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The refugee limbo: negotiating the bar of Australian law

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The refugee limbo: negotiating the bar of Australian law

Abstract

Often refugees and asylum seekers are said to be in some sort of limbo: physical, social, and/or legal. This article picks apart the limbo-concept through the expanded metaphor of the Limbo dance; a performance that illustrates an 'inner history' that evolved from the conditions aboard the slave ships of the Middle Passage. 'Playing' the Limbo allows the experiences of the slaves to be reenacted: due to the limited space and terrible conditions, slaves had to arch their backs in order to fit inside the ship's hulls. They had to remain limber or limba before they could re-emerge on the other side. Likewise, this paper investigates the possibilities of an 'inner history' of refugee boat arrivals in Australia. However, it is not suggested that the sorts of limbo that refugees encounter are somehow a game or have a lighter meaning. Refugee Limbo is not simply an empty metaphor for the refugee experience. As such, the Limbo line, bar, and the physical bodies placed under the bar are each considered. Due to the restrictive policies in Australia, there lies a particular essence in refugee character, something which can be identified as 'limberness'.

Keywords

limbo, negotiating, refugee, bar, law, australian

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The refugee limbo: negotiating the *bar* of Australian law[†]

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Often refugees and asylum seekers are said to be in some sort of limbo: physical, social, and/or legal. This article picks apart the limbo-concept through the expanded metaphor of the Limbo dance; a performance that illustrates an ‘inner history’ that evolved from the conditions aboard the slave ships of the Middle Passage. ‘Playing’ the Limbo allows the experiences of the slaves to be re-enacted: due to the limited space and terrible conditions, slaves had to arch their backs in order to fit inside the ship’s hulls. They had to remain limber or limba before they could re-emerge on the other side. Likewise, this paper investigates the possibilities of an ‘inner history’ of refugee boat arrivals in Australia. However, it is not suggested that the sorts of limbo that refugees encounter are somehow a game or have a lighter meaning. Refugee Limbo is not simply an empty metaphor for the refugee experience. As such, the Limbo line, bar, and the physical bodies placed under the bar are each considered. Due to the restrictive policies in Australia, there lies a particular essence in refugee character, something which can be identified as ‘limberness’.

Jack be limber (limbo), Jack be quick
Jack go unda limbo stick
All around the limbo clock
Hey, let’s do the limbo rock!
Limber lower now
Limber lower now
How low can you go? (*Limbo Rock*, Chubby Checker)

Context: the world of limbo

How many times have you heard of someone being in ‘limbo’? The colloquial context and meaning seems to be immediately understood as an irreconcilable or ‘standstill’ type of situation. In our globalising and increasingly complex society it is common for the term ‘limbo’ to be extended to a variety of experiences. On any given day, a quick search of the media will uncover a world brimming with limbo. Same sex couples are in limbo.¹ The homeless are in limbo.² People living with chronic critical

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¹Schreiber (2012), Shapiro (2014).

²Clairmont (2012), Shenoy (2014).

illness are in limbo.³ New York flood victims in 2012 were said to be in limbo⁴ just as the entire city of New Orleans was in limbo six months after Hurricane Katrina struck in 2005.⁵ Death row inmates remain in limbo.⁶ Even entire countries have no immunity to this designation. Egypt,⁷ Greece,⁸ Ukraine,⁹ Israel and Palestine¹⁰ are all, for different reasons, said to be in some sort of limbo. It is also common for refugees around the world to be reported as being in one type of limbo or another.¹¹

