

But the kidnapping of the sergeants did not have the expected impact. At first, the British hoped to find and release them and initiated a special mission known as Operation Tiger.⁷⁶ A forty-eight-hour military curfew on the city of Natanya and two long weeks of searching its surroundings were fruitless, however. The *Hagana* and the *Yishuv* in general cooperated with the British in the attempt to find the kidnapped sergeants, but also to no avail.⁷⁷ Nonetheless, these failures did not lead the British authorities to succumb to the *Irgun*'s demands, and they remained determined to execute the *Irgun* members.

The reason for the eventual change in British strategy is not fully clear, but it would seem that the British authorities in Palestine believed that the situation was gradually getting out of control and politicians and public opinion in Britain were demanding a firm-hand policy in Palestine.⁷⁸ On the morning of July 29, 1947, the British executed the three *Irgun* prisoners and grave consequences were soon to follow:⁷⁹ the *Irgun* carried out its threat and secretly hung the British sergeants near the *Irgun*'s hideout place, later hanging the corpses for display in the woods.⁸⁰

74 *Shloshet Nidonei Ako Huvlu L'Kvurot* [The Three Convicts from Acre Were Brought to Burial], *Yediot Aharonot*, July 29, 1947, at 1; see also Haim Lazar, *The Castle of Ako* (1962) (Hebrew).

75 Another such incident revolved around the planned execution by the British of *Irgun* members Michael Eshbal and Yosef Simchon, who were sentenced to death by a military court on June 13, 1946. After two British officials were kidnapped by the *Irgun*, the British authorities yielded to the organization's threat to execute the officials and released the *Irgun* members. See Guryon, *supra* note 12, at 87-88; Bell, *supra* note 12, at 164-66.

76 Niv, *supra* note 12, at 162.

77 The *Hagana* was so involved in the hunt for the sergeants that it later tried some of its own members for withholding from the leadership information on the matter. See Eshel, *supra* note 12, at 211-300.

78 *Ha'shlosha Yoalu Ha'Boker La'Gardom* [The Three Will Be Executed This Morning], *Ha'Boker*, July 29, 1947, at 1. In the tough days before the hanging of the sergeants, public opinion in the *Yishuv* leaned in favor of the Jewish resistance in Palestine and against the British rule due to the infamous treatment of the Exodus refugees by the British. See *M'Bahutz Um'Bifnim* [From Outside and Inside], *Ha'Tzofe*, July 30, 1947, at 2.

79 See Guryon, *supra* note 12, at 150-55.

80 See Kanaan, *supra* note 12, at 78-89.

In the eyes of the British, along with most of the *Yishuv*, the hostages had been held by a terrorist organization and their deaths had been the expected outcome of violence run amok. The leaders of the *Irgun*, of course, had a different perception of the killings, a perception that may shed light on the *Irgun's* perception of terror as an unjust yet justifiable use of force. *Irgun* leader Menachem Begin expounded his perception of the kidnapping and hangings:

None of the British that was caught, up to that point, and there were many British prisoners over the years, was used for the purpose of revenge. We have never executed the method of revenge against the British in response to the death of one of our warriors in battle during combat. We have taught our men that they have the role of warriors, which might lead to their imminent death. Only in one single case did we announce in advance that we would use that cruel rule, which is part of the laws of war, the name of which is retaliation. We have proclaimed that if the British do not treat our soldiers as prisoners of war but rather treat them as criminal offenders and hang them, we will respond with a guillotine for a guillotine.⁸¹

To what extent should we take this self-proclaimed sensitivity to the rule of law at face value? After all, the *Irgun* was not known for its moderate ways and was responsible for, among other militant activities, the massacre of the inhabitants of the Arab village Dir Yasin.⁸² It is also clear that Begin's memory failed him; the hanging of the sergeants was not the only act of revenge that took place under his leadership. Despite these facts, we might still wish to take seriously the specific justification offered for this act of vengeful terror.⁸³

In the passage above, Begin laid out the basic structure of terror as an unjust but justifiable act. The tone is apologetic precisely because it was clear to the *Irgun* leader that it is unjust to kill an unarmed soldier outside of the battlefield. He nevertheless attempted to justify the action, distinguishing it from a brute act of violence. To do so, he first suggested that the act of terror was merely a response to an already-established act of violence. The British started the cycle of non-combative violence when they decided to

81 *Id.* at 56-57 (author's translation).

