

# Landmark reforms

*Prominent commentators present what they believe to be landmark reforms in criminal justice.*

There have been many significant changes in prisons over time. Many have been public and long lasting, such as the abolition of capital punishment, whilst others have taken place without the glare of the media but have nevertheless marked a significant change in policy and practice.

A number of prominent professionals and commentators were asked to identify examples of landmark reforms, changes that had led to significant, progressive changes in criminal justice. This does not attempt to be a comprehensive or definitive list but is instead some personal examples that illustrate how changes can emerge, whether that be from crises, from principled lobbying, popular support or litigation.

## The Woolf Report

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**Baroness Vivien Stern** is a Senior Research Fellow at the International Centre for Prison Studies at Kings College, London.

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The Strangeways prison riot in 1990 lasted 25 days and spread to another 30 prisons. The media set up encampments outside and a running commentary was broadcast to the nation and the wider world. In response, the government could have appointed someone with a security background to carry out an inquiry and produce a report recommending a new regime with security at its centre. Fortunately for the prison service and penal reformers around the world, the Home Secretary, David (now Lord) Waddington, invited Lord Justice Woolf, then a judge of the High Court. The inquiry had a wide brief. The way it was conducted gave an indication of the values that would underpin its findings. The closed world of prisons was opened up to public hearings. Lord Justice Woolf wrote personally to many prisoners. Prisoners' voices were heard, and believed.

The method of inquiry was reflected in the findings. The report was a profound exposition of the approach to prisoners adopted by the world community when it embraced the United Nations international human rights framework after the Second World War. At its heart was the notion of prisons run according to the principles of natural justice, where every prisoner was treated with 'humanity and respect for the inherent dignity of the human person'. These ideas permeated the process and the outcome. Over time they seeped into the ethos of the Prison Service. Institutions were set up or developed in a way that supported the opening up of prisons to scrutiny, the acceptance that prisoners must be allowed to complain, must not be punished without due process, must have access to the courts.

Much remains to be done in our prisons. But the effects of the Woolf Report in tilting the balance towards justice means that we have much less of which to be ashamed.

## The extension of the Children Act 1989 to prisons

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**Anita Dockley** is Research Director of the Howard League for Penal Reform.

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The Howard League for Penal Reform has used litigation as a tool to implement change in the penal system since 2002. The charity successfully used judicial review to challenge the Home Secretary's refusal to apply the Children Act 1989 to children in prison (see: [www.howardleague.org/fileadmin/howard\\_league/user/pdf/Munby\\_judgement\\_01.pdf](http://www.howardleague.org/fileadmin/howard_league/user/pdf/Munby_judgement_01.pdf) for judgment).

At this time, the Prison Service Order (4950) that guides the regime for juveniles stated that the Children Act did not apply to under 18s in prison establishments. We argued that this was erroneous and that the duties imposed on social services departments in respect of children in need were owed to such children, especially those at risk from bullying, assault or self-injury. It was our view that, based on our research, children in prison were routinely subjected to treatment that in other circumstances would trigger child protection investigations. In the High Court we argued that this policy effectively created 'no-go' zones for agencies responsible for ensuring that children's needs are met. Local authorities considered that once a child was in prison custody they had no responsibilities to that child until their release.

Mr Justice Munby found in our favour, stating that we had 'performed a most useful service in bringing to public attention matters which ... ought to shock the conscience of every citizen'.

The judgment declared that the Children Act applied to children in Prison Service establishments subject to the necessary requirements of imprisonment. It led directly to the amendment of Prison Service and local authority policy and guidance and meant that local authorities retained their statutory duties to safeguard the welfare of children even if they are in custody.

We believe that the judicial review was a significant step towards a universal standard of care for all children.

## The Mubarek Inquiry

**Matt Wotton** is Acting Head of Race Equality Action Group in the National Offender Management Service.

In March 2000, just hours before his release, Zahid Mubarek was murdered by his racist cellmate – a young man with previous convictions for over 70 offences and who is now serving a life sentence for that offence. This tragedy led to an inquiry by the Commission for Racial Equality (CRE) and, later, to a public inquiry conducted by Lord Keith. Both issued in highly critical reports into race equality in the Prison Service.

In 2008, five years on from the CRE Inquiry, the Prison Service invited some of its harshest critics back to assess progress. We did so, in part, because we believe much has been achieved, but also because we wanted the benefit of an authoritative and independent assessment. Our sense that progress had been made, particularly in largely eradicating the most blatant forms of racism, was shared by the external contributors to the Review and by the Independent Advisory Group, which oversaw and endorsed its findings, published in *Race review 2008*.

Among other things, the earlier reports suggested that managers weren't taking race seriously and there was little pressure from the top to make them do so. We believe that's no longer the case. Governors are now focused on race equality, because they believe it is the right thing to do and because the performance framework won't allow them to ignore it. The low number of black and minority ethnic (BME) staff identified in the reports has significantly increased – from 3.5 per cent to 6.3 per cent. It can no longer be said that race complaints are not taken seriously or that prisoners are discouraged from making them. The number received has increased dramatically – hardly a cause for celebration, but a sign that prisoners now feel there is a point to complaining. As a consequence of the progress we have made, the last five years has seen a reduction in the number of BME members of the public who think the Prison Service is discriminatory – down from 21 per cent to 14 per cent – the biggest growth in confidence of any criminal justice agency during this period.

