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The Konrad Adenauer Program for Jewish-Arab Cooperation

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Lecture delivered by Prof. Ruth Gavison
24 September 2009 at Tel Aviv University
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Nine years have passed since the October 2000 Events, when the earth trembled, borrowing from the description of Or Commission of Inquiry, appointed to examine the factors leading up to these events.

The October 2000 Events were exceptional in the intensity of the erupting tension between Jews and Arabs, in their widespread occurrence, in the inadequacy of advance police preparations, and the insufficient allocation of responding police forces. The outcome of these events was unprecedented in Israel’s recent history: Before calm was restored, 14 persons had died, including 12 young Arab Israeli citizens, one young Arab who was not an Israeli citizen, and one Jewish Israeli citizen. Dozens of individuals were injured. The Or Commission submitted its report three years after the Events.

The October 2000 Events, similar to Land Day, are a milestone in the political history of the Arab sector in Israel. One of the main consequences of the Report was an improvement in police preparations for demonstrations commemorating the Events. Preparations are now accompanied by a dialogue, and as the Report states, even leaders who encourage the public to protest, demonstrate, and commemorate the events, make an effort to ensure the demonstrators return to their homes safely. This important development is one of the lessons of the Events themselves and one of the recommendations and the results of the Or Commission Report.

The Or Commission Report does not restrict itself to an investigation of the events, but rather places on the public agenda of Israeli society, the unequivocal statements that

* This is a revised version of the annual lecture discussing the Or Commission Report, on September 24, 2009 at Tel Aviv University. This version retains the oral lecture style. I would like to thank Dr. Alexander Yakobson for his comments on a previous version of my talk.
Jewish-Arab relations in Israel is a strategic issue, yet is not treated as such by the State. Moreover, the Report states that it is necessary to give an account of the roots of the developments that erupted as the October Events. On both issues the Report is correct and while it offers a significant contribution to thinking about this subject, commissions of inquiry are not the optimal tool to address strategic issues of this kind.

In the first part of my talk I will discuss the unique features of commissions of inquiry functioning as an instrument to address and resolve social issues. In the second part, I will examine the main recommendation of the Or Committee, and its underlying presuppositions. In the final part of my talk, I will sketch a perspective for the future.

A. Traumas and Commissions of Inquiry

In the final paragraph of the Report (paragraph 43 in the sixth and final chapter), the Commission states:

“The Commission is aware that it was established under circumstances of a severe public crisis and a distressed and heated climate. It also knows that the establishment of a state commission of inquiry frequently involves the expectation that its work will alleviate the pain and restore trust. We hope that presentation of authoritative information on the grave events of October, explanation of the factors that led or contributed to their incidence, and an exposition of the problems and risks that have plagued and continue to plague the relations between Jews and Arabs in Israel – as these are reflected in this Report – may contribute to the realization of this expectation. Indeed, although the Commission placed above all other considerations its dedication to an inquiry of the facts of the October Events, it has not abandoned hope that its work will ultimately contribute to a warmer relationship between Jews and Arabs in Israel.”

This perception of the Commission’s goals or hopes, which is reflected in its Report, is a very ambitious perspective. Although the main focus is on the October Events – the Events and their causes – the fact is that this was a grave event that highlighted its antecedents: ongoing mistreatment of Arab citizens, and very strong feelings of exclusion, alienation, anger, and blame which affected all population groups. The Events featured a pattern of violence that was encouraged by the Arab population leadership in order to achieve certain goals, which were indeed gained. This pattern poses a threat to the values of any well-ordered society. At the same time, the lack of preparedness of senior government and police decision makers was conspicuous. An important question is to what extent commissions of inquiry into specific incidents, as grave as such
incident may be, provide an adequate response to issues involving so many different levels of reasoning and deliberation?

The Report attempts to comprehensively cover the October Events, and formulates policy recommendations as well as individual recommendations concerning the politicians and police commanders, offers professional comments, and general recommendations relating to the state’s treatment of the Arab sector and to the conduct of the Arab sector leaders. To understand the Report and the relationships between these different types of recommendations, we must understand the nature of commissions of inquiry. Unlike ordinary decision-making agencies in well-ordered states – politicians, public leaders, courts, police, and government – commissions of inquiry are ad hoc entities established by the government in the wake of an event that evokes a great public outcry; Through the commission, the government seeks to deflect the criticism, protest, anger and frustration at its direct involvement, from a political process (possibly aiming at the collapse of the government itself) to a more reason-based process, headed by persons who are not considered to be directly responsible for the “failure”, “murder”, “riots”, “uprising” or “incitement” – persons who are more detached from the events yet who, due to their public reputation and integrity, are able to study and analyze the problematic events, and objectively recount the developments leading up to the events, in an attempt to dispel the Rashomon effect which obscures the distinctions between the conflicting narratives of “murder” and “violent uprising” or “rebellion.” Mainly, the duty of members of such commissions is to identify those responsible for the events, and to offer us tools to draw a constructive lesson from the events and pave our path toward the future. After all, not only do we all wish to repent for past sins, but we also wish to discover how to extract ourselves from the webs of past events and move forward toward a better future. In some ways, commissions of inquiry effectively serve this immediate goal of diverting political and social protest, but are the long-term material and structural consequences of such commissions of inquiry indeed beneficial? Can they perform their other functions well?

As ad-hoc entities, commissions of inquiry have advantages and shortcomings. The primary advantage of a commission of inquiry is its lack of obligation to any party; Its main shortcoming is the fact that its role ends when it completes the task for which it is appointed. It has no control whatsoever over what is done after the publication of the Report: Ordinary public institutions have this control.

The Or Commission deliberated for three years, which is a very long period of time for handling a compelling, distressful public issue. The government may have contributed to the duration of the inquiry by defining a very broad mandate for the Commission’s inquiry; Procedural constraints may have also prevented the Commission
from making more rapid progress. In this way, the government managed to gain political
time, creating an interval during which it was exempt from giving a public account on
what was considered its failings and failures.

The Or Commission was established on behalf of a government with a direct political
interest in its outcomes and an immediate goal of winning the upcoming elections. Its
additional, long-term political goal was to find a way to reduce the significance and
import of the outcomes of the events, and at the same time attribute responsibility for
them to as many parties and processes as possible.

The Or Commission received a complicated mandate, into which much thought
had gone. The Barak Administration had already succumbed to public pressure after
a previous government-appointed examination committee headed by a judge had
been undermined by the Arab public’s refusal to cooperate. Since the President of the
Supreme Court had the authority to appoint the Commission members, the only means
available to the Barak Administration to influence the Commission’s work was through
drafting the Commission’s mandate. From this perspective, the government’s work was
no different than mandates drafted for commissions under similar circumstances. On
one hand, the mandate was very limited – for example, the decision to permit Sharon to
visit the Temple Mount was specifically excluded from the scope of the inquiry. At the
same time, compared to previous commissions, the mandate was significantly extended:
The Commission was required to examine not only the events themselves but also their
background, including the conduct of the Arab leaders, so that, in view of the grave
outcomes of the events, the government and the police would not bear the brunt of the
blame alone. In this way, the mandate encouraged the Commission to discuss the deep-
rooted processes that caused or contributed to the events. Such an extended mandate
might have also been expected to entail a lengthy period of inquiry by the Commission,
because the expanded scope of inquiry would require the Commission to point to the
complexities involved as well as to individuals in previous governments and in the Arab
leadership who share responsibility for the events, and to describe the complex and
growing radicalization in the Arab public.

