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ESSAY

Remembering Roxby Downs

Mythology, mining and the latent power of archives

Peter Sutton

IN 1842, THE mainly British and German settlers who had arrived en masse at the beginning of South Australia's colonial history six years earlier were given a huge economic surprise. The colonists, largely farmers, artisans and public servants and their dependents, learnt of the discovery of copper ore at Kapunda. Kapunda was only eighty kilometres from the colonial capital of Adelaide. Three years later, the world-renowned bonanza copper lode at Burra was discovered. Other South Australian copper mines were to follow, and they gave the economy a huge stimulus by high-yield, low-cost mining within workable distances from a port. Even though mineral exploration was on the colony's drawing board from 1835, South Australia was largely intended to be founded on the steady labour of cropping and pastoralism and reaping the fruits of the sea. Suddenly, luck was a key player too.

Shift forward to 1975, to the forbidding desert west of Lake Torrens – a vast salina in South Australia's outback – where gravitational and magnetic anomalies were indicating that the vicinity of Roxby Downs Station was prospective for copper. Since 1969, geologist Douglas Haynes and others had been making the relevant theoretical and predictive discoveries. Western Mining Corporation had the exploration licence. Driller Ted Whenan put down the first diamond drill hole close to Olympic Dam, named for its

construction in the year of the 1956 games held in Melbourne. The Whenan Shaft at the mine would eventually reach down more than a kilometre.

The discovery was unparalleled in Australian mining history, except perhaps for Mount Isa. Olympic Dam has the largest uranium body in the world and the fourth-largest copper lode, as well as producing substantial quantities of gold, silver and other minerals. The troubled South Australian economy of the 1970s and 1980s, which had lost much of its manufacturing base, was rescued by mining royalties. By the late 1980s the mine, currently owned by BHP Billiton, was running smoothly, and a quiet little service township called Roxby Downs flourished nearby among the red sandhills.

But the trip to get there had not been entirely smooth. In the 1980s, Roxby Downs was the locus of a very public and muscular conflict between anti-nuclear protesters and the state. As this was well out in the public domain, I leave it for others to reflect on; my concern here is with a largely concealed contestation between the company and Aboriginal people, and between different Aboriginal groups. Having held the country since time out of mind, the Kuyani people's descendants (now also identifying as Adnyamathanha), except for a few who also had Kokatha ancestry, were unable, for a series of complex reasons, to be part of a 2014 Federal Court consent determination (CD) over the land that included Roxby Downs. The native title rights in their country were in effect gifted to the post-1850s immigrant Kokatha group. While some Kokatha families had established genuine post-colonisation ties to the consent determination area through work on sheep stations, this did not mean they had native title rights there that had persisted since the advent of British sovereignty. Such continuity is crucial to the native title test.

This tale involves the recording of multiple Kokatha sacred sites at Roxby Downs in 1983 and, afterwards, at places in the vicinity of Roxby Downs where nothing had been recorded only shortly before with the same informants. It ends with a fierce contest in the Federal Court in 2015–16 between the Kokatha and the Kuyani and Barngarla peoples, over native title claims on a single huge feature close to Roxby: Lake Torrens. Justice Mansfield's decision in that case – *Lake Torrens Overlap Proceedings (No 3)* [2016] FCA 899 – is in the public domain.

IN SEPTEMBER 1980, I was taking part in the Finnis River Land Claim hearing in Darwin. The late and revered Justice John Toohey, sitting as Aboriginal Land Commissioner in a borrowed church hall that offered us the microclimate from hell, was receiving the evidence of Aboriginal witnesses. He did so with his usual courtesy, his untiring interest in the facts, and an enviable clarity of mind. Dignity without aloofness was his trademark in court, whether under a banyan tree on the Daly River or in the air-conditioned barrens of a public building.

I was about to become embroiled in a story where the absence of a figure such as Justice Toohey – a non-judicial mediator and decision-maker who was held in genuine awe and respect by all parties to a dispute – would contribute to the shemozzle that became the Roxby Downs Aboriginal sacred sites saga. Surprisingly, a number of books have been published on the Hindmarsh Island story, which has some clear parallels, but no book of any substance has been written about Roxby Downs as a powerful moment in cultural and race politics in Australia – although this side of the story does play a cameo role in histories of the mine by Keith Johns, John Showers and Bernard O’Neil.

Little impress of the Roxby environmental conflict seems to have remained in the public memory. This is despite plenty of media coverage in 1983 of the three hundred arrests and the presence of two hundred and fifty police when the Campaign Against Nuclear Energy (CANE) confronted the state at the aptly named Canegrass Swamp near the mine site. Shallowly descriptive, ‘Canegrass Swamp’ was a name imposed by the colonists who arrived from the 1850s. Its real name was Piya-piyanha. It is a Dreaming site for the Two Snakes, named Kurkari and Yurgunanggu, whose vast songline came from Aranda country in Central Australia, headed south via Arabana country west of Lake Eyre and arrived at Piya-piyanha, close to Roxby Downs in Kuyani country.

Luise Hercus, a linguist who specialised in languages of Victoria and South Australia, had documented this songline long before 1983. She worked closely with me on the Roxby regional literature survey I completed in 1981; she had worked tirelessly for decades to ensure that the old people’s knowledge of sites, songs and mythology in the wider Lake Eyre Basin was recorded

and properly translated. For her pains, she was criticised at meetings and in the media over her involvement in the Roxby research, and received abusive phone calls. Luise knows a lot about ideological hatred. She still remembers having to wear the yellow Star of David on her clothing as a schoolgirl in Munich before escaping with her family to England.

