

Bullock versus the Department of Corrections: Did the Human Rights Review Tribunal get it wrong?

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Abstract: Cultural misunderstandings regarding the use of Māori rituals in Pākehā surroundings have led to embarrassment and anger. Recently, a woman, Bullock by name, filed a claim against the Department of Corrections with the Human Rights Review Tribunal (HRRT) a body whose job, amongst others, is to review breaches of human rights as defined under the Human Rights Act 1993. The Department of Corrections was charged with “sexual discrimination.” At the foundation of this claim was the traditional Māori gender-specific role of *pūkōrero*, (a Maori orator) a person who during rituals of encounter will extend greetings but more importantly through acknowledgement and invocation remove the tapu of the *manuhiri* (the visitors) in such a way as make them one with the *tangata whenua* (the hosts). Bullock claimed that she was prevented from speaking and sitting in the place reserved for *whaikorero* (oratory). The HRRT agreed that the Department of Corrections was guilty of sexual discrimination and that the Māori practice of excluding women from the *paepae* (place of oratory) was sexually inappropriate. The Māori perspective of the events was never considered by the Tribunal. This paper considers the Bullock case from the Maori perspective, highlights a number of issues that deserved attention and raises the possibility that the HRRT erred in their assessment of the facts.

Keywords: biculturalism; ethnocentrism; Indigenous rights; sexual discrimination; *tikanga* Māori

Introduction

The colonization of Aotearoa over the last 200 years by Europeans has been fraught with difficulties especially for the Māori people. Europeans have, over the years, struggled to accommodate the presence of Māori within their social order with a variety of strategies ranging from armed aggression to assimilation, none of which, from the Pākehā point of view, have been entirely successful. Today the strategy is to offer limited recognition of the Treaty of Waitangi and to press on with biculturalism whereby the two major cultures strive for some kind of ill-defined although inevitably one-sided partnership (The Waitangi Tribunal, 1975).

The principles of biculturalism seem simple enough, two cultures engaged in partnership together strong, building a nation with equality for all; unfortunately, the reality is quite different. Māori account for only 14.7% of the population at the present time. The culture of New Zealand is overwhelmingly European, and its institutions are built around European concepts of government, freedom, justice, business, religion, commerce, education, morality, and social structure. The move towards biculturalism seems idyllic, but is practically impossible. How does one create a blend of cultures when one of the cultures is so overwhelmingly in control, and the other simply trying to preserve what little it's got?

Biculturalism raises issues regarding the preservation or protection of Māori traditions and values in an environment that is dominantly European, and not particularly sympathetic to the idea of cultural partnership. How then can Māori graft themselves onto a tree that is already grown? How does Māori protect its culture from degradation and distortion imposed from the outside and how should Māori deal with misunderstandings that inevitably arise from Eurocentric misinterpretations of meaning and intent? Aspects of Māori culture such as welcoming ceremonies give New Zealand a unique quality that sets this nation apart from

others. However, those unique qualities that arise from the Māori side of the bicultural partnership are sometimes subject to criticism by Pākehā who do not understand the history or the purpose from which those rituals evolved. How can Māori preserve its culture in an environment that is so overwhelmingly European?

In this essay I have considered a single example of European interference with Māori cultural traditions to illustrate and reveal the absence of protections that Māori actually have when it comes to preserving, practicing, and maintaining their culture. The depth of government driven Eurocentricity and the extent of its negative influences has been shown through an examination of the case of *Bullock v The Department of Corrections* (2008).

The Bullock incident

Several years ago an incident occurred whereby a Pākehā woman working for the government Department of Corrections took umbrage over the Māori custom of excluding women from the front row or *paepae* of a welcoming ceremony. The *paepae* is, in Pākehā terms, essentially a place from where priests conduct ritual and process. This exclusion of women by Māori from just one aspect of their ritual is based upon its history; males and females play different roles that have nothing to do with “better than,” “superior to,” or any other quality relating to rank. For Māori, *rangatira* (chief) is not gender-specific. Māori have practised these rituals of encounter over hundreds and possibly thousands of years and each role has evolved into a specialist function aimed at testing the intent of *manuhiri* (visitors) without being openly hostile or putting themselves the *tangata whenua* (hosts) at risk, as well as serving to spiritually unite *manuhiri* with the *tangata whenua*. Today those risks have diminished but the rituals carry on as part of *tikanga* Māori (custom). Since Māori understand the reasons and honour the memories of their *tipuna* (ancestors) they see no reason to change the way they currently do things insofar as the rituals of encounter are concerned; some Pākehā have problems with this.