In short, limbo is part of the paradigm we have created to identify with the world, our lives and the lives of others. It denotes protracted instability, insecurity, or irreconcilability. One of the key elements centred at the core of any type of limbo is *uncertainty*. People unfortunate enough to find themselves in limbo remain uncertain about what their future will be. This is because limbo is an uncertain place. In our minds, limbo is situated outside the normal order of things and is at once, presumably inescapable and inaccessible. However, limbo is not merely a throw-away term used to describe hopeless situations. Given the examples listed above, limbo represents very real places and experiences. Like the limbo found in many religious traditions, it is a space that has been created to exclude or deny access to particular types of 'others'.¹² While observers may have limited access to limbo, or at least, know of its existence, there are 'higher powers' that control these spaces. More often than not, when considering 'real-world' limbo situations, we find that they are created by the State as a result of its legal systems. The spaces that are opened up are then regulated by the State which has the power to intervene as much or as little as it wishes. Due to limbo's unique 'location', there is limited defence against or opportunity to 'legally' challenge confinement. They are exclusionary zones where people have limited or no presence before the law; a "no-man's land" between ... the juridical order and life'.¹³ As such, limbo remains completely foreign and uncertain because it is an exceptional place outside the legal order; a place where potentially anything can happen.

It seems that the term 'limbo' has increasingly been associated with refugees in Australian media, particularly due to progressively restrictive refugee laws and policies.¹⁴ Unfortunately, when we pick up a newspaper, limbo has become the place where we can 'expect' to find refugees. This article seeks to unpack this 'limbo

³Lamas (2014).

⁴Yee (2012).

⁵*The Economist* (2006).

⁶Pilkington (2013).

⁷Suarez (2012).

⁸Reguly (2012).

⁹*Firstpost* (2014).

¹⁰Klement (2012).

¹¹Letesh (2015), Daigle (2015), McDonnell (2015).

¹²Catholicism perhaps contains the most illustrative example of Limbo largely due to the work of Dante Alighieri in the Divine Comedy. While the concept of limbo is most commonly associated with Catholicism, there are several other religions with 'limbo' traditions. For instance, in Islam the concept of Limbo exists as Barzakh and in Zoroastrianism it is hamistagan. The aim here is to not delve deeply into this realm, but instead acknowledge the presence and tradition of limbo in the minds of many people around the world.

¹³Agamben (2005), p 41. Agamben's work on the state of exception and the 'camp' also provide a means to further explore the notion of legal limbo. For more on this, see Hightower (2013). See also Agamben (1998).

¹⁴Hightower (2014).

realm' that has been associated with refugees in Australia. However, the manner which limbo will be explored will require a degree of *flexibility*. There is yet another usage of the word 'limbo' that resonates with the refugee experience. Upon closer inspection, it elaborates on how limbo is legally created and how people, once they are placed there, tend to react. What I am alluding to is the Limbo game or Limbo dance; something that is played with (or perhaps against) others.¹⁵ It is not suggested that the sorts of limbo that refugees encounter are somehow a game or have a lighter meaning. *Refugee Limbo* is not simply an empty metaphor for the refugee experience. Instead, refugee situations and encounters with the law operate much like the Limbo dance and have rules and elements that function in similar ways. In addition, as it will be shown, Refugee Limbo contains an 'inner meaning' of the refugee experience and is 'played out' in ways which call to mind the historical context of the Limbo dance. The discussion weaves through etymological understandings of limbo, history, law, and playful dialogue in order to demonstrate these points. In so doing, it is revealed that not only is the Refugee Limbo difficult to perform, but it is also purposefully created to exclude others from the judicial order; or even more correct, is a space where the judicial order can be manipulated in order to deny protection to refugees who come to a country's border. How refugees 'perform' in limbo is a reflection of the factors that drive them to seek protection, the hardships that they encounter on their journey and the restrictive laws and policies that prohibit durable protection.

The 'game' of limbo

Before Refugee Limbo can be properly analysed it is necessary to first consider the traditional Limbo dancing game that originated in Trinidad. In one example, Limbo is played for the purpose of presenting us with a spectacle. During such games, there are some players who are able to execute amazing feats of strength and flexibility; managing to bend backwards, knees bent akimbo to extreme positions, and avert the Limbo bar while only inches from the ground (Figure 1). In some of these games, more experienced dancers may pass under a bar which is engulfed in flames; adding an additional element of spectacle if not fire hazard. In this type of game, it would not be as 'fun' without someone there to observe the game being played; those who came to see the 'show'. It is fun for the player to show off her abilities and conversely, it is fun for the observer to stand in awe of those abilities. In yet another instance of Limbo, we see a game that is played as part of a competition. Players keep passing underneath the Limbo bar until there is only the last man standing. Here, the person is offered a different or additional type of reward; a chance to 'win' the game. In essence, every game of limbo comes down to the player and her ability to negotiate the bar; to remain *limber*.