Three years before the pitched fracas at 'Canegrass Swamp', a phone call from Hugh Orr in Adelaide reached me in Darwin between the sittings of Justice Toohey in the steaming church hall. Hugh's firm was on a shortlist to carry out baseline data gathering for the early stage Olympic Dam mining project. Kinhill Stearns, another Adelaide engineering company, was hoping to carry out the related environmental impact study (EIS). For the archaeological side of things they had hired Phil Hughes, a colleague I knew from my Canberra days and a consultant with real academic street cred. They also needed an anthropologist for the social impact study. If successful, the tenderers would commission the work to be carried out during 1981.

I expressed an interest. To an extent this was living dangerously. I hadn't stepped into the impact study arena before. Aboriginal land rights and the mining industry were in repeated collision at the time. The heavy drivers on the mining side in this particular case were the Australian Mining Industry Council, and one of its key members was Western Mining Corporation (WMC), whose boss, Hugh Morgan, took an aggressively conservative and, unusually, Christian fundamentalist stance on land rights. But the Olympic Dam impact study was to be done under both federal and state government requirements, and my client would be Kinhill Stearns, not WMC. I thought this would form enough of a buffer to defend my reputation for objectivity. My habitual independence from unwelcome external influence, at times a thorn in the sides of others, was here going to be a blessing.

NOTHING MUCH HAPPENED at my end until March 1981, when I was contacted by Phil Fitzpatrick of the Aboriginal Heritage and Relics Unit (AHRU) in Adelaide. He had been asked to draw up state guidelines for the EIS and sought my advice. I offered to visit him with copies of useful documents, including those relating to the Social Impact of Uranium Mining Project that was then in full flight in western Arnhem Land. At that

time I was preparing myself for intensive fieldwork in the same region of the Top End, as a consultant to the Northern Land Council on the Jabiluka uranium negotiations.

I went along to meet Phil Fitzpatrick, and with him Rosemary Buchan and Tom Power, both also of the AHRU. Here I made my first note about an Aboriginal people usually called the Kokatha, who would be central to the Roxby Downs story for the next thirty-five years: 'David Schinnick, Margaret Kelly, lawyers re Kukata.' The Kokatha were organised but, as yet with no legal protection for pursuing their land-rights interests, pressure, protest and persuasion were their main tools.

Like other Aboriginal people, however, the Kokatha had allies in the state heritage bureaucracy. Given the presence of Fitzpatrick, an ex-kiap, and his Irish colleague Tom Power, this departmental pro-Aboriginal culture had been strong at least since the 1970s, when Bob Ellis had run the AHRU. It was common knowledge that public servants running the environmental and heritage bureaucracies in Adelaide generally either leant or leapt enthusiastically towards the causes of protection and tradition rather than those of economic development.

At this time, I was also asked by Bryan Jenkins of Kinhill Stearns to map out a prospective program for anthropological field research in the Roxby region. One day in 1981, Kinhill had had a meeting with Roger Goldsworthy, Minister for Mines and Energy for the state government. Goldsworthy was a political heavy. During the meeting Goldsworthy, chief negotiator of the Roxby Downs Indenture and deputy premier of South Australia, had been, according to a note from my conversation with Bryan, 'paranoid – fear of land claims'. But he wasn't delusional; these claims were indeed to come.

I eventually met the client who thus far had loomed silently behind my Kinhill contact, the ever-smiling Bryan Jenkins, whose sporting of a bushwalker's beard spelt 'environment' rather than 'development'. This client was a company set up by a joint venture for the Olympic Dam project, called Roxby Management Services (RMS). Its head was John Copping, an old-school gentleman manager whose roles in the Roxby tale included trying to play cricket with often hostile Aboriginal interests, trying to rein in his own legal pit bulls, and attempting to juggle a solution that appeased all. The

lawyer with him at this meeting was Geoff Witham, a man with whom I was to clash vehemently on more than one occasion later. Copping overruled him pretty often.

Bryan Jenkins's Kinhill colleague Bill Woodhead was also at the meeting, as always cool and apparently running very well on idle – a true pro. Also present, among others, were Rosemary Buchan and Phil Fitzpatrick, whose unit was not to be involved in any research but only in assessment of the results of the EIS. And then there was a man by the name of Colin Woolard.

Colin Woolard was an RMS geologist who had a lot to do with arrangements at the mine site. No township had been established when he took me on a quick tour of the site eatery and the men's demountable accommodation, and the surrounding sandhill country. Once out on the sandy tracks, and even off the tracks, he drove like a contestant at the Mallala Motor Sport Park. Colin's huge hands made the Toyota steering wheel look like one taken off a kid's billy cart. He was all health and strength, and seemed to be glowing in his role as equerry to one of the most gigantic precious mineral enterprises in the world. And he clearly knew every inch of a great penumbra of sand and rocks and claypans and bushes stretching out many kilometres from the mine site. He walked me over a sample of the millions of stone artefacts and bits of debitage covering what looked like an unliveable environment. The old people were tough. But where were they now? Colin was to become a player in the attempts by anthropologists (and linguist Luise Hercus) to map parts of the same country in cultural terms later that year and afterwards.

I told Bryan Jenkins my position in entering the field at Port Augusta would be greatly facilitated if the state government or RMS were to make an apology to the relevant Aboriginal people about the lateness of contact with them regarding the mine's development. This delay had been disrespectful, though perhaps not illegal. Sites of significance were protected by state legislation, but native title was yet to be recognised and legislated (it became law in 1993). Sites were, as a result, a key legal pathway to formal Aboriginal recognition in the Roxby region.

On 28 April 1981, I suggested to Kinhills the need for a regional Aboriginal Sites Council, a proposal I thought should be offered to the local Aboriginal polity by the state government, albeit on the company's or

Kinhill's suggestion. The proposed council could act in relation not only to Roxby Downs but also a brace of projects in outback South Australia, including Santos, Dow, Lake Dey Dey and others. I proposed that site custodians should be paid \$80–\$100 per day for their work, less if their knowledge was less specialised. RMS paid graduate technical consultants \$100–\$150 per day at the time. John Copping was not opposed to engaging Aboriginal people as consultants, but thought the company should begin by funding small numbers and 'go in gently'.

