
Forced migration situations as exceptions in history?

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Abstract: In refugee studies and the general literature on forced migration, the refugee condition or the condition of forced migration is considered exceptional. Yet, one can enquire in colonial and post-colonial context, if the theory of exception does not ignore concrete post-colonial conditions, which are both exceptional as well as part of the general history of democracy and human rights, and if does not assume the liberal-democratic condition as universal to which refugeehood would be the supposed exception. This paper seeks to conduct this enquiry by reviewing and examining the context in which ideas and concepts of refugeehood and forced migration have emerged in a post-colonial country like India, and the ways in which post-colonial political sense has combined rights, ethics, and law in generating the specific ideas related to forced migration.

Keywords: refugeehood; colonialism and the post-colonial context; exception; partition; globalisation; labour; problematisation; rights; ethics; legal pluralism.

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Biographical notes: Ranabir Samaddar belongs to the critical school of thinking and is considered as one of the foremost theorists in the field of forced migration studies. He has worked extensively on issues of forced migration, the theory and practices of dialogue, nationalism and post-colonial statehood in South Asia, and new regimes of technological restructuring and labour control. His recent work on new town and new forms of accumulation has taken forward urban studies in the context of post-colonial capitalism. He is currently the Distinguished Chair in Migration and Forced Migration Studies at the Calcutta Research Group.

1 Introduction

In the refugee studies literature, and in the general literature on forced migration, the refugee condition or the condition of forced migration is considered following Hannah Arendt and Giorgio Agamben exceptional.¹ In this idea of exception there is a tremendous force of generalisation. It is based on the binary of exceptionality and banality, which attracts those who study refugees and forced migration to think of the subject in the framework of exception. Yet one can ask in colonial and post-colonial context, does not the theory of exception ignore concrete post-colonial conditions, which are both exceptional as well as part of the general history of democracy and human

rights? Or to pose it differently, does not this theory take the liberal-democratic condition as universal to which refugeehood would be the supposed exception? And more importantly how does theory look like if we consider the role of historical intelligibility as crucial in the making of a concept?

This paper seeks to address these questions by reviewing and examining

- a the context in which ideas and concepts of refugeehood and forced migration have emerged in a post-colonial country like India
- b the ways in which these concepts have been problematised
- c similarly the way post-colonial political sense has combined rights, ethics, and law in generating the specific ideas related to forced migration
- d the problem of locating the idea of exception in a critical post-colonial milieu.

2 The context of forced migration studies in India: crossing boundaries of times and themes

In the last 25 to 30 years research on forced migration in India and broadly South Asia has advanced greatly. Particularly the 15th year of partition and independence of India and Pakistan in 1947 occasioned a spurt in refugee and partition studies. By 2000, though not the first, the most extensive volume on refugees in West Bengal, the institutional practices of their protection, and the production of the refugee identity came out.² Within three years or so of that publication the first comprehensive account of refugees in post-Independent India and the history of her asylum practices, in other words the first account of the post-colonial regime of care and power was published (Samaddar, 2003). Researching on the edges of ethics, law, and history, the study of refugees in India for the first time produced a framework that was distinctly post-colonial and critical, but at the same time engaging and challenging the dominant paradigms of refugee studies, refugee law, and refugee protection policies. The study produced a framework that since its publication has attracted wide readership, reviews, appreciation, comments, and has encouraged many others to study forced migration in that frame. Insights gained from these two researches have helped researchers to undertake systematic studies of internal displacement in South Asia, the relevance of UN guiding principles, and the relevance of the IDP issue to studies on forced migration, the first of this genre of studies coming out in Banerjee et al. (2005). The studies of the IDPs, attending governmental practices, legal definitions and their limit, and finally the massive nature of the internal population flows also helped forced migration researchers to see refugee movements in a new and broader light, beyond the existing international legal framework or a dominantly cultural framework that had hitherto limited the understanding of refugee condition to mainly symbols and identities.

These three phases or milestones – first, the partition of 1947 as the birth mark of refugees in the South Asian sub-continent, constituting our understanding of what is a refugee flow, second, historical understanding of refugee care in India by the post-colonial state, and third, the study of the IDPs in the broad framework of forced migration flows – have produced and defined a critical, post-colonial mode of investigation that is now part of the valued methods in forced migration studies. Strong empirical base, historical understanding of issues in question, critical legal theory,

gender-sensitive approach, deploying the concept of border as method of study, understanding of the epochal significance of issues of colonialism, partitions, borders and boundaries, and critique of neo-liberal developmentalism, are some of the aspects of this critical post-colonial approach. This mode too studies subjectivity; this too accepts refugee subject-hood as expressed in literature, songs, music, etc., as important aspects of study. But in place of limited textual reading of these subject experiences, these researches show how to study subjectivity materially grounded in historical experiences.

These three milestones in the development of the historical intelligibility of the phenomenon of forced migration have been possible due to a nuanced understanding of the relation between migration and forced migration, out of which came the concept of mixed and massive flows. Two works carried the evidence of this nuanced understanding. One was *The Marginal Nation*, written around the time of the 15th year of Indian independence. It linked the institution of border, the event of partition, peasant migration, historical continuities in migration patterns, network theory, and the production of forced migrants in a detailed texture to prove the particularities of the post-colonial milieu (Samaddar, 1999). The second was the *Reader on International Refugee Law*, which in its selection of the material and commentary again pointed to the inter-linked nature of migration flows, the limits to a positivist legal understanding, and new approaches to refugee law (Chimni, 2000).

An important stage in the evolution of this critical mode came in the last decade when empirical studies on camps of refugees and IDPs in South Asia with emphasis on mapping the voices of IDPs in camps became available.³ Around the same time there were other reports on the displaced due to communal disturbances and developmental disorders, and collectively these reports and studies broke many myths on acceptance and legitimacy of laws, their efficacy and relevance, the comparative roles of development projects and violence in producing IDPs, etc. These studies also helped the researchers in the post-colonial world conceptualise the notion of *massive and mixed flows of populations*.⁴ These studies also anchored refugee studies firmly in forced migration studies and border and borderland studies. The results were seen in works on two crucial themes: the specific nature and consequences of protracted displacement and the governmental technologies that produce the identity of the migrant. All in all, post-colonial sensibility has helped deepen our understanding of human rights and justice.