In both instances, while the Limbo line moves along to a Caribbean rhythm, people laugh, joke, taunt, stare and put their bodies in awkward physical positions. The pulsing music sets the overall pace and drama of the game. The rules themselves are easy enough to follow. Each player must pass under a horizontal bar while bending backwards. Generally, two people hold the Limbo bar, one at each end. The 'bar-

¹⁵Whether it is called a 'dance' or a 'game' is of little consequence here. In either instance, Limbo (capital 'L'), is used to represent something which is 'playful'. As such, throughout this article I use the terms dance, game and in fact, 'dancing game' interchangeably.



Figure 1. Salo (2012)¹⁶ Folk music and limbo dance performance at The Cityhall of Port of Spain in Trinidad. CC BY-SA 3.0/Desaturated and cropped from original.

holders' are an integral part of the game; necessary for *play* but are not actually the ones who are *playing*. Touching the bar effectively places a player 'out'. Falling to the ground in an attempt to go under the bar also sees the player as out. After each player has negotiated the bar, it is lowered. As such, the task of making a successful pass under the bar is made more difficult. While it is game usually played in groups, it is an individual test of skill, endurance, and flexibility. Observers are unable to aid the person attempting to pass under the bar. These are the basics of the Limbo game; the Limbo that we 'know'.

However, the origins of the game we are familiar with are not so well known and perhaps stem from a much darker place in history, indeed. In his essay *History, Fable and Myth in the Caribbean and the Guianas*, Wilson Harris *plays* with what we can consider to be the frame of Limbo. He mentions that the Limbo as I described above is a 'well known feature in the Carnival life' and 'played' for the entertainment of tourists; but goes on to suggest a deeper meaning of the game.¹⁷ This meaning arises from a subconscious reality of the Caribbean experience. Harris writes: 'Limbo was born, *it is said*, on the slave ships of the Middle Passage. There was so little space that the slaves contorted themselves into human spiders.'¹⁸ In fact, voyage conditions aboard slave ships such as *Brookes* were 'brutal and beyond comprehension'.¹⁹ On this particular vessel enslaved people were

jammed below decks in one-hundred-degree heat and packed 'spoonways'. The rolling of the ship bruised and rubbed their bodies raw; people gasped for breath, and some died of asphyxiation. Others perished from scurvy, yet more from dysentery ... Those who dared to resist suffered forced 'dancing,' choreographed by the cat-o'-nine-tails.²⁰ (Figures 2–4)

Harris therefore suggests that 'limbo emerged as a novel re-assembly out of the stigmata of the Middle Passage'.²³ McWatt considers this explanation of Limbo's origin and points out that Harris' words 'it is said' are significant because everyone who speaks of Limbo in a historical context uses the same formula.²⁴ In other words, in discussions about Limbo we accept that 'it is said', but we do not know by whom. This is important to note as it signifies the fact that the history of subjugated and/or undocumented people is of necessity an oral history. McWatt suggests that it may well be that the link between the Limbo dance and the Middle Passage has been 'established to the satisfaction of historical scholarship', but the main point is that it *is* widely accepted and has 'become no less a "truth" for being "imaginative"'.²⁵

¹⁶Salo (2012).

¹⁷Harris (1995), p 18.

¹⁸Harris (1995), p 18. The term 'Middle Passage' has historically been Eurocentric, but its meaning has developed and changed over time. The editors of *Many Middle Passages* conclude that the term has been 'embraced ... as a site of suffering, resistance, and community'. Christopher et al (2007), p 1.

¹⁹Christopher et al (2007), p 1.

²⁰Christopher et al (2007), p 3.

²¹Clarkson (1789).

²²Grehan (1837).

²³Harris (1995), p 20. (My additions).

²⁴McWatt (2002), p 130.

²⁵McWatt (2002), p 130.