On December 9, 2004, during a Māori ritual of welcome, Josie Bullock, a Probation Officer with the Department of Corrections sat herself down on the *paepae* and when asked to move back she refused. She claimed that her reasons for doing this were to protest the sexist treatment of women by Māori during the ceremony; exclusion of women from the front rank of seats was, in her estimation, a value judgement and therefore sexist. Bullock’s act caused trouble with her Department heads who were embarrassed by her behaviour, her fellow workers were not happy and nor were the Māori participants. Eventually Bullock lost her job, although not specifically for her breach of protocol, but for taking her case to the media (Bullock, 2005; Rudman, 2008). She brought charges of gender discrimination against the Department of Corrections, charges that were later upheld by the HRRT (Rudman, 2008; *Bullock v. The Dept of Corrections*, 2008).

This was Eurocentrism gone mad, not only were Māori having to face cultural discrimination in the workplace, but the very asylum that should be protecting their cultural rights was being run by the inmates. This sent a chill down the collective backbone of Māoridom, because as an outcome of the Bullock fiasco, it appeared that not only were Māori being asked to perform, but they were essentially going to be told how to perform (Anonymous, 2006). The decision by the Department of Corrections was that Māori ways did not take into account the niceties of Pākehā society, and therefore needed to be adapted. This was ethnocentric cultural arrogance at its worst, especially when those decisions by the Department of Corrections to modify Māori custom may have been based on incorrect assumptions in the first place.

The Department of Corrections was caught between a rock and hardplace knowing that no matter what they did they were always going to be the bad guys, after all it was their employee who made a fuss, it was they who could not control their employee, it was they who

were exposed to public scrutiny, and it was they who now had to make it right. Somewhat ironic when one considers that their intentions regarding inclusivity and cultural respect were laudable. Bullock accused the Department of Corrections of overly pandering to political correctness, and even the New Zealand Herald columnist Rudman (2008) in his own narrow misconceptions huffed and puffed about the “sexist practice” of *powhiri*. Thus the Pākehā media agreed to the “sexist” labels being attached to Māori cultural rituals, although theirs could have been simply an opportunistic knee jerk reaction to a Māori issue.

In Bullock’s opinion being made to sit behind the men was sexist. Feeling this way, Bullock had four choices: she could choose not to participate although the Tribunal did not consider this to be a viable option and they were probably right (Bullock v The Department of Corrections, 2008, para. 28), she could choose to take part in the ritual but remain quiet, she could choose to make a fuss, or she could have spoken during the Pākehā part of the graduation ceremony. She chose to make a fuss and in so doing she remained true to herself, but degraded those around her especially the Māori. Her correct choice was to speak during the Pākehā part of the ceremony. Bullock has spoken of this event many times to the media, and even published her opinions on the internet (Bullock, 2005). Bullock’s ignorance of Māori culture is quite evident, although her courage to speak out cannot be faulted. Her summary of the event and her feelings about Māori culture were as follows:

The Department of Corrections seems to think that because something is part of Maori culture, it's good. Clearly, lots of aspects of Maori culture aren't good and should be done away with. Just as cannibalism has gone, so too should the sexism inherent in these ceremonies. Cultures aren't set in concrete. They change as time goes by. Otherwise, we'd still be living in caves and women would be the chattels of men (Bullock, 2005).

It appears that Bullock disagreed with the policies of the Department of Corrections, that Māori culture needed to change in order to accommodate her concepts of gender-equality, and her snide remark regarding the cannibal history of Māori was intended to diminish those who probably no longer even practice the custom. The Bullock incident is not unique and even women members of parliament have refused to move back behind the men during *powhiri* (Crewdson, 2006). The Department of Corrections has moved to change its use of Māori ritual to a more inclusive model and this in turn has been protested by Māori in particular by the Māori MP Peter Sharples (Anonymous, 2006; Berry, 2006; Binning, 2006).