These studies have been followed appropriately by work on researches on refugee situations in Sri Lanka, Nepal, Pakistan, Bangladesh, Afghanistan, and Burma – producing in relatively short time an understanding of the interlinked nature of many refugee crises, nature of camps, great power interventions, etc.⁵

Research has been done extensively on statelessness too,⁶ and all these developments can be appreciated only in the perspective of the last two and half decades of work on forced migration. Particularly in the engagement with the theme of statelessness readers may sense the same unique method: careful selection of case studies that will tell us of the minor, subjugated histories, genealogical orientation, and a critical, post-colonial mode of investigation. Statelessness is seen in these studies less as a positive definition that sets down complete conditions towards such a definition of statelessness. Statelessness is seen in these studies more as refraction of a reality known as citizenship, citizenship as an institution that to use the word of a philosopher always ‘incompletes’ itself.⁷ Statelessness has a definition that always even if unknowingly bases itself

on a kind of displacement of a reality – the reality of state, nationality, citizenship. Therefore the post-colonial commentaries on statelessness are studies of permanent incompleteness – a reality that always seems to fall short of a hyper-reality, and therefore the ideal reality, of citizenship, entitlements, legal protection, full proof identity, solemn recognitions by courts of law, and the avowals by the state. Statelessness is thus more a situation, a condition, or a set of conditions that make what can be called a *limit situation* and *limit experience*, by which one can mean *situated at the limits, and experience of the limits of a situation, at the same time limits of an experience and situation we have defined in this case as citizenship*. Such an understanding must at one point of time brush against the positivism of law. It is up to law (in this case international law) to live up to these refracted, displaced realities, whose function is to tell the society the limits of the assured knowledge of institutions like border, state, citizenship, rights, humanitarianism, constitution, etc. If the subject of the state is the citizen, the stateless is the alien. One can thus say: that the citizen is the defence of the visibility of constitution; the alien is the shadow, its prey. The citizen exists in the alien as the savage form. Citizen is articulate; the alien is inaudible, silent. Yet the more interesting question will be: What are the ways in which the alien overcomes the two obstacles of inaudibility and invisibility? To understand this life world of the stateless, forced migration studies in post-colonial milieu have adopted the strategy of interrogating alterity.⁸

There is no doubt that the study of stateless population groups will become increasingly significant in forced migration studies. As states once again go to wars, come up and go down in history, countries fight newer forms of colonialism, newer forms of decolonisation occur, and borders and boundaries play havoc with settled configurations, the number of the stateless people will increase. We may see a reduction of de jure statelessness, but at the same time a rise in de facto stateless population around the world. It may also become increasingly difficult to distinguish between a refugee group and a stateless group. Newer identity practices imposed by States may produce stateless condition. If the preceding century was a century of partitions, this century may become known as the century of stateless people.

In short, the post-colonial perspective is important to remember to appreciate the particular way in which forced migration studies in India and South Asia in general have developed, because this perspective has combined the exceptionality of the events of forced migration with the structure and the daily experiences of colonialism, decolonisation, and the post-colonial realities of society and politics.

3 Concept as an epistemological category and the function of problematising

Concepts in forced migration studies thus have emerged as steps in the development of post-colonial historical understanding of the phenomenon, and they have given birth to certain definite methods in pursuing studies in this field.

Concepts and methods are interlinked in this history, because these concepts have emerged through a process of critique of the realities of partition, colonialism, decolonisation, riots, boundary setting and border drawing exercises of the departing colonial power, developmental policies of the post-colonial State, migration of labour in

servitude and semi-servitude, and capitalist conquest of land belonging to indigenous communities. Critique means in this context not so much re-framing a philosophical idea by reworking on some of the aspects of the latter, but criticism of existing practices, policies, and discourses of a theme from 'presentist' concerns. Critique thus has turned an existing or a given phenomenon or knowledge into a problem. This is distinct from the usual problem setting exercise, a favourite pastime in policy exercises in migration management. Critique has become in this way a step towards formulation of new themes. Some concepts have become ruling formulations in the field of forced migration studies. As a result there have been clashes of concepts, such as over the definition of a refugee in India. Questions are asked: Who is a *refugee*?⁹ What does *security* mean in forced migration studies in the post-colonial context?¹⁰ What does the concept of *care* signify in studies on forced migration?¹¹ Ethics brought in the question of the post-colonial self, traditions of hospitality, etc., reminding us of way Derrida raised the question, "Is not hospitality an interruption of the self?"¹² In other words, discussions in courts, policy circles, human rights community, political forums, and scholarly academia began referring to the cosmopolitan ideas in the pre-colonial and colonial time, the duty to protect the shelter-seekers, and ethics of kith and kin ties, and if and how these ethical principles sit with security and economic imperatives.¹³

Yet, even though battles are fought over concepts, and concepts can work against each other, concepts, we should recall, generally work in groups. Thus a concept may be known by its family identity. Studying concepts is thus inherently genealogical. Not only we need to discuss the historical evolution of a concept in a 'presentist' framework, the purpose is to lay bare the 'hidden' structure of the concept, its anatomy, laws of its formation, function, and affinity with other concepts. Given our post-colonial existence, the mode is always to turn the received theme into a problematic through a critical procedure.

For instance, refuge, asylum, non-*refoulement*, protracted displacement, environmental refuge, statelessness, situations in limbo, regime of protection, protection agencies, refugee laws and conventions, borders, illegal immigration, irregular migration, voluntary and forced migration – and we can go on – belong to a family of concepts.¹⁴ We also bring in associated concepts of acculturation, assimilation, borders, brain drain, chain and circular migration, deportation, Diaspora, ethnicity, ethnic enclaves, gendered migration, guest workers, integration, migration networks, social capital, undocumented migration, etc. These are like signs of a phenomenon moving together, making sense only in association with each other. Indeed after a point, they are empty signs almost exhausted of any further reference. Possibly they cannot be called strictly empty, because collectively they point to a particular structure of ideas, and thus of power. Post-colonial experience suggests that problematising these concepts and categories is a political task aimed at critiquing existing knowledge and power structure. In some cases problematising means showing the impossibility of certain claims, let us say in this case, the ethical claims of protection by the state or a community.¹⁵

Problematising may also mean discussing how the immigrant becomes the *abnormal* figure of our time, also how this figure represents insecurity in various forms.¹⁶ To get a sense of the relation between migration and security a genealogical method of enquiry will aim to understand

- a the post-colonial nature of the phenomena of population flows today
- b the protracted nature of displacement
- c the mixed and massive nature of forced population movements
- d borders, security, and borderland existence
- e migrant as the subject of the modern empire.