This mandate could be interpreted in different ways, and I believe that the Commission
interpreted it correctly because it decided to do two things concurrently: (1) To present
a very detailed description of the October Events and the immediate responsibility for
these Events at all decision-making levels, and; (2) To provide a comprehensive – albeit
inevitably superficial – account of the history of Jewish-Arab relations in Israel (Section
One of the Report). The general description functioned both as background for a focused
discussion of the October Events, and as a foundation for the Commission’s conclusions
and recommendations.
Despite the Commission’s public image, which emerged at its establishment and persisted, especially after the publication of its report, the Or Commission published a rather balanced document. Such a long document naturally includes some controversial statements, but in essence, the Commission sought to examine the events without either placing the blame or exonerating any one side exclusively. This was the Commission’s consistent policy, both concerning the identity of the individuals whom it ‘cautioned’ and in its analysis of the issues and events: In this sense, its accomplishment is impressive. To readers of the Report it is clear that the Commission did not underrate the import of the events, and that the Commission believed that the events enfolded as they did because the authorities were inadequately prepared. Yet the Commission also thought that the events and their intensity should be read against a broader background, which included identifying others who were responsible for them in less direct but important ways. The immediate responses to the publication of the Report confirm its balanced nature: Both sides believed that it presented a distorted description of the events, and both expressed disappointment at its conclusions and recommendations. Nonetheless, since then, this perception has changed. The Report, as well as the incomplete implementation of its recommendations, is currently considered yet one more indication of the Israeli governments’ reluctance and inability to adopt a proper strategic position on the explosive issues revolving on the status of Israel’s Arab minority. If the relationship between Israeli governments and the Arab minority is perceived to be confrontational, the Report has come to be viewed as an expression of support for the position of the Arab minority, sharply and emphatically criticizing the government; Hardly any mention is made of the Report’s critical tone toward Arab public leaders, and its incisive description of the events in the Arab sector.

The Report’s concluding section also contains recommendations alongside its conclusions. The individual recommendations involve senior elected politicians as well as senior police officers. Recommendations concerning politicians – then Prime Minister Ehud Barak and then Minister of Defense Shlomo Ben Ami – were never implemented because these officials were no longer in office when the Report was published (regarding Ben Ami, it was determined that he could not serve as Minister of Internal Security, although it is not clear why the defects which emerged in his performance, according to the Commission’s Report, would apply only to this specific position. In any case, the Minister had withdrawn from political life. The impact of the recommendations is less clear for then PM Ehud Barak. Although the Commission gave no recommendation regarding his competence to serve in similar positions in the future, both he and the political system clearly consider him competent to compete for the office of PM despite the criticism voiced against him. The criticism did not include explicit practical
recommendations concerning his future public activities). These recommendations thus illustrate some of the serious difficulties in allowing a commission of inquiry to disqualify an elected public official from further serving in a political office in a procedure that allows no appeal, and whose underlying criteria of accountability are not similar to those which impose strict legal liability. Some believe that for this reason, commissions of inquiry should refrain from making recommendations that involve the political future of elected public officials, especially when these officials are members of the political branches – as did the Or Commission itself concerning leaders of the Arab public. In contrast, its individual recommendations involving law enforcement professionals were all implemented in a timely manner (regarding officials who continued to serve in the police) and remained in effect. (For example, several years later, when an attempt was made to promote an individual whose promotion the Report recommended should be delayed, the court endorsed the recommendation and determined that no promotion should be awarded.)

We can generalize and see these as important features of Commissions of inquiry in Israel: Despite their problematic aspects, individual recommendations are generally followed. In Israel, in contrast to other countries, and in contrast to the practice of the Agranat Commission, commissions of inquiry also view themselves as properly exercising the power to make individual recommendations concerning elected public officials. This feature naturally leads to considerable hesitation when a government is under pressure to establish a commission of inquiry.

The anticipation that the commission of inquiry will identify “guilty parties” and recommend their “punishment” (by recommending that they be prosecuted, their term of office terminated, or their promotions halted) evokes great expectations from a commission. These expectations explain why the Arab public was so deeply disappointed by the Report, which did not include a conclusion identifying those responsible directly for the death of the Arab youngsters or a recommendation to prosecute them. The significant accountability attributed to senior police officers did not placate the strong sense that the commission had failed to fill its main obligation – to do “justice” and prosecute the young men’s “murderers.”

This disappointment is yet another indication of the unrealistic expectations of the work of commissions of inquiry. The public must understand that commissions of inquiry cannot recommend prosecution and generally do not even have the tools to recommend specific steps be taken to interrogate individuals suspected of committing a specific act or causing a specific outcome. A commission of inquiry faces an enormous challenge, because it is a small ad hoc body charged with four distinct and independent functions (which are typically performed by separate professional entities): (a) Investigation
(typically performed by the police and other investigatory functions; in our case – the Police Investigation Department – PID [“Mahash”]); (b) Determination to prosecute (typically a function of the District Attorney), expressed in the form of individual ‘cautions’; (c) Trial – an almost full-fledged judicial procedure takes place before the commission, following the ‘cautions’; (d) Adjudication - determination of liability and ‘punishment.’

In an ordinary criminal proceeding, performance of any of these functions may continue for a lengthy period, even though the agencies in charge possess special expertise and professional resources for their job. Investigative authorities must depose witnesses, sometimes repeatedly, examine evidence, corroborate information, and complete investigations as necessary. It is not sufficient to determine that a certain individual was killed in circumstances suggesting that an offence may have been committed: An investigation must be conducted on how exactly he died, the circumstances surrounding the event, and especially, who caused the death. Due to its structure and composition, a commission of inquiry typically is unable to work through details in the necessary subtlety or specificity. Against this backdrop, the degree of detail of the Or Commission hearings on specific events is very impressive, but – and this is not surprising – even this commission could not formulate recommendations for prosecution. In this case, the investigation also encountered difficulties because it did not receive full cooperation immediately. It should be recalled that the examination commission appointed prior to the Commission failed due to the lack of cooperation of the Arab sector. Still, even when the ‘judicial’ commission of inquiry was appointed, as the Arab sector wished, some cooperation was given but evidence was not handed over immediately, no witness list was submitted, and the Commission was unable to speak with the individuals with whom it wished to speak. PID’s investigation was suspended, and affidavits of the Arab public were submitted to the Commission en masse by Adalah, which also prepared and edited the statements. This organization may have performed an importance service for the civic Arab public, but there is no doubt that its involvement hindered the Commission’s ability to investigate the events.

Following the publication of the Report, PID re-opened its investigation of the events and ultimately decided to prosecute no one. This decision generated considerable resentment: Was it possible that so many people were killed and injured yet no one was to blame? The detailed statement justifying the decision not to prosecute by the Attorney General of Israel was also troubling in this way, but I believe that the Attorney General was correct in determining that no individual in a well-ordered state should be prosecuted without evidence that he himself committed a crime. Therefore, the disappointment from the Commission’s Report is not justified. Such commissions are not authorized to make
determinations concerning prosecution, and they lack the skills, tools, and the time to collect the evidence that could support such a decision to prosecute.4

It thus should not come as a surprise that the most interesting and influential section of the Or Report is its description of the relationship between the State and the Arab sector, and its recommendations regarding this relationship, notwithstanding the fact that it is exactly this section of the Report that raises doubts whether a commission of inquiry, with its legal emphasis and the nature and context of its operations, is the most appropriate entity to provide such accounts and recommendations.