It is difficult to determine exactly what the implications are of these changes in the government approach to the use of Māori rituals. Regardless of whether or not this is a storm in a tea cup it behoves Māori to be cognizant of the fact that what has happened is an attack on Māori cultural practices, however slight, and it is appropriate that Māori should respond. In my opinion Māori should stand firm and not be pushed into a place of compromise by a system that places little value on Māori traditions, other than for its entertainment value at rugby matches and for the greeting of overseas visitors. Surely, the ultimate degradation of any culture must be to end up simply as entertainment for the dominant culture.

The Human Rights Review Tribunal

What a mess! Bullock lost her job, and she then filed a complaint with the Human Rights Review Tribunal (hence forth referred to as the ‘Tribunal’) believing that her rights as defined under the Human Rights Act of 1993 (Human Rights Act, 1993) had been violated. In particular she felt that her protest against what she perceived as inherent sexism of Māori cultural ritual had been fully justified and that her subsequent dismissal by the Department of Corrections had been unjustified. The Tribunal hearing was held in November, 2007 and its findings were made public on March 19, 2008. The Tribunal examined the complaint as it

related to The Human Rights Act 1993 (HRRT, 2002). The details of the complaint and the circumstances surrounding the event are all laid out in the report 'Bullock v The Department of Corrections' (2008).

There are three sides to this complaint of Bullock's although the Tribunal considered only two. The two sides considered by the Tribunal consisted of Bullock and the Department of Corrections, but the third side, not considered by the Tribunal, was the interests of the Māori people. The Human Rights Act of 1993 (the Act) does not take into account specifically the rights of indigenous people such as their right of freedom to practice their rituals and cultural traditions without interference from their colonisers. The Act under Section 61 (1)a (Human Rights Act, 1993) does address racial disharmony by making it, "unlawful for any person to publish or distribute written matter which is threatening, abusive, or insulting..." but this is the only reference that could be directed towards violations of indigenous rights in New Zealand society under the Act.

The challenging of Māori ritual by Europeans is not uncommon. Māori custom has been the subject of Pākehā (European) ridicule (Scott, 1995), disparagement (Best 1954), and academic analysis (Ritchie, 1963) ever since Pākehā began to colonize this country 200 years ago (see also Dieffenbach, 1843 in Best, 1982) and no doubt analysis and criticism will continue into the future. It sometimes seems that those who criticise the most actually understand the least when it comes to Māori society and culture. However, that said, one would hardly expect the Tribunal, consisting as it does of people of broad experience, and whose job it is to protect all New Zealanders against the discriminatory acts of their unthinking fellow countrymen, to be so totally Eurocentric in their deliberations as to believe that the problem involving Bullock and the Department of Corrections actually lay with Māori and their traditions and not with some other more basic distortion of New Zealand society. In addition, if the belief was that the problem lay with Māori traditions then surely knowledgeable Māori should have been invited to give testimony.

According to the published report, and I quote:

On 9 December 2004 the defendant ('the Department') held a *poroporoaki* at its service centre in Tamaki, Auckland for graduands of one of its programmes of instruction offered by the Department. According to the *tikanga* for the event the front row seating was for the *manuhiri* (visitors), and specifically for males only (including but not limited to the men who were to speak at the ceremony) (Bullock v The Department of Corrections, 2008, para. 2).

It is important to understand exactly what the event was that unfolded on December 9, 2004 (referred to hereafter as 'the event'). Was the event a *poroporoaki*, a Māori traditional ceremony of farewell as stated in paragraph 2, or was it, as later referred to in paragraphs 10 through 14, a graduation ceremony "to honour eleven offenders who had successfully completed a ten-week criminogenic programme run by the department" (Bullock v The Department of Corrections, 2008, para. 23)?