Copping thought that the government should make the apology directly through Phil Fitzpatrick. He was, after all, a public servant, and well known to Aboriginal people in the region as a sites officer. Copping's company generally took the stance that it was the government's responsibility to act as honest broker between the Aboriginal polity and that of the developers. I thought so too. Some key people in the government worked hard to evade this responsibility. They mostly lacked courage – the courage to deal with Aboriginal people directly and realistically. Coming from many years in Queensland and the Northern Territory, I was thunderstruck at the absence of any depth or spine in the Adelaide bureaucratic subculture when it came to Indigenous affairs. Be nice and do nothing dangerous. Live with the double exposure of showing respect and tolerance for a conquered people who were largely dispossessed. And at 4.40 pm go home to Norwood and have a shiraz.

Phil Fitzpatrick was too junior in the system to be handing out state apologies. Another, much more senior public servant, Peter Ellyard, discussed with me the possibility of the relevant minister making an off-the-record apology while meeting with Adnyamathanha people at Balcanoona the following week. This was in the Flinders Ranges, and thus far the people most visible in opposition to the mine had been Kokatha people of the deserts west of there. The two mobs weren't known to get on too well, even though there was some shared ancestry. This idea clearly didn't have legs. It was a grab at symbolism in the absence of a grip on *realpolitik*.

MEANWHILE, I STARTED researching the literature on the Roxby region in preparation for a baseline report. According to Kinhill's Bryan Jenkins, two senior public servants, Peter Hill and Ted Phipps, had decided

that my suggestion of a sites organisation for western South Australia should be restricted to simply reviewing my report after it had been completed. I responded that this would vitiate the original purpose of the proposed group, which was to provide a properly run organisational structure for Aboriginal interests over the long term. The state was being resistant at more than one turn.

My research was also meant to be in preparation for fieldwork. One of my conditions was that I would not start fieldwork until the consent of the various Aboriginal interest groups had been negotiated. This never happened, so in the end I submitted my literature survey to Kinhill Stearns late in 1981 and withdrew. The fieldwork was done by others in 1981–83. Two vital anthropological field reports from 1981 went missing for thirty-five years. When they were rediscovered and put into evidence in the Lake Torrens native title case in 2016, they landed as a rocket from the past. I return to this later.

On 5 May 1981, Phil Fitzpatrick drove me to Port Augusta in an AHRU vehicle to meet with the Kokatha Peoples Committee (KPC) at the local social club. First, though, we went to the National Parks office to meet Des Coulthard and his fellow ranger Vince Coulthard, both Adnyamathanha men of the Flinders Ranges. Des was later to spend about a fortnight with Luise Hercus and myself mapping mythological sites in the mound springs country near Lake Eyre with the last of the old-style initiated Arabana men: Arthur Warren, Brian Marks and Glen Hull. Vince Coulthard rose to become a power in the politics of the Flinders Ranges. We bumped into each other from time to time over the decades, and he was in the Federal Court on 9 August 2016 to hear Justice Mansfield publish his decision on the recently heard Aboriginal native title claims over Lake Torrens. We nodded across the pews.

I had made all sorts of notes on what I was going to say at that first Kokatha Peoples Committee meeting. This included informing them that Roxby Management Services hadn't contacted them yet because they were prevented from doing so by the state government; that I had told RMS that the anthropology field research had to be negotiated before it started, and that was why I was there; that my report would be checked by the relevant

Aboriginal people for accuracy, and questions of copyright sorted out; and so on. But this script was short-circuited. John Thomas, Simon Dare and other Kokatha members cut to the chase. Thomas, deputy chairman of the committee, dominated the proceedings. The chairman, Bill Clifton, was a non-Aboriginal man married to a Kokatha woman. He seemed to be a neutral linchpin, taking a low profile.

Among other things, Thomas said RMS should be financing his committee to engage its own expert researchers. (This did, in fact, eventuate.) Simon Dare said the reason the government wouldn't fund the KPC or let RMS talk to them earlier was because it was against land rights. I asked them if they would consider sharing control of the research. There was no clear response because, as Thomas said, they needed expert advice first. I wondered if my Queensland Murri friend Michael Mace might be available to give that advice. Aboriginal Queenslanders were at that time far more experienced in dealing with difficult government and industry struggles than their counterparts in South Australia.

John Thomas complained that there had been no written contact from RMS. This was offensive: 'We are not illiterate,' he said. Indeed, his own well-written document of 1981 containing a map of Kokatha country was to have its day again. It was one of several sources Justice Mansfield relied on in 2016 to conclude that Kokatha claims to Lake Torrens only post-dated the 1980s.

Simon Dare suggested at the 1981 committee meeting that the whole Kokatha area should be surveyed for sites *before* any further exploration, to avoid potential accusations of made-up sites. The issue of sacred site 'discovery' or 'extension' or 'creation' among the younger generations was not going to go away. This suggestion returned like the eye of a hurricane in 2016.

The next day, I continued the conversation with John Thomas at the Department of Aboriginal Affairs office in Port Augusta. He proposed various compromises, though these were just his own ideas. The Kokatha could work with me if RMS would also fund them to employ their own anthropologist; if not, they were prepared to block the research work. Thomas suggested Kokatha involvement in the research be on a consultancy basis: \$300 a day, say, to go to the Kokatha Peoples Committee, with senior people

like Richard 'Ningel' (pronounced *Nyinytjil*) Reid being paid \$150 a week to participate in the fieldwork. We left it at that.

TWO DAYS LATER I was back in the Top End to resume fieldwork in Western Arnhem Land. This job, on the Jabiluka uranium mine negotiations, was one I was doing for the large and well organised Northern Land Council (NLC), whose structure and powers had been a matter of federal legislation and reliable funding since 1976. By contrast, the KPC in 1981 were a voluntary organisation short on staff and funds, and even shorter on any kind of statutory blessing. Unlike the NLC they had no legal land rights base, only a toehold through state laws about protecting Aboriginal sites of significance. Even more of a problem, in the long run, was that they only represented part of the Aboriginal population that had genuine historical and cultural links to Roxby Downs. The others had pretty much no voice and no organisational advocates on the Roxby scene.

