

## The Insidious Power of Permits

Yael Berda, *Living Emergency: Israel's Permit Regime in the West Bank*. 130 pages, acknowledgements and notes to 144. Stanford, CA: Stanford University Press, 2018. \$12.99 paper.

Reviewed by Alex Winder

Those who study and experience the Israeli security apparatus are confronted with a certain tension. On the one hand, Israel seeks to refine its various technologies of surveillance and control to penetrate deeply into Palestinian society, to expand its reach in terms of both width and depth – that is, to assert control over as many people as possible and into as many aspects of each individual life as possible. The impression is of a totalizing effort. On the other hand, Israeli “security” is often unpredictable and arbitrary. When and where information is recorded and shared is unclear and restrictions can be enforced erratically and capriciously. How is it – or, more crucially, why is it – that such a system tends both toward totality and irregularity? *Living Emergency*, Yael Berda’s compelling, detailed, and theoretically sophisticated analysis of the Israeli permit regime, resolves this apparent paradox of Israeli securitization with the concept of “effective inefficiency.” Berda writes:

Administrative flexibility, wide discretion, conflicting decisions, and changing decrees create constant administrative friction and uncertainty. While administratively inefficient, these characteristics of the population management control system achieve two important results for governing the West Bank: to create Palestinian dependency on the administrative system – to construct, maintain, and widen the scope of monitoring and control; and to create uncertainty, disorientation, and suspicion within Palestinian society through the prevention of mobility (35).

The personal frustration of dealing with an

opaque and unpredictable bureaucratic regime is thus amplified and expanded to frustrate communal goals: economic self-sufficiency, national unity, and, ultimately, sovereignty. Inefficiency serves rather than hinders Israel's totalizing security regime.

Berda's significant contribution to understanding Israel's permit regime is not just to explain its shifting purposes – that is, *why* it was put in place and evolved – but to examine in detail *how* it works – not just in theory, but in practice, for both Palestinians and Israelis. She is aided in this task by her previous experience as a lawyer in Israel, where she represented Palestinian clients classified as “security threats” and who were therefore denied permits. Berda opens and closes *Living Emergency* with revealing anecdotes from her legal practice, but the entire book is clearly informed by her attempts to maneuver within the permits system to access information (including about when, where, how, and by whom decisions were made) and produce change. Her extensive access to and interactions with the permit regime allow her to write with specificity and assert with authority that the examples she mobilizes “are not outliers but accumulated evidence of thousands of administrative interactions that are local yet over time became the mammoth institutional system I call the bureaucracy of the occupation” (12). Berda skillfully overlays these examples upon a framework rooted in history, political economy, and theoretical engagement with sovereignty, administration, and “emergency.”

Israel's permit regime has its roots in the Defense (Emergency) Regulations enacted by the British Mandate administration in Palestine and quickly adapted by Israel after 1948 for the military rule of its Palestinian population. Berda's focus is on the West Bank, however, and thus the bulk of her analysis focuses on the period after 1967, when Israel occupied the West Bank and Gaza Strip. In the wake of the 1967 war, the West Bank and Gaza Strip were declared a “closed military zone” and, after a census taken in September 1967, every Palestinian resident sixteen years of age and older was required to register and carry an identification card. These actions are representative of the three powerful tools that Israel uses to control the Palestinian population: emergency laws, classification of the population, and spatial closure. The 1968 Entry to Israel Directive required Palestinians crossing from the West Bank and Gaza Strip into pre-1967 Israel – whether for work, medical care, family visits, education, or any other number of reasons – to obtain a permit issued by the regional military commander. In 1972, Israel's Ministry of Defense declared a “general exit permit” for West Bank and Gaza residents to pre-1967 Israel between 5:00 a.m. and midnight – largely to facilitate flows of low-wage Arab labor that Israeli employers could exploit – while maintaining the West Bank and Gaza Strip's status as a “closed military zone,” thus allowing Israel to use curfews, deportations, and denial of entry to target individuals or communities considered active in political or military resistance (20–21). In 1968, 6 percent of the Palestinian labor force worked in Israel; six years later, this figure reached 32 percent. By the time Israel entered into negotiations with the Palestinian Liberation Organization in the early 1990s, the Palestinian economy was locked into a relationship of dependency on Israeli employment.