Contemporary law, administrative practices, and mainstream economy consider the borderland existence of population groups and their flux as threats to security, which is built around the idea of stable population groups. A genealogical investigation of these issues will take us forward towards the post-colonial task of settling the still unresolved problematic in the science of ruling – settled governments and the unsettled populations of our time.

Problematizing a given knowledge is however possible only in the context of *the historical intelligibility of some contemporary studies*: Studies on aspects of welfare state and schemes suggest a different way of understanding modern governance in which the study of the nation is not at the centre of political understanding. Instead, significant in such studies is the inadequately explored history of governing a mobile, unruly world of population flows. These works have given us a sense of the hidden histories of conflicts, of desperate survivals, and of networks new and old. Studies of hunger in the 19th century, of itinerant movements and preaching, transportations of coolies, spread of famines, shipping of children and adult girls, trafficking in sex and labour, and pieces of welfare legislation to cope with this great infamy tell us how actually we have arrived at our own time of subject formation. This is certainly different from conventional nation-centred histories. Working within this new strand of history-writing, labour historians have tried to recognise the political significance of labour migration in the late 19th and early 20th century. Their works suggest a different way of writing the history of the nation-form in the last two centuries, where the extra-nationalist narrative of mobile labour constitutes a different universe. After all, the late 19th and early 20th century was the period of several changing modes of labour process – the slave, the indentured, the contract, and finally the free. These modes historically never appeared as pure types, because much of the availability of labour depended on labour's mobility. In fact, it was largely on the condition of making labour mobile that globalisation would proceed at that time. Transit labour then too, as it does now, occupied a crucial place in capitalist production. The late 19th and early 20th century was a period of globalisation when migration controls were put in place. It was in that age that control of mobile bodies began constituting one of the most critical aspects of governance. Likewise studies of gendered nature of migration tell us the emergence of some of the different forms of labour subjectivities marking our world today can be traced back to that time.¹⁷ A genealogical understanding will be thus helpful to problematise the present history of care. Care will appear as a function of power (and vice versa) in this demystified world of refugee protection. Production of the refugee or the illegal immigrant takes place in what we can call the *social factory*.

When we study how concepts in forced migration studies have emerged in post-colonial context, we cannot but notice that for a long time the research agenda of forced migration studies was dominated by the scholars and thinkers from the global north. Researchers of the global south were expected to work on case studies that would

support the meta-narratives produced in the north.¹⁸ However, with the emergence of new and critical scholars from the global south in the last two decades that picture has changed substantially. This has been possible because they have brought in issues that have impacted heavily on the agenda of research in forced migration. They have pointed out that categorisation of forced migrants into rigid groups of refugees, IDPs, forced migrants, environmental migrants, and economic migrants, is unhelpful to say the least. They have also pointed out that forced migrants are always vulnerable people irrespective of whether the particular vulnerability comes from poverty or political situation within a society, but that it always results in severe persecution. Death caused by genocide or hunger is equally reprehensible and most conflicts at the end are conflicts over resources.¹⁹

As a result of research done by these new age scholars *avant garde* centres have grown up in hitherto unknown quarters in the post-colonial world. New issues such as mixed and massive flows, labour migration, statelessness, and several other issues are now debated. The post-1989 political situation also contributed to these developments. Focus on terror brought to the forefront the critique of the role of global north in producing forced migrants in the south in the name of anti-terror operations. Pakistan and Iraq are burning instances of this. More and more research now focuses on vulnerable groups and their own narratives of living as forced migrants. Subjectivity of the victims in this way has become an important theme of research. There is also an accompanying shift from a focus purely on refugee laws. Critical juridical discourse is one of the outcomes of this shift. It is increasingly pointed out that in the end it should be remembered that research on forced migration is research on human beings who are severely discriminated and dispossessed of power. Demands have also emerged that knowledge networks in this field should play the role of a bridge between research institutions of global north and global south towards joint research, and that there should be more emphasis on qualitative research and joint leadership of research projects. The challenge is how to escape policy driven research, because good research always produces policy critiques and policy implications.²⁰

In other words, only through strategic mapping of critical work in the field of forced migration studies, such as research, knowledge exchange, and dissemination, that we can make sense of the historical intelligibility of certain ideas say of partition, borderlands, or border violence, or smuggling.

We are thus witness to a strategic epistemic displacement in forced migration studies. As suggested at the outset, when in the beginning of the 90s, forced migration studies began in different universities and centres of research in India, researchers were not unaware of bonded labour, indentured labour, village to city migration of labour in forms of servitude, in short different forms in which the *forced* comes into play, but refugee studies till then had not looked into them as related fields of inquiry. But *forced migration* soon emerged as a holistic concept. Several critical investigations thus have now enabled Indian researchers in the field of forced migration studies to see the inter connections between various forms of 'force'. If we think of this little more deeply, we shall see that the reason for this change is the realisation that only with a post-colonial sense of history we can move on from the old, restricted, 'northern' way of looking at things to the broader, more historical, political way of looking at the phenomenon of forced migration. It is in this sense, studies of partition as well as natural calamities – that is political as well as environmental events – have shaped the post-colonial intelligibility

of refugee and other forms of forced migration flows. Whereas the influence of partition studies on our sensitivities regarding forced migration was only to be expected,²¹ it is the critical sensibility about disasters and migration that has brought in changes in approach, made our sensibilities regarding forced migration more acute.²² Disaster, politics, fate, partition, long history, memory, critique of the state, verdict on colonialism, the feeling of a post-colonial destiny – all have meshed into a complex sensitivity about forced migration.

A critical post-colonial approach is therefore important. It enables the researcher to go beyond the binary of exceptionality and banality, and follow a new way of chronicling and analysing various forms of forced migration, which now marks the writings of a number of scholars. These writings are informed by a strong sense of history, awareness of the distinct nature of post-colonial politics and society, and an appreciation of the figure of the migrant and the refugee appearing as the subject of history of our time. These writings and reports are marked by collaborative research, critical post-coloniality, and a strong sense of the significance of the local in this globalising time. In course of all these, the post-colonial researchers are now able to take a long view of citizenship and alien-hood, histories of hatred, reconciliation, friendships and enmities, the significance of camp as a liminal space of subjectivity and submission, of control and escape, despair and inefficacy of international norms, laws, and arrangements, and victims' own voices about how and what could be done. All in all, one can say that forced migration studies has come out of the restrictive framework of refugee studies, and has evolved to embrace many other aspects of migration, and has now entered a critical post-colonial phase. This is a case of strategic displacement of our classical ideas of refugeehood and camp, which treated these realities as exceptional, and the involved concepts as sovereign. The historical-critical mode is now able to place migration in the grey zone of force/volition, subjectivity/conditions, human rights/humanitarianism, exception and the normal, and all other binaries that at times lead us to a blind alley.