82 For a somewhat apologetic account of the events that took place at Dir Yasin, see Pesach Gany, *Ha'Irgun Ha'Zvai Ha'Leumi* [The National Military Organization] 24-25 (1983) (Hebrew).

83 On the distinction between revenge and vengeance, see Lavi, *supra* note 4, at 220-21.

put prisoners of war on trial as though they were criminals. This violent act of injustice warranted a response in kind. Thus terror appears in this passage as an unjust act of violence that can, nevertheless, be justified as retaliation for a similar unjust act of violence.

The hanging of the corpses for public display, no less than the actual executions, was part of the political use of violence. In hanging the bodies in a thicket of eucalyptus trees on the outskirts of Natanya,⁸⁴ the *Irgun* offered a spectacle of the use of force that would not easily be forgotten. The sight of the corpses was gruesome. They were hanging from a tree, the sergeants' shirts covering their heads, the dry blood that had dripped from their open mouths staining their clothes, and a short statement attached to their chests. The note explained that the two were executed after an *Irgun* court had heard them confess to their crimes and that the two had asked to be pardoned but the court had rejected their plea. The note neither mentioned nor tried to hide the vengeful character of this deed. The execution of three *Irgun* members several days earlier by a British military court left little room for doubt as to the motivation behind the act.⁸⁵

The public in Britain was horrified. "In the long history of violence in Palestine," declared Secretary of State for the Colonies Creech-Jones, "there has scarcely been a more dastardly act than the cold-blooded and calculated murder of these innocent young men after holding them hostage for more than a fortnight. I can only express the deep feelings of horror and revulsion shared by all of us here at this barbarous crime."⁸⁶ The Zionist establishment was quick to denounce the act in a similar vein, fearing a harsh response from the British. And though, by this point in time, the mainstream *Hagana* was itself involved in forceful opposition to the British, the *Irgun's* abduction and killing of two unarmed British soldiers drew unequivocal opposition from those quarters as well: the unjust but justifiable act of terror was presented as an unacceptable act of violence, a horrifying crime.

Less than an hour after the corpses of the dead sergeants were found, Oved Ben-Ami, the Mayor of Natanya, issued the following declaration to the press, expressing the mainstream response of the *Yishuv*, which

84 *Tlyat Ha'Shmayim B'Veit Ha'Nivcharim* [The Hanging of the Two in the Parliament], Ha'Boker, Aug. 1, 1947, at 1; *Ha'Chayalim Nitlu B'Yaar Karov L'Natanya* [The Soldiers Were Hung in a Forest Close to Natanya], Al Ha'Mishmar, July 31, 1947, at 4. See also Bell, *supra* note 12, at 237-38; Eshel, *supra* note 12, at 188-89; Evron, *supra* note 12, at 278-79.

85 See Eshel, *supra* note 12, at 166-69; Evron, *supra* note 12, at 278-89; Kanaan, *supra* note 12, at 92-93.

86 441 Parl. Deb., H.C. 636 (5th ser.) (1947), cited in Bell, *supra* note 12, at 238.

opposed the terrorist attacks of the *Irgun*, not least out of fear of British retaliation:

Of all the crimes that have taken place till this day in this land, this is the most grievous and disgusting one and will stain the purity of our people's struggle for freedom. May this act of hanging remain as a sign of Cain on the doers of this disgraceful deed! The heavens and the earth are my witnesses ... that most of our population took desperate measures to free the hostages and prevent this shame.⁸⁷