For Māori, there is a difference between a *poroporoaki* and a graduation ceremony; for one, Māori do not own a graduation ceremony *per se* and a graduation ceremony is a Pakeha construct not a Māori one. The event was probably, and I'm reading between the lines, in fact a Pākehā graduation ceremony upon which was grafted a Māori ceremony of welcome. In other words, a bicultural synthesis that gave the graduation a Māori flavour in order to appear Māori-friendly. The welcome was founded in Māori traditions, but the graduation was Pākehā. Thus the overall event was a bicultural ceremony during which the visitors were welcomed to the venue by Māori but congratulated and celebrated by Pākehā and other members of the Department of Corrections staff. The opening part of the ceremony was Māori by invitation from the Department, but it was not the main event, and not the reason for

the gathering, and yet it was accorded the significance of a royal gala by Bullock who specifically targeted this small, but to her offensive, part of the overall ceremony.

The Māori part of the ceremony was important to the Department of Corrections because it provided a cultural inclusiveness which spoke to Māori offenders. The report of the Tribunal states quite categorically as to why a Māori flavour was added to the graduation ceremony: it said:

Maori make up approximately 50% of the offender population, and are shown by research to be statistically more likely than any other group to re-offend. The Department is committed to addressing issues of Maori offending, and does so in part through targeted programmes for Maori including the incorporation of Maori cultural elements and processes into programmes that are then available to all offenders (Bullock v The Department of Corrections, 2008, para. 61).

Thus Māori came to the graduation ceremony to help the Department of Corrections meet what it perceived were its cultural obligations to Māori offenders. Māori did not come to the event to run a graduation ceremony, or to be attacked either verbally or engaged inappropriately by a member of the Corrections staff. Maori came to help but received in return disparagement of their traditions, and since then have received neither formal apology nor any indication that the problems within the Department of Corrections concerning ethnic insensitivity has been resolved other than with notification of the intent to replace the traditional Māori *powhiri* with something that the Department considers more palatable. This intent has been protested by the Māori MP Peter Sharples as being culturally inappropriate (Binning, 2006).

Thus the cultural needs of those Māori offenders that seemed so important to the Department to begin with have become a casualty of rampant Eurocentrism. The practice of Māori ritual within government departments is under review and, no doubt, what comes out of the chaos will be Pākehā driven. The Declaration on the Rights of Indigenous Peoples (United Nations, 2007) has not been recognized by the New Zealand government though most of the world overwhelmingly supports the document (Māori Party's head in the clouds, Press Release: New Zealand Government, 2007) and thus in this country there would appear to be little chance of appeal excepting perhaps through the Waitangi Tribunal, whose findings would, nevertheless, have no weight in law.

The European point of view has been clearly stated by Ms Bullock, but the Māori perspective seems to have been lost in the shouting. The Tribunal was compelled to view the Bullock complaint strictly according to its relationship to the Human Rights Act of 1993 (Bullock v The Department of Corrections, 2008). Nowhere in their report, however, is the Māori perspective offered, considered, or explained.

The Māori perspective

From a Māori perspective there are several aspects that should also have been taken into account by the Tribunal. The nature of the *powhiri* was not considered and its relationship to the graduation ceremony as a whole ignored. Māori traditions were not respected because in the context of the Tribunal review it was simply articulated as a tool for the control of Māori offenders. Māori custom may well be of value in relating to Māori offenders, but that is not the sole extent or value of Māori traditions and customs. Māori traditions extend far beyond their value to the Department of Corrections and should be accorded due respect especially when it is directly involved in issues of discrimination and employee disputes.

Only the Pākehā point of view was looked at and that point of view focussed exclusively on the issue of gender equality as perceived by Europeans. The Tribunal decided in Bullock's favour affirming that she had been discriminated against by her employer on grounds of her 'sex'. This decision based only on a single perspective of a bicultural event needs to be revisited. Much of Bullock's complaint concerned her not being allowed to sit with the men and being prevented from speaking during this occasion and, therefore, she had been discriminated against. However, the right to speak whenever one wants is not part of the Human Rights Act and nor is the right to sit.

The Tribunal judged that but for her 'sex' (I presume they meant gender) she would have been a possible choice of speaker. The Tribunal revealed no clues as to whether they understood the intricacies and demands of Māori *powhiri*.

The plaintiff says that she offered to speak but was ignored. Even if her offer was not heard (rather than ignored) what is clear is that, but for her sex, she would have been a possible choice of speaker. We accept the plaintiff's evidence that she was not considered as a potential speaker that day because she is a woman ((Bullock v The Department of Corrections, 2008, para. 31).