The first Chapter of the Report offers a comprehensive account of the history of the diverse longstanding gaps between the Arab and Jewish populations, the neglect of the Arab population, and their growing sense of discrimination and rage. Indeed, there is no dispute that considerable gaps exist between the two sectors. There is also no doubt that these gaps engender a sense of inequity, and that some of them are the result of discrimination and neglect. Nonetheless, it is important to note that there is no agreement concerning the reasons for these gaps. Clearly discrimination should be eliminated. However, our own experience and the experience of other societies suggest that it cannot be stated with certainty that the elimination of discrimination in itself will erase the gaps between these two sectors. Any action that seeks to eradicate discrimination and promote equality must take into consideration the cultural features of Arab society; What is needed is very careful, detailed work, which is responsive to the social and cultural characteristics of the relevant communities.5

In one sense, equality means an absence of discrimination; Indeed, there is no dispute over the need to eliminate discrimination. In a second, more complex sense, equality entails reducing the serious poverty and crime that afflict Arab society, and expanding representation of Arabs in public institutions. Greater equality in these areas as well is in Israel’s strategic interest; The Commission noted that such greater equality is a complex issue that requires careful thinking through.

The Or Commission was very cautious in its statements on equality. The Commission touched upon the painful, problematic land issue, and also addressed the police’s treatment of the Arab sector. In addition to its determinations concerning the police preparedness, the means used by the police to disperse the demonstrations, including the use of firearms, the Commission stated that police attitudes and perceptions of the Arab sector also warrant attention: Sometimes, the police tended to view the Arabs as an enemy. The Commission recommended increasing recognition of Arabs as citizens of the state rather than enemies.

Three paragraphs in the Report concern the leadership of the Arab public. The observations contained in these paragraphs are important and troubling, and the statements
Concerning the attitudes of Arab leadership are relevant today as well. Today, the Arab public has a proud, vigorous, defiant political leadership. This leadership was elected by the Arab public, even though sections of the public may not support its style. However, as the Commission noted, this leadership does not hesitate to support or encourage violence as a means to achieve political aims. Not only does the Arab leadership fail to prevent protest from deteriorating into violence, and does not attempt to stop violence — it even commends violence. The Commission also stated that the leadership of the Arab public in Israel has linked the fate of the struggle for equality of the Arabs in Israel with the Palestinians’ campaign against the State for independence. In this way, the leadership encourages the view that the State is an enemy, and not just a state whose government’s actions are not in accord with the wishes of its Arab residents. This creates the following predicament: On one hand the police views the Arab public, or a part of it, as an “enemy,” and this perspective affects its treatment of the Arab public. Better that the police view the Arab public as citizens with equal rights who are legally protesting government policy. On the other hand, the leadership of the Arab minority — rather than the Arab minority itself — conveys messages that might cause tension between the two sectors because the Arabs, who are citizens of the State and demand recognition of this fact, apparently cannot consider themselves as such because they are led to feel the State is their enemy. The Commission noted that this view also poses a great danger. On this issue, the Commission stated (paragraph 40, Section Six of the Report), that Jews and Arabs in Israel have no choice but to live together on the basis of mutual respect, even though the scars have not yet healed and many have been hurt. The question does then arise: Mutual respect as co-citizens or as adversaries? or perhaps even as actual enemies? The Commission stated that existing statements of Arab leaders on this matter do not offer a clear answer. We will return to this point below.

Thus we return to the beginning of this Section – the Commission’s hope that its work will generate not only authoritative fact-finding but will also contribute to an improvement in the relationship [between Jews and Arabs in Israel]. The Commission was aware that the wounds had not yet healed. Some in the two sectors subscribe to two distinct, opposing views of the 2000 Events: Those who believed that the murders had not been justly resolved, think no differently today; Those who believed that the events were a natural police response — albeit occasionally insufficiently calibrated — to the prolonged, widespread, violent, dangerous riots, continue to believe that the Commission’s blame of the police was excessive.

That is the fate of commissions of inquiry: Only rarely can they satisfy the myriad interests and narratives of those who evaluate their work. This is because they lack genuine ability to investigate ‘the truth’, even in events of a limited scope, and they
typically lack the professional skills and executive and staff abilities necessary to reach interesting historical or sociological insights.

It seems to follow that appointing judges to head a commission of inquiry generates some benefit for the appointing government, because it lends the commission a countenance of impartiality. It is less clear whether such appointment is beneficial to the long-term perception of the judiciary, to the pacification of tempers, or to rectification of the wrongs that led to the commission’s establishment.

It is precisely on this backdrop that it is warranted to note that the Or Commission Report is unique and significant: This was the first time that an official agency did not merely examine some issue or another, which is occasionally the case incidental to a judicial hearing or an examination by the State Comptroller. This Report systematically and comprehensively addresses the key features of the conflict and the tension between Jews and Arabs in Israel, and adds a long list of recommendations to improve the situation. This has special significance when reviewing the section of the Report that discusses these issues.

Before continuing to the second Part, I should note that there have been complaints that some of the Commission’s general recommendations have not been implemented. In fact, a considerable proportion of the assessments of the Or Report focus on the implementation of its recommendations, and criticism on their poor execution. I believe that the implementation of the Or Commission’s recommendations is not weaker than implementation of other commissions of inquiry, especially with reference to the general recommendations. The very limited implementation is caused by a combination of reluctance on part of the political officials, ineffectiveness, and a general tendency to deal with urgent crises instead of treating the root causes of strategic issues. Examining the implementation of the Agranat Commission recommendations shows that not a single structural recommendation was implemented. In contrast, the Or Commission recommendations led to some progress, especially in police preparedness for anticipated demonstrations; Consequently, I will not discuss the question of which of the Commission’s recommendations have been implemented. The main issues, in my opinion, are what we should do from now forward, and what contribution does the Report offer in answering this important question.

**B. Basic presuppositions of the Commission’s vision and recommendations**

Paragraph 42 in Section Six of the Report defines the vision which the Commission offers:
“Co-existence [that existence which is the only option we have] is not achieved easily. It poses demands that are not easy for either party. It requires responsiveness to the other, understanding the other’s sensitivities, and respecting their fundamental rights. The Arab citizens should remember that Israel constitutes the realization of the Jewish nation’s yearnings for a state of its own, the only state in which Jews are the majority, a state one of whose main ideals is the gathering of the exiles, and this is the essence of the significance of the State for its Jewish citizens. The state’s Jewish nature is a constitutional given, which is manifest in the pivotal role played by Jewish heritage and Hebrew language in public life.

The Jewish majority should remember that the state is not only Jewish but also democratic, and as stated above, equality is one of the key foundations of the state’s constitutional structure, and that the prohibition on discrimination applies to all citizens. The Jewish majority should understand that the events that transformed the Arabs into a minority in Israel were a national tragedy for them [past tense], and their integration in the State of Israel entailed painful sacrifices on their part [again, past tense]. Perhaps the time has come to give expression in public life also to the common denominator of the entire population by adding state events and symbols with which all citizens can identify. We should find ways to reinforce Arab citizens’ sense of belonging to the state without detracting from their belonging to their own culture and community.”

The Commission clarified that it meant equality in the sense of absence of discrimination, individual equality, and equality in representation, and not necessarily in collective rights – which are an extremely important issue that warrant separate study.

It is important to remember that there may be multiple approaches to a general strategy for the future. The Commission’s voice is not the voice of the State, but neither is it the voice of the courts or the legislature. It is the voice of an important, ad-hoc public entity that espouses a specific ethos. Alongside it, voices of the Jewish public and voices of the Arab public may be heard (and we must remember that there are many and even opposing voices within each group). It is very important to study all these voices. Below I focus on the voice of the Commission, reflected in its Report.

In brief, I would say that the Commission’s ethos is the correct ethos, in my opinion, but its assumption that this ethos could become a common foundation for action for all sections of Israeli society, is somewhat simplistic and overly optimistic. Therefore we must not necessarily strive toward rapprochement and reconciliation, whose feasibility
is not certain, but rather toward co-existence based on mutual respect. To pursue a life based on mutual respect, it is important that we ground our conduct in reliable, realistic assumptions and not delude ourselves by subscribing to wishful thinking.