The way in which the partition of 1947 on the occasion of its own 15th year, which was also the 15th year of Independence (1997) became a turning point in forced migration studies in India is a good example of what we mean by problematisation, that is to say the mode in which a problem becomes historically intelligible.

It has been rightly said that the 20th century will be remembered as a century of partitions. Partition leads to forced migration – refugee flows and flows of other types. Partition also makes the question of return crucial. Do partition refugees have right to return?²³ If they have the right to return, then what is the period they will enjoy the right? Also, will there be certain conditions, in as much as we know that there may be forced return. Partition is the prism in which the stakes in the study of forced migration become sharper.

However there is a danger also. Partition scholars and there are hundreds of scholars of partition today, take post-partition migration to be a unique process, and ignore the possibility that post-partition migration can be built on lines of historical continuity, and it is important to find out the continuities and discontinuities in the process. Do we study for instance the nature of forced migration in Europe in their century of religious wars, and compare that with what happened in India when the great religious war broke out in South Asia in the second half of the forties of the last century? Can we compare the mobile subjectivity evoked in Brecht's *Mother Courage* and Manto's *Toba Tek Singh*?²⁴ We are still to appreciate the stakes in studying partition as a major marker in forced migration studies. Partition of the Ottoman Empire, of Germany, Palestine, and Korea in

the last century, or the Indian partition or the partitions by default that happened in the last decade of the last century – these are only some of the major events to shape the story of forced migration.²⁵ Perhaps we shall have to master the art of writing event-centric history to bring out the depths of the phenomenon of forced migration. There are so many unnoticed events, which are neither as major nor as infamous as the partition of 1947, but which have their own histories of migration. These small histories will enrich our forced migration studies.

Likewise, can we compare subaltern labour migration today with what had happened in the late 19th and early 20th century? Through such comparison what kinds of histories of immigration are brought out and how do they help us in understanding today's post-colonial nature of massive immigration of labour?

Problematization means challenging received binaries: It has been observed that the proportion of refugees has gone down significantly in the last twenty years and that of different categories of the internally displaced people/population groups/persons (IDPs) gone up. Now the question for instance will be, is this not an oversimplified statement that somehow hides the mixed and massive flows of population worldwide? This is of course not to deny that acknowledgement of the IDP issue has done enormous service to forced migration studies. By including the IDPs forced migration studies has widened in scope and can now study the phenomenon of displacement more reliably. Researchers are now able to link issues of nation, sovereignty, economy, globalisation, social violence, environment, and developmental issues in a more meaningful way. We have become aware of displacement as the most critical issue of our time – and all these have become possible after we have been able to connect and integrate the IDP issue and the phenomenon of forced migration. Recognition of the rights of the IDPs is the collective product of decades of struggles of population groups trying to survive.

Is it not strange therefore that very few big names in refugee studies care to see displacement in a broad light or do any worthwhile research on IDP issues? Yet the point raised here is significant, because we witness today massive and mixed flows of people across and within countries, and these flows in the wake of globalisation should make us sit up and wonder how worth the various norms are with which we categorise displaced population groups and use them in terms of analysis and policy response. The UNHCR in one of its recent notes has taken cognisance of this.²⁶ Old protection strategies are failing. New strategies are needed to ensure the rights of victims of protracted state of displacement.²⁷ Old forms of refugee status determination do not make much sense in this new situation. Old guarantees of asylum likewise do not make sense in the light of preventing strategies of States and Unions such as *fortress Europe*. Also, how does one distinguish between a classic refugee, a person escaping hunger and in search of work by any means and anyhow, and say, trafficked labour in servitude?

Once more then let us remember the point at stake that this paper tries to address: how to problematise the received category of *exception* in the light of colonial and post-colonial accounts of forced migration?

4 Rights, ethics, and legal pluralism

Rights are indivisible. Yet the way forward may not be to do away with all the institutions and set up new ones, which will inevitably result in more centralisation of

mechanisms with the aim to control and regulate population movements. Probably a more dialogic relationship is necessary, also we have to struggle for minimising – if we cannot do away altogether – the hold of security related thinking, provisions, and practices in matters of recognising and protecting the rights of the victims of forced migration. Institutions have their vested interests – their domains. To try to reduce them is the need of the hour. To do so we have to begin with working out the implications of the theoretical recognition that population flows are massive and mixed. The reality of these mixed and massive flows questions old polarities. They need to be recognised in their variety, plurality, and amorphous nature – and this is possible only when we have a more federal way of looking at things, not from an institutional-pyramid point of view from the top, but from the point of understanding how it works on the ground. We shall then be able to challenge the customary distinction between refugee studies and forced migration studies, and episodic violence and structural violence in terms of protection policies and institutions.

We shall be able to ask also, if constructing hierarchy of the victims is the appropriate way to frame protection policy. This way of analysing through interrogation of received binaries is already evident in the ongoing studies on statelessness. These binaries such as refugee/IDP, episodic violence/structural violence, citizen/stateless, movement due to fear/movement due to economic imperative, international norms/national responsibility,²⁸ and human rights / humanitarianism – have been subjected to critical inquiry today. Such critical inquiry is possible only when we consider forced migration studies not as an isolated discipline or a subject, defined by some strange esoteric rules, but as a field marked by lines of power and flight paths of various subjectivities.

This brings us to the issue of legal pluralism. The UN convention of refugees has completed 60 years and UN guiding principles on internal displacement have also been in existence for more than 15 years. Yet the question is: Are they adequate in the contemporary context of displacement of population? If they are not adequate, how can we replicate the instances of regional conventions and/or protocols? We all know that the 1951 convention is dated for all kinds of reasons. The cold war perspective is long over. The nature of forced migration has changed. New forms of servitude have appeared along with new vulnerabilities. The 1951 convention also does not address the issue of burden sharing. But no one wants to open the can of worms.