This conclusion on the part of the Tribunal may not be totally correct. As explained above, the graduation was a synthesis of two parts; a Māori part followed by a Pākehā part. Bullock did not qualify for a speaking role during the Māori part of the ceremony, but she did qualify to stand and speak during the Pākehā part of the graduation ceremony. Bullock did not qualify to speak during the Māori part of the ceremony because of her lack of *whakapapa* (genealogical connection), her lack of training in *whaikorero* (the art of Māori oratory), and her inability to speak fluent Māori. As a Māori orator she would have needed to speak Māori and be male because the role of *pūkōrero* or orator is, generally, but not universally, vested in males (some iwi such as Ngati Porou have accorded speaking rights to some of their women). However, in general the role of *pūkōrero* is a gender-specific role within the performance of a Māori ritual in much the same way that the role of priest is a gender-specific role within the traditions of the Roman Catholic Church.

Māori do not have to apologise for the use of gender-specific roles within their cultural traditions any more than Pākehā have to apologise for their use of male priests in the Roman Catholic Church. It is most unlikely that there are any Pākehā women who could perform credibly within the demands of a Māori ritual of encounter, who have received the training needed or hold the *mana* or knowledge. To assume that anyone can do these things is naïve and simply shows that degree of ignorance held by Europeans in general regarding Māori cultural traditions.

Whaikorero, or the performance of Māori oratory during *powhiri* is intricate and difficult to perform. Māori oratory is based on traditional knowledge, as required to remove the *tapu* of *manuhiri* to make them one with the *tangata whenua*. Traditionally only the experts in the art of *whaikorero* would stand to speak to the *manuhiri*. The purpose of the *mihi* (the greeting) is to acknowledge and weave together the past, present and future, by acknowledging the creator, guardians, the *hunga mate* (the dead), the *hunga ora* (the living) and laying down the *take* or *kaupapa* (the reason) for the *powhiri* or event that is about to take place (Powhiri, 2008).

The idea that Bullock could have achieved any of these important functions within the context of *powhiri* is unlikely, although my assessment of her bicultural knowledge is based entirely on what she has written and what has been written about her (Bullock, 2005; Rudman, 2008; Binning, 2006; Anonymous, 2006; Anonymous, 2005) and nowhere is there any indication of cross-cultural enlightenment. A Māori ritual requires Māori knowledge, experience, and Māori language abilities. It seems most likely that, "sex" aside, Bullock was not qualified to

speak in this Māori section of the graduation ceremony. The Tribunal could have done better by recognizing the cultural intricacies of the *powhiri*, and that the overall ceremony was a synthesis which allowed all people to participate. While Bullock was not qualified to speak during the Māori part of the ceremony she could have during the Pākehā section.

The HRRT, report said:

To put our conclusion in the language of the Act, we are satisfied that the Department's expectations of the plaintiff when she attended the graduation (specifically, in that it expected she would not be a speaker, and it expected her to sit behind the men) amounted to detrimental treatment by reason of her sex: male employees employed on work of the same description as the plaintiff were not subjected to the same limiting expectations (*Bullock v. The Department of Corrections*, 2008, para. 90).

To presume that sitting and speaking is simply a matter of gender is incorrect and the Tribunal should have realized this. The Tribunal assumed that Bullock's rejection from the *paepae* was gender related, and while gender may have played a part, more to the point was her lack of qualifications for the role. Again, the Tribunal should have understood this. The first voice heard during a *powhiri* is that of the *kaikaranga* and indeed Bullock could have offered her services as a speaker during this important part of the event. Unfortunately, while her gender was appropriate for this function, more importantly, her experience and qualifications were not. While women usually assume the role of *kaikaranga* not all women are qualified to call.

Consider for a moment a situation where a person, a woman say, enters a Roman Catholic Church during the unfolding of a service of worship. During the course of the service she decides that her human rights have been violated because she has been excluded from the place where the priests perform their gender-specific roles as priests and decides to go to the altar and join them anyway. When the priests and congregation object and ask her to leave she protests loudly and then files a complaint with the Tribunal claiming discrimination.