The 1993 Oslo accords reconfigured the system of population control in the West Bank and Gaza Strip, of which the permit regime was a cornerstone. As some aspects of control *within* the territories occupied in 1967 were handed to the fledgling Palestinian Authority,

measures to control movement *between* these territories and those across the Green Line (as the 1949 armistice line that served as Israel's de facto border until 1967, is known) expanded. The "general exit permit" was done away with, and permits became necessary for any and all Palestinian movement into pre-1967 Israel. Given the dependence of Palestinians' livelihoods on freedom of movement across the Green Line, the permit regime became "a powerful economic weapon for population management through distinction between labor and political status" (24–25). Some commentators hailed the establishment of the Palestinian Authority as a step toward Palestinian sovereignty in the West Bank and Gaza, but, as Berda writes, "despite the structural shifts, the system for the Civil Administration's management of the Palestinian population, the security forces, and the degree of interest Israel took in the activities of that population (particularly on the intelligence-gathering level) only grew" (28). A downsized Civil Administration became more, not less, colonial; and shifting aspects of Palestinian civil affairs to the Palestinian Authority increased the power of Israel's General Security Service (better known as the Shin Bet) vis-à-vis the Civil Administration. In sum, the Oslo accords "ended Palestinian free labor movement across borders and directed such flows to suit Israeli security considerations" (82).

The power of the Shin Bet only intensified with the breakdown of negotiations and the outbreak of the second intifada, at which point every resident of the West Bank came to be seen as a potential security threat. Between October 2000 and 2005, the Shin Bet classified more than two hundred thousand Palestinians as "security threats" and the police classified sixty thousand more as "criminal security threats." In 2007, approximately 20 percent of the male population between sixteen and fifty-five were classified as "security threats." Of course, as Berda makes clear:

"Security threat" was not a stable category; it was a fluctuating matrix of profiles sometimes based on age, gender, region, family, village, political affiliation, or intelligence information. As the blacklist expanded, so did the indices and measures of the security threat profile, which remained classified and unavailable to all agents of the bureaucracy except the agents of the Shin Bet (48).

With no clear criteria defining what could lead to being classified a "security threat," and the knowledge that being thus labeled was largely irreversible, Palestinians understandably sought to avoid any and all activities and personal associations that could conceivably lead to being denied a permit. This "generated a sense of paralysis and confusion," Berda writes. "The strongest effect of the restriction that remained constant across hundreds of people I questioned was the chilling effect on political activity and a belief that political participation and active citizenship would be criminalized and penalized by the Shin Bet or the Israeli military" (53). Israel also turned to closure as a method to punish the Palestinians for their uprising and asphyxiate its support among the population. In 2004, the West Bank experienced 240 days of closure. Such limitations on movement only increased the value of permits, and the considerable discretion wielded by Israeli administrators in granting permits, denying

permits, and imposing closure gave them enormous leverage over the lives of Palestinians.

Berda describes the permits system as a regime of privilege, not of rights, within which Palestinian lives were subject to the whims of Israeli officials, who were powerfully placed to trade on these privileges. In particular, granting or denying permits became tools in the recruitment of informants and collaborators. Put crudely, the Shin Bet was willing to trade permits for information. Not only did Israel pressure some Palestinians to accept this devil's bargain, but it also succeeded in generating fear and suspicion within Palestinian society, with devastating individual and communal repercussions. For individuals: "accepting collaboration means betraying your community and nation as well as risking you and your family's lives; declining can end any possibility of earning a living once and for all, relinquishing hope for economic survival" (69). Collectively, knowledge that Israel employs such methods breeds distrust within Palestinian society: the receipt of a permit – especially if one had previously been denied – raises suspicions of collaboration. The opacity of the process in combination with the practice of recruitment leads to paranoia, and sometimes attribution of fantastic superpowers to the Israeli security forces. The result, again, is a chilling effect on Palestinian political life.