Likewise the guiding principles emphasise a particular context. It is too much rooted in a particular reading of the contexts of Africa, some parts of Latin America, and the Caucasus. It ignores to a large extent developmental displacement,²⁹ and places the issue in the framework of what is known as sovereignty as responsibility. While the Guiding Principles have done service to the cause of the displaced population groups, it has left open many occasions for abuse. Great powers can intervene on the pretext of saving endangered population groups (recall Syria) while they may be the responsible one to a large extent for the unsettling scenario. Again while they may be responsible for economic catastrophes in many countries and regions, they can appear as saviours. On the top of that, while the origin of the guiding principles in the human rights principles is clear, its structure carries an old state of international law. In a sense the Guiding Principles has removed the focus from the issue of developmental displacement in today's world. However the modality of *guiding principles* is significant and has dialogic potentiality. It offers new insights into the process of law making.

If we take 1951 convention we can see the reason for its wide acceptance. It creates a legal person (of the refugee), a whole penumbra of institutions, an office, etc. without

making any one – nation, government, big powers, individual – responsible for creating refugee-hood. It has been able to merge in a milieu of a fantasy the ethics of humanitarian protection and guarantee of rights of a right-less person, who the refugee is. Likewise, the guiding principles are not law, yet they have the appearance of some kind of moral injunction with at least the partial effectiveness of law. So countries may not have signed the principles, they are only a resolution. Yet they appear as giving birth to some kind of law. How do we retain this fantasy and proceed? Possibly, not only that we need to move on to the regional level as the most crucial level in framing the international, but that there too there will be the need to innovate the art of successful law making by combining the fantasy with injunction. The art of governmentality will never cease to be relevant. The important point here is how to produce the consent that is necessary for enacting what is termed as soft law. On one hand we have sovereignty as a still important factor in treaty making process, which is a crucial part of international law making, also we have great power concord and combined pressure to produce the law, on the other hand there is the effort to produce consent of the probable treaty parties. This is a process, which is getting more and more intriguing. How to produce consent for a treaty is a serious problem for the international that we speak of today. It may be that the more we decentralise the process the more we shall produce the consent necessary for law. After all we may not need grand and universal laws any more, or at least not to the extent to which we are led to believe. As if the world will break down if we do not have a single treaty, a single convention, a single office... And therefore what we need is more work on the process of producing the consensus at different levels and making that consensus work. For this purpose the idea of ‘soft law’ (because the soft may be more insidious, as we have seen this in the iniquitous application of the principle of intervention on humanitarian grounds), and legal pluralism may be a significant area of work.³⁰

The practices of the South Asian countries including India give us a faint idea of what this legal pluralism can be. None of these countries is a signatory to the 1951 convention for refugee protection, there is no national refugee law in India for instance, yet most of these countries have borne tremendous amount of load of refugee protection. Indian courts have referred to international human rights laws also in matters of adjudicating over issues of grant of asylum and non-refoulement.³¹ One important reason behind such a pluralist approach to law is an underlying concept of ethics born out of anti-colonialism and post-colonial sense of the world. It is important therefore to historicise the concept of ethics of care and protection.

The ethical practices of care and protection to the extent they are there in the legal mechanisms for protection of the displaced persons are like a double edged sword. They strengthen the principles of humanitarianism, which we need in our individual and collective lives. Yet when applied they tend to reduce the persons they seek to protect and care for to being objects of sympathy and charity. Therefore in the refugee protection literature there is this debate on charity or rights. Also some people say that whatever protection people have got are not due to the principles of care and hospitality, but through struggle for rights. How is basic rightlessness removed? A philosopher may say, that while the principle of care and hospitality is unavoidable, yet we care only to the extent self-care allows. Thus there is always a limit to the care that these international legal mechanisms offer. At times a great power will bomb a country, create refugees, displace millions, and then the so-called international community will invoke the principles of care to rush in aid for those bombed out countries, and help the displaced

within the limits set by the big power. That is why people in war ravaged countries sometimes despise the humanitarian workers, many of whom are inspired with the noblest values, yet appear to the war ravaged people as those who come to supply artificial legs in the evening after their legs have been blown off in the morning by invading bombers. Therefore it may be the case that the process of infusing the legal and administrative mechanisms of protection of the displaced with the principles of care and protection is a contradictory one. One has to therefore examine this process through an examination of the self-care involved in the big humanitarian enterprises today.

In this respect, we need to interrogate a concept such as humanitarianism. It may be an ideology that works like a machine. It may be based on sentiments, but we create institutions to give effect to those sentiments, and then we legitimise those institutions with an overarching ideology of care, which may gloss over the injustices of the entire process through which persons have been reduced to being objects of care and protection. And what sense shall we make of the fact that in any case a large number of the displaced millions on earth, possibly the majority of the displaced persons, do not depend at all on these legal arrangements? Care operates in the lives of the millions in a different way. We can see this paradox then even in the legal and administrative mechanisms for the protection of the displaced. There is no one single arrangement of care, for instance in India. Care of the displaced due to violence is organised along one line, or set of lines, while care of the displaced due to developmental activities runs along another set, while again the care of the displaced due to natural disasters is organised in a different set of ways. There are similarities in these three cases, yet the principle of care operates in a differential way.

Humanitarianism in the 19th century was for the destitute, the abnormal, and the poor in the colonies. Yet we cannot do away with the principle of care. The task possibly will be to organise the principle in a different way, to see how this operates in popular life, to entrust the people with the task of protector than making the mighty the protector of imperiled lives. Federalisation of care is important. Likewise important is the task of making dialogic the principles of care and protection. This requires the insertion of the principle of justice, which will bring back the issues of claims and rights. We thus cannot avoid the contradiction between care and rights; therefore a dialectical view is necessary. Can justice be compatible with the principle of care? Probably that is the main task in public morality today. Only a sense of justice can make us more caring. The evolution of the jurisprudence on disability rights as an instance shows how a sense of justice can lead to a more caring deliberation and approach.

There is a running thread through these three points, which to recapitulate are:

- a the historical context of forced migration studies in India
- b the significance of problematisation in an analysis of the historical intelligibility of the concepts in forced migration studies
- c third, the historical obligation in crossing the boundaries of rights, law, and ethics.

