

philosophy and judgment: listening to max deutscher

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I

I shall begin today with some brief and “friendly words” by way of introduction to what I have to say about Max Deutscher’s work. (No one who has read Max’s work will be left in doubt about this phrase “friendly words”). These introductory words, to some small extent, contextualise Max’s work geographically and historically.

What many of you may not know is that there is a long and significant relation between Max, his philosophy, and The University of Queensland, and this is especially true over the past fifteen (or more) years. Max has been an invaluable bridge generously connecting philosophical work carried out by some of us “there” with work being carried out “here” Sydney (and “elsewhere”). This is nationally of import in the Australian philosophical community, as it has led to collaborations (of writing and thought) that would have otherwise not occurred. As a result of his own nomadic philosophical practice, Max has been a frequent visitor to UQ and, more recently, an Honorary Professor of Philosophy there.

“Historical” Note 1. However, this link with The University of Queensland predates my time there. We can link Max with UQ back to the mid-sixties. I am re-

ferring to the paper he presented at the special symposium organised by Don Mannison—“The Brain State Theory of Mind”. Max’s paper, “Mental and Physical Properties”, though broadly supportive of the theory of a non-reductive identification of conscious states with processes and states of the brain, concluded with concerns about a tendency towards a descriptive reduction. Around a decade later, in the mid-seventies, Max’s paper at the Australasian Association of Philosophy Conference (AAP - Macquarie University), “A Refutation of Physicalism”, caused something of a stir. Though this was more of a “repudiation” than a “refutation”, the paper was something of an event in Australasian philosophy; it occurred at a time when significant changes in thought and practice were underway. Max’s break with physicalism at that time was to have long term consequences for philosophy, and philosophy in Australia perhaps even more so. To some extent this break—and its consequences - are why and how we are standing “here” (UNSW) today in honour of his work.

Jump ahead, and in 2013, at the AAP Conference at The University of Queensland, I was fortunate to be present at another “event”, and this was Max’s paper “Breaking with Physicalism”, delivered almost 50 years after those first concerns at that first symposium. Listening to that paper and placing it in the context of what had occurred in 1964 and 1974, i.e. in the context of the debates that Max’s early papers had unleashed, I felt myself—in a very particular way—to be witnessing a significant moment in the history of philosophy in Australia, a history that we are all, in our various ways, contributing to now. I commend that paper - and the work on Ryle that Max is currently undertaking in this area - warmly to you. In complex ways, it is an important part of “our” history as well.

“Historical” Note 2. Since 1981, Max had been reading and engaging with Michèle Le Dœuff’s work,¹ beginning with her now infamous essay “Operative Philosophy: Existentialism and Simone de Beauvoir”. In 2000, he edited a collection of essays engaging the provocative tone of Le Dœuff’s philosophical work. Titled *Operative Philosophy and Imaginary Practice: Michèle Le Dœuff*, the book comprised essays by Max himself, Genevieve Lloyd, Moira Gatens, and a good few of us here today.² These essays were first presented as papers at a conference Max organised at Macquarie University in 1996. The work that he assembled and helped refine in this book was, importantly, one of the first instances of “a circle of witnesses” (to borrow Le Dœuff’s phrase) to engage with the very particular feminist philosophical critique Le Dœuff was in the process of developing. This was no small matter. While we may overlook this now, Max’s intervention proved timely by providing

a focussed context in which to read carefully and respond to Le Dœuff's work. Le Dœuff's own role in establishing a circle of witnesses was evident in her return to the famous couple, Sartre and Beauvoir. By reading Beauvoir's work somewhat against the grain of the time, Le Dœuff helped to validate her work as proper to philosophy. As Max later wrote:

It was, then, a momentous event to discover in Le Dœuff's terse language and sharp observations... the means to overcome these obstacles to responding philosophically to the work of both Beauvoir and Sartre. Le Dœuff's series of early papers helped to put an end to the sheer absence of *The Second Sex* from the intellectual scene of philosophy. And this work of Le Dœuff's began to disturb the stasis that prevented the formation of an effective critique of Sartre. For my part, I was also impressed and provoked to respond to Le Dœuff's work, produced in much the same short period (from the late 'seventies into the early 'eighties) about how one might escape fundamentalism in philosophy without losing a coherent line of argument, and without lapsing into relativism.³