It is worth noting that the *Irgun* was not simply avenging the deaths of its members in killing the two British sergeants. Begin, as much a jurist as a soldier, insisted on a formal judicial process being conducted. An improvised field trial was held against the kidnapped soldiers: the *Irgun* pressed charges, tried the soldiers according to criminal procedure, and only then ordered their execution. In fact, the *Irgun* claimed at first that the hangings were merely an ordinary act of the *Irgun*'s underground martial courts and not a vengeful act.⁸⁸ According to the *Irgun*, the executions could have political and legal significance only to the extent that they became a public spectacle. Since the *Irgun* did not conceal its intentions to publicly hang the sergeants, leaders of the *Yishuv* feared that the two corpses would be hung for display from an electricity pole in one of the busy streets of Natanya.⁸⁹

Approximately twenty-four hours after the sergeants' execution, the *Irgun*'s broadcasting station, The Combative Voice of Zion, made the following announcement:

The two British spies, Martin and Paice, who were held in underground arrest since July 12, 1947, were put on trial after the completion of the investigation of their criminal anti-Hebrew activity. Martin and Paice were convicted on the following charges: A. Illegal entry into our homeland. B. Membership in the British criminal-terrorist organization known as "The British Occupation Army in the Land of Israel," which is responsible for denying the right of life to our people, acts of repression and cruelty, torture, the murder of men, women and children, the murder of prisoners of war, the murder of wounded prisoners, and the expulsion of Jewish citizens from their

⁸⁷ Kanaan, *supra* note 12, at 93-94 (author's translation).

⁸⁸ *Etzel Modia: Shney Ha'Sergentim Nitlu [The Irgun Announces: The Two Sergeants Were Hung]*, Ha'Boker, July 31, 1947, at 1.

⁸⁹ See Eshel, *supra* note 12, at 176.

homeland. C. Illegally holding weapons designed to uphold oppression and tyranny.⁹⁰

These charges should be understood first and foremost as a conscious parody of the criminal trials that the British conducted against *Irgun* members, and parody here, as elsewhere, works through mimicry.⁹¹ The legalistic language that the British military courts used against the *Irgun* in these trials was imitated and directed against the British occupying forces. The charges of illegality, criminality, and terrorism were reversed. But the parodic repetition of the trial should not be understood merely as political criticism, but, rather, as part of the structure of vengeful terror. The structure of revenge, not unlike parody, is one of mimetic repetition: "An eye for an eye," a trial for a trial, a scaffold for a scaffold.⁹² Here, however, the structure of terror should be understood also through its political goals: not only to expose, through parody, the British system as arbitrary and unjust, but also to transform, through terror, the perception of the system of punishment into arbitrary violence.

After the hanging of the British sergeants became publicly known, the leaders of the *Yishuv* dreaded the possibility of British retaliation. Tel Aviv Mayor Israel Rokach turned to the District Governor for assurance. "There is nothing to fear, there will be no retaliation by the security forces," promised the Governor, adding, "one may count on fair treatment by the British soldier."⁹³

But things soon turned out differently. The British response began on August 1, at around 8:30 p.m. on the corner of Ben-Yehuda Street and Trumpeldor Street in Tel Aviv.⁹⁴ At that hour, the people on the street were relaxed, as could be expected on an August summer night. Some were sitting at cafes; others were strolling or waiting for the late show at the cinema. This pastoral setting turned within minutes into violent bloodshed. Dozens of British soldiers and police officers, some wearing uniforms but most dressed

90 *Id.* at 186-88 (author's translation).

91 For a discussion of mimicry in the context of colonialism, see Homi K. Bhabha, *The Location of Culture* (1995).

92 "We repaid our enemy in kind. We had warned him again and again. He had callously disregarded our warnings. He forced us to answer gallows with gallows." Begin, *supra* note 12, at 290.