What is the difference between reconciliation and co-existence based on mutual respect? The Scriptures tell us of a non-Jew who came up to Hillel the Elder, and asked him to teach him the entire Torah while standing on one leg. Hillel taught him the verse, "Love your brother as thyself." Another version says that Hillel taught him the verse, "Whatever is hurtful to you, do not do to any other person." Some say that both responses are in fact two versions of the same principle, but I beg to differ. In my opinion, "Love your brother as thyself" is a problematic moral rule, because it is not credible: A person should not be instructed to love someone else just as he loves himself. This is also impossible from a psychological perspective – Our survival instincts do not allow us to deliberate whether we truly love another as we love ourselves or to wonder what we should do to demonstrate this. Some people love themselves less than they should, and many others love themselves more than they should, but we cannot love someone else just as we love ourselves. In contrast, the rule "Whatever is hurtful to you, do not do to any other person" is entirely different. This instruction is the genuine foundation for a moral social life. Psychologically it is not always easy to act upon this rule, but it is a rule that is both correct and morally binding. It implies that we must know what truly offends us and act with empathy toward others and refrain from offending them in ways that we know would offend us. We must listen to the call of the vulnerable other, and refrain from treating him in a manner which we find hateful.

This rule is true both from the perspective of ethics and of prudence. When we exploit our powers to harm and humiliate those who are weaker than ourselves, we transform them into our bitter enemy who seeks painful revenge for our unfair treatment of them. However, sometimes, a relationship between two parties should be based not only on ethics but also on a credible balance of power. Do not do unto others what is hateful to you – even were we able to do so without any short-term repercussions – is a compelling moral rule; but we had better be able to prevent the other from committing actions against us that are abhorrent to us both. Therefore, in order to establish a stable relationship, it is necessary to adequately analyze the desires, inclinations, and abilities of both parties, and base the relationship on a credible combination of desires and abilities.

I would like to use this approach to examine the Or Commission’s vision. The Commission’s recommendations are based on three assumptions: Israel is a Jewish and democratic state; It is possible and necessary to distinguish between the relationship between Jews and Arabs who are citizens of the State, and between Israel’s citizens (Arabs and Jews), and Palestinians who are not citizens of the State; and: The way to
realize this vision in the State of Israel is to carefully abide by the law and refrain from committing or inciting violence. I concur with the vision offered in the Commission’s Report, but I fear that there is no agreement among the parties on all these premises and therefore they cannot serve as a basis for joint action. Therefore I conclude that the Or Commission recommendations in themselves do not offer a realistic framework for addressing the complex issue of Jewish-Arab relations in Israel.

The first premise of the Or Commission: Israel is and should remain a Jewish and democratic state

Indeed, in its Basic Laws, Israel is defined as a Jewish, democratic state, and this definition plays a focal role in the perception of the identity of the State by a large proportion of the elite groups in Israel. The Commission does not elaborate on what it means by this complex phrase. It notes that this identity is extremely important to the majority of the country’s Jewish population. The Commission also explains that both sides find it difficult to accept the full meaning of this complex ideal. Members of the Arab minority do not accept the significance to Jews of the Jewish nature of the state, while Jews do not always accept that a Jewish democratic state entails full civic equality, at least in terms of absence of discrimination – which means that no citizen should suffer discrimination, whatever his religion or nationality.

The Or Commission was aware of the Arab population’s difficulty in accepting the definition of Israel as a Jewish and democratic state. The Commission emphasized that the Arab minority lives in Israel alongside the Jewish majority, creating a situation that is extremely challenging for both sides. Each side has a completely different attitude toward the State, yet both must accept that the State is both Jewish and democratic. The Commission does concede that the current balance between Jewishness and democracy could possibly be modified, but, according to the Commission, the duality of these two components is not only possible but is justified. Defining the nature of the State in this way constitutes a “package deal”: Israel is the nation state of the Jewish people, and a Jewish majority is necessary to ensure its existence as such; At the same time, it must award its Arab citizens a dignified, egalitarian partnership absent of discrimination in the personal and public spheres, allowing them to live in security and prosperity. This is the normative framework proposed by the Or Commission.

The Or Commission expresses strong empathy toward members of the Arab minority and the complexity of their predicament. In my view, the Or Commission Report makes it somewhat easy for itself on this point because it creates the impression that the crux of the Arab minority’s problem stems from past events. But it should be conceded that the burden imposed on the Arab minority by its life in a Jewish state is not only the memory
of the destruction of Palestinian society in the past (400 villages were annihilated and their 700,000 inhabitants became refugees, with their numbers spiraling over time into several million). The establishment of the State of Israel and the non-establishment of a Palestinian state alongside it imply that Palestinians have no political independence. From its perspective, the Arab population in Israel lives – and will have to continue to live – in a state that emerged on part of the territory of their former country, in which they constituted the majority; Now, they are and will continue to be a minority in this state. They live in a state whose language is different from their own, and whose culture is different from their own; a state which prevents them from living in their homeland as a political and cultural majority.

More importantly, the Or Commission does not directly discuss the fact that a considerable number of Israeli Arab leaders reject this package deal. The Arab public’s rejection of Israel’s vision as a Jewish and democratic state was stated explicitly, even prior to the October 2000 Events and prior to the work by the Or Commission; but since the publication of the Or Commission Report the Future Vision Documents have been published. The Future Vision Documents remind us that according to leaders of Israel’s Arab minority, the State of Israel cannot be both Jewish and democratic. This means that the assumed feasibility of a reasonable “package deal” – a chance of creating a broad civic partnership in which we all work together and promote the State, while balancing between its Jewishness and its democratic nature – is unacceptable to the leaders of the Arab public. It is merely an ideal of the majority of official voices in the mainstream Jewish establishment. Any Arab leader who accepts this premise today is considered a marginal leader or a “traitor,” as evinced by the Future Vision Documents and the debate that emerged in the Arab society in Israel in response to their publication.

Awareness of this has had a significant impact on the widely discussed constitutional process. Ostensibly, the absence of a constitution that includes a Bill of Rights and judicial review reflects a flaw in Israeli democracy. Yet we must understand that a constitution in Israel will never win the consent of a large portion of its citizens if it attempts to combine a comprehensive Bill of Rights and affords better protection for minorities, including of course the Arab minority, so long as it also includes some recognition of the Jewish nature of the State. The position of the Arab minority leaders on such a constitution is consistently unequivocal: They oppose any recognition, in a complete constitutional document, of the Jewish distinctness of the state, even if it is coupled with a stronger framework that protects individual and collective rights of the minority. The debate turns not only on the contents of the constitutional document, but also on the identification of the fundamental goals of the State of Israel. In principle, a constitution should aid in the development of a shared civic framework in which we can address and resolve
our disputes. It should facilitate civic cohesion through which we can promote our goals. But, the constitution’s contribution to promoting goals is problematic if the goals themselves are in dispute. For Israel as a Jewish state, maintaining a Jewish majority is extremely important, but is this a legitimate goal for Israel? Most Jewish citizens would concur, but Arab supporters of the Future Vision Documents would disagree. If so, this is a fundamental debate on values and on the identity of the State.