I mention this aspect of Max's intellectual focus because I think it bears importantly on the tone, or perhaps undertone, of aspects of the kind of philosophy a good many of us do in Australia today. Le Dœuff's work on the philosophical imaginary has been particularly influential in establishing a nuanced way of listening to philosophy, to engaging its images, imagery, imagination, and metaphors. Max's role, though certainly not singular, was crucial in helping us engage this nuanced philosophical mode. Of course, Liz Grosz and Meaghan Morris, in quite different ways, were undeniably important figures in the creation of this circle of witnesses so crucial to the development of critical philosophical thought in the Australian context. Along with Meaghan Morris, Max has highlighted the operative nature of Le Dœuff's approach to philosophy. We might think of this as a kind of "doing useful things with theory" kind of approach to philosophy, one that fits philosophy to a specific task. Max writes: "What we bring into being when we *do* something in philosophy is a temporary use, a particular inflexion, a bending back on itself, a flexing over and around the objects of pre-existing discourse."⁴ In a paper reflecting on the publication of *Operative Philosophy and Imaginary Practice*, Max writes:

If I were to attempt a generally retrospective regard of the understanding of Le Dœuff that we shared at the time of the conference that gave rise

to [the book]... I would, for my part, remark upon her work as exhibiting the value of theory as ‘operative’—as what is needed for some particular task. Her reminders of what is involved in the operations of argumentative discourses come to mind: the *clin d’oeil* that works to by-pass a problem that tacitly we have agreed to overlook; the appropriation of the position of another as an object of study rather than as their own origin of perception; the enjoyment of the welcome relief of imagery and every kind of trope that disarms criticism of a discourse; the taking of some striking general theory as a final explanation of everything (except itself!); the fact that any theory may be the object of scrutiny by a mode of discourse *tout autre*.⁵

What is worth underlining here is the obvious and ongoing influence of Le Dœuff’s work, her “rigorous personalism”, on Max’s later development as a philosopher (GV xxviii). Le Dœuff’s very particular take on Sartre’s work, accessed through an independent and original retrieval of Beauvoir’s philosophical work, provides Max with an operative viewpoint from which and through which philosophy itself can be reconsidered and re-engaged.⁶ Indeed, the influence of Le Dœuff’s work on Max’s important book *Genre and Void: Looking Back at Sartre and Beauvoir* demonstrates what he himself refers to as the permanent mark Le Dœuff’s thinking has left on everything he writes.⁷ We might refer to this as his *watermark* and we can see the trace of this in his current work on the subject, work that responds to Le Dœuff’s discussion in her essay “Du Sujet” of the subject in Lacan, Hegel, Descartes, Shakespeare, and others.⁸

The presence of another European philosopher, Hannah Arendt, is evident in Max’s two important recent works on judgment, and while the Le Dœuffean watermark is less obvious here, than it is in *Genre and Void*, I would argue that it is present in the form of a trace of a trace, one that accompanies Max in his efforts to build a perspective on Arendt’s work. It is to this work that I shall now turn.

II

The word ‘judgement’ has a deep tone.
(ISJ 174)⁹

Having, in some very brief sense, contextualised my relation with Max’s work I would like to go on now to “frame” my response to his more recent work on

judgement. This is a mature work in a long career in thought—a career that bears witness to much thinking and judgement. As such, it is a somewhat daunting task to respond to work that while “mature” remains still very much in process (and in progress). Despite this, one is pleased to do so and one judges it a pleasure—and, indeed, a joy.

For some time, I’ve been “squatting” in two of Deutscher’s works: *Judgment After Arendt* (JAA)¹⁰ and *In Sensible Judgement* (ISJ). While not a “permanent habitation” (ISJ 85, 86), my stay there has been something more like a dwelling, a “use of premises without ownership of them” (86), permitting “a provisional life of inquiry and perception” (85). Accordingly, my reading of his work will be something like a reading “along with” Deutscher, a slow reading that returns to dwell alongside the work—to catch Deutscher in the act of thinking.¹¹ A “waiting” (JAA xiii), a “stopping to think” (JAA 125, 127), and even a “withdrawal” (JAA xv-xvi).