However, while the report concludes that the actions taken have generated substantial improvements, it also acknowledges that the experience of BME prisoners and staff has yet to be transformed. We know we are not there yet. Anyone who has read the Review will see that it is unflinching in listing the detail of where we are still failing. Work to put those things right lies ahead of us.

Following publication of the report, the new regulator – the Equality and Human Rights Commission – has taken the Prison Service off 'special measures'. They were right to do so. In a leader following the publication of the Zahid Mubarek Inquiry, *The Guardian* wrote: 'The shock that follows a single outrage can provide the chance to start putting it right... The Stephen Lawrence tragedy jolted the Metropolitan Police into tackling its racism. The murder of Zahid Mubarek should shake up the prison service in the same way'.

It did.

## *I am a fugitive from the chain gang* (1932)

**Jamie Bennett** is Governor of HM Prison Morton Hall.

*I am a fugitive from the chain gang* (dir. Mervyn Le Roy, 1932) is more than a film; it is a legend. It is widely cited as a film that directly led to the changes in prisons in the USA.

Based on the true story of Robert E. Burns, the film follows an unemployed First World War veteran who is duped into taking part in a robbery. He is sentenced to hard labour on a chain gang. In real life, Burns was sentenced to ten years hard labour in Georgia. He escapes and makes his way to Chicago where he becomes a successful civil engineer. In real life, Burns became a publisher, establishing the *Greater Chicago magazine*. However, a spurred lover discloses his past and despite popular press support for him, he is recalled to prison. The promise of an early pardon recedes and he finds himself facing a long sentence on the chain gang. He therefore escapes again, as Burns did. In the final scene, the character returns to see his true love and as he recedes into the shadows she asks him how he manages love to which he replies, 'I steal'.

The film scored huge critical and commercial success. Robert E Burns, still a fugitive when the film was released, came out of hiding in New Jersey to promote the film. This led to his re-arrest and an attempt by Georgia to extradite him. However, this generated a public outcry against and the state governor refused the extradition order.

The film also generated wide criticism of the chain gang system. Georgia reacted by trying to ban the film and sue the filmmakers. However, changes did slowly start to emerge. In 1937, Georgia announced that her first prison would be built in order to replace the chain gangs. Then, following the election of Ellis Arnold as governor in the 1940's, reform gained momentum, including separation of young offenders, the removal of stripes, the abolition of leg irons and abolition of the chain gangs. In an important symbolic step, Robert E. Burns was invited back to Georgia in 1945, and represented by Arnold before a pardon hearing, his sentence was commuted to the time already served. For the first time in almost a quarter of a century, Burns was a free man.

The film did not achieve these changes itself, but provided an important medium through which reform was advocated and public support secured.

## The creation of the office of Prisons and Probation Ombudsman

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**Stephen Shaw** has been the Prisons and Probation Ombudsman since 1999; prior to that he was Director of the Prison Reform Trust.

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This year marks the 15th anniversary of the setting up of an independent Ombudsman for prisoners. The first Prisons Ombudsman, Sir Peter Woodhead, began investigating complaints in October 1994.

Since that time, the role of the office has expanded in two directions. From 2001, we have been able to take complaints from those subject to probation supervision – whether on licence or as an order of the court – and we have been re-branded as Prisons and Probation Ombudsman (PPO) accordingly. (The complaints remit was further extended in 2006 to include complaints from those held in immigration detention.) And since April 2004, we have had a standing commission to investigate every death in prison or immigration detention, or amongst the residents of probation hostels (approved premises). This includes all causes of death – natural, accidental, homicide, and self-inflicted. Earlier this year, we commenced our 1,000th fatal incident investigation – and the reports of about half of these are now published (albeit in anonymised form) on our website, [www.ppo.gov.uk](http://www.ppo.gov.uk). The website represents a unique archive of both national and international significance.

Alongside HM Chief Inspector of Prisons and the Independent Monitoring Boards, the Ombudsman's office represents the third pillar in the English system for prison accountability and monitoring. Each year, between 4,000 and 5,000 complaints are referred to the Ombudsman and around 200 deaths are investigated.

Although there had been some pressure group interest in the idea of a specialist Ombudsman for prisons (reports in the 1980s from Justice and the Prison Reform Trust), the PPO is a direct result of the 1990 Strangeways riot and the landmark Woolf Report, *Prison disturbances* (1991). Woolf identified an absence of justice in the running of jails as being a key factor in the causes of prisoner unrest. (He meant by this both a lack of procedural safeguards, and a more general sense of unfairness in the treatment of prisoners' grievances.) Woolf's recommendation for an Independent Complaints Adjudicator for Prisons morphed into the more authoritative Prisons Ombudsman by the time the office was actually up-and-running.

The roots of the death in custody role are slightly different. This was a more overtly political decision by ministers, reflecting a general unease with internal investigation systems in both the police and prison services. The requirement under Article 2 of the European Convention on Human Rights for independent and effective investigations into all deaths in custody was also a major driver.

Although the staff group has grown from just over ten to more than 100, compared with our nearest sister organisation – the Independent Police Complaints Commission – the PPO office remains poorly resourced. Indeed, staff are very stretched and many investigations suffer delays as a consequence. The PPO is also the poor relation in that, despite a government commitment going back a decade, we have never been established in statute. Nevertheless, there can be little doubt that the setting up of the independent Ombudsman is one of the key reforms in penal policy over the last 20 years. ■