The reconciliation model states that the way to try to resolve this dispute is through a dialogue between the parties. Indeed, a dialogue involving both sectors is an essential condition for constructing a shared framework within which they can live. Improving the relationship between the sectors has additional important implications, such as empowering local governments in Arab society, anti-corruption efforts, and promoting life conditions in Arab communities – yet I find it difficult to understand how it is possible to conduct a dialogue on whether the State of Israel is (or should be) a Jewish and democratic state or whether it is “a state of all its citizens.” After all, a Jewish and democratic state implies that it is also a state of all its citizens, because a democratic state is clearly a state of all its citizens: Only citizens have the right to vote in Israel. The Arab claim that that Israel is the state of all the Jews wherever they are is simply not true. Jews are indeed entitled to immigrate to Israel under the Law of Return, but those who have not exercised their right, as well as Jews who have left Israel and do not live in Israel, are not entitled to participate in its decision-making. The Future Vision Documents - the Adalah Constitution, the Mada El-Carmel Document, and the document by the Follow-up Committee – all these do not merely aspire to a state in which all its citizens and all its citizens alone have a right to participate in elections: They seek a neutral bi-national state that accepts the “right” of return of the Palestinian refugees and their offspring. The Jews elites want a Jewish state, and they are willing to ensure that it is a democracy. The Arabs reject the possibility that a Jewish state by definition can ever be democratic. In terms of the Future Vision Documents, the demand for democracy and ‘rights’ is tantamount to a denial of the Jews’ right to a state which realizes their right to self-determination. This is a deep-rooted ideological conflict. It is not clear whether it is possible or fruitful to discuss this issue, because it is not clear whether or how such a discussion could promote understanding and agreement.

It is both fruitful and important to discuss the characteristics of egalitarian citizenship of the Arab minority in Israel. There is agreement on the principle, but details should be discussed and elaborated. In my view, there is no justification for discrimination against Arabs, and it is important to take action to reduce the structural gaps between Arabs and Jews. Nonetheless, there remains an important disagreement on how to describe the current situation. I believe that the picture is more complex and multi-faceted than
some Arab leaders suggest. It is not true that the members of the Arab minority do not enjoy any rights whatsoever, and it is certainly not true that there is no recognition of their collective rights. The status and equality of the Arab minority are improving – this is a clear trend. Nonetheless, there are considerable gaps between the sectors, some of which are indeed structured by the Jewish nature of the state and especially by the ongoing conflict. Do Arabs in Israel today enjoy equality? Do they have opportunities for education, culture, and a modern lifestyle? I believe that the answer to these questions is not a simple one. The situation of Arabs in Israel features considerable elements of liberty and equality, certainly compared to the social and political reality in neighboring Arab countries. In Israel, pluralism is strong: Arabs are under no pressure to become assimilated into the Jewish-Israeli society. Even within the Arab community in Israel, individuals enjoy relatively broad freedom to select an Arab identity of their choosing. These are all achievements, and the Arab citizens of Israel occasionally concede that they strongly prefer to remain its citizens. This preference may be evidence of the fact that the life of the Arab citizens of Israel is not intolerable, although it contains structural burdens that may be almost impossible to eliminate. One important example is the language: Arab citizens of Israel live in a society whose dominant language is Hebrew. This is the language of the state – even though Arabic is legally an official language, a status which has practical manifestations. Many of the state’s Jewish citizens are not proficient in Arabic, and this lack of knowledge has no adverse impact on their lives. The situation is different for Arabs, whose degree of integration in Israel’s social and economic life depends on their command of the Hebrew language. This asymmetry is very blatant, and as long as Israel is the nation state of the Jewish people with a Jewish majority, and it wishes its culture to be Jewish, the dominant language of the State of Israel will remain Hebrew. Consequently, even in the absence of discrimination against Arabs, even if Arabs do not suffer from exclusion or under-representation in government agencies, and they live lives of prosperity – in some aspects, they will remain aliens here.

The Arabs would like to stop being a minority in their country. This is a universal, understandable desire: After all, the Jews themselves live here because it is the only place where they are not a minority. But for the Arabs to stop being a minority in their land, we the Jews must stop being the majority in our land. This reality poses a difficult question for local Arab leaders. While the leaders of the Arab public in Israel do not accept the legitimacy of preserving Israel’s status as a nation state of the Jewish people, this is not an issue for negotiation or compromise for most of the Jewish majority. The basic premise of the Or Commission, that dialogue and prolonged negotiations will bring the parties’ positions closer, seems to be unrealistic. A considerable portion of the leaders of the Arab minority do not accept the vision of Israel as a Jewish democratic state even
if coupled with an egalitarian, shared citizenship. No dialogue or progress in reducing discrimination against the Arab minority will change this reality.

The second premise of the Or Commission: The relevant territory is Israel within the Green Line borders. A distinction should be made between the relationship of Arabs and Jews within Israel, and Israel’s conflict with the Palestinian people.

The second premise of the Or Commission states that the State of Israel within (more or less) its Green Line borders is the territory relevant to the relationship between Jews and Arabs. According to this premise, it is important for both Jews and Arabs in Israel to emphasize the distinction between the arrangements and disputes within the state, and those that concern the future relationship between Israel and the Palestinians outside the state. This premise is indeed valid and important on many levels. For many Zionists, Israel’s existence as a nation-state of the Jewish people is justified by the solid Jewish majority in Israel, and the fact that a Jewish state in part of the Land of Israel allows Palestinian self-determination in its other part. In fact, many of Israel’s Arab citizens oppose action leading to redrawing borders to better align populations and sovereignty, or steps leading to the annexation of predominantly Arab-populated areas to the Palestinian state. Nonetheless, this premise is not a simple one because the geo-political situation is unstable, and instability leads to ambiguity concerning borders, which also affects Jewish-Arab relations inside Israel. The Or Commission was correct in stating that this overflow of the conflict into the state is dangerous, but it appears to be inevitable. As a result, any hope that depends on the ability to separate the two issues seems to be unrealistic.

The political unit called the State of Israel currently contains a stable Arab minority and Jewish majority. A different demographic reality exists in the territory between the Mediterranean and the Jordan River. The current demographic situation is disputed, but it is conceded by all that even if the Jews may meanwhile enjoy a slight majority in the area between the Mediterranean and the Jordan River, Arabs will quickly become the majority if a single state is established and refugees and their descendants are allowed to return. These facts are known to all, and are not a secret. This reality introduces instability into the area, and the two sectors hold different preferences in the choice between a single-state or two-state solution.

What will happen if one state is established in the territory extending from the Mediterranean to the Jordan River? No one talks about that. It is very popular to speak of the vision of a single state, but no one has confronted questions such as, which language will be spoken there, and what the life of either Jews or Arabs will be like. Arabic speakers belong to a large nation that speaks Arabic, a nation of many millions. Even in
Israel, speakers of Arabic continue to preserve their language, despite some difficulties. But what will happen to Jews in a single state between the Mediterranean and the Jordan River? What will happen to Hebrew? How can it preserve itself? What will happen to the Jews’ physical security? What will happen to their collective security? There is no answer to these questions. Many people explain that a single state for two nations is a just solution because it will be a neutral, democratic state – and moreover, a stable one; It would also allow the Jewish settlers to remain in their place. However, a single state will not be a Jewish state, and the Jews will lose the one place in the world where they are a majority, where their language is spoken, and where they enjoy security. It is also unclear what would a state-for-two-nations be like. Would it be democratic? Would the standards of welfare, education, healthcare and science be similar to those in Israel? There is no certainty of this. It seems that a sober study of figures and reality indicates that such a single state would quickly become similar to the other countries in the region.

Today, asymmetry exists in the State of Israel. “Two-states-for-two-nations” appeared to be a just solution in view of the dispute between the two nations that seemed to have prevented coexistence of Arabs and Jews in a single state; However, due to the outcome of the War of Independence – the Nakba, for the Palestinians – the State of Israel was indeed established as a Jewish nation-state, but no Palestinian nation-state has yet been established. Ostensibly, the Or Commission assumes that a Palestinian state will come into existence and the resulting symmetry will, to some extent, help Israel’s Palestinian citizens realize their aspirations for a state in which their own people exercises its right to self-determination. However, it is not certain whether the two-state solution will resolve the concerns of Israel’s Arab citizens. In fact, it is precisely their leaders who demand that the PA withhold recognition of Israel as a Jewish state. By doing so, they are demanding that the PA not recognize the “two-states-for-two nations” solution, but only support the principle of “two-states-side-by-side” – a Palestinian state and a state-of-all-its-citizens.