One of the things I have discovered (or, more properly re-discovered) in this process of re-reading Deutscher, is the antipodean tone of his work—the way that he manages to situate momentous events here in the Australian context (events arguably marginal to our European and Anglo-American philosophical worlds) within his broader philosophical frame. I am referring, of course, to the centrality Deutscher accords the Mabo Case¹² in his engaged and re-considered philosophical inquiry into judgement.^{13 14} This gesture reminds me of what Meaghan Morris observed long ago now—that what we do when we “import” or “translate” theory or philosophy into the Australian context involves something quite other than *simply* repeating it here.¹⁵

So, to Deutscher’s work. My starting premise will be that it is best to read *In Sensible Judgement* along with its companion piece *Judgment After Arendt*. While the two works certainly stand alone, there is a richness and layering that JAA provides, that deepens one’s engagement with ISJ. By way of support for this claim, I turn to some passages in JAA that help bridge the work carried out there with work undertaken in ISJ. In considerations of thinking, Deutscher reminds us that Hannah Arendt calls forth the withdrawal that characterises the negative or “use-less” action of thinking (JAA 75). To think is to *not* do something, or *not* to do something—to act by inaction; to stop and think (JAA xiii). In this, thinking shares something with waiting; it “shares the ambiguity of *waiting*”, Deutscher says (JAA xiii).¹⁶ This withdrawal—thought’s withdrawal—will ultimately make judgement possible—although we’re not yet there. Thinking brings us “to the face of judg-

ment,” indeed “even to face judgment” (JAA 64). Following the arc of Kant’s three critiques, Arendt famously follows thinking with willing in her exploration of the *vita contemplativa*—her “life of the mind.” Here, Deutscher notes Arendt’s observation of a “clash between thinking and willing’, marked by a distinction of ‘tonality’ in these ‘mental activities’” (JAA 91). The serenity of thinking appears in contrast to the “tense-ness” of will, which demands action to resolve the tension between hope and fear. “Only action resolves this tension. Only by action is hope fulfilled or fear validated. To *think* as a means to this release is to procrastinate, observes Arendt” (JAA 91). The “tense-ness” of will, along with its conflicts and dangers (JAA105), exist in an uneasy relation with the serenity of thinking¹⁷, and Arendt follows Kant, once again, in positioning judgement as the “remarkable and entirely familiar” (JAA 155) bridge between the two:

So judgment appears on the scene, to solve the standoff between thinking and willing. Judgment has the required degree of autonomy from each to be able to achieve the task. To judge is not to think, since, for one thing, it is not a process like thinking. Nor is it simply the final point of thinking—the moment at which thinking comes to its end. A judgment is neither a calculation nor an inference. Useful as calculation and inference are, they do not bridge the gap between what is open to the intellect and what is required of the will.

(JAA 155)

While thinking (as the withdrawal of wonder and the ability to ponder [JAA 127])¹⁸ allows us to move toward the possibility of judgment, to face judgment, it is our need for public life—for social and political engagement—that calls forth judgement as the bridge connecting thinking and willing in human life (JAA xiii). Deutscher notes that “the competing demands of thought and will are brought to a head by the need for judgment. Judgment enters the scene as we move towards active involvement and, equally when we ‘stop and think’. Judgment is confined neither to the role of spectator, nor to that of the involved party, but it must involve a thinking will” (JAA xv-xvi). Judgment requires thinking, but it must go beyond the thinking that makes it possible. While it is “a manifestation of the wind of thought” it is, simultaneously a surpassing of that thought (JAA 129).¹⁹

Along with Kant, Arendt has judged judgment as the “bridge between natural causes and the will as our freedom of origin” (JAA 162), or between solitary thought and engaged public action.²⁰ By following her to this point, Deutscher has

set the scene for what is to come in *In Sensible Judgment*. In *Judgment After Arendt* Deutscher is able to see things from Arendt's perspective (her premises), while also being able to depart these and reside elsewhere. Just as in *Genre and Void*, where he is able to take up Beauvoir's perspective, inhabit it and move along,²¹ here in *Judgment After Arendt* he is comfortable, at home, and even friendly in Arendt's philosophical terrain. This "squatting"²², that he elsewhere refers to, enables him to share Arendt's world and yet not be contained by it. What Deutscher goes on to achieve in *In Sensible Judgment* is testament to this. Indeed, there, he refers to premises as both "places of dwelling *and* of departure" (ISJ 94 emphasis added), noting that both our knowledge and our ability to judge "arise from *where* we dwell and *how* we visit the dwellings of others" (ISJ 94 *emphases added*).²³

