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# THE BUREAUCRACY OF THE OCCUPATION: AN INTRODUCTION TO THE PERMIT REGIME

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The Israeli occupation in the occupied territories is based on violence,<sup>1</sup> since the prerequisite of the legal category of “occupation” is an existence of a war or national conflict true in any country. In the Occupied Palestinian Territories (OPT) it is founded on the basic asymmetrical capacities of the Israeli armed forces to inflict violence by physical or technological power. This can be agreed upon regardless of our ideological standpoint on the Israeli-Palestinian conflict. Physical violence administered by the Israeli armed forces includes targeted assassination, arrests, beatings and daily encounters of Palestinians with the army. Bearing semblance to other national conflicts, these represent physical, direct violence, which pose a threat to life and the body. On the foundation of this first layer of violence, spatial violence is constructed. Ranging from the building of settlements, the annexation of land, the division of the West Bank into “cells of territory”, the construction of the “separation wall” and the omnipresent checkpoints produce the second layer of spatial violence that superintends the possibility of movement in the OPT.

These first two layers of violence – physical violence and the transposition and control of space – provide the building blocks for a most potent, concealed and pervasive form of social control: the bureaucracy of the occupation. Obscured to those outside the occupied territories, and prosaic to those who suffer daily from the enveloping system of the permit regime, the bureaucracy of the occupation has remained in the shadows of international and Israeli criticism. In these next few pages, I attempt to offer a glimpse into the world of “procedural bare life” and the “security theology”: terms that I suggest as possibilities to decipher and describe the regime that upholds the military and civilian bureaucratic apparatus. I argue that the bureaucracy of the occupation is an executive mechanism that has retained the administrative memory of colonial bureaucracies in the Middle East.

I will first describe the permit regime briefly, then continue to the existing sociological critique of liberal bureaucracies, based on the classical work of Max Weber, and offer an alternative critique of the bureaucracy of the occupation, based on the features of the colonial bureau offered in the works of Timothy Mitchell and Yehouda Shenhav. I will describe the historical chronology of the permit regime and subsequently offer a case study of Palestinians who are denied entry into Israel by the secret service (*Shabak*) and the Israeli police.

The core of the bureaucracy of the occupation can be discovered in the permit regime, a regulatory system that requires every Palestinian wishing to cross into Israel (including East Jerusalem), travel from the West Bank to Gaza or in the West Bank itself, to obtain a permit issued by the branches of the civil administration. The permit regime is intrinsic for every human and social need that requires freedom of movement in the occupied territories: permits for work (in Israel or the settlement), for commerce, medical treatment, university education, visiting family, agricultural permits to one's land in the "seam zone" and more. All permits are subject to the discretion of the military commander of the territories, the secret service and the Israeli police.

If we are to use Michel Foucault's conceptualization in his *Security, Territory, Population*, (FOUCAULT, 2006, p. 108), it is the acts of sovereignty of spatial control exerted by the Israeli army, by monitoring territory with the threat of physical force (such as the checkpoints and wall) which constitute the fundamentals of the practices of governmentality that attempts to direct the apparatus toward the control and monitoring of the population, both as individuals and as a collective. The permit regime is perhaps the prevailing weapon in stifling Palestinian society, way beyond the issues of freedom of movement. Its implications have altered the relationships between communities and within them, as well transformed marital patterns and social and economic class, based on the individuals' ability to cross the bureaucratic labyrinth of the permit regime and obtain the documents needed for movement.

The permit regime supplants much of the need for physical violence, and as such is does not pose a threat to life and the physical body, but rather a denial of the conditions needed for life. If we are to articulate it in the language of Giorgio Agamben, who has juxtaposed sovereign power with the creation of "bare life" (AGAMBEN, 1998, 2005), human life that is stripped from its human rights by the State of Exception, in which the sovereign suspends the law through the law itself, the permit regime creates a procedural "bare life", where bureaucracy denies individuals and collectives, on the basis of race, the basic conditions needed to sustain life. Procedural bare life takes its effect in its creation of uncertainty, denying the individual of their decision making power, as well as devastating social, economic, cultural and political life, since it obstructs, primarily, a potent power of a population – its ability to organize.

Following this introduction, which conjugates Kafkaesque metaphors alluding to any bureaucratic system, we may ask at this point, in what ways does the permit regime differ from other forms of bureaucracy? What are the distinguishing features of the permit regime that can classify it apart from the "ideal type" of liberal bureaucracy? Under what conditions does a bureaucracy fail to conform to the liberal model of bureaucracy?