The running thread is the post-colonial idea that there is no pure field of concepts. Concepts in forced migration studies are linked to several modes such as problematising, thematising, conceptualising, critique, genealogy, dialectical handling, quantifying, observing, narrating, analysing, and several others including ones that are deployed to deconstruct a concept. In fact methods turn in time into concepts. The field of forced migration studies is a particular one with specific concepts and its own history. As a field

of scientific research besides having policy implications, it deals with human beings in vulnerable situations. It is thus inescapably a study of power. It has quantitative dimensions. Also its concepts are embodiments of social relations.

For all these reason, we always begin with concepts, never with pure descriptions. Even the purest of the descriptions has an underlying concept. Therefore concepts are like signs. They are also at times metaphors. Thus for instance, one of the questions presently marking forced migration studies is around the institution of border. Is *border a concept, a sign, or a concept-metaphor, or all these and therefore an analytical method?*

At a second level of analysis we may say that while forced migration studies aims to understand forced migration, however incompletely, and uncover the contents within the various forms of forced migration, it has to still ask, why the contents assume their particular forms, that is to say, why the migrant is the abnormal subject, why border appears as ubiquitous, why forced migration has a pronounced gendered nature, why the power of the government requires the element of care, why the concept of human rights needs as its complement the ideology of humanitarianism, and why camps exist as abnormal site, yet whose abnormality is only discrete, in other words, camps function only as one end of a series of forms of confinement and protection. It implies also asking as to why the measurement of vulnerability as expressed in the phrase *forced migration* is expressed by duration (protracted or short – another binary) and by the magnitude of the protection involved. These research questions bear the unmistakable imprint of belonging to an age in which the process of displacement appears to have overwhelmed societies to an extent where the concepts and policies relating to displacement seem to appear as nature-imposed necessity instead of societies and social systems producing migration being considered as natural. Hence the given knowledge of forced migration studies appears to treat all non-official, non-legal knowledge, particularly pre-existing non-official and non-legal knowledge on migration, as belonging to nature, which is pre-scientific and pre-practical in this age.

An understanding of displacement in post-colonial conditions also requires grappling with the issue of security, which functions as the silent other of the contradictory process of eviction, migration, and care. With population flows increasing worldwide and with situations in Syria, Iraq, Afghanistan, sub-Saharan Africa, and other countries and regions, one can already notice the irrelevance of the international protection system in this field. There is a distinct possibility that with this massive increase the entire complex of the concepts in this field may break down. The irrelevance of the institutions, laws, and norms will reflect in the irrelevance and obsolescence of the categories, even though policy angle may look at forced migration situations as exceptional ones requiring policy attention and policy prescriptions.

However as the foregoing discussion shows, to get a sense of the historical intelligibility of the issues in forced migration in post-colonial conditions we have to move beyond the question of exception. If colonialism was not an exception to the history of capitalism, then many of the abuses considered as exceptions to the history of bourgeois civility will not also appear as exceptional. On the contrary, these so-called exceptional situations may be like forms or particular instances of a *series*, reminding us of the Deluzian *fold*. This does not mean that we do away with the idea of exception. But it means that we have to turn this given idea of exception into a problematic to be studied, so that we can determine its dialectical relation with what we consider as banal, everyday, non-exceptional evoked in the memorable words of Daniel Warner, “We are all

refugees".³² To do so, history is important. Equally important is the historical intelligibility of a concept, also to see the history of migration in long term, continuities and discontinuities, which will require inter-epoch comparisons, handling of large series of data, making sense of what Charles Tilly had called more than two decades back, history through big data.³³ Researches show remarkable historical continuities in patterns of migration and forced migration flows for instance in India.³⁴ At times, history may thus play the role of grand jury more effectively than law or philosophy.

Thinking of the phenomenon of forced migration along the line of exceptionality thus faces five methodological problems: These are: problem of concepts and their basic definitions, problem of making sense of enumeration, problem of fragmentary documentation, problem of multiple units of analysis, and the problem of discussing forced migration to its context.

5 Concluding remarks

In the context of the methodological implications of post-colonial accounts of forced migration, we can now return to the issue of exceptionality.

In *Homo Sacer*, Agamben taking his cue from Foucault's fragmentary analysis of bio-politics probes with great breadth, intensity, and acuteness the covert or implicit presence of an idea of bio-politics in the history of traditional political theory. He argues that from the earliest treatises of political theory, notably in Aristotle's notion of man as a political animal, and throughout the history of Western thinking about sovereignty (whether of the king or the state), a notion of sovereignty as power over 'life' is implicit. This is so because of the way the sacred becomes integral to the idea of sovereignty. Carl Schmitt had already said that the sovereign's status depended on the power to make exception to the rules he safeguarded. Besides we have the anthropological theory of the close interlink of the sacred and the taboo. Agamben makes use of both these insights, and defines the sacred person as one who can be killed and yet not sacrificed. He finds this paradoxical in the status of the modern individual living in a system, which controls the collective 'naked life' of all individuals. The *homo sacer* as an individual who exists in the law as an exile is a paradox, because while law enables the society to recognise the individual as *homo sacer*, law also mandates the exclusion, which thus gives the individual an identity. Agamben holds that life exists in two capacities. One is natural biological life, and the other is political life. Agamben likens the natural life to Hannah Arendt's description of the refugee's naked life.³⁵ The effect of *homo sacer* is a cleavage between one's biological and political lives. As 'bare life', the *homo sacer* finds himself submitted to the sovereign's state of exception, and, though he has biological life, it has no political significance. Agamben says that the states of *homo sacer*, the states of the political refugees, those persecuted in the Holocaust, and others in similar outlawed conditions, are the states of the *Homo Sacer*. Thus, the so-called sacred and inalienable rights of man prove to be completely unprotected from the power of the sovereign at the very moment it is no longer possible to characterise them as rights of the citizens of a state. This is because the basic right to claim other rights is gone. Although human rights were conceived of as the ground for civil rights, the deprivation of those civil rights (as, for example, in the case of stateless people or refugees) made them comparable to 'savages', many of whom are periodically exterminated, as in the camps. In this way, the regime becomes the camp. Camp as the exceptional, yet the only possible form of

political life under existing conditions, becomes the question mark for democracy. *Homo Sacer* becomes the question mark for the liberal natural rights philosophers.