This issue was raised by Kinhill Stearns's Bryan Jenkins at a meeting in Port Augusta on 28 August 1981, with Kokatha representatives Ningel Reid and Joan Wingfield. I was there, as was the Kokatha legal representative, the bullish young Christopher Charles of the Aboriginal Legal Rights Movement (ALRM). Charles said 'other tribes' were not represented and mentioned the Kuyani. He then passed the ball to Ningel Reid, who said, 'We'll tell our *own* anthropologist, not yours – we got it in head.' Reid then moved straight into saying that if the Kokatha divulged (sacred) information in the wrong way, they would not merely be criticised by other Aboriginal people but would be 'six foot under'. This kind of unpredictable change of subject, or perhaps speaking in a private code, was typical of Ningel.

Somehow, the Kuyani were once more off the agenda. But this moment flagged a notable feature of the Kokatha future in the 2000s: the use of the sacred domain, in the next generation of Kokatha, to attempt to disenfranchise those with anciently embedded rights, but who could be portrayed as having little sacred knowledge of the land in question. I was later, in 2015–16, to conclude for the Federal Court's consideration that the Kokatha claims on Kuyani country were a case of attempted annexation.

Witness intimidation was a feature of the trial in Port Augusta in 2015. At one point, Justice Mansfield had the courtroom cleared of all Kokatha people, so that a Kuyani woman could give evidence. She testified on oath that she had been threatened with bashings by certain named Kokatha women if she gave evidence. There was no later news of anyone being arrested for witness intimidation. I wondered why.

Ningel Reid made a statement at the August 1981 meeting about an issue that had already arisen and would come back to haunt his people in 2016. As I recorded in my notes at the time, he was concerned that sacred sites identified after the drilling phase would be considered by others to have been invented; that is, fictionally placed close to the mining action. Christopher Charles thought my standing, if I were the anthropologist recording the sites, would circumvent this criticism. In any case, it was the company's fault (their 'moral and political responsibility'), Chris Charles said, that the company had failed to consult Aboriginal people before the drilling. 'You are now doing too little too late!' he told Bryan Jenkins, shall we say, firmly.

Chris Charles also told Bryan that the Kuyani had, in the past, referred their interests in the area to Ningel Reid, who then interposed: 'I'm boss of this area,' adding that ownership of the country was for 'old people' to resolve, not something done on paper. Evidence of a Kuyani delegation of their sovereignty to Ningel Reid has, as far as I know, never been discovered. Ningel claims he is the 'One Man', the only 'Buddoo' (*bardu*, initiated man) for Kokatha country including Lake Torrens, and designates himself as the 'perpetual chairperson' of the Kokatha People's Community.

IN 1981, THE Kokatha were finally able to secure the services of Canadian expatriate anthropologist Daniel Vachon. The two most senior Kokatha men, who had both worked as stockmen in the Roxby Downs area and were said to know the country, went out with Vachon on two field trips to map the country in the general area of the new mine site. These were Max Thomas (now deceased) and Ningel Reid. On the second trip, their numbers were bolstered by senior men from the far north-west of the state, a region where religious traditions were far more intact.

Vachon's valuable credentials included fluency in a dialect of the same language as Kokatha (Pitjantjatjara) and the fact that he was a *wati*, an initiated man in Western Desert Law. If anyone could record sacred sites with senior Kokatha men, and not have material information withheld from them, it was him.

Daniel Vachon made two reports and submitted them to the ALRM's Chris Charles. (Vachon told me in 2015 that he himself kept no copies at the time.) The reports then disappeared. For thirty-five years they remained so, until by chance, during the Lake Torrens native title trial in 2015, historian Tom Gara found photocopies of both reports. He had been in Canberra, working his way through the archived field records of geographer Jane Jacobs who, in 1981, had been studying the land rights movement in Port Augusta as a postgraduate student, and had taken or been given a copy of Daniel Vachon's reports. I come back to them later, where I detail Vachon's finding that senior Kokatha men knew little of the Roxby country's traditions and could name no sacred sites there.

Vachon was followed by Rod Hagen, who had long been a researcher with the Central Land Council in Alice Springs. Like Vachon, Hagen was briefed only to investigate Kokatha interests in the Roxby area, not those of others, especially the Kuyani, of whom both researchers were aware, according to their reports. Hagen made return field trips to the Roxby area in 1983 with Max Thomas and Ningel Reid and others, who located and mapped plenty of sacred sites both at and near the mine site and in the wider surrounding country, although none on Lake Torrens, and no name for the lake itself, and indeed no Aboriginal names for any of the sacred sites. The distinctive patterns of rocky outcrops to which they were guided, at times at least, by Colin Woolard, were linked to the Sleepy Lizard Dreaming. On 13 October 1981, Adelaide's *Advertiser* newspaper reacted to the Hagen reports with 'New look at Roxby sacred sites'. It was indeed a new look.

Hagen visited many rock outcrops at and around the Olympic Dam mine site in early 1983 with Max, Ningel and others, and on that trip eighteen nameless Dreaming places were identified as Sleepy Lizard sites. This absence of names was not restricted to the Sleepy Lizard sites. Hagen did not speak a relevant language and was not a *wati*, but his recordings included a lot more

mythological sites identified by the Kokatha men than had been recorded from the same men by Vachon.

Hagen, according to his extensive tape transcripts, repeatedly asked these men, including Max Thomas and Ningel Reid – men with decades of personal familiarity with the area – for the names of places and features. Repeatedly on the tape they said they did not know, or had not been told, these Aboriginal place names. In the Roxby Downs area they knew plenty of English names, such as Jimmy Hole, Lake Torrens, Phillip Ponds, Chimney Pothole, Old Wire Waterhole, Centenary Dam, Cane Grass Dam, Sandstone Dam, Olympic Dam and Dogleg, and the old Aboriginal names of stations and towns that are in common use and are on the petrol company maps.