### **The liberal critique of bureaucracy**

As early as Max Weber's constitutive writings on bureaucracy (1968, 1970, 1978) he warned of the dangers of confusion between means and ends, diagnosing bureaucracy as having an inherent disparity between efficiency and morality. Both conservative and critical thinkers

criticized bureaucracy; the critique can be divided into two major sociological avenues. One path is the critique of the dysfunctional patterns of bureaucracy, such as Thomas Merton (1940) and Michel Crozier (1964), whose method of research in his groundbreaking *Bureaucratic Phenomenon* was to attend to dysfunctionalities of bureaucracy in order to decipher its apparatuses. The second track was the one that diagnosed bureaucracy as harboring a permanent moral flaw. In the *Dialectic of Enlightenment*, (1969) Adorno and Horkheimer follow the path of Max Weber's warning of the indistinguishability of means and ends, resulting in an organizational system's preservation of itself while omitting its own initial values and goals. Frantz Neumann (1944) distinguishes between the rule of law and the rule by law, rule by bureaucratic administration, focusing on the practices of the Nazi bureaucratic regime. Hannah Arendt (1951) viewed bureaucracy as a banal form of evil, one that constituted the basis for totalitarian regimes. Sigmund Bauman follows in her footsteps, while tracing the road to the human extermination machine through the bureaucratic order and paperwork of the Nazi regime. This line of criticism views bureaucracies as containing an inherent flaw, part of the DNA of modernity, that inevitably will lead to the immorality of the system and the loss of the ability of its agents to discern and act on the basis of liberal morals and values.

However, another type of bureaucracy has existed in the colonies, which Arendt points to, when she traced one of the origins of totalitarianism in the imperial administration (ARENDT, 1951). In her chapter on race and bureaucracy, Arendt focuses on English colonial bureaucracy and its view on the rule of subject races. She maps the thinking of the Lord Cromer, than viceroy of Egypt. In the two books written by him in 1908, Cromer uncovers the basic structures of colonial bureaucracy. As Yehouda Shenhav explains: "Cromer devised a form of bureaucracy for the governance of 'the subject races' in societies which allegedly 'could not be mapped' into the catalogue of modern nation states. This model – which was part of the British philosophy of indirect rule and which diverged from Weber's ideal type of bureaucracy (see SHENHAV 1999; 2003a) – was conducive to imperial expansion as well as to the denial of national aspirations among the so-called 'subject races'. Cromer's work was discovered in the late 1940s by Hannah Arendt (1951) who used his case to draw a link between 19th-century imperial expansion and 20th-century state violence exerted by totalitarian regimes. Arendt argued that 'race thinking' and bureaucratic rule could unleash extraordinary power and destruction". (SHENHAV, 2005). As can be asserted from the works of Cromer, an executive official theorizing his own policies and administrative practices, in lieu of liberal bureaucracy's reliance on rules, stability, hierarchy, accountability, efficiency and speed, colonial bureaucracies tenets are secrecy, flexibility, ever-changing rules by military decrees, personalized governing and total discretion.

This article is an invitation to investigate the inner workings of the bureaucracy of the occupation. I argue that the bureaucracy of the occupation, and specifically the permit regime is based on the administrative memory of colonial bureaucracy, whose fundamental elements differ greatly from the model of liberal bureaucracy. I suggest that the liberal critique of bureaucracy, be it the critique of its dysfunctionality or the critique of the growing disparity between moral values and administrative functions, still complies with the basic formula of Weberian bureaucracy. A deeper investigation into the apparatuses of colonial bureaucracy reveals that its basic organizing foundations are the very dysfunctionalities and exceptions of the liberal bureaucratic model. Thus, its deviations from the liberal model are not deviations at all, but the inherent and fundamental foundation of a bureaucratic system.

### **The fundamentals of the permit regime**

The bureaucracy of the occupation relies on the organizational elements of the colonial permit regime that was implemented against the Palestinian citizens of Israel, during the military rule of the Arab population between the years 1949 and 1966. However, it introduces a new element, where the bureaucracy is not simply based on the racial hierarchy that existed in all colonial regimes, separating the rules that applied to locals from those that applied to the imperial ruling class, but rather one which merges the category of race with the category of “security threat”, producing what I have named as “security theology”. In the rest of the paper I wish to map the basic sprawling administrative apparatus of the bureaucracy of the occupation, its multiple departments and organizational bodies, and describe the control of the secret service of apparatus through the ongoing creation of a “security theology” which provides the regime of justification for its practices. I will focus on the permit regime and specifically, permits allowing workers to enter Israel, since this type of permit describes the regime as one of privileges and, according to international law, a sovereign state has an uncontested prerogative to deny or allow entry into its territory.