Yet, one may ask, does this naked person simply die? We know he must die. He is fated to die. He does not die for us, but dies as the 'first person in the row' to die. But does he die before our knowing, before we know the pain, the shock, the fear, the terror, the vengeance, the pity, the resignation, and the defiance – all that we know are combined with relief that the waiting is over, that s/he is finally dead? Who dies? Not you. Who is dying? Not I? The naked person; and then you, after you I...

This position of the 'bare life' brings forth one more question pertinent to what we are discussing here. Bare life facing death is free from identities. The possibility of naked life assumes the barest of identities – that is, the only identity possible – and this is the fundamental political identity of being counter-posed to sovereign power, meeting at times the sovereign power in a state of near death. In the process such an identity also suggests the nature of political freedom as the condition of being in a state that makes this opposition to the sovereign possible only by being fundamentally beyond law. We can see that in terms of identity, 'bare life' is in a perfectly 'sayable' or 'describable' condition, yet we know it is 'unsayable', much of this existence as a near-death condition will be un-describable. Thus politics rearranges in a fundamental way some of the fundamental questions of philosophy, such as the meaning of being, truth, and so on. 'Bare life' therefore has a political viability, because it not only brings up the possibility of counter-posing life to sovereign power, it also extracts politics from the bareness of language, the language that 'naked life' allows and then the language that it suggests as a future agenda. By making death a moment to be collectively shared 'naked life' makes the paradox of the simultaneous existence of 'sayability' and 'unsayability' the political condition of being.

We can push the point a little more. If as response to the power of the sovereign, bare life becomes the subject of politics, then one may ask (and probably Agamben himself seems to suggest that in his book), how is this possible, that is the fact of bare life becoming the subject of politics, when the legal resolution of democracy by putting rights of 'man' and 'citizens' together closes any chance of dissidence in politics? Indeed is this not what Aristotle wanted? Who would have reckoned with the possibility of bare life refusing such resolution, in other words, taking recourse to political actions, revolts, in short politics, exceeding the legal power of the sovereign – in short, bare life never becoming good life in politics? In other words, in that fissure, epitomised in refugee like conditions, we can see the emergence of the possibility of political subjectivity.

To conclude: The historical analysis of the post-colonial studies of refugees and forced migration should not be subject to an a priori theory of knowledge that depends on received binaries, but to a theory of discursive practices that does not privilege any concept anterior to discourse. We shall then be able to ask, can the refugee be reduced to 'bare life'?

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Notes

- 1 See Arendt (1994) and Agamben (2005); however, to be truthful while Arendt considered the refugee situation as one of basic rightlessness, she also in the closing paragraph of 'We refugees', wrote, "...outlawing of the Jewish people in Europe has been followed closely by the outlawing of most European nations" (p.119).
- 2 Bose (2000) took forward the discussion on the condition of partition refugees first initiated by Chakrabarti (1990). The marginal men was path breaking in discussion on partition refugees in India in many ways.
- 3 See Banerjee and Samaddar (2006); this is a report from the Calcutta Research Group on the IDP Camps in South Asia.
- 4 For a broad compilation of studies based on this concept, see Banerjee (2013); on this see also UNHCR (2006); see also Tometten (2012).
- 5 To get an idea of the range of themes, see the volumes of Refugee Watch: A South Asian Journal on Forced Migration (<http://www.mcrg.ac.in/ci.asp> and <http://www.mcrg.ac.in/ct.asp>).
- 6 See Banerjee et al. (2005), see also http://www.mcrg.ac.in/Statelessness/Statelessness_Concept.asp (accessed 22 February 2015) and see also, Banerjee (2006).
- 7 In this essay 'Historical dilemmas of democracy and their contemporary relevance to citizenship', Balibar (2008) discusses the dialectical relationship between the concepts of democracy and citizenship, by considering aporias of democracy as a model or an ideology. He argues that these closures can be overcome if we defining democracy as a process of permanent anti-oligarchic 'insurrection' rather than a stable regime. It is not the spread of democracy, therefore, that constitutes the primordial object of political theory, but the democratisation of democracy itself, especially in the form of the elimination of its internal exclusions.
- 8 For a detailed illustration of this point, see Malischewski and Sarker (2014).
- 9 This is more because India is not a signatory to the 1951 *Convention on Refugees*, and there is no national refugee protection act. Refugee protection is guided by government decisions under immigration, citizenship, and foreigners' laws, though courts play a vital function – often in congruity of international law. See Nair (2007), Ranabir Samaddar, Refugees and the State, op. cit.; Dhavan (2004) and ISIL Yearbook of International Humanitarian and Refugee Law (2001).
- 10 The debate summed up in the context of forced migration and security in Samaddar and Banerjee (2010).
- 11 "Introduction: Power and Care – Building the New Indian State", Refugees and the State, pp.21–68; the discussion on the ethical debate around the concepts of care in recent times begins with Jacques Derrida, of Hospitality, trans. Rachel Bowlby (Stanford: Stanford University Press, 2000) and On Cosmopolitanism and Forgiveness, trans. Mark Dooley and Richard Kearney (New York: Routledge, 2005).