How does this hypothetical situation differ in principle from that involving the Bullock woman? What the woman did in the Church was not against the law, but it was against the traditions of the people performing the service. Freedom of religion certainly allows for the performance of customary practices without constituting a violation of human rights. Surely, in the same vein, Māori have the right to practice their customs according to their own traditions without violating the sensitivities of Eurocentric dogma.

Freedom of speech comes with expectations of responsibility. You cannot, for example, shout "fire" in a crowded movie theatre. You cannot speak in places where you are not qualified to speak such as giving lectures on specialized subjects about which you have no knowledge. You cannot speak publically in a derogatory fashion against other races (*The Human Rights Act*, 1993 Sect. 61 [1]a). So what you say and where you say it is regulated within Pākehā society. Can Māori not claim within their own culture the same restrictions on what is said, where, and by whom?

The evolution of tradition and who decides

There are four processes by which cultural practices change. The first is by common assent, the second is by necessity (which includes legal necessity) and the third is by imposition and the fourth is by mistake. Common assent requires a general agreement by the tribe that a process of ritual will change. Not everyone may agree with the change, but if the majority support a change then change could occur swiftly and literally overnight. Second, a change in ritual can occur through necessity. In the ancient world of the Māori the ritual of encounter

evolved as a means of testing the intentions of visitors, and it consisted of many actions designed to provoke visitors into prematurely revealing their intent. This did not always work and there are many stories of treachery whereby visitors might enter a marae under the pretext of friendship only to find themselves subject to a sneak attack. Certainly it is conceivable that any ritual that left the hosts vulnerable would be replaced out of necessity. Third, rituals could be changed by way of imposition whereby a particular individual having the power of authority might choose to change ritual. In Māori society arguments for replacement of ritual would require compelling arguments for the tribe to accept such changes. Conquest by an outside force might lead to imposed changes in ritual. For example, the practice of cannibalism was stopped by the imposition of legal authority by the early invaders of New Zealand. The fourth mechanism by which ritual could change is by mistake whereby the process of ritual becomes so complex that in the passage of time mistakes occur and those mistakes become incorporated into the ritual.

Bullock attempted to change Māori ritual by the process of imposition, but lacking the authority to do so was basically ignored by Māoridom. If that doorway was closed could she have chosen another? Realistically the only other doorway open might have been by encouraging Māori to change by common assent and this in her case would not have been easy.

The final arbiter of ritual is in fact the law. Practices deemed unlawful such as might be the case where cannibalism and infanticide is concerned would be deemed unlawful and prevented from being practiced. Conceivably, the law could take a hand and force change although a great deal of resentment and resistance might be the end result. This thinly disguised attempt by the Tribunal to influence Māori ritual simply to please Pākehā may not succeed especially in view of the recent move by the United Nations to protect indigenous cultures around the world.

Summary and conclusions

Generally, the right to sit and/or speak based solely on gender would be a violation of the Human Rights Act of 1993. However, as pointed out there are mitigating circumstances or conditions that can modify that right, such as and especially those to do with qualifications. Speaking on the *paepae* during Māori ritual requires stringent qualifications and is not simply a matter of gender.

It is also reasonable to point out that while Bullock has become a pivot point for debate around Māori ritual and its place in New Zealand ceremonial customs, her original intentions may well have become diverted by those seeking political gain especially within the Department of Corrections, however, becoming a public figure ensures a degree of notoriety and exposes one to public scrutiny. In writing this essay my intentions have not been to attack or degrade Bullock, but to point out inequities within the civil rights system of New Zealand especially when it comes to Māori traditions.

Not every Māori is expert in his/her own customs and confusion regarding purpose and practice is to be expected, especially when those rituals and customs are questioned. Bullock being even further removed from Māori knowledge did what she thought was right and so too did the Tribunal. However, the process used does not necessarily ensure correct decisions especially as they relate to the broader context of indigenous rights.

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Author Notes

The author acknowledges the assistance of L. Parehaereone Raumati in researching and debating the content of this manuscript. Appreciation is also extended to Dr. Fiona Cram for her critical review of the manuscript prior to submission and to an anonymous reviewer who provided excellent points that have added to this paper. This research was funded by the Institute for Māori Research and Development, Ohope.

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