The permit regime is a separate administrative system that has developed organically through its administration, without direct decision-making by government or army officials. The regime is one where the bureaucrats bear colossal discretionary power while remaining nameless, free of administrative responsibility and accountability. Since this separate system remains out of the limelight of public debate in Israel, it does not encompass modes of restraint. There are no options for appeal, critique or intervention in decision-making.

The permit regime is comprised of a wide array of administrative bodies and departments, headed by the civil administration of the Israeli military and realized by the liaison offices established by the Oslo Accords, representatives of the general secret service (*Shabak*) and the Israeli police, the investigation units of the border police, the Ministry of Interior, the Labor Ministry, the office for foreign workers, the command of the coordinator of government action in the territories and the military courts. What I have referred to as “procedural bare life” manifests as a result of daily administrative practices of these competing and collaborating departments, mainly since it lacks most features of classic liberal bureaucracy, which include some form of appeal, critique and accountability. The system is secret; its rules are unknown to those who are not administering it directly, in their own field of operation. Its decision-makers are unknown and it is infested with conflicting decisions and what may seem like acute managerial inefficiency. However, all these features epitomize the effectiveness of the regime in preventing Palestinians from entering Israel as workers. These features and the bureaucratic mayhem they create for seekers of a permit, become powerful tools for population control and offer many an opportunity for intervention and mass recruitment of informers by the secret service, a subject that I will elaborate on later. In this system, space and time, uncertainty and fear of the discretionary power of the secret service become power tools of procedural violence against the Palestinian population, turning their lives into “procedural bare life”, which does not pose a direct threat to physical existence but denies the basic conditions needed for daily life.

I will offer a basic outline of this system that is constructed by a patchwork of authority, states of exception, departments and military decrees that create the apparatus of the management of life. I have had the opportunity to peek into this apparatus following my daily legal work as a defense lawyer of Palestinians from the West Bank and East Jerusalem, which

has provided the means for information through the daily legal interaction with the various authorities.

But first, I wish to return briefly to the ideal type of bureaucracy Max Weber contracted as being “quick and exact, clear, stable and known”. The bureaucrat operated by published and acknowledged rules, knew the law and was responsible for keeping a clear connection and distinction between means and ends. Weber viewed uncertainty as the source of inefficiency, which in turn, would limit the possibility of the applicant to plan their life, as well as fail the system in its search for standardization and effective supervision.

As Hannah Arendt shows in the origins of totalitarianism, racially based imperial bureaucracies were the administrative foundations of totalitarian regimes. Arendt traces those origins to the disparity between bureaucratic practices in the metropolis, based on the liberal set of values, and their extreme transformation in the colonies, where bureaucracy was carried out differently through the hierarchy of race. As I claimed earlier, the bureaucracy of the occupation draws its inspiration from the colonial bureaucratic model, which was used as a complementary weapon to physical violence in order to control the subject races under imperial occupation. In the works of Timothy Mitchell (2002), Yehouda Shenhav (2005) and Stoller and Cooper (1997), we can derive the organizational foundations of colonial bureaucracy which are secrecy, administrative flexibility, instability and uncertainty, complete discretion and the lack of accountability of the administrative authority, provided by the anonymity of decision makers.

I assess the bureaucracy of the occupation is an evolved form of colonial bureaucracy, that has created an effective, racially based form of control that reduces the need for physical violence. Since its foundations are the exceptions and deviations from liberal bureaucracy, those attempting to aid Palestinians, be they human rights organizations, lawyers or workers’ unions, simply synchronize the bureaucracy and structure it administratively, through the making of new exceptions in specific cases, which remain exceptions to unknown rules. In this way, the bureaucracy of exception gains more power and control over the lives of the Palestinian population, since the permit regime itself gains power the more it is acknowledged, contested and actually legitimized. In order to better understand the inner working of the apparatus, it is helpful to understand the historical construction of the permit regime.

### **The Oslo Accords – the sketch of bureaucratic control**

In 1972, five years after the occupation of the Palestinian territories, Israeli defense minister Moshe Dayan declared a policy of “open borders” between Israel, Gaza and the West Bank. In 1981, Government Executive Decision 106 established the civil administration of the Israeli military in order to separate the military actions of the army from the management of Palestinian civil life as required of the occupying force by international humanitarian law. One of the first administrative actions of the nascent civil administration was conducting a population census, which would, decades later, prove to be the most powerful tool of the permit regime.