Berda is also adept at exploring Israeli dimensions of the permit regime. This includes the rivalry and shifting power dynamics between the Civil Administration and the Shin Bet, as well as the involvement of Israeli courts, including the High Court of Israel, in sustaining the permit regime. It also includes less prominent institutions, such as the Payments Section of the Interior Ministry's Population, Immigration, and Border Crossings Authority, whose workings Berda uses to "illustrate how institutional routines create repertoires of uncertainty" (86). Berda includes a flowchart to map the convoluted interactions between Israeli employers, Palestinian employees, the Shin Bet, the police, middlemen, the Payments Section, the Ministry of Economy, the Civil Administration, and the Coordinator of Government Activities in the Territories (COGAT). These overlapping sites of authority make it nearly impossible to locate decision makers within the system and feed into the personalization of decision-making. Berda writes, "approaching different clerks at different times by different applicants produced different outcomes because outcomes were the result of the identity of the decision maker, not of stable and standardized practices. This occurs despite meticulously detailed internal procedures that exist on paper, thus creating a fake transparency of governance through documents" (92–93). This frustrates Israeli employers – who are thus disinclined to hire Palestinian labor, even if this would otherwise be their preference – and fuels an informal economy around permits.

The informal permit economy is driven by middlemen, who thrive in an environment of opacity, confusion, and personalism. Where both Israeli employers and Palestinian workers find themselves stymied by an impenetrable labyrinthine bureaucracy, these middlemen, through personal connections and knowledge of institutional intricacies, are able to facilitate the issuance of permits – for the right price, of course. The power of the middleman is thus rooted in the inefficiencies of the permits system; his "livelihood depended on the illegibility of the labor permit process. His expertise was invaluable as long as there were no systematic practices one could count on" (96). The thriving black market for permits subjects Palestinians to yet another layer of exploitation. In 2014, the Israeli workers' rights

organization Kav LaOved estimated that one-quarter of Palestinian workers with permits had paid employers or middlemen for them. The lax prosecution of forgery and bribery in this informal economy, meanwhile, gives the lie to the security justification of Israel's permit regime. Instead, Berda cogently concludes:

The bureaucratic cruelty of the permit regime, the disorganized mayhem that caused such suffering and despair, was incredibly efficient for achieving institutional and legal segregation between Jews and Palestinians, creating disorientation and atomization that turned life in the West Bank into a daily struggle within a perpetual emergency (109).

Finally, though *Living Emergency* focuses on the development and impact of the permit regime in the West Bank, part of its power derives from Berda's de-exceptionalization of Israel/Palestine. She acknowledges that the West Bank permit regime is an "extreme," not a "representative," case, but "it does reveal the institutional logic of other systems throughout the world to control and monitor populations through classifications of security" (9). European governments and the United States increasingly subscribe to a securitized approach that blurs the lines between terrorism, crime, immigration, and labor, with Israel often serving either explicitly or implicitly as a model in this regard. (The revelation that the acting deputy director of U.S. Immigration and Customs Enforcement was part of a delegation of U.S. officials to a "National Counter Terrorism Institute Seminar" in Israel is only a recent example of this phenomenon.) Those who seek to challenge this phenomenon globally might also look to Israel, therefore, for lessons on how to combat the encroachment of securitized bureaucracy more effectively.

Berda's assessment in this regard is sobering. In the book's powerful epilogue, she recalls realizing the futility of her efforts to combat the permit regime as a lawyer. "Even when we won the case, we lost," Berda writes, "as each case created more regulations, crafted better answers for the Civil Administration, and highlighted gray areas and loopholes for the secret service" (127–28). The bureaucracy of the occupation is like a hydra: each time a head is cut off, multiple others grow back in its place. Berda's hope is drawn from those whom she served as a lawyer, the "security threats" whose resilience and sheer humanity inspired her faith "in the possibility to change [Israel's] political regime and demand citizenship and equal rights for all the inhabitants from the Jordan River to the sea" (129). Where legal solutions are insufficient, political solutions point the way forward. This entails recognizing that labor rights, freedom of movement, and transparent governance are intertwined, and that all must be defended rigorously from the justification of "security" that seeks to undermine them. Yael Berda's *Living Emergency* is indispensable reading to better understand the proliferation and bureaucratization of securitization and to recognize the enormity of the struggle ahead to undo its pernicious effects, in Palestine and beyond.

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