I had the opportunity of hearing this position, powerfully and fluently articulated, during my preparations for teaching a mandatory course at the Faculty of Law, entitled Israel as a Jewish Democratic State. Due to the deep cleavages in Israel on this issue, I chose to prepare the syllabus and reading materials with the assistance of three graduates of the Faculty of Law: a young Haredi man, a young Arab woman, and a young Jewish woman (of Mizrahi origin). The dialogue we conducted was fascinating, especially the exchanges between the Haredi man and the Arab woman (anyone attending those sessions would have easily understood that part of the Haredi public creates concerns for the Jewish majority which are no less complex or critical than the concerns created by the existence of the Arab minority).
The young Arab woman powerfully presented her sense of being doubly entrapped. I will attempt to reconstruct the spirit of her statements: “If there would be two states for two nations, where would my place be? The Palestinian state would accept the refugees and celebrate the Palestinians’ right to independence. The Jews would be even less generous than they are now, because they would have been forced to perform very difficult actions, such as evacuating people from their homes, even face the risk of a civil war. As a result, they would want the State to be even more Jewish than it was before. I want to live here and enjoy all the benefits that the State of Israel gives me, but at the same time I also want to retain my own identity and my right to representation. On one hand, I would be more vulnerable in the State of Israel, and my place in the public sphere may be even more constricted than it currently is. On the other hand, I am very fearful of the second possibility that is emerging, which is a bi-national state on the entire territory. In the past, I thought I could be a bridge to peace – today I am afraid that I would suffer from double marginality – I would be someone who is neither here nor there. Worst of all, from my perspective, the two states would be re-defined on a demographic basis. The Jews would say to the Arabs of Israel: “You are Palestinians, you claim that you are oppressed, you demand self-determination; We’ll re-draw the borders and give up sovereignty over Arab towns and villages, so that they will be in Palestine, which is the realization of your collective right to self-determination.”

As is well known, the majority of Arabs do not wish for this solution, especially in the current circumstances, where the choice is between life in Israel, with all its advantages and shortcomings, and annexation to an unstable, divided Palestinian state or entity of uncertain political, economic, and social conditions. Perhaps a stable, well-developed, prosperous Palestinian state will exist in the future. In this event, an agreed redrawing of borders along demographic lines might be the appropriate and natural solution to all. We have not yet reached that point, and therefore we must consider Jewish-Arab relations in the State of Israel today; Today, nothing is certain about what we can expect.

After 1967, many people believed that the initial question of the Jewish state had been decided: The State of Israel was established as a Jewish state, and it could not be defeated in war. Therefore it was only natural that the debates in Israel did not deal obsessively with the conflict between Israel and the Arab nations or the Palestinians. In recent years, however, we have been living in the shadow of wars, the Oslo Accords, and guerilla warfare; It is not clear who is friend and who is foe. We do not know whether the Palestinians are neighbors, enemies, or partners for peace. The Hamas declares its desire to destroy us, but perhaps this is merely a tactic on its part: Perhaps Hamas is not really our enemy. True, Hamas declares that we are enemies, but perhaps we have to understand that it does not really mean what it says. This confusion and uncertainty
trickles down to affect not only Jews but Arabs as well. Today, it has become very difficult for Arabs in Israel to adopt a strategic decision to support either side, because there is no certainty which side will prevail. Moreover, some Arab political leaders believe that they can simultaneously express unequivocal public support for all forms of the Palestinian struggle, and even accuse State’s leaders of being ‘war criminals,’ and at the same time demand full rights as citizens of the State. Sections of the Jewish majority view this position as a threat, and consequently, they wish to limit the freedom of Israel’s Arab citizens to identify publicly and openly with any armed campaign against the State; Arab public leaders present such intentions as anti-democratic expressions of racism.

This dilemma comes into sharp focus in the diverging attitudes of the State and the leaders of the Arab public toward the goals of civic equality and integration of Arabs in the State. Both the State and the leaders of the Arab public are committed to civic equality for all sectors. Although the State has not done all that it can to promote such equality, it is an indisputable goal. In contrast, on the issue of integration, both sides are afflicted by ambivalence. There is a similar degree of ambiguity surrounding the issue of equality of obligations. Both issues are clearly reflected in the debate on national or civic service. Civic service is one of the most powerful tools the State of Israel has to integrate Arabs into the mainstream of life in the state; Civic service is not necessarily designed to achieve assimilation; it aims at the better integration of Arabs into the work force and into society. Such a transformation in levels of integration could emerge, for example, as a result of opportunities offered to women in civic service to leave the confines of their families and traditional society, and to acquire qualifications for work and participation in the labor market. Civic service could contribute to mutual respect between the two communities, and to the development of a rich, shared citizenship. Young Arab men and women would be able to do their civic service in hospitals, for example. After all, there are many Arab doctors, nurses, and patients. Despite all these advantages, leaders of the Arab public generally oppose the civic service project. While the number of young Arabs who wish to participate increases steadily (which attests to the heterogeneity within the Arab community in Israel, and to the diverse processes it experiences), the position of the leaders reinforces the impression that they envisage a horizon that is not necessarily a horizon of full civic equality or integration in a Jewish democratic State of Israel.

The Or Commission is advising the leaders of the Arab public not to identify their struggle within the State of Israel with the Palestinians’ struggle against the State of the Israel. Instead, they should try to campaign for equality inside the State. They would find committed supporters of this cause among Israel’s Jewish majority. Lest they lose this support, the leaders of the Arab public should be wary of appearing to join forces with the Hizbollah and Hamas against the State of Israel. Arab leaders appear to not
to have endorsed this recommendation. The Or Commission Report also explains why this is so: The leaders of the Arab public find it difficult to accept this recommendation because their emergent narrative is the narrative of the Palestinians, the nation whose land was stolen in the Nakba. In their view, their association with the struggle against the continued dispossession of their people beyond the borders of the state is a natural one. They could not remain disinterested when the State of Israel embarked on the Cast Lead campaign against Gaza, although they were unmoved when Sderot residents were unable to sleep peacefully for eight years. They identify with those conducting an armed struggle against Israel, and we cannot change this reality.

Had the leaders of the Arab public stated that they eschew involvement in the conflict with the Palestinians and focus exclusively on the welfare of the Arab minority in Israel, this would be a good basis for hope that we could live together in a single state. However, in the current political and geo-political circumstances in the region, such a statement by Arab leaders would be seen as co-option, and for this reason they are hardly expected to accept the fact — as do several Druze leaders — that history determined that they live in the single country in the world that is a Jewish state.

Thus it seems that we cannot attain the state of greater clarity which the Or Committee recommends: a situation in which the leaders of the Arab citizens of Israel distinguish between cultural, social and political identification with their national brethren, and the explicit clarification that as citizens of Israel they cannot be partners to the non-political means of struggle of their national brethren; In such a situation they neither renounce their brethren nor their aspirations, but they equally do not define Israel and its leaders as the enemy. However, we must recognize that failure to achieve this distinction inevitably weakens the chances of implementation of the Commission’s important recommendation to the police to view Arab citizens of Israel as equal citizens rather than enemies.

The third premise of the Or Commission: The prescription for improving relations between the two sectors is mutual commitment to promoting equality and the rule of law, and to refraining from violence and incitement to violence.