During the first *intifada*, the Israeli Army began to announce and enforce curfews and closures on West Bank villages. But only in 1989 can we mark the birth of the current permit regime, when the army demanded workers from Gaza to carry a magnetic card as a prerequisite of obtaining permission to enter Israel. In 1991, during the Gulf War, the first closure on the territories was enforced. Checkpoints and barricades were set up to enforce the clo-

sure, which lasted over one month. Dayan's general permit of entry that had been granted for two decades was cancelled and a new military decree required Palestinians to obtain individual permits for entry into Israel, allowing the military commander of the occupied territories full discretion in distribution of permits. In 1993 the first closure without an end date was announced. It was a first operation of what was to later become the main feature in population control, used as a political, military and economic tool against the Palestinian population. In May 1994, the interim agreement (Gaza-Jericho Agreement) was signed between Israel and the PLO, first dividing the West Bank into three areas and then designating the transferring of authority in the civil spheres (besides land issues) from the civil administration to the Palestinian Authority. This was promulgated by delegating areas A, B and C to the Palestinian Authority, the Israeli armed forces and the civil administration with a patchwork of varying authority over security and civil issues. The civil administration, once an employer of over 30,000 workers, was reduced to 500 bureaucrats, soldiers and civilians. The reduced civil administration was responsible for coordination and liaison with the Palestinian Authority, the administrative control of Palestinian movement into Israel and between the West Bank and the Gaza Strip and the governing of the Jewish settlers that remained in area C (approximately 60% of the land in the OPT). The second annex of the agreement established the District Liaison and Coordination Offices (DCLs) in seven Palestinian areas (to date, there are 10 liaison offices which comprise the main administrative spaces of the permit regime). The DCLs have become sites of permanent waiting for Palestinian individuals seeking permits of every kind in order to travel (work permits, access to medical care permits, education permits for students and faculty, agricultural permits, family unification permits, seam zone permits and permits to drive a car within various land cells of the OPT). The waiting is joined by a perpetual uncertainty, hope and despair in achieving the task of completing the bureaucratic labyrinth. The organizational change in the civil administration bared implications not only on the size and effectiveness of operations, but was a focal point in the shifting of the governing paradigm – from one focused on organizing and managing civilian life in the OPT to a security paradigm whose main goal was the separation of the Palestinian population from the Israeli population. This was also the event in which the secret service ceased to be an advising body, and became a main decision-maker concerning Palestinian freedom of movement.

The law (rules and decrees) that govern Palestinian movement are racially based, negating the fundamental principal of territoriality, which asserts that one law apply to all population within a specific territory. The prevention of movement is applied to Palestinians only, while the Jewish settler population is not restricted regarding freedom of movement. Jointly using the Israeli population census database, a double-headed bureaucracy was erected, where Israeli and Palestinian coordination and liaison offices administered work permits for Palestinians who worked in Israel. The structure of the double bureaucracy was still in the process of precarious administrative construction, when the structure crashed due to the political changes and the turbulent security situation in Israel and Palestine following the civilian bus bombings of 1996 in Israeli cities. The crash of the double-headed bureaucracy left the Palestinian DCLs to function as extremely slow post offices, most of the time delaying further the request of individual Palestinians to the Israeli DCLs. The Israeli DCLs continued to function until October 2000, the days that have come to be known as the el Akza uprising (*intifada*). The DCLs severed their connection with the Palestinian Authority admin-



istrative bodies and the permit regime was implemented draconically. The work permits for West Bank Palestinians became political tools in the hands of the defense minister and the labor and commerce minister, used in negotiations with the Palestinian Authority. The building of the separation wall, the establishment of the border police units of the “Jerusalem Envelope” of the wall, the legislation and implementation of high penalties and jail sentences for Israelis employing or driving Palestinians without permits weighed heavily on the smaller independent employers who had for decades relied on Palestinian labor. Over 50% of Palestinian workers lost completely their sole source of income, their only remaining option to work illegally with the risk of being beaten or jailed for illegal entry. At this point, the permit regime was severely enforced at all levels, while a yearly average of 1,000 Palestinians served jail sentences for illegal entry into Israel in the military and civil Israeli courts. The permits and magnetic cards became the single most important issue in one’s ability to sustain the conditions needed for life for residents of the West Bank. As the wall was completed and the checkpoints became permanent, the permit regime gained powerful control over movement and patterns of Palestinians in the West Bank. After October 2000, 200,000 Palestinians were classified as “Denied entry into Israel for security reasons”,<sup>2</sup> preventing them from obtaining a magnetic card, a prerequisite for requesting a permit of any kind. The Israeli police categorized another 70,000 Palestinians as “denied entry” by secret, internal regulations that were published for the first time in May 2007.