III

In *In Sensible Judgment* Deutscher explores what it is to judge and what judgment is able to achieve (ISJ viii).²⁴ His strong claim in this work is that all judgement involves sensibility (pleasure/displeasure)—the being pleased (or displeased) at something being the case that follows from Kant's depiction of aesthetics as the exemplary field of judgement. This "being pleased (or displeased) at" rests upon a thinking that in Arendt's words: "liberates us in using our faculty of judgement"²⁵ but is not coincident with it.²⁶ Judgment is the "mental resolution that arises in *being pleased at* rather than *thinking that*" (ISJ 133). Sensible judgement is, therefore, the aesthetic judgment of being pleased at how something is or might be. It involves our ability to be moved and unsettled by what we judge "as we reanimate... [our] entrenched ways of perceiving" (ISJ 22). Beyond any simple evaluation of what is good, this "being pleased at" of sensible judgement embraces feeling at the very heart of what it means to judge (ISJ 31). "Being pleased at" is the "event of coming to judgement" (ISJ 59), and while judgement is not determined by feeling, it embraces and is in turn embraced by it. "Judgement is an accomplishment—of coming to a certain satisfaction" (ISJ 97). The first and central moment of aesthetic judgement is, following Kant, to be pleased (or displeased) at the very appearance of something (ISJ 99), or of some resolution of factors. For Kant, and Deutscher follows, various forms of reason are here in play. Reason has its own role in what unfolds.²⁷ But how, Deutscher asks, do various forms of reason support or impact upon our pleasure at a given situation? (ISJ 133) "If sensibility is thus involved at the heart of judgement, how *can* reason have a proper purchase upon it?" (ISJ ix-x)

Of course, a response to these questions is what occupies an important part of the third section of Deutscher's book.²⁸ Here he re-reads key moments in the canon of Western philosophical thought—Plato's charioteer, Hume's slave, and Kant's detached judge—in order to unsettle entrenched dichotomies of reason and passion, arguing that something like Arendt's sweet reason would “moderate the whims and weaknesses of the mastering passions” (ISJ 114)²⁹ without suppressing sensibility. Reason, then, would step back from dominating the passions, all the better at crucial moments to defer them (ISJ 132).

In Deutscher's chapter on “Dissenting Judgement”, he outlines the judgement made in the ‘Mabo’ case—“the most significant peculiarly *national* judgement that has been made [since federation] by the High Court of Australia” (ISJ ix). Deutscher's observations, especially in relation to Justice Dawson's dissenting judgment, bring us face-to-face with the nuts and bolts—and, indeed, the complexity - of what it means to judge, and how judgments are made. In considering a question concerning common law, Deutscher claims that a very particular form of judgement—reflective judgment—needs to be considered alongside Dawson's insistence on determinative judgment: “The appeal to common law justice calls out for reflective judgment, since the principle is too open to determine an answer by logical deduction, and a judge must interpret the content of the principle from the exemplary case that comes before them” (ISJ 57). What Deutscher points to here, is a distinction between reflective and determinative judgment. Determinative judgment is a juridical judgment that proceeds from principle down to case. It depends on written rule and creates no precedent. Reflective judgment, on the other hand, proceeds without a set rule. It involves principle both formed and informed from an exemplary case. It is a non-juridical unguided judgment that proceeds from exemplary case to the principle. For Deutscher, reflective judgment (in evidence in Justice Brennan's judgment) demonstrates the event of coming to a judgment and is “one and the same with coming to be pleased (or displeased) at a state of affairs” (ISJ 59). According to Deutscher, the lack of judicial pleasure or displeasure reduces judgment to deduction, a state wherein judgment cannot perform its task (ISJ 61). Indeed, at various times throughout his book Deutscher claims that it is often more appropriate to speak of judgment *not* taking place rather than bad judgment.

The unguided nature of reflective judgment shares affinity with what Deutscher refers to throughout his book as sensible judgment. This is by no means to say that reflective judgment is determined by feeling. Deutscher refuses this outright.