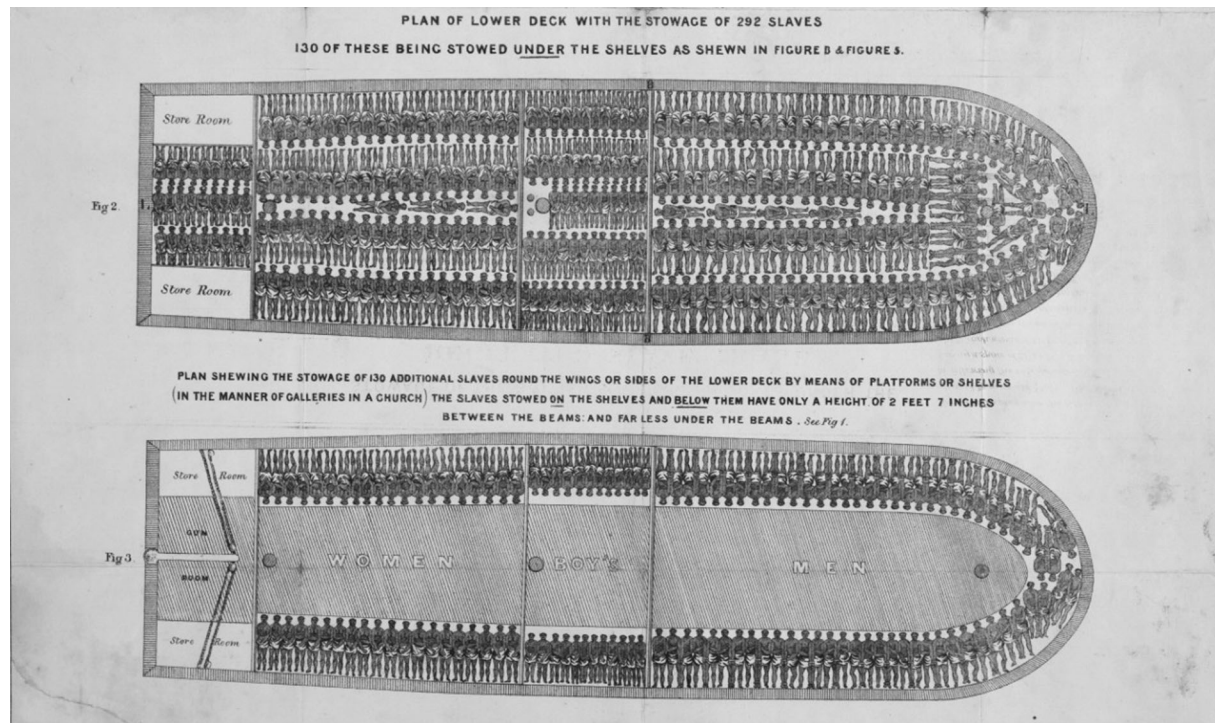


Figure 2. Clarkson (1789)²¹ Stowage of the British slave ship Brookes under the regulated Slave Trade Act of 1788. Library of Congress/Cropped from original.