### **Effective inefficiency – the creation of uncertainty and “procedural bare life”**

As described earlier, the apparatus of the permit regime is inefficient, cluttered by conflicting orders, departments and issues, where there is no certainty, administrative or other, nor a process of appeal, right to plea or be granted a hearing, or need for administrative argumentation or accountability.

The applicant, usually in urgent need of a permit, is sent from one department to the next, where there is no connection between the official making a decision and the official who actually signs the permit. The closure policy,<sup>3</sup> physically preventing movement of those with permits as well as a crackdown on illegal workers, created an administrative block by calibrating all permits without warning, compelling the to restart the entire bureaucratic process of obtaining permits by the employers *de novo*. The process of obtaining a permit for a Palestinian worker is a rigorous one. Employers wishing to employ Palestinian workers must first prove to the Ministry of Labor that no Israeli can work in their business: usually a process that takes a few months. They are then given an allotment of Palestinian workers. With this allotment form they must go to the payment department of the employment service, request specific workers and pay the equivalent of \$250 a month in taxes per worker. The department forwards the requests to the DCLs in the civil administration of the occupied territories.

As I mentioned, a prerequisite to obtaining a permit is that the worker possesses a biometric “magnetic card” indicating that he has not been categorized as a “security threat” by the secret service or a criminal threat (on traffic tickets as well) by the Israeli police. I will elaborate further on the subject of the classification as “denied entry for security reasons” later. Another prerequisite for entry into Israel is that the worker meets the criteria, be at least 30 years old, married and the father of children. The age criteria changes based on the decisions of the defense minister. Criteria changes are not announced to the public, and remain

unknown until they come into effect. Most workers and employers are informed of the changes when they are stopped at the checkpoints, even when bearing permits, because they are underage. I will not go into the results of the age criteria, which has stratifying implications on young men's unemployment and the difficulties of the construction industry that relies on workers over the age of 35. Workers in the settlement areas can be married with children, 21 or 28 years old, depending on the administrative assessment of the "security situation". Permits arrive at the DCLs in the locality of the worker and between four days to two weeks. Most of the permits allow for workers to be in Israel from 5 am to 7 pm. Due to the long lines at the checkpoints, workers will gather from 3 am at the checkpoints.

The system allows some unpublished exception to the basic internal regulations. For instance, there exists an option for exceptional permits, which allow for longer work hours such as a permit from 5 am to 2 am. The 24-hour permit, a rarity allowing maximum freedom of movement, is given to employers after passing a Special Committee for Exceptional Permits, which convenes once a month at the headquarters of the civil administration. Any request of the employment department of the civil administration is lengthy, usually accompanied by degrading treatment, long waiting periods and general uncertainty about the hours that the department functions, who the officials responsible for decision-making are, and what their area of responsibility is. Because of the variety of workers that includes military officers, low-ranking soldiers in compulsory service and civilians, who tend to specific tasks, time is spent mostly on finding the right department or person to process the request. An application or request to different administrative bodies in the local district liaison offices, in the civil administration, the Department of the Coordination of Government Actions in the Territories (Cogat) or commanders in the field, will render the applicants with several conflicting answers to the same question. Peeking over the shoulder of the military bureaucrat shows that the only exception to the uncertainty is that the applicant has been classified as "denied entry for security reasons", which is undefinable by any administrative body excluding the secret service.

### **The category of "Denied entry for security reasons" and the apparatus of recruiting informants**

If we are to use Carl Schmidt's "Political Theology" (1922) as a theory of sovereignty, it can facilitate the understanding of the secret service's use of a "security theology", the regime of justification that underlies the bureaucratic apparatus of the permit regime. As Shenhav explains "Schmitt pointed an accusing finger toward liberal political theory which allegedly incapacitated the sovereign by forcing him to rely on, and be restricted by, the legal rule of law. He criticized liberal law and democratic parliamentary institutions for lack of "decisionism" and for neglect of the exception, namely how the legal system suspends itself in light of political threats (SCHMITT 1922/1988, p. 14). Instead, he suggests that all significant concepts of modern theory of the state are secularized theological concepts, arguing that the omnipotence of the modern lawgiver is derived from theology. In *Political Theology* the "Sovereign is he who decides on the exception" (SCHMITT 1922/1988, p. 5), suggesting that the exception in jurisprudence is analogous to the miracle in theology (SCHMITT 1922/1988, p. 36)" (SHENHAV and BERDA, 2007).

