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Review - Penelope Debell, *Red Silk: The Life of Elliot Johnston QC*, Wakefield Press, Kent Town, South Australia, 2011

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Abstract

Penelope Debell is a very fine writer and a keen researcher, and she has drawn upon Elliot Johnston's own extensive personal papers, on conversations with him and with many of his family and friends, and on files held by the biographers' new best friend, ASIO, which had surveilled Elliot for 40 years. The result is an extremely well-written and lively account of how and why Elliot became a Communist, the first (known) member of the Communist Party of Australia (CPA) to become a Queens Counsel, and later a Justice of the Supreme Court of South Australia.

**Penelope Debell, *Red Silk: The Life of Elliot Johnston QC*, Wakefield Press,
 Kent Town, South Australia, 2011**

Reviewed by Mike Donaldson

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Penelope Debell is a very fine writer and a keen researcher, and she has drawn upon Elliot Johnston's own extensive personal papers, on conversations with him and with many of his family and friends, and on files held by the biographers' new best friend, ASIO, which had surveilled Elliot for 40 years. The result is an extremely well-written and lively account of how and why Elliot became a Communist, the first (known) member of the Communist Party of Australia (CPA) to become a Queens Counsel, and later a Justice of the Supreme Court of South Australia.

Elliot Johnston was born in 1918 with congenital blindness to his left eye, which failed to stop him becoming a dashing AFL player, and from winning a school scholarship and then a bursary to the University of Adelaide. Elliot was strongly affected by the Depression that deepened as he left school, leaving 40% of the Adelaide workforce unemployed and 6,000 homes deserted. The civil war in Spain and the rapid growth of European fascism convinced him to become the foundation secretary of the University of Adelaide Peace Group, and he helped to establish the National Union of Australian Students in 1938. Impressed by the Port Kembla waterside workers' use of industrial power to further the cause of peace, he formed the Radical Club which argued for a just distribution of economic resources and which attacked wartime censorship for suppressing criticism of the Government. For this he was threatened with expulsion and was stood down for two weeks by the Vice-chancellor, but he received strong support from Communists in the University of Sydney Labour

Club. Elliot survived this tribulation, and being tossed in the River Torrens by students attempting to organise as strike breakers, further strengthened his resolve. In his application for a Rhodes Scholarship, he wrote that “capitalism had shown itself incapable of dealing with the manifest injustices of society . . . namely poverty, malnutrition, poor housing and the fear of unemployment. It should be replaced with socialist reforms that placed capital and political power in the hands of the state. It would be my desire after leaving Oxford to return to South Australia and join some existing group or help to found some new group advocating such a policy”.

The scholarship did not eventuate, but Elliot joined his girlfriend Elizabeth Teesdale Smith and 15,000 others in the CPA in 1941, not long after it had been declared illegal by the Menzies government. Serving in the artillery in Port Moresby at the end of the New Guinea campaign, he was happy to find that the CPA was well-organised and about 4,000 strong in the armed forces. On his return to Australia and to the practice of law, Elliott threw himself into the peace movement, work which took him to Europe and to the USSR from which he returned convinced that two essentials for real communism were a sound legal system and freedom of speech.

Elliott was delighted in 1951 when the Party approached him to become an organiser even though, with the onset of the Cold War, Party membership had plummeted by half in the four years since the war ended. On the princely wage of 11 pounds per week, he set about organising farmers and workers in northern South Australia, Whyalla, Port Augusta and Port Pirie, and he became a member of the S.A. State Committee on which he served for 30 years. In 1957 he returned after 18 months studying at a Party school in China, convinced that Australian Communists must find their own way by learning from, while not being in thrall to, the Soviet and Chinese Parties.