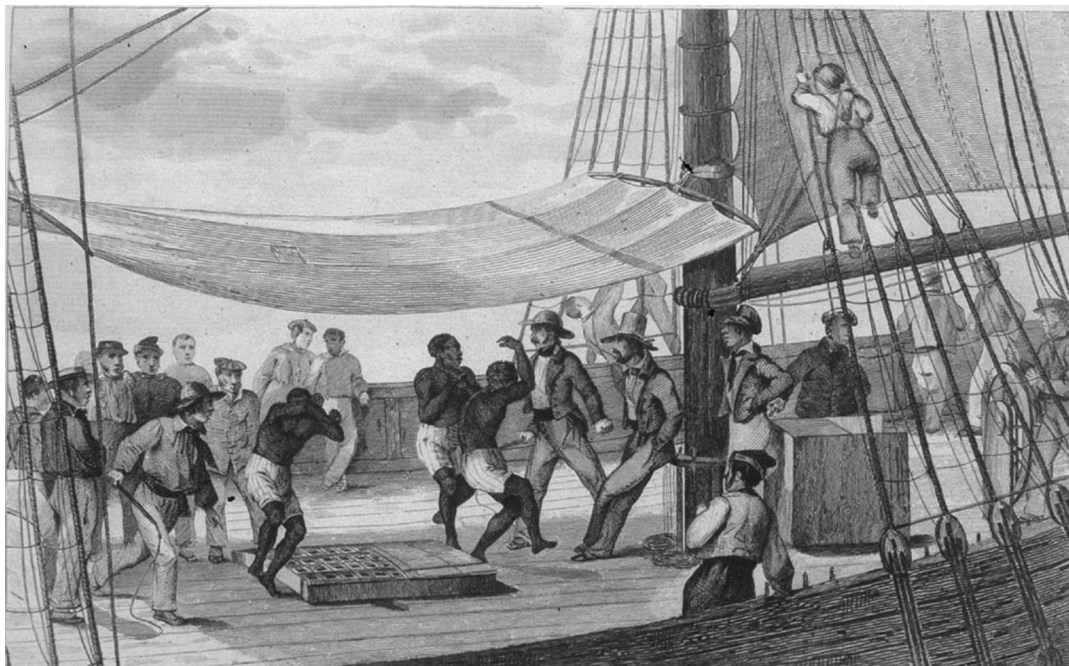


Figure 3. Grehan (1837)²² *Danse de Negres*, as shown on www.slaveryimages.org, compiled by Jerome Handler and Michael Tuite, and sponsored by the Virginia Foundation for the Humanities and the University of Virginia Library.

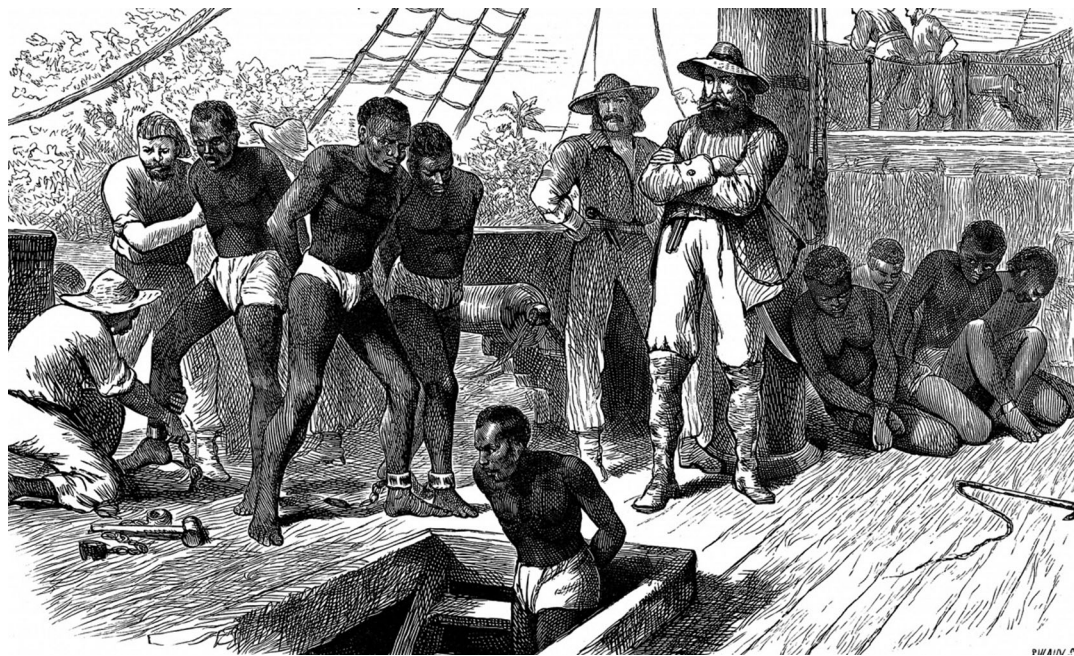


Figure 4. Unknown artist (c1880) *On Board A Slave-ship*, engraving. Anti-Slavery International/Cropped and desaturated from the original.