In the bureaucracy of the occupation, the category of "denied entry for security reasons", applied to almost one third of young Palestinian males, serves as the sovereign's "mir-



acle". The "security threat" serves as a ubiquitous category, one that enables the secret service to suspend all other legal and administrative procedures, published or unpublished. This security paradigm, views every Palestinian as a potential threat, and the only objective certainty on this scale is the denial of entry. I will shortly relay the various cases, which my research has produced as indications for the reasons that one is classified as "denied entry". Since the classifications and categorization by the military civil administration are secret and unpublished, the only way to assess the reasons is by the grouping into categories of the 300 cases I have represented in. as I mentioned earlier, the "denied entry" category prevents one from obtaining a magnetic card which is a prerequisite for requesting a work permit. In 2006, there were 200,000 Palestinians who were classified as "denied entry for security reasons" and another 70,000 who were classified as "denied entry for criminal reasons" by the Israeli police. In the summer of 2007, another 12,000 Palestinians were classified as denied entry by the police (denial of entry by the police includes people who have pending cases in criminal or civil courts, cases opened by the police but never investigated, or who have served jail sentences for any charge, and are denied for two to five years after they are released, and those who have not paid their traffic tickets). Only through the database of the civil administration can one obtain the knowledge if they are denied entry by the police or by the secret service. In the computer system of the Ministries of Interior and Labor, all denials of entry are classified as security reasons.

The criteria and rules for denial of entry are not published, since according to the military legal advisor of Judea and Samaria<sup>4</sup> the publishing of the criteria would create a security threat in itself, since terrorist organizations would then gain information that would aid them in evading the permit regime. From the experience of hundreds of applications through lawyers and human rights organizations we can deduct the reasons for classification:

1. If a family member of the applicant for a permit was killed or injured by Israeli forces, the entire family will be classified as "denied entry", for the fear of revenge. This classification applies to all family members, including women, and people over the age of 80.
2. If a family member of the applicant is serving a sentence in an Israeli jail on a security offence (including being part of a political organization deemed illegal by military decree) or is currently in administrative detention.<sup>5</sup> There are exceptions to this rule, but we have no knowledge of the reasons or constancy for these exceptions.
3. If the secret service has received information about the political or military activities of the applicant. In many encounters, a family or neighborly dispute is the background for the information passed to the secret service. (In tens of cases, it is a common threat in labor disputes between Israeli employers and Palestinian workers that if the workers will not comply with the employer, the employer will relay information to administration and will prevent the worker from entering Israel.)
4. The applicant resides in a village that has been classified a security threat, a classification that includes all residents of a specific locality.

5. If an applicant has refused a proposition by the secret service to work as an informer for the secret service or the police, he will be classified as denied entry, until he chooses to comply.

The bureaucratic labyrinth of the permit regime constitutes many possible entry points for the intervention of the secret service in the administrative procedure. These interventions usually include an offer to work for the secret service and in return receive a magnetic card and a permit. (These propositions have been used also in urgent cases, such as a family member who needs a life-saving operation in Jordan, will be denied exit into Jordan – a severe violation of international human rights law –, if the family member does not agree to serve as an informer). The applicant who is denied entry is ordered to come to the offices of the secret service, usually located in caravans or buildings behind the DCL offices. The applicant fills out a form, called an “*Istirham*” (request for pardon). In many cases, people denied entry arrive early in the morning, give their identification cards to a guard and are told to wait, sometimes until sundown and then sent home. Some applicants wait for months and years, daily, outside the offices of the GSS in order to speak to a “captain” in the attempt to remove the classification of “denied entry”. In almost every case I have knowledge of, during an interview with the representatives of the secret service, the applicant is offered “work” with the secret service in exchange for the abatement of the classification and receiving a permit. In some cases, cash payments are offered as well. In the cases that the applicant who refuses to “work” with the secret service is of high interest to the secret service, his decline to accept the offer will create the factor for the continuation of the denial of entry. There are exceptions to this rule, in which applicants have declined the offers, and did receive a permit after the classification was removed from the administration’s database. We cannot know what the reasons are for these exceptions, or their actual numbers.

