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Ethics at Work: Who will watch the watchers?

By ASHER MEIR

The Israeli public is very disappointed in the way the recent conflict in Lebanon was prosecuted; and a combination of non-governmental organizations (such as the Movement for Quality Government in Israel), spontaneous protests (such as that of the reservists) and Knesset members have all called for the establishment of a state commission to examine the performance of the military and the government.

This column strives to be completely nonpolitical, and I have nothing to say about the performance of the relevant authorities in this conflict. However, perhaps the most common emphasis of my column is the need for good governance structures to ensure accountability.

In that spirit, I want to examine the remarkable Israeli institution known as the "State Commission of Inquiry."

A state commission of inquiry is a special committee appointed by the government, generally headed by a retired judge and including public figures no longer active in public service. As its name suggests, the committee is given a very broad mandate to inquire. It can summon and question witnesses and documents, etc. Afterwards, the members discuss the evidence and make recommendations. In the past, the government has invariably adopted the recommendations of state inquiry commissions, although no law obliges it to do so.

Almost a year ago, I was present at a meeting of the Ethics in Government Committee under the auspices of the Prime Minister's Office, which was devoted to the topic of "Accountability in the public service." One of the speakers was former finance minister Yoram Aridor. Among other things, Aridor spoke at length about the problematic nature of these commissions. In his view, these commissions violate the principles of the due process of law. I will explain what I think this means, without any implication that I am citing Aridor exactly.

Normally, in order to punish someone for wrongdoing, a prolonged and detailed process is required.

This due process proceeds more or less in this manner: Following some reason for suspicion, a person is investigated by the police. If the police think there is good evidence, they submit their evidence to a state attorney. If the state attorney decides that there is a good chance for a conviction, then the office will serve an indictment and also act as the prosecution in court. The accused is then brought before a judge, in a court case with exacting standards of procedure and admissibility of evidence. The judge then decides if the defendant is guilty. In some countries, including the US, this stage actually involves a fourth participant - a jury of peers. If the person is convicted, then a separate hearing is held to decide the appropriate punishment.

After this involved process is finished, the convicted individual has the right of appeal.

However, a state commission fulfills all these functions by itself - it investigates, accuses, judges and sentences. Furthermore, no possibility of appeal exists. Even within the process, not all the protections granted criminal defendants are present. The commission and its members are not accountable to anyone. (In all fairness, the commissions don't put people in jail. But their recommendations are often far-reaching, involving questions of which politicians are suitable for which office.)

Why, then, do Israelis believe that such a commission, with the severe governance problems it presents, is the solution to our periodic crises?

In my judgment, Israelis have a strong belief that when power is abused and there is heck to pay, there is some benevolent, incorruptible parent who can be counted upon to set things right. The idea of a comptroller (ombudsman) is one expression of this idea, but there is an important check on the comptroller's power - namely, he or she doesn't have any. The comptroller's office is allowed to acquire information and publicize it but does not always make recommendations; and when it does, the government doesn't have to accept them and, as often as not, demurs.