However, the importance of Harris' work does not lie with the uncovering of any singular Limbo truths. Instead, the significance is what he does with the ideas about Limbo; how he *plays* with the Limbo imagination. Cudjoe notes that Harris certainly intends to imply that early works which helped to shape the Caribbean identity are 'imbricated within the European prison house of language and sensibility'.²⁶ As such, in order to come to a further or re-established meaning of Limbo, Harris plays with the idea of limbo and the word 'limbo' itself. He puns on the word 'limbo' in order to establish some interesting considerations. Harris refers to the 'limbo gateway between Africa and the Caribbean'²⁷ which conjures images of the limbo found in the theology of the Catholic Church; the rim of Dante's *Inferno* – the 'gate of hell'. By making this reference, Harris allows the Limbo dance to emerge in a way which includes a mythology of theological context.

In this way the dance is made to evoke the 'limbo', of some Christian traditions – an intermediate state between heaven and hell, a place of suspended animation between two definite worlds or realities, a waiting room of sadness and suffering – all of these apply to the journey on the slave ships, hence the tense, writhing, uncertain stage of the dance (passing under the bar) and the subsequent exuberant, celebratory, upright dancing that signifies survival and release.²⁸

Harris employs a further pun on the word 'limbo' with an illustration of the 'shared phantom *limb*'.²⁹ He recalls images from his youth of performers dancing spreadeagled on the ground while others performed high above on stilts like lengthened limbs. Harris suggests that in this theatrical performance lies a 'sleeping resource ... of dismembered slave or god'.³⁰ In this example the dancer becomes a 'spider' when lowered to the ground, but then is reassembled to full height. Here the 'limb' meaning reflects the transformation which took place on the Middle Passage. Harris writes that the 'theme of the phantom limb – the reassembly of dismembered man or god – possesses archetypal resonances that embrace Egyptian Osiris, the resurrected Christ, and the many-armed deity of India'.³¹ At the same time, this reassembly resonates in an additional way by 'commemorating the dismemberment of African tribes that the slave trade entailed and seeking, in music and exuberant dance, to compensate, as it were, for the pain and hardship of the past'.³²

What is perhaps most important about Harris' puns on limbo is their 'cultural cross-fertilization'.³³ The puns on Limbo involve myths, histories, and concepts from various cultures which are all fused together. From this fusion, 'replaying' the Caribbean Limbo experience is not eliminated, but instead, expanded. Through this method replaying the Limbo dance also allows us to explore other possible symbolic

²⁶Cudjoe notes that Harris certainly intends to imply that early works which helped to shape the Caribbean identity are 'imbricated within the European prison house of language and sensibility'. Harris attempts to correct this problem through a cultural reimagining of Limbo. Cudjoe (1995), p 4.

²⁷Harris (1995), p 19.

²⁸McWatt (2002), p 130.

²⁹Harris (1995), p 19. (Emphasis added).

³⁰Harris (1995), p 19.

³¹Harris (1995), p 21.

³²McWatt (2002), p 131.

³³McWatt (2002), p 131.

meanings in what Harris calls the ‘inner space’ or ‘inner time’ of the Middle Passage. He argues that

the limbo imagination of the folk (on the Middle Passage) involved a crucial inner recreative response to the violations of slavery and indenture and conquest, and needed its critical or historical correlative, its critical or historical advocacy.³⁴

This understanding of Limbo ‘serves therefore as a corrective to a uniform cloak or documentary stasis of imperialism’ and the ‘colonial prejudices which censored the limbo imagination’.³⁵ Harris proposes that these ‘unpredictable perspectives and latent spaces [allows us to] establish a criterion to examine our experiences’.³⁶ The censorship of Limbo is defeated by what Harris calls a ‘subconscious reality’; ‘a philosophy of history ... [which] lie[s] buried in the arts of the imagination’.³⁷