The recruitment of informers who are part of a protected civil population, by the forces of the occupying power is completely prohibited by article 31 of the 4th Geneva Convention. However, the widespread violation of this customary international law through the recruitment of informers by bureaucratic means, since the establishment of the permit regime, 15 years ago, has created great suspicion and atomization in Palestinian society, including a very limited trust within the nuclear family, for fear of the pressures of the secret service. Hannah Arendt describes this situation succinctly:

The effectiveness of terror (alluding to government terror) depends almost entirely on social atomization. Every kind of organized social opposition must disappear before the full force of terror can be let loose. This atomization – an outrageously pale academic word for the horror it implies – is maintained and intensified through the ubiquity of the informer who can be literally omnipresent because he is no longer merely a professional agent in the pay of the police but potentially every person one comes in contact with. (ARENDT, 1951, p. 253)

However, the “denial of entry for security reasons” is not conclusive, or irreparable. In some cases, requests and complaints to the foreign affairs department, or the international organizations liaisons department in the command of the coordination of government action in the territories can produce an “exceptional permit” or a “special exceptional permit given

in spite of the classification as denied entry". There is an array of exceptional permits with names similar to those above, but they are difficult to obtain. The only possibility of appeal of the classification as denied entry, is recruiting a lawyer who will appeal to the legal advisor of Judea and Samaria, the legal department in charge of advising the military commander in the occupied territories. In 75% of the appeals the answer, given one to two months later, is laconically similar: "following secret information that exists in his case, the applicant is classified as denied entry for security reasons. You may appeal again in one year." I do not know of any case where a reason was given for the denial of entry, and after some conversations with soldiers and officers in the office of the legal advisor, I came to the conclusion that they simply do not know the reasons, and the answer is dictated by the secret service with no process of assessment and critique of the secret service decision. The only possible appeal at this point is a petition to Israeli High Court that demands financial resources and is deeply feared by much of the Palestinian population. In 75% of the cases petitioned to the Supreme Court in 2007 (60 cases), the classification was lifted before a court hearing, through negotiation with the state attorney who, in turn, negotiates with the secret service, which they represent in the Supreme Court. In the remaining cases, the state attorney replies to the court that there is no legal grounds for the petition, since there is no right to enter Israel, and it the prerogative of the sovereign state to accept or deny anyone into its territory. Usually, even in the answer to the court, the applicant does not know what is held against him. The answer will include a phrase such as "the applicant has ties or connections to terrorist organizations". When a court hearing takes place, the representatives and legal advisor of the secret service show the judges (usually three) secret evidence, which the applicant and his defense counsel cannot see. There is no point when the information can be contested since during the entire legal procedure the reasons for the classification remain secret and unobtainable to the applicant or his lawyer. In some cases, the Supreme Court has denied appeals without a hearing based solely on the secret service assessment. This practice did not continue in 2007.

The classification of denial of entry is justified by the coordinator of government action in the territories<sup>6</sup> by the fact that the state cannot distinguish between "friend" and "foe". These definitions return us to Carl Schmidt, whose major critique of the liberal polity was the constraints it drew on the executive power in its ability to distinguish between friend and foe within the borders of a state's territory. (SCHMITT, 1922, p. 24)

### **The security threat and security theology**

"The government of Israel does not know of a process of classification named 'Denial of Entry'" wrote the spokesman of the prime minister's office in a letter to attorney Limor Yehouda, from the Association for Civil Rights in Israel.<sup>7</sup> The prime minister's office is responsible ministerially for the operations of the secret service. The security threat, the theological miracle of the bureaucracy of the occupation, creates an island of complete discretion of the secret service. The security paradigm's view on population management since the Oslo Accord has formed an administrative sphere where inside every Palestinian, regardless of their profession, class or age, hides the phantom of the terrorist, which, in turn, allows the secret service uncontested decisions and a separate institutional field of power. The practices of the permit regime create a dynamic of exponential power, necrotized and unsupervised, that opens a sphere where the law is suspended and the daily bureaucratic and physi-

cal reality of people are controlled by unknown administrative bodies and officials, who are the actual “phantom sovereign”.

The system does not allow a free flow of information to the elected or delegated decision-makers, and in this way disconnects the system’s ability to change and shift policy. Another look beyond the shoulder of the military commander of the occupied territories or a Supreme Court judge reveals an inherent anxiety and fear to contest the decisions of the secret service. Because of the security expertise of the secret service, contesting such a decision could involve the responsibility of a real security threat and therefore this freezes the ability of any individual in the system, regardless of administrative or legal position in the hierarchy, to make changes in the bureaucracy that is erected upon “security theology”. The procedure of secret information in the courts, and the inability to contest evidence, create a space of virtually total control and uncertainty, where the only possibility for certainty is the existence of a security threat in itself. This process turns security-based decisions into a “security theology”, to a belief, that those who contest it, are deemed as heretics that can bring a calamity. This belief justifies and gains power as it proceeds daily, through an omnipresent control of the bureaucratic system.