My conclusion from this in one of my Lake Torrens reports was that these men had very little traditional knowledge of the landscape in 1983, but, through stock and other station work, had come to learn the location names used by the pastoralists who employed them. This picture was consistent with that obtained two years earlier by Daniel Vachon, except that multiple Sleepy Lizard sites had suddenly come onto the record, densely arranged around the Olympic Dam mine site and also elsewhere.

The company had seen Vachon's 1981 reports, or at least knew what was in them, and raised questions about the sudden appearance of this new swathe of sacred but unnamed sites in Hagen's reports, which appeared on the heels of the KPC's dismay and disappointment with Vachon's results. A dispute appeared to be brewing fast. The late Professor Ronald Berndt, a Perth resident and an elder statesman of Australian anthropology, was engaged by the South Australian government to act as a kind of arbitrator. He was to peer assess Hagen's reports. Dr Lee Sackett, then an academic anthropologist at Adelaide, also took part in the discussion process with Don Hopgood, by now the relevant minister, and myself. The meeting took place in Parliament House, in the belly of the state government.

Ron Berndt's position was that it was 'desirable to assume that the Hagen report is reliable', in spite of the shortcomings of its 'methodology'. These shortcomings were that, 'at a social anthropological level', the report was 'not prepared as well as it should be', more elaboration of the mythologies and genealogies was to be preferred, and site descriptions were 'not as clear-cut

as one might expect'. Despite this, he considered the Hagen report to be 'on the whole convincing', even though he had not been able to study Vachon's results by way of comparison. Ron Berndt did mention Daniel Vachon's reports, of which he had heard from RMS, and said he had not been given access to them. Strangely, he made no comment at all on his own quotation from an RMS document: 'The Vachon surveys were completely organised by the Kokatha People's Committee on their own initiative and as a result the Joint Venturers and the Government were informed that there were no sites of anthropological significance in the Project Area'. 'Anthropological' here referred to non-archaeological, living cultural sites.

Hagen's reports made no mention at all of Vachon's. His introduction to one of them acknowledged drawing upon reports by myself, Luise Hercus, Phil Fitzpatrick and Kin hills. It was as if the chief informants for his report had not in fact gone over the same ground with Vachon two years before and come up with next to nothing.

Later, I was better able to understand why Ron Berndt went along with the material in the Hagen report without insisting on seeing the Vachon reports, and in the absence of a report based on complementary field work with Kuyani, Arabana and possibly Barngarla people. In his own statement to Don Hopgood, Ron made a strong point of the status of the Kokatha people, who were 'in a socially, economically and politically disadvantaged condition, and still trying to cope with the negative public attitudes and regulations that have dogged them for so many years'. His focus was on forging a compromise between the Aboriginal people and the miners: 'The primary issue rests on misunderstandings, and our aim must be the resolution of conflicting views. It is in that "atmosphere" that I approach the issue of compromise.'

Ron Berndt intimated to Don Hopgood that he thought 'instant recognition' of sites was a legitimate means of 'site designation' by people who had suffered colonial devastation. He said: 'The process by which site designation is arrived at (examples of which are demonstrated in the Hagen tape transcriptions) is not necessarily a traditional one. One could not expect it to be, in the light of the social, cultural and physical disruption which has occurred over the years. "Instant recognition" is one kind of response, along with recognition through discussion and consultation with Aborigines drawn

from cognate cultural areas...’ Indeed, it later became my view, on the balance of probabilities, that the 1983 sites had, in most cases at least, been newly ‘read’ into the landscape by Hagen’s informants.

I think there was another motivation behind Ron Berndt’s reluctance to question the Hagen report: he had a distinct desire to avoid confrontation himself, but he liked to take the role of peacemaker. He’d acted in this way during Ted Strehlow’s fight with the University of Adelaide over ownership of his ethnographic collection and the creation of the Strehlow Research Foundation in the mid-1970s.

Ron Berndt had also had a searing time as an expert witness in the Gove land rights case of 1972, an experience he did not want to repeat. He never subsequently appeared as a witness in *any* of the many land claims located in his own former field areas. He had been under surveillance by ASIO during World War II, as a possible fifth columnist of German ancestry – an experience that clearly scarred him. I knew him reasonably well over some time, from 1973 until his death in 1990, so these are not wild guesses. But I was taken aback at his virtual rubber-stamping of the Hagen reports. At the time, I thought this was sowing the wind. It was.

The Hagen report’s sacred sites were duly entered on the state register, and things more or less settled down. By this stage I had pulled out of the consultancy and gone off to Cambridge on a post-doctoral fellowship, and also into a time of recovery, with my young family. Telling my sons bedtime stories, walking along the Backs, and experiencing the St Matthew Passion at Ely Cathedral and Monteverdi’s Vespers at King’s College, were perfect antidotes to many months of overdoing it on both Jabiluka and Roxby Downs, and various Northern Territory land claims. Happily, the dusty swag was back in Adelaide, and the mosquitoes in their swamps.

IT WAS MORE than ten years later that the native title regime began. Under it, the Kokatha put in a claim over Lake Torrens and the country west of there for many kilometres. After the Kuyani and Barngarla put in their claims over the lake, it was split off for processing separately, to be contested three ways. After much negotiation, the Kokatha and the state signed off on a consent determination in which the Kokatha were given exclusive recognition

as the native title holders of the country west of the lake, as far as Wirraminna and Parakylia, north to Billa Kalina and south to Yudnapinna. This block of 34,000 square kilometres is a fair bit larger than Belgium. Roxby Downs and the Olympic Dam mine lie within its boundaries. Determinations of native title were, by the time of the Lake Torrens trial, already in place for most of the country surrounding the Lake.