But rather, that reflective judgment, in its very nature, keeps alive the question of what it is to judge and how judgment is made.³⁰ In the Mabo judgment Deutscher claims that any oppositional relation between reflective and determinative judgment falls away: “The appeal to ‘justice in common law’ dismantles the opposition between the *unguided* and the *juridical*, or the *reflective* and the *determinative*” (ISJ 61). However, this falling away does not mean that these very different moments of judging do not exist: “To deconstruct a distinction is not to destroy but to exhibit it. A judgement such as the Mabo decision involves a reflective moment where principle is formed and informed *from* exemplary case—the essence of a reflective judgement. But in this moment the reflective borrows from and is borrowed by the determinative moment of legal history and specific precedent” (ISJ 61). Reflective judgment, despite the intricacies of its relations with determinative judgement, stands for Deutscher as a moment of judging that keeps thinking alive. In keeping this thought in process, reflective or sensible judgment encompasses feeling at the heart of judgment—in terms of pleasure or displeasure at something being the case.

In being pleased (or displeased) at something being the case, we acknowledge feeling and sensibility as central to the act of judgment. For me, this is the place of a future conversation between Deutscher and Jean-François Lyotard.³¹ When Deutscher writes: “What we first felt, now we pronounce in the form of a judgment” (ISJ 21) or “we expect that an object of beauty is liable to unsettle and challenge us, as it reanimates entrenched ways of perceiving” (ISJ 22) we know that it is not Lyotard speaking, but we sense (we have the feeling) that it could be the opening words of a conversation between the two yet to come.

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NOTES

1. Max's ongoing engagement with the work of women philosophers ought act as a provocation to many of our male colleagues.
2. Deutscher, Max, ed. 2000. *Operative Philosophy and Imaginary Practice: Michèle Le Dœuff* (Amherst: Humanities Books).
3. Deutscher, Max, 2001. "Le Dœuff's philosophy: *Operative Philosophy and Imaginary Practice: Michèle Le Dœuff*" (unpublished paper), 3.
4. Deutscher, Max, 2003. *Genre and Void: Looking Back at Sartre and Beauvoir* (Aldershot: Ashgate), xxx. Hereafter cited as GV.
5. Deutscher, "Le Dœuff's philosophy," 7.
6. Deutscher writes: "[Le Dœuff's] critique gives new life to the phenomenological tradition, demonstrating how much we can learn by use of our always dubious resources" (GV xxxi).
7. For a discussion of *Genre and Void* see Boulous Walker, Michelle, "Writing Couples: Reading Deutscher on Sartre and Beauvoir" in *Crossroads: An interdisciplinary Journal for the Study of History, Philosophy, Religion and Classics* IV:I (2009), 45-52.
8. cf. Max Deutscher, "The self-dispossessing subject", unpublished manuscript. Additionally, Deutscher points to the influence of Le Dœuff's critique of Sartre's "unique speaking subject" who "speaks as if for the whole world" and her claim that Beauvoir's existentialism adopts another voice entirely. (GV xxix).
9. Deutscher, Max. 2013. *In Sensible Judgement* (Farnham: Ashgate), 174. Hereafter cited as ISJ.
10. Deutscher, Max, 2007. *Judgment After Arendt* (Aldershot: Ashgate). Hereafter cited as JAA.
11. In JAA Deutscher observes that "Arendt's writing stages the process of thinking itself as a conversation, not only with the reader but also with herself" (JAA 50). I think that this is true, too, of Deutscher's writing, and this allows us access to the thinking taking place.
12. Acknowledging the traditional custodians of this land—and their ongoing struggles for justice—ought found the philosophical work that we do in the Australian context. We philosophise on ground that bears a very particular history of colonial injustice. We need to acknowledge this, and begin the long and complex work of thinking through what this means for the present and the future of our philosophical community. Max's recent philosophy has begun this important work, and in this sense it provides a provocation for us to do the same.
13. Matthew Lamb would refer to this (following a strategic line in the work of Luiz Costa Lima) as a "peripheral" framing, one that unsettles the "metropole" of European themes and concerns. See my discussion of this point in Boulous Walker, "Writing Couples".
14. N.B. Different spellings of judgment (JAA) and judgement (ISJ) in the two publications. When not quoting directly from either work I will remain with "judgment".
15. Morris, Meaghan, 1981. "Import Retic: 'Semiotics in/and Australia'", in *The Foreign Bodies Papers* (Surry Hills: Local Consumption Publications: 122-139).
16. Arendt's work here shares, perhaps unsurprisingly, something with Martin Heidegger's characterisation of a certain thought as an "active restoration" resisting the dangers inherent in the narrows confines of "enframing" thought (cf. Martin Heidegger "The Turning" in Heidegger's *The Question Concerning Technology and Other Essays*, trans. W. Lovitt [New York: Harper, 1977], 36-52).
17. Deutscher writes: "Conceptually, we have left the site of the will in withdrawing to think" (JAA 154).
18. Deutscher notes that in response to the question "What Makes us Think?" Arendt returns to