This view was not a popular in the CPA. A few months later, Lance Sharkey from the national leadership paid him a visit. Elliott told Sharkey that the Central Committee was wrong not to permit discussion in the Party about Stalin’s atrocities revealed in Kruschew’s secret speech the year before. Sharkey advised him that it might be best if he returned to his work as a lawyer. Elliott said that Sharkey talked bullshit. He was

glad to use his legal skills for the Australian Communist cause and to place himself at the service of the working class. Some Communists condemned the courts as the bosses' but Elliott thought that the law could be harnessed to protect the poor and the marginalised. He believed bourgeois law had "redemptive power" and threw himself into his legal work, soon gaining the patronage of the left trade unions. He was unstinting in his work for the Party, standing as a Party election candidate about a dozen times, and he attended every National Conference and served on the State Executive for 30 years.

When Elliot decided that he should become a Queen's Counsel, he was aware that Victor Ted Laurie had been refused the appointment in 1961 for being a Communist, but 4 years later was given silk after he resigned from the Party. This was not Elliot's way. But when his name went forward with the support of the Chief Justice and other judges, the conservative Premier, Steele Hall, said that as a matter of national security he would not appoint a Communist and that he would rather lose office than change his mind.

The S.A. Law Society became involved, and a packed meeting voted 3 to 1 in support of Elliot. (So heated and polarised was the discussion, that 40 years on, Debell notes, people's minuted voting positions still remain confidential.) The question of his taking the Oath of Allegiance, a necessary condition of appointment, bothered many. Elliott said that he could see no contradiction between taking the oath and belonging to the CPA to "put forward propositions for changes in our society. The Queen is the constitutional monarch, she is the titular head of the society, she represents the society, the Australian people. I owe allegiance to her and I am very happy to owe allegiance to the Australian people and their way of life". He had, after all, sworn the oath on joining the army and on admission to the bar. But he had to wait for silk until 1970 and the election of the Dunstan State government which had supported his appointment while in Opposition.

On his elevation, Elliot threw himself even more into legal work for progressive causes helping many anti-Vietnam war and anti-apartheid activists, and Irish republicans, too. By the 1980s his firm was representing 19 unions. All the lawyers employed in his Chambers were equal partners, and profits

from the firm were divided according to need, leading ASIO to comment on the poverty of his own household. "It was all a bit communist", one of the partners remarked. "What could he do?" asked Premier Don Dunstan when he dismissed the idea of Elliot becoming a Judge of the Supreme Court, "use the bar as a barricade?"

Yet Elliot's appointment to the Supreme Court in 1983 at age 65, proceeded "without a ripple". He was very reluctant to leave the CPA to become a judge, but party apoliticism was a prerequisite of the office, whatever the party, for a judge "must be seen to be impartial". This, as Elliot explained directly from the Bench, caused him "a good deal of heartburn. I want to express to the members of the Party from which I have resigned and to wider sections of the labour movement, my profound thanks for what they have contributed to the shaping of my ideas and my life". Elliot felt "duped" by Bernie Taft, and never forgave him for resigning from the CPA in 1984 with 7 of the 8 members of the Victorian State Executive to form the Socialist Forum, precipitating the CPA's rush to oblivion.

On his retirement at aged 70, Elliot was looking forward to rejoining the Party with which he had kept in touch while on the Bench, but instead he was called to head up the Royal Commission into Aboriginal Deaths in Custody. Elliot's membership of the CPA which since the 1940s had been campaigning for Indigenous rights, had familiarised him with some of the profound issues involved. In 1971, following a visit from Paul Coe and Gary Foley, Elliot became the interim and founding chair of the Aboriginal Legal Rights Movement, and in 1975 he sat on the Laverton Royal Commission into police violence against Aboriginal people at Skull Creek in Western Australia. Elliot explained to the State Executive that the restrictions on a Royal Commissioner were the same as those for a judge, adding that "I remain convinced of the importance of the CPA now and in the future for the welfare of our country and the Left movement. I hope that my own conduct will reflect credit on the Party". But by the time his work on Deaths in Custody was completed, his Party had suicided. Elliott however, now in his early nineties, remains a communist, explaining that while socialism may be a way off, if good people don't keep up the fight, it will be even further away still.