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## INDEPENDENT SCRUTINY AND THE OPEN SOCIETY

Two thousand years ago, the great Roman poet and satirist, Juvenal, expressed a thought of undoubted timelessness when he asked the rhetorical question, '*quis custodes custodiet?*' ('who will guard the guardians?'). We have all observed Parliament recently wrestling with the problem which has become called freedom of information and few now would argue against the notion that the availability of information is an essential ingredient for an open society. Any citizen or resident should be entitled to know what information is held concerning himself or herself by any agency or body, public or private which has the power to affect his or her life. This must be supported by readily available remedies, firstly to obliterate any of this information for whose collection there is no warrant, secondly to punish those who have illegally collected such information, and, thirdly, to correct information which is legally stored but which is incorrect. Principles of this kind would seem indispensable in a society which prides itself on being a democracy.

Self regulation would have been taken for granted a generation or two ago as unquestionable in relation to the activities of many of our society's significant sectors. Doctors, the police, the city, to name but three, were largely left to their own devices when it came to examining and correcting the actions of their members. In this, they were aided by the courts which forged legal principles to support and protect such monitoring from within. The idea of independent monitoring of alleged wrongful acts on the part of a member or members of certain bodies was considered inappropriate and inefficient.

Today, this principle of self regulation is under serious attack and it is difficult to argue with those who applaud this development in the name of a more open and a more just society. The connection between racist crimes in our society and a police complaints procedure which lacked full independence was graphically pointed out in the ghastly Stephen Lawrence murder and the subsequent Macpherson inquiry. After many years of campaigning, we now seem close to a fully independent police complaints procedure. The Kennedy inquiry into infant deaths following heart operations in Bristol is beginning to reveal the indispensability of the independent scrutiny of the training and conduct of doctors. And on the financial front, despite strong internal resistance, steps are now being taken to establish an independent agency to police the actions of those whose financial operations are now central to the lives of so many people in this country.

Whether we satirise the *ancien régime* as 'an old boys' network' or insist on the traditional maxim that justice must not only be done it must be seen to be done (not, as some wag once put it, 'justice must not only be done, it must be seen to be believed!'), we see developing about us a scepticism (arguably a healthy one) for monitoring regimes which are not clearly independent of the bodies whose members are under investigation. The courts have shown an increasing awareness of this phenomenon and we can have confidence that the Human Rights Act will be pressed into effective service as the UK seeks to strengthen its democracy.

**Professor Harry Rajak**