The same philosophical method may very well be applied to our present and future. If we (re)imagine the Limbo in relation to refugees – since it is often said to be their shared experience – we may find a new perspective or philosophy of the refugee experience, so they too are not trapped by a ‘language’ which is not their own. The actions of refugees who are forced into limbo situations compel us to make these considerations. Refugees not only protest the sites of limbo in what might be considered a traditional sense, they write, create and act out their experiences of limbo as a result of their unique perspectives. As Harris notes:

The true capacity of marginal and disadvantaged cultures resides in their genius to tilt the field of civilization so that one may visualize boundaries of persuasion in new and unsuspected lights to release a different apprehension of reality, the language of reality, a different *reading* of texts of reality.³⁸

At this point I wish to come back to limbo and how it relates to the refugee experience. In order to further open up ‘hidden’ aspects of Refugee Limbo (but only hidden by failures to establish new means of examination of the refugee experience) we must reveal and understand ‘unpredictable perspectives’. To be successful in this endeavour we need to continue to be *limber*. It was mentioned earlier that unpacking the Limbo dance – its history, significance, as well as its key elements – provides a method in which we can understand refugee limbos. It was also mentioned that limbo persists in being attached to refugees. Examples in the media span over the physical and meta-physical, over religion and law, over the refugee camp and every experience in-between. In due course, it will be shown that elements of limbo also appear in legal decision and legal practice. Therefore, it is useful to pun further on Limbo and explore it within an imaginative, but nonetheless, ‘real’ and legal context. Refugee Limbo is a ‘game’ of skill that many refugees must play – are forced to play – in order to receive protection. Following Harris’ example, replaying Refugee Limbo by this unpredictable perspective allows us to further examine the experience of refugees and possibly correct the censorship of the limbo imagination. In other words, this

³⁴Harris (1995), p 23. (My additions).

³⁵Harris (1995), p 21.

³⁶Cudjoe in Harris (1995), p 7.

³⁷Harris (1995), p 18.

³⁸Harris (1995), p 50.

allows for limbo to evolve from a ‘throw-away’ or simplistic concept that is overused in media discourse into a dense area of inquiry for the refugee experience.

Exploring Refugee Limbo allows us to examine not only the legal spaces that are opened up, but also how legal mechanisms create these spaces. In addition, it allows us an opportunity to understand what is involved in negotiating such experiences. Namely, what must a refugee do in order to move past or through limbo? Following the historical context of Limbo and its key physical elements, the discussion can thus be broken down to the following: the limbo line, the limbo bar, and the limbo body, or the experience under the bar. Each of these is essential to any game of Limbo. These elements run parallels and operate much like legal lines and legal bars, which create particular types of legal bodies and legal experiences. These will each get attention in the following sections which are opened with a vignette; a short impressionistic description that illustrates the metaphorical nature of the analysis. Once the line, the bar and the feelings of being under the bar are considered then an illustration starts to emerge which corrects the normative and blithe refugee limbo narrative.

The limbo line

For the first time the woman seemed to take notice of where she was. How did she find herself in this place? For the life of her she could not recall all the moments which led up to this point. They were a blur. Images she couldn’t or didn’t want to remember.

The sound of beating drums was incessant and all around her. In the distance she could hear people chanting loudly: ‘HOW LOW WILL SHE GO? HOW LOW WILL SHE GO?’

She whirled around not knowing exactly what to do or where to go.

Suddenly, she was jostled from one place to another into what appeared to be a line. By whom? She did not see.

Despite the noise and confusion, she quietly but urgently asked the man in front of her; a desperate whisper. ‘Have you been here long?’

The man nodded, his eyes darted from place to place, taking in everything and nothing. ‘Yes. I have been here for some time now. I’m not sure how long. This line seems to go on forever.’

They stood silently waiting together in the line for what seemed an age, one in front of the other. Time to time, they shuffled a few steps forward. Forward? At least she thought they were steps forward. But she could not be certain.

And then, ‘I’m frightened. Why must we wait like this? What is this place?’

The man’s only reply was silence. Maybe he didn’t know either.

‘What is the end of the line like?’