The permit regime, as I argue, is inefficient, but extremely effective. It replaces physical violence, with sterile administrative control, backed by the dynamo of the security threat. It is built upon the spatial reorganization of the territories, and relies on technology and documentation in order to administer racially differential rules of movement. The procedural bare life of the Palestinians does create the fear of death, but rather denies the conditions for life. The security theology provides the moral justification as well as the organizational foundations of decision-making in the field of Palestinian population management and the denial of freedom of movement. The bureaucracy of the occupation is vast, complex, and constantly changing and reforming. Its potent power is undeniable, forming and controlling the lives of individuals and collectives through administrative violence. This article is an invitation to explore the bureaucracy of the occupation, offering possible ways of deciphering the apparatuses of population control in the Palestinian territories, and in other forms of colonizing regimes, where a hierarchy of race defines the legal and administrative operation of population control.

### **Bibliography**

- AGAMBEN, Giorgio, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press, Stanford 1998.
- AGAMBEN, Giorgio, *State of Exception*, University of Chicago Press, Chicago and London 2005.
- BAUMAN, Zygmunt, *Modernity and the Holocaust*, Cornell University Press, New York 1989.
- CROZIER, Michel, *The Bureaucratic Phenomenon*, The University of Chicago Press, Chicago 1964.
- FOUCAULT, Michel, *Security, Territory, Population (Lectures at the College De France)*, Picador, New York 2006.
- FOUCAULT, Michel, *Society Must Be Defended: Lectures at the College De France 1975-1976*, Picador, New York 1997.
- MERTON, Robert, “The Bureaucratic Structure and Personality”, *Social Forces*, vol. 18, no. 4, 1940, pp. 560-568.
- MITCHELL, Timothy, *Rule of Experts: Egypt, Techno-Politics, Modernity*, University of California Press, Berkeley 2002.

- NEUMANN, Frantz, *Behemoth - The Theory and Practice of National-Socialism*, Harper & Row, New York 1966, pp. 48-52, 89-112.
- SHENHAV, Yehouda and BERDA, Yael, "The Political-Theological and Racial Foundations of Colonial State Bureaucracy: Juxtaposing the Israeli Occupation of Palestinian Territories with Colonial History", in OFIR, Adi (ed.), Zone Books, New York (forthcoming).
- SHENHAV, Yehouda, "Imperial Governance, Nazi Bureaucracy and the Omission of Colonial Legacy", paper presented at the *International Critical Management Studies Conference*, Cambridge, UK, 4-6 July 2005
- SHENHAV, Yehouda, "Fusing sociological theory with engineering discourse: The historical and epistemological foundations of organization theory", in KNUDSEN, Christian and HARIDIMOS, Tsoukas (eds.), *The Oxford Handbook of Organization Theory: Meta-theoretical Perspectives*, Oxford University Press, Oxford 2003, pp. 183-209.
- SHENHAV, Yehouda, *Manufacturing Rationality*, Oxford University Press, Oxford 1999.
- STOLLER, Ann L. and COOPER, Frederick (ed.), *Tensions of Empire: Colonial Cultures in a Bourgeois World*, University of California Press, Berkeley 1997 (introduction).
- WEBER, Max, *From Max Weber: Essays in Sociology*, edited and translated by H. H. Gerth and C. Wright Mills, Routledge and Kegan Paul, London 1970.
- WEBER, Max, *On Charisma and Institution Building*, The University of Chicago Press, Chicago 1968.
- WEBER, Max, *Economy and Society*, The University of California Press, Berkeley 1978.

## Notes

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2. Interview with Brigadier General (Res) Ilan Paz, former head of the civil administration in the occupied territories during the years 2002-2005, Tel Aviv, December 2006.
3. For a history and analysis of the closure policy, see HASS, Amira, "Israel's Closure Policy: An Ineffective Strategy of Containment and Repression", *Journal of Palestine Studies*, issue 123, 2002, pp. 5-20.
4. Interview with Liron Alush, head of the population registry department in the office of the legal advisor to Judea and Samaria in the civil administration in the occupied territories, November 2005).
5. Administrative detention is a procedure under which detainees are held without charge or trial. No charges are filed, and there is no intention of bringing a detainee to trial. By the detention order, a detainee is given a specific term of detention. On or before the expiry of the term, the detention order is frequently renewed. This process can be continued indefinitely.
6. Letter of Colonel Daniel Beaudoin, head of the Foreign Relations Branch, coordination of government activities in the territories, Israel Ministry of Defense, to Physicians for Human Rights, 4 June 2004.
7. November 2005.