The Lake Torrens Overlap Proceeding didn't commence until 2015. Expert anthropologists engaged by the parties were Bob Ellis (Kuyani/Adnyamathanha), Jon Willis (Kokatha), the team of Deane Fergie, Rod Lucas and Paul Monaghan (Barngarla), Patrick Sullivan (Kelaray, a mining company), and myself (the state of South Australia). My client contact in the state was lawyer Peter Tonkin. Peter's father, David, had been South Australia's premier from 1979–82, and had presided over the early years of the Roxby development. As a liberal Liberal he also piloted new anti-discrimination laws and the Pitjantjatjara Land Rights Act. When he was succeeded by Labor's John Bannon in November 1982, the Roxby development continued as before.

We wrote and submitted our pre-trial reports to the Federal Court in 2015. The court was the only entity to which we could, and had to, swear allegiance. After the claimants' witness evidence, and after reading each others' reports, we submitted supplementary reports later that year. Cross-examination of experts took place early in December and we submitted supplementary reports soon afterwards. On 1 March 2016, the expert evidence came to a close. Right to the end, my client, South Australia, had argued from the outset that no Kokatha native title had existed on Lake Torrens, and the Kuyani and Barngarla former native titles had been washed away by the tide of history. I agreed regarding the Kokatha claims, but took the opposite view about the Kuyani and Barngarla, and said so.

The basic wash-up was that all the experts except Jon Willis, acting for the Kokatha, considered the lake to have been, at the time of establishment of British sovereignty, Kuyani in the north and Barngarla in the south. Roxby Downs is on the west side of the northern part of the lake and, on the balance of the evidence as I saw it, was in Kuyani traditional country. We concluded from a mass of evidence – not all of it consistent, but nonetheless on the whole clear – that the Kokathas' ancestors were, at the time of effective British

sovereignty (circa 1850), in charge of country a great distance from Lake Torrens. The closest Kokatha country at that time was around Mount Eba, Bon Bon, Tarcoola, Coondambo and Kingoonya, approximately 150–200 kilometres west of Lake Torrens. The Kokathas' presence as workers on sheep stations closer to the lake, and most likely (I argued) on the lake's substantial Andamooka Island, which also carried and still carries stock, had come about due to a general migration east during postcolonial times. They had walked into a relative vacuum left by the departed or dead Kuyani and Barngarla, whose populations had been mullered by the grindstones of colonial impact. It was clear, I argued, that the original peoples had not conceded the country to the Kokatha, nor had the Kokatha succeeded to it in a form acceptable in Aboriginal law.

In my reports to the court I had been critical of the Kokathas' anthropologist, observing that his reports 'consistently advocate the case for the Kokatha applicants to the exclusion of all others'. I based this assessment of Willis partly on his asserting in his main report that the historical and ethnographic record 'consistently identifies the Kokatha as occupying the territory from Lake Torrens west toward Ooldea and north-west towards the Everard Ranges'. He stated this without dealing adequately with a significant number of sources covered in the reports of the other experts that contradicted this position. His caveat that lack of time had not allowed him to be completely satisfied with this report, and had rendered him unable 'to satisfactorily absorb all of the expert reports and other historical material', led one to expect a much more cautious pronouncement on the tendency of the record. In the course of the trial Willis came to adopt the opinion that both Kokatha and Kuyani may have lived in the same area west of Lake Torrens at the time of sovereignty, but persisted in the claim that Kokatha rights in the area would have remained exclusive to them. But evidence of such co-existence was not there to support this assertion. Willis also dismissed other evidence in the absence of what I would regard as adequate scholarly grounds. This was the case with his rejection of the firmly and long-established anthropological picture of Aboriginal country/language relationships, a topic on which he was prepared to pronounce in the absence of having ever studied the subject properly: 'The idea of country having a linguistic or language identity was

a new one to me,' he wrote, attributing the idea to linguists, suggesting to me he was unaware of the comprehensive record for regions outside his own specialism in which this 'idea' is in fact Aboriginal tradition. Hence, in my view, he acted at times more as an advocate than as the expert required by the Federal Court guidelines. I was surprised when I read Justice Mansfield's decision, in which he rated Willis as objective. In my view he wasn't.

The Kokathas' barrister sought early on to have all expert evidence relating to the area from the western shores of the lake and 140 kilometres further west to Wirraminna, the country in the Kokatha consent determination, excluded from any part in the trial. More precisely, what was to be expunged was any expert evidence that might call the determination into question. Because the lake was girt by consent determinations, the same would have to apply to the entire encompassing historical and anthropological context of the lake.

The problem for the anthropologists, who were bound to affirm that they had not omitted anything of substantial relevance to the case in their examination of evidence, was that Lake Torrens was to be surrounded by legal facts that erased most of the evidence central to the question at issue. Only evidence about the lake itself was to be given weight.

The Kokathas' counsel argued that the Kokatha consent determination of 2014 had found the Kokatha were the native title holders of the described lands since British sovereignty and this was now a fact in law. The Kuyani/Adnyamathanha had failed to press a case for the country west of Lake Torrens, and because the determination was negotiated, no thorough connection report on the country had been carried out. He complained vigorously that myself and others were trying to subvert the legal fact of the determination and go behind it. He claimed the experts should be prevented by the court from making scholarly use of any evidence that went against the consent determination:

MR HUGHSTON: ...they must assume that the only people who have traditional rights and interests, and have always had traditional rights and interests in the areas of the two consent determinations, are the Adnyamathanha people on the east, and

the Kokatha people on the west. They have to accept that. That assumption must be factored in to any report that they do. And for them to look beneath the determination and look at the early ethnography and come up with their views as to whether yes, well, Kuyani people had rights over there in the west and therefore, you can assume that – you can infer that they had the rights in the lake because they've got it on the west side and they've got it on the east side. That's simply impermissible...