Plato to provide an answer: “it is wonder that makes us think. Thinking out what we wonder at enriches an otherwise too detached ‘spectatorship’” (Hannah Arendt, *The Life of the Mind* [Harcourt: New York, 1978], 129-93, cited in JAA 125).

19. Deutscher claims that judging is “a culmination rather than a process”; it “sums up what *has happened* (what has been accomplished)” and must therefore be “announced in the past tense” (JAA 131).

20. In *Critique of Judgment* Kant writes: “the critique of judgment [will provide] a means of linking the two parts of philosophy into a whole” (Immanuel Kant, *Critique of Judgment*, trans. Werner S. Pluhar (Indianapolis: Hackett Publishing, 1987[1790]), 15, cited in ISJ 138).

21. See my discussion of Deutscher’s relation to Beauvoir in: Boulos Walker, “Writing Couples,” 47.

22. See ISJ 85-86 on squatting, where he claims that although in squatting one does not own the place, one nevertheless needs to “invest considerable effort and expense to make [the] premises habitable” (ISJ 86).

23. Deutscher writes: “To think of premises as material conditions provides a guide to how disagreement arises and persists. We do not therefore despair of judgement; we place a sensible construction on judgement as arising where we dwell and from our mode of dwelling there. We can sense our constructions and those of others and so, as Kant and then Arendt suggest, we develop a common sense of our differences... We can grasp the finality [of] judgement that can be achieved when we recognise the material status of premises whose implications we contest” (ISJ 95).

24. These are no small questions, as Deutscher himself indicates. For example, the question of what it is to judge is routinely lost in discussions of “communicative conversation”, “contesting argument”, and “culturally entrenched standards of discourse”. Deutscher writes (and I concur): “The accent on good standards of ‘validity’ is, at best, a condition of better as against worse judgements. There is a great deal that cannot be explained about judgement if we take it to be only another kind of belief or opinion that has perhaps, some special domains of its own, or perhaps its own particular relation to evidence” (ISJ 99).

25. Arendt, “What makes us think?,” 192, cited in ISJ 2.

26. For example: “The withdrawal that *judgement* requires is different from what the philosopher needs in order to *think*. The one who judges does not ‘leave the appearing world’, but makes a partial withdrawal from involvement in the matters that have to be judged” (Deutscher 2013: 1).

27. Deutscher: “The brilliance of Kant... is shown in his confidence that still he will succeed in demonstrating the vital role of various forms of reason in relation to such judgement” (ISJ 99).

28. At the beginning of chapter seven Deutscher states: “I shall argue then, not for a new dichotomy of reason and affect, but still for a distinction between their roles in our emotionally intelligent lives” (ISJ 111).

29. “Instead of mastering passion by whip and punishment, reason must project the passions within itself so as to understand passion’s whims and weaknesses and its strength in bringing reason to face with reality. And, conversely, before Passion can be commanded by Reason it must import reason within its own province” (ISJ 114).

30. “The very reasonable requirement of communicability of judgement and the need to ‘visit’ other points of view generates an argument about what makes a judgement a ‘sound’ or ‘valid’ one. But then this ‘communication’ of judgement and the ‘visiting’ of other points of view are made criteria of having *made* a judgement. That, I think, is a mistake. Important as ‘communication’ and ‘visiting’ are in their own right, the enquiry into their roles does not tell us what it *is* to judge” (ISJ 60).

31. cf. Jean-François Lyotard, *The Différend: Phrases in Dispute*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1988).