The third assumption of the Or Commission is that it is possible to achieve fair, stable relations between the sectors through a dialogue based on democratic means that respect the rule of law, through agreement to refrain from resorting to violence to resolve disputes. Unfortunately, for both sides, the conditions that would transform this premise into reality do not obtain. The fact that this assumption is unrealistic is not limited to Israel, or to the relationship between Jews and Arabs: For example, violence is also used as a means to achieve goals by Haredim in Israel. Violence is rampant because using force does manage to achieve goals, both in general and as a means to prevent
law enforcement. In Israel’s reality, things are slow to change before force is used to compel the government to recognize the gravity of the situation and the intensity of the protest. It is a fact that the authorities cannot always execute a legal demolition order in an Arab village, because hundreds of young people arrive at the scene and prevent the demolition day after day. This is the situation in villages in the Galilee, in recognized and unrecognized towns in the Negev, in Sabbath demonstrations on Bar Ilan Road, and in settlements in Judea and Samaria. In many contexts, strong determination to defy the police is successful. Therefore, the Or Commission’s recommendation to refrain from violence and denounce violence is very important and correct, but in practice we are conveying the opposite message because we are not vigilant about law enforcement.

At the same time, we fail to do all we should to prevent the development of conclaves of perceived discrimination, selective enforcement, and anger, which lead to violence in general and violence against law enforcement in particular. Surely, the inability to enforce the law, especially when disobedience is viewed by participants a necessary component in the struggle against government injustice, is not the optimal foundation for relations between individuals or groups, and the State. Public order and its effective maintenance are critical especially in situations of unrest. And yet, I fear that we cannot rely on having a credible foundation of law enforcement that will serve as a basic component in improving the relationship between Jews and Arabs, and between state agencies and the Arab public. Such effective law enforcement is required both in order to take determined, reliable action to promote the equality and security of Arabs in Israel, and to convey a clear, unequivocal message that violence and disregard of the law do not pay, so that gaining political and social goals clearly depends on relinquishing violence as a means to achieve them.

C. A View to the Future

This analysis indicates that the ideal, moral and just vision described by the Or Commission is unattainable because it is partly based on premises or factual determinations that are unrealistic or unattainable. This does not, however, undermine the validity of this vision as an ideal: An ideal is always unattainable in its entirety. The power of an ideal is that we persistently strive toward it. The ideal directs our actions even if it is unattainable. Yet our attempts will be more effective if we are aware that at present our presuppositions are not realistic. Our attempt to realize a just, exciting, and valid ideal will fail if we do not recognize that it is not an authentic ideal for all of us. Recognizing the diversity of approaches is extremely important for how we progress toward realization of the ideal.

Thus, we must be more sober and realistic. We should not relinquish our ideal – after all, one cannot live without a vision, and we cannot have any vision other than this vision
of life of peace and mutual respect. Moreover, I truly believe that a large part of the Arab public—though not necessarily its leaders—views the attainable future in a similar manner. I believe that the dream of a state that affords Jews the self-determination they critically need, and offers Arabs a place of dignity and equality in the State of Israel, is the correct dream for the State of Israel and for its Arab minority. This imposes a considerable burden on the Arabs: They will live in a country whose dominant ethnic and religious culture is not their own. But, after all, many people in the world live as a minority. The “package deal” of a state that is both Jewish and democratic may indeed be the best situation possible for both groups, under the circumstances and underlying conditions, especially if, alongside Israel, there is a political entity where Palestinian Arabs can enjoy political independence and liberty in part of their historic homeland.

Can the relations between Jews and Arabs in Israel be improved by revoking Israel’s status as a Jewish state and forgoing the preservation of a Jewish majority in Israel? A reduction in the Jewish majority might improve the sense of belonging of the Arabs in Israel, but I do not believe that it would improve the general situation of the Arabs living in Israel. In addition, the Jews’ situation in Israel would become precarious. The hope that “color-blindness” and the transformation of Israel into a neutral country would improve the situation is not a realistic hope in my view. I similarly do not believe that the Arabs genuinely wish for a “state of all its citizens.” Furthermore, based on my understanding of the history of inter-group relations, such an approach demonstrates a lack of understanding of the nature of human society. It is incorrect to state that numbers have no significance, and the identities of the majority or minority have no significance. It is incorrect that stability will be maintained equally well, whether one group or the other constitutes the majority: The fact is that not a single Jew visited the Temple Mount or the Cave of the Patriarchs in all the years that these sites were controlled by Arabs, despite the international consensus supporting universal access to holy places. In contrast, under Israeli control, the holy places are accessible by all. Israel is one of the few countries in the Middle East that allows minorities to maintain autonomous community life. Therefore, in principle, it is possible to limit the adverse impact to individual and group rights of Arabs within a Jewish State of Israel, even if they are a minority and do not enjoy political independence within Israel. On the other hand, the majority of the Jewish public in Israel believes that the Jewish community in Israel will not enjoy security or equality if it relinquishes its position as the majority. Therefore under the existing circumstances, the transition from “Israel the Jewish state” to “Israel the state of all its citizens” or a state with an Arab majority, will not occur without a struggle. We do not know what the outcome of such a struggle would be. Therefore it is advisable for both sides to stick to the rules of the game and seek to effect changes within the current political framework.
As the Or Commission Report stated – agreement on this point requires judgment and responsibility on part of the State and the leadership of both sides. The majority must assume greater responsibility, because it is the majority, but the minority in Israel is also part of a regional majority, and the majority in Israel is a small minority in the region – and this is another point that the minority in Israel must understand.

In-built factors must be recognized: Since Israel is defined as a Jewish state, it evokes greater affinity on part of the Jewish majority, and the Arab minority indeed feels – and will continue to feel – a lesser sense of belonging. This is not something that can be denied: We cannot change this fact even if we constantly strive toward coexistence, equality, peace, and brotherhood. We must understand that we cannot have our cake and eat it too. Even if we say that we are walking toward a horizon of complete equality between Jews and Arabs, most of the people are Jews, and it is important for them to continue to be Jews and preserve Jewish culture. No one in Israel wants a state of all its citizens that is a neutral state of alienated individuals. None of the groups in Israel are similar to some groups in the West: These are groups whose collective identity is important to them, and they want a state-of-all-groups – whether the group is based on religious, national or other affiliation.

If we wish to preserve our own collective identity, we cannot adopt a “colorblind” or neutral approach. Preserving the identity of one group implies emphasizing the distinction between it and the other groups. The other groups maintain similar mechanisms of exclusion. Thus, a country of groups requires a shared mediating framework to allow the members of the different groups to connect to their civic identity. The state must provide this mechanism, and I believe that it is doing so with considerable success.

If this is the case, what should we do? In the British Mandate period, there was some advantage to having a third party who played the role of the “bad guy” and maintained order among the warring parties. The then Jewish minority and Arab majority each addressed their demands to the mandatory government, and each side believed that the mandatory government favored the other. Despite the arguments, both peoples had full autonomy to develop. The Jews built national institutions, and a magnificent “state-in-the-making.” The Arabs proceeded in a less impressive manner – apparently even they admit to this – which explains the results of the 1947-48 war. Nonetheless, there was no problem of duality between the two national movements and the state because the state was a third party; The two national groups felt that they could each struggle against the government, because it was an occupying force, an alien, an enemy. Nonetheless, several small, marginal national groups organized jointly, creating Jewish-Arab cooperation against the British.
Today the situation is different. We must continue to live in this region under a non-neutral sovereignty, be it Jewish or Arab, that is – Jewish sovereignty in one part of the territory, and Arab sovereignty in another part thereof. It is desirable that in one part of the land of Israel there should be a considerable degree of national independence for the Palestinians. This would greatly improve the prospects for the important vision elaborated here.