NO SCHOLAR OF any conscience could quietly go along with this absurdity. The power of the legal arm of the state to guarantee that the moon is made of green cheese is scary sometimes. Perhaps just as scary for Hughston's clients was the possibility that, in the course of the Lake Torrens Overlap Proceeding, the Kokatha consent determination would be revealed as the grave error and injustice that (in my assessment and that of others) it was, and the revocation process available under Section 13 of the Native Title Act might be invoked.

When this evidentiary issue came up in the Port Augusta courthouse during the lay evidence, I was astonished to hear Justice Mansfield say that any anthropological or historical evidence relating to the Kokatha determination and the other surrounding determinations that might call into question the findings of the determinations would be given no weight in his reasoning. Most of the evidence that was relevant to an anthropological and historical account of Lake Torrens itself as a land unit and cultural entity lay in its relationship with its surrounds; the lake itself was largely uninhabitable and devoid of anything except salt, save for a few islands and a few mainly saline springs. Lake Torrens itself was a brick in the wall of the Stuart Shelf and the Flinders Ranges. To understand the brick, as I put it, you needed a view of the wall. We were being told that the wall was out of bounds – the purpose of the brick had to be understood in legal isolation of it. Dr Johnson was right: anthropology and history were gagged, while the law brayed.

At that moment, I couldn't see any point in staying in the game. I left the Port Augusta courthouse quickly. I didn't slam the courtroom door, no – it banged shut all by itself. I went straight back to the motel and started

packing to go home. The state team came around one by one, and eventually persuaded me to stay. They had up their sleeves some peachy keen argument that would mean the contextual evidence could maintain a ghostly presence in the proceedings. At least, I conceded to myself, we could leave behind a credible and quite detailed record for the future, especially the future of the Aboriginal families who came from the region and for whom a lean historical past would now be richer, if they wanted it.

The Kokatha had given Justice Mansfield and other male participants detailed mythological accounts relating to Lake Torrens: to its internal features, to its entirety as a form, and to sites on its largest island and along its western edge. They claimed it had only ever been theirs, and that their country extended exactly to the eastern shore and no further.

The Kokatha had been consistent in saying that, although some of their site-myth knowledge had come to them courtesy of elders from a long way away, and some of it from Ningel Reid, the most crucial and richest source of their knowledge of the sacred sites both on Lake Torrens and around Roxby Downs came from one chief source: the late Max Thomas. While Max could not be called as a witness, Ningel was alive and assertive and one of the most senior Kokatha men. He was never called. Almost all of the Kokatha's own evidence of any substance was given by members of younger generations.

We knew much of what Max Thomas had told Rod Hagen in 1983, because Hagen tape-recorded and transcribed some of it and included a lot of it in his report. What Max had or had not told Daniel Vachon two years earlier had apparently been lost, and no comparison between the two was possible.

And then the lost reports dropped out of the sky like V-2 rockets. Tom Gara found Jane Jacobs's copies of them during his Canberra archival visit in late 2015. In his first report of 1981, we could now read, Vachon had written about his first mapping trip with Max Thomas and Richard Reid:

The men who made up the field party were selected by themselves as being most knowledgeable of the study area. In my opinion, unless other people can accompany us on a second trip, we will be forced

to indicate to RMS [Roxby Management Services] archaeological [sites] only – places the KPC [Kokatha Peoples Committee] would want no mining on the basis of protecting a forgotten heritage.

Mythological knowledge is worse than thin, it is non-existent among these informants. The men themselves know that others will need to be involved if the myths are to be re-learned.

Unlike those people who still retain their religious traditions, these men:

- a) Sang no songs during the trip – a constant practice in the North-West [of SA]. They admit they do not know them.
- b) Know no Aboriginal place names.
- c) Knowledge of the people who do know the country is very thin.
- d) Identify wilyaru as the only ‘dreaming’. The term seems to be used in a generic fashion for any site.

Since the songs and place names are not known, there are no ‘ethnographic sites’ to protect. Without the place names, it becomes almost impossible (but not entirely) to elicit information on the area from others.

This is not to say that no one knows the country. But unless a process of re-learning begins immediately, whatever knowledge of the area remains will be lost within the next few years.

These men know that the situation is desperate, but have little confidence that the younger people share their enthusiasm. In truth, only Richard Ried [sic] and, maybe, Max Thomas are serious in re-learning their heritage. Both are willing to consider having white people who know anything teach them the country.

The picture presented by Vachon’s site records on this trip wasn’t quite so dire, but very nearly so. There were some fragmentary elements of mythological associations that are consistent with other and later assertions by Kokatha and other people. But they did not relate directly to the rock formations Rod Hagen soon found were asserted by the Kokatha men to be Sleepy Lizard Dreamings. Recall that Colin Woolard knew where such outcrops were

located and took the Hagen party to at least some, if not most of them, in 1983. In 1981, Thomas and Reid had not mentioned Sleepy Lizard Dreaming sites to Vachon at all. Nor did the mythic associations recorded by Hagen relate directly to Lake Torrens, even though it is only forty kilometres from the Roxby mine site and fifteen kilometres from Max Thomas's long-term home at Andamooka. In desert terms, these distances are minute.

Vachon's next trip added senior men from remote north-west South Australia. But again he wrote, in his second report of 1981:

...knowledge of sites, including names of sites, and mythological information is virtually non-existent.

Yalata men could be used as could people from Koonibba. It is my opinion, however, that little additional information will be gained from these people.

If the two men from the North-West can be used as an indication, Pitjantjatjara and Yankunytjatjara people from the north have had little information on the area. All northern men repeatedly asked the locations of places, such as Andamooka, Woomera and Pt. Augusta; a situation which would not have been possible if they had had some physical association with the area, even some years ago.