- 12 See Derrida (1999, p.51) and read also Westmoreland (2008).
- 13 Classic in this perspective has been the debates over protection to Bangladeshi immigrants – illegal and asylum seekers. See on this debate, Ramachandran (2005).
- 14 In this case, the best is to go through any related work on key concepts. For instance, Betram et al. (2014), where 39 such concepts share the field.
- 15 Apart from refugees and the state, which interrogated the ethical claims of the new Indian state regarding protection of refugees, readers have to read the exhaustive survey of refugee literature in India between 1996–2006 (plus the extensive bibliography) that touches on several issues raised here, by Bose (2010); see also, Gibney (2004) and Stedman and Tanner (2003) based on studies of refugees in Pakistan, Cambodia, and Zaire.
- 16 On the idea of the abnormal in modern societies, see Foucault (2003); on the idea of the migrant as the abnormal figure of our time, see Samaddar (2010, 2015).
- 17 See Samaddar, 'Returning to the histories of the late 19th and early 20th century immigration', op. cit., Behel and van der Linden (2007) and Breman (1989).
- 18 Landau (2012) argued that the field of refugee research, often produces hierarchies both of knowledge and resources. South-based researchers find themselves in a dual imperative – that is, whereas research should be about refugees, they have to justify their work in scholarly terms and to their funding bodies. He argued that partnerships should produce research that could be used for policy purposes across regions in the north/south, but also building capacity in the south, in order to have greater influence at the policy level. Often partnerships worked against these objectives. Partnerships generated knowledge but how they generated this knowledge, who benefited from it and how was it used was questionable. The reality, he argued, was that academics in Africa must supplement their income with consultancy work, whereby critical theorising worked directly against the academic because it alienated them from the funding they were trying to acquire. The result of this culture of consultancy was that people tried to own a field – this suppressed the work of collaborating with students or others.
- 19 A recent study by the Calcutta Research Group on "Ecosystems for Life: Ecology, Politics, and Survival" in the deltaic West Bengal, and the Brahmaputra and Meghna river basins in the Northeast of India bring out the link between resources, conflict, and displacement in details. See http://mcrg.ac.in/IUCN/IUCN_Report.asp (accessed 24 February 2014); the classic study on the links between resources, ecology, and migration is however, Mike Davis, *El Nino Famines: Late Victorian Holocausts and the Making of the Third World* (London: Verso, 2002); see also Chakrabarty (2011).
- 20 Banerjee (2012) in a critique of Landau argued that researchers in the south were not passive agents in collaboration, and based on their locations, they had the capacity to bring critical orientation to forced migration studies, and they had done so.
- 21 On this the best discussion till date is, Bose, P.K. 'Refugee, memory, and the state: a review of research in refugee studies', op. cit.; see also Samaddar (1997).
- 22 On this see the report brought by Calcutta Research Group on river erosion and displacement, authored by Bandopadhyay et al. (2006) and also available in http://www.mcrg.ac.in/Eroded_Lives.pdf (accessed 25 February 2015). The report was an in-depth study of the conditions of the people devastated by erosion of the banks of River Ganga in the districts of Malda and Murshidabad. River bank erosion had over the years become a 'natural' and almost regular phenomenon in the places under study. With extensive field study and study of Census reports, the researchers gave a vivid account of the district-wise displacement scenario, including the number of displaced people, their present condition, the available alternatives of livelihood that they had been forced into etc. The report concluded with recommendations, though finally closing with a not-so optimistic note on the chances of the administration taking any step towards the fulfilment of any of the recommended proposals. The report along with *Voices* (n 7), which studied the victims of the Tsunami in 2004) became landmark documents in the evolution of critical consciousness on forced migration. See also in this connection, the report on the Tsunami, forced migration, and the political economy of resettlement, see Mahato (2010), de Silva (2010) and Mukhopadhyay (2009).

- 23 On the partition refugees' right to return there are several commentaries available; they show the relevance of the theme. Unfortunately however there is very little rigorous study on this till date. Megan Bradley's "Return of Forced Migrants" is exhaustive, but the paper is of a policy nature, and leaves the category of partition refugees out of analysis and policy prescriptions. Also the exhaustive bibliography leaves the literature on partition refugees out. In fact there is little evidence in refugee studies literature of an awareness of the distinct position that partition refugees (in Indian sub-continent, Israel-Palestine, Korea, or erstwhile Yugoslavia occupy. For Bradley's paper see <http://www.forcedmigration.org/research-resources/expert-guides/return-of-forced-migrants/alldocuments> (accessed 25 February 2015); see also the comparative discussion on of various issues of right to return at http://refugeewatchonline.blogspot.in/2006/08/is-right-to-return-symbolic-right_28.html.
- 24 Brecht's (1955) famous play, *Mother Courage and Her Children*, trans. Eric Bentley; see Sadat Hasan Manto, Toba Tek Singh, trans. Frances W. Pritchett, available online at <http://www.columbia.edu/itc/mealac/pritchett/00urdu/tobateksingh/translation.html> (accessed 25 February 2015); a slightly different English translation available on <http://www.sacw.net> (accessed February 1998).
- 25 For a comparative study on partitions, see Bianchini et al. (2005).
- 26 See UNHCR Division of International Protection (2014).
- 27 See the recommendations and the report of a special UNHCR assisted South Asian conference in Kolkata on the need for new protection strategies for persons in situations of protracted displacement – "Report of Dialogue on Protection Strategies for People in Situations of Forced Migration", 14–15 December 2008 – <http://mcrg.ac.in/UNHCRconference/home.html> (accessed 25 February 2015); for the study papers in the conference, Paula Banerjee (Ed.), *Unstable Populations, Anxious States: Mixed and Massive Population Flows in South Asia*, op. cit.
- 28 On the issue of responsibility, see the report, see Dey and Chaushury (2007).
- 29 Though to be fair, several jurists and researchers have argued in favour of including persons affected by developmental displacement in the category of IDPs. For instance, see Robinson (2003). However in the totality of the framework of the Guiding Principles, and in the perspective of massive developmental displacements throughout the developing countries of the world, the emphasis on developmental displacement remains inadequate. In the light of the researches by Walter Fernandes and others it may be safe to conclude that the number of the development-induced IDPs far outweighs that of conflict-induced IDPs. – See for instance the reports by Fernandes and his collaborators on IDPs in Orissa (1997), Goa and Andhra Pradesh (2001), and West Bengal and Assam (2006) – Indian Social Institute and North Eastern Social Research Centre, New Delhi and Guwahati (mimeo).
- 30 See McConnachic (2014), Berman (2007, 2009) and see also Krisch (2009).
- 31 The point here is that ratification of the Convention is increasingly becoming of less importance. In Africa, for instance, ratification has been higher, yet that has not desisted or reduced anti-immigrant riots, as recent (April 2015) anti-immigrant riots in Johannesburg testifies. On this see the compilation by Madhura Chakrabarty's of several news reports, 'Xenophobia in South Africa', see <http://refugeewatchonline.blogspot.in/2015/06/xenophobia-in-south-africa-report.html> (accessed 8 June 2015).
- 32 See Warner (1992); in this connection see also Soguk (1999).
- 33 See Tilly (1980, 1994); on Tilly's writings on methodology, visit the collection of his relevant writings on methodology, see <http://professor-murmann.info/index.php/weblog/tilly> (accessed 26 February 2015).
- 34 On migration data series, see Tumble (2012); on the historical continuity of migration and forced migration patterns, see Samaddar's *The Marginal Nation*, which discusses the historical foundations of forced migration patterns in the eastern part of South Asia.
- 35 "It is true that the chances of the famous refugee are improved just as a dog with a name has a better chance to survive than a stray dog who is just a dog in general" [Arendt (1951), p.287].