93 Kanaan, *supra* note 12, at 95 (author's translation).

94 Reports of the following events were published in daily newspapers both in Palestine and abroad, including *Praot* [Riots], *Ha'Tzofe*, Aug. 3, 1947, at 2, and *Meoraot Tel Aviv B'Itonut Ha'Aravit* [The Riots in Tel Aviv in the Arab Press], *Davar*, Aug. 3, 1947, at 4.

as civilians, carrying machine-guns, pistols, and heavy metal clubs, arrived at the spot in three trucks escorted by an armored police vehicle. The police officers and soldiers attacked citizens with their clubs and battered both men and women, old and young. When the streets eventually were cleared of civilians, the "men of the law" began to break and shatter shop windows. Several policemen who were on duty at the time and saw what was happening did nothing to prevent this outburst of terror. "These are not policemen, and we are not allowed to intervene, these are soldiers," the law officers on duty responded to citizens who asked them to assert their authority.⁹⁵

In unauthorized reports on the radio, it was claimed that shots had been fired from a police car on Allenby Street, killing one man on a bus and injuring a female pedestrian. Other sources reported that in *Shchunat Ha'Tikva*, a neighborhood in South Tel Aviv, shots had been fired from a car and a bomb had been thrown out of the car into a café, killing three and wounding several others. The official British sources reported, however, that "all police vehicles on duty in Tel-Aviv were ordered to report back to their bases, their weapons were examined, and they were found not to have been in use."⁹⁶

CONCLUSION

We can now return to our opening question and ask what role force plays in establishing, preserving, and overturning political power. Liberalism insists that excessive use of force as a form of violence cannot ground the political power of the liberal State. The bipolar criterion of legitimate versus illegitimate uses of force delineates the boundary between politics and that which lies beyond it, namely, crime, revolution, and terror. The liberal conception of force is correct only in a limited way. As the liberal paradigm suggests, the use of bare force may succeed only in destroying political power, not in replacing it. The liberal conception, however, is limited in its understanding of the use of force both by the State and by the State's internal enemies.

What do the two *aventuras* described and considered in this article suggest about the use of force in times of political upheaval? The *Irgun* was determined to drive the British out of Palestine, but the use of military force was not its sole strategy. The *Irgun* responded to military force with military

95 Bell, *supra* note 12, at 237-38; Kanaan, *supra* note 12, at 97-98.

96 Eshel, *supra* note 12, at 195.

force, but used terror to respond to the forceful use of law. Unlike violence, which may undermine political power but cannot replace it, terror poses an effective threat to the rule of law.

Under the bipolar conceptual framework of the rule of law, only punishment and violence are recognized. Any force exercised within the boundaries of the modern State that is not just and justifiable (i.e., legal) is understood immediately as unjust and unjustifiable (i.e., as violence) and treated as such. Liberalism acknowledges neither the possibility of the unjust justifiability of terror nor the possibility of the unjustifiable justice of empire. But in times of political contestation, the State faces the challenge of having its actions transformed through its response to terror into acts of violence. This outcome seems to characterize not only the *Irgun's* perception of British action, but also the effective response of the British, who were forced to respond violently to the *Irgun's* terror.

And yet, though terror may wish to transform just and justifiable punishment into unjust and unjustifiable violence, it can never truly succeed in doing so. As the hanging of the British sergeants incident suggests, terror can, at most, pull the State into a cycle of terror. Paradoxically, the *Irgun's* acts of terror can only serve as proof of the need for the rule of law to bring the cycle of terror to an end. Thus terror comes up against the limits of its own transformative powers. Effective contestation of the law cannot take place through the unjust use of terror, just as it cannot through the just use of legality, which is always in need of justification. I therefore suggest in conclusion that the ultimate political power of sovereign states lies in what I have termed the force of empire, which, contrary to Weber, is not a monopoly on the legitimate use of force but, rather, a monopoly on the just but not in need of justification application of force.