These gaps were filled by Rod Hagen's informants in 1983, and then – east of there, on and in the lake – further filled after 1993. The key moment of extension of mythology onto the lake seemed to have happened in 1996, when Jon Willis and a senior man from Muṯitjulu in the Northern Territory, Tony Tjamiwa, went out mapping with Kokatha people. It was not clear to me that Tjamiwa had ever been to this particular area before.

The elaborate mythology Willis and the Kokatha men described for Lake Torrens and Andamooka Island, Justice Mansfield concluded in his 2016 decision, 'must be post-sovereignty in origin'. This was true, but it was also clear from the context that the Lake Torrens mythology of the Kokathas was not only post-1780s but post-1980s in origin. They now link it directly to Roxby Downs.

MY PROBLEM WITH all this ‘reading’, ‘extension’ or ‘re-creation’ of new sacred sites was not the mere fact of innovative readings of country in mythological terms – I had adduced several unimpeachable examples of this in my own report. Two of these examples involved features of the Canberra region being ‘read’ by visiting men of remote outback origin during the 1970s – men who had never before trod the ACT, but who ‘saw’ the Dreaming events of their own remote countries reflected, naturally, close to the seat of national power and economy. The problem in the Lake Torrens case was the mobilisation of this ancient practice against others in a legal-bureaucratic and developmental environment where intense competition existed between Aboriginal groups. The goalposts had shifted.

However, another set of facts effectively placed all of this evidence of mythological ‘extension’ or ‘finding’ of sacred sites through ‘reading’ the country – of which one had no extant lore – into a kind of native title limbo. During the 1980s, Kokatha people were on record as to the relationship of Lake Torrens to their country in writings from four different sources. These included Max Thomas and Ningel Reid, and other Kokatha senior people. The recorders, on different occasions, were Daniel Vachon, Rod Hagen, Tom Gara and John Thomas. All of the Kokatha told their recorders (or wrote himself, in the case of John Thomas) that country claimed as Kokatha did not include Lake Torrens, but only went as far as the edge of the lake on its western shore. (Norman Tindale had recorded the same fact from two different informants in 1939.) This is how Willis dealt with that crucial evidence while being cross-examined by Adnyamathanha counsel Michael Roder:

RODER: Would that suggest that as far as you’re aware that throughout the 1980s when Kokatha people were asked to identify their boundaries, it went no further east than the western boundary of Lake Torrens?

WILLIS: I think on the strength of the reports that you’ve put in front of me, these reports definitely say that, yes.

RODER: Thank you. Can I suggest to you that that is – that ought to be a very important matter to take into account in determining whether the Kokatha had traditional rights over Lake Torrens?

WILLIS: You can suggest it to me, yes.

RODER: What's your response to it?

WILLIS: I think the 1980s were a particular time in Kokatha history, yes, you know, but the Kokatha have existed for a long time before and after that.

RODER: It's certainly not material that you had regard to or were even aware of when you wrote your report?

WILLIS: I was certainly aware of it.

RODER: Of those 1980[s] reports?

WILLIS: Yes, I've read them a number of times.

RODER: Why didn't you refer to them in your report?

WILLIS: Because I don't – I think what they say is interesting–

RODER: I see.

WILLIS: –in terms of what else I know from other records and from contemporary ethnographic evidence as well as from the evidence from the Desert people, *I don't think that these reports are of interest.* [emphasis added, PS]

It was only after the Kokatha visited the area with Willis and Tjamiwa in 1996 that the previously unrecorded and elaborate Kokatha mythology of the lake, together with their since-sovereignty native title claims over the lake, to the exclusion of all others, emerged.

In August 2016, Justice Mansfield dismissed the Kokatha claim to Lake Torrens. He found it had not been theirs at the time of British sovereignty. He also dismissed the Kuyani/Adnyamathanha and Bangarla claims as well, saying he was not convinced that they had held any part of Lake Torrens at sovereignty either, even if this may have been the case. He also dismissed their claims because, assuming they did hold the lake in 1788, he did not consider they had kept up the required strength of coherent connection to the lake between conquest and now. Their evidence had also, at times, been internally inconsistent.

And so, after the prodigious efforts required by litigation of this complexity, and after the taxpayer's meeting of some heavenly bills, nobody got a guernsey. Meanwhile, the mine at Olympic Dam has underwritten the

economy of the South Australia for nearly three decades and promises to do so into the foreseeable future. According to the *Australian Business Review* on 5 May 2012, Aboriginal beneficiaries of the Olympic Dam Agreement stood to receive an additional \$920 million over thirty years once the \$30 billion Olympic Dam expansion, currently on hold, takes place. And the word is that underneath the northern part of Lake Torrens is an even bigger mineral treasure than the Roxby blockbuster.

Within a few weeks of Justice Mansfield's decision, all three claimant groups – the Barngarla, Kuyani (Adnyamathanha) and Kokatha – lodged appeals against his decision. The miners with an exploration permit over part of northern Lake Torrens once more had to hold off further attempts at negotiating exploratory drilling while the uncertainty remained as to who, if anyone, they should treat as native title holders.

Stay tuned.

The views expressed in this essay are those of the author, and are not intended to reflect the views of the State of South Australia.

Peter Sutton is an author, anthropologist and linguist who has lived and worked with Aboriginal people since 1969, and is a specialist in the Cape York Peninsula region. He is also a specialist in Aboriginal land tenure and has taken part in some seventy land-claim legal cases over the years 1979–2016 in three Australian jurisdictions: Northern Territory's Aboriginal Land Rights Act, Queensland's Aboriginal Land Act and the Commonwealth's Native Title Act. He has written or edited sixteen books in the fields of Aboriginal languages, visual arts, land tenure, history and policy. His two latest books are *The Politics of Suffering: Indigenous Australia and the end of the Liberal Consensus* (MUP, 2009) and, with Michael Snow, *Iridescence: The Play of Colours* (Thames & Hudson, 2015). He is currently writing a biography of pioneer Queensland anthropologist Ursula McConnel.