Several recommendations and insights emerge from this analysis on those modes of action that are required and those that may be ineffective:

– Steps should be taken to reduce the Arab minority’s feelings of discrimination and the causes that justify these feelings. Still, it is important to understand that these feelings are not exclusively a response to genuine discrimination, and not every inter-group difference is evidence of discrimination. Action should be taken to change the circumstances of the Arab public, by acting with intelligence and sensitivity and not merely by allocating funds. On part of the State, grassroots work and serious motivation is necessary, as is sensitivity for the other’s culture. The increased strength of civil society in the Arab public should be welcomed. It is important that the motivation originate from the Arab public: People should be given fishing poles, not fish. These fishing poles should also include assistance in addressing the complex issue of identity. It is important that the desire of members of the Arab public to change their situation is not exhausted with blaming the Jews.

– In democratic societies, there is complete freedom of opinion. No one wishes to limit the freedom of expression of the Arab public’s leaders when they declare that they prefer that the State of Israel no longer be defined as the nation state of the Jewish people. This stated position is also understandable. At the same time, understanding does not imply that the State’s commitment to Jewish self-determination is a matter of political negotiations between the State, the Jewish majority, and the Arab minority. Furthermore, this understanding should not be confused with agreeing to the position of the Arab leadership that there is no justification for Israel’s continued existence as a nation state of the Jewish people.

– Israel’s definition as a Jewish state does not contradict democracy – it is an expression of its democracy. The vast majority of Jews in Israel wishes to continue to preserve this feature. At the same time, Israel is committed, and should be committed, to full protection of the rights of the members of the Arab minority – individual and collective rights – with the exception of the right to political state-level self-determination within the State of Israel.

– It is reasonable to assume that prolonged discussions on the justification of the State’s definition as a Jewish state or whether the level of protection of Arabs’ rights
in Israel is reasonable will not promote reconciliation or understanding, because such discussions are not likely to convince individuals who come to these issues armed with ideology. Nonetheless it is important to continue to teach both sides the positions of the other side and their reasons, and it is important to continue to promote realization of the rights of the members of minorities in Israel.

– It is most important to reinforce a sense of shared citizenship in all citizens of the State. Rights granted by the State are part of such citizenship. We should reinforce citizens’ bonds to the State and to their citizenship, and encourage service that contributes to the State’s prosperity. Citizens should also be encouraged not to endorse those who conduct an armed struggle against the State from without, even if they are the national brethren of the State’s citizens.

– The education system should instill in all sectors a sense of shared citizenship. Members of all sectors should study the history of the conflict. Jews should know that the Arab minority lives here as a matter of entitlement, not charity. This is its homeland, and the State was established largely on the ruins of its society. For the Arabs, the *Nakba* is part of the history of the conflict. Members of all sectors should study Jewish history, and the Jews’ connection to Israel, Zionism, the Arab struggle against it, the Holocaust, the UN partition plan, and the subsequent war that was designed to prevent the establishment of a Jewish state. This is the shared history of both nations. This history clearly shows that both nations seek independence and freedom. The vision is the realization of the aspirations of both nations.

– Life based on mutual respect will be achieved, as the Or Commission stated, only through the genuine efforts of the leaders of both peoples. There is very fruitful collaboration between Jewish and Arab groups, and it is better to concentrate on resolving practical problems than on ideological arguments that may not be resolved or settled.

The Or Committee deserves our thanks for placing these issues on our table. The State of Israel can have no vision other than that described by the Commission—a Jewish majority and an Arab minority living alongside each other in a state that carefully maintains both its Jewish character and its democratic features. The Commission was correct in emphasizing that commitment to this vision requires much effort on part of both sides. Informed, consistent policy and leadership are required by the State and by the leaders of both groups.
The Or Commission did not and could not have resolved the issue of individual responsibility for the October Events themselves. It similarly could not define a binding strategy of action for the State to follow because commissions of inquiry, by their very nature, cannot propose strategies since whose execution depends on political leadership and ongoing social processes. Still, this is not merely one more case in which the government imposes on a “judicial” commission of inquiry an inappropriate role due to political constraints: The Or Commission Report is an important document precisely because it is not a typical commission of inquiry report. It reminds us that addressing the relationship between the Jewish majority and the Arab minority in a Jewish democratic state is a critical challenge and we must all incessantly apply ourselves to this challenge, not merely because of the October 2000 Events, but because these issues speak to the very essence of our life in this country.

Notes

2 According to the law, after the initial inquiry, those individuals to whom the final commission report may attribute personal responsibility are ‘cautioned’, and thus they have the right to examine the evidence against them and question witnesses.

3 Appointed to investigate the actions of Israel’s government and army in the period leading to the the October 1973 war, up to the end of the first week of the war.

4 Personal recommendations against elected public officials were first made by the Kahan Commission studying the massacres of Sabra and Shatilla in the 1982 Lebanon war.

5 In addition to the problems in collecting evidence, the investigations by the Commission and the investigations conducted by PID were inevitably incomplete due to the refusal of the victims’ families to an autopsy at any stage of the investigations.

6 Several important background facts offer evidence of the complex connections between the gaps between sectors and the State’s actions. For example, education and social economic status levels of Christians are not only higher than those of Muslims but are also higher than the education and welfare level of Jews. Furthermore, Arabs’ low level of social and economic status is related — at least in several sub-groups — to a relatively low level of educational attainment, large family size, and relatively limited participation of women in the labor force, which are in turn affected by cultural factors.

7 Throughout the text I speak of Jews and Arabs in Israel. I use the term ‘Palestinians’ to denote those Palestinian Arabs who are not citizens of Israel. In this I follow the Or Report. I realize that some Arabs who are citizens of Israel would prefer to be identified as Palestinians, as they most certainly are. My terminological choice is not meant to deny their preferences in any way.

8 MK Tibi indeed clarified that the Arabs wish is for a “state of all its nations” — a bi-national state in which the Arabs have right of veto on issues that are important to them, such as the state described in the Future Vision Documents. The common denominator of both formulations is that they both deny the legitimacy of Israel as a state in which the Jewish people — and it alone — realizes its right to state-level self-determination in the one place in the world in which it constitutes the majority.
Six years after the publication of the Or Commission Report, which studied the antecedents of the October 2000 Events, this year’s Annual Or Lecture, organized by the Konrad Adenauer Program for Jewish-Arab Cooperation and Konrad-Adenauer-Stiftung Israel is devoted to an evaluation of the work of the Or Commission, its conclusions and its recommendations.

Professor of law Ruth Gavison discusses the problematic aspects of a commission of inquiry’s authority, based on criteria that are less than legally unequivocal and without granting option of appeal, to disqualify a public official from serving in a political office. According to Prof. Gavison, although commissions of inquiry in Israel typically consider themselves competent to formulate personal recommendations concerning publicly elected officials, they should – as the Or Commission did with reference to Arab public leaders – avoid such conclusions. The Arab minority’s disappointment at what they considered a failure of the Commission to attribute blame to political officials is evidence that the work of commissions of inquiry gives rise to unrealistic expectations.

Prof. Gavison analyzes the Commission’s basic assumptions and its recommendations, which emphasized the inequality and neglect of the Arab society in Israel, and linked the reduction of gaps between these two sectors with the elimination of discrimination against minorities. She believes, however, that the programmatic outline proposed by the Commission was based on the overly optimistic assumption that all sectors of Israeli society share a common ground for action. While she notes that the need to eliminate discrimination is uncontested, there is no consensus on the root causes of the disparities between the sectors. As a result, there is no guarantee that elimination of discrimination will reduce the disparities. Consequently, what is needed is extensive and meticulous action to promote equality between Arabs and Jews in Israel.

Prof. Gavison views the Or Commission Report as an important document which demonstrates that addressing the relations between the Jewish majority and the Arab minority in Israel is a “major challenge that everyone must constantly address, because it is the very essence of our life in Israel.” She notes that there is a no other vision for the State of Israel, which is the vision outlined by the Commission: a life in which the Jewish majority and Arab minority live alongside each other in a state that carefully maintains both its unique Jewish character and its democratic features.