The man turned and looked her in the face for the first time. He looked tired; the tiredest looking man she had ever seen. Although the hard lines of his face seemed to will otherwise, he managed the faintest smile as he spoke. ‘I have only heard rumours. That it depends on who you are; where you come from. It depends on your story. In a way, it has much to do with the middle of this line as anything else; all those people who have gone before us will determine our fate. You will have to wait and see.’ Then, half to himself, ‘And so will I.’

For quite some time, subsequent Australian Governments have maintained that there is a queue for seeking asylum. Despite this tendency, the existence of an asylum seeking queue has been repeatedly rejected by the UNHCR, Amnesty International

and other human rights groups³⁹ as well as defeated in the High Court of Australia.⁴⁰ Nevertheless, the decision of whether or not to offer refugee protection remains linked with this notion. As such, particular lines of inquiry have persisted: Has a person ‘jumped the queue’? Did they come to Australia the ‘right’ way? Do they ‘deserve’ our protection?

Structurally, a ‘queue’ suggests that there is a line with a determinable beginning, middle and end. Queuing etiquette expects that a person will wait until it is their ‘turn’. However, waiting in line can be a difficult thing; especially when your life is in danger and there is no idea of how long the wait will last. When a person is said to have ‘jumped the queue’, it is implied that they have come to be in the line illegitimately; moved ahead without permission and thusly, taken someone else’s spot in the line. For those who accept the idea of a refugee queue, it is thought that refugees should remain in line until they reach the end and it is their turn to be offered protection. The end of the queue, of course, is the border; for it is only the State which can offer refuge. This is what concerns the State – ‘the end of the line’. However, the Australian Government has taken extreme measures to assure that arrival at the ‘end of the line’ is next to impossible.

In part, the association of refugees with a queue began in Australia under the Howard Government and policies that linked onshore and offshore processing programs in a fixed quota system.⁴¹ This created two particular refugee groups: offshore applicants (refugees waiting in camps someplace ‘over there’ for entry into Australia) and onshore arrivals (refugees who seek asylum in Australia by boat). While onshore applicants were officially (and incorrectly) labelled as ‘illegal’, offshore applicants were considered to be seeking asylum the ‘right way’. By waiting their turn, refugees were somehow considered ‘genuine’ or ‘worthy’ of protection. In short, this policy was an attempt to create a beginning to the queue; a ‘back of the line’ someplace far away from Australian borders. Yet, the policies did not take into account the variety of refugee experiences such as the first stages of flight, the conditions of overseas refugee camps, or what motivates refugees to continue their search for protection. The idea of a queue also does not tie in with the right to seek asylum at a countries border as protected in international law.

Restricting refugee access to the border has been an evolving practice. In response to the 2001 *Tampa* affair, the Howard Government devised the Pacific Solution (later named the Pacific Strategy). This policy involved actively transporting asylum seekers to detention camps on small island nations in the Pacific Ocean such as Nauru, Manus Island and excised offshore places like Christmas Island, rather than allowing them to arrive on the Australian mainland.⁴² Essentially, the Government manufactured a

³⁹Asylum or refugee ‘queues’ have been advocated in other countries as well. Similar rhetoric has been made by the Government in Canada. However, it has also been rejected by refugee advocate groups. According to the Canadian Association of Refugee Lawyers,

Refugee claimants who arrive in Canada by boat are not ‘jumping the queue’ or bypassing the ‘proper’ process of applying for refugee protection. Refugees have an internationally protected right to seek asylum, whether they arrive by boat, plane, or foot. There is no queue. (date unknown)

⁴⁰*R v Al Jenabi* 2004.

⁴¹Crock et al (2007), Ch 2.

⁴²*Migration Amendment (Excision from Migration Zone) Act 2001*.

state of emergency towards ‘illegal’ boat arrivals which encouraged successive governments to develop similar refugee plans – usually ‘tougher’ ones – to restrict refugees at the border. Former Prime Ministers Kevin Rudd, Julia Gillard and Tony Abbott, each devised ‘tough’ strategies to keep refugees away from the Australian mainland. Although the Pacific Strategy was formally abandoned, Kevin Rudd continued with an immigration policy that operated in much the same way when he took office in 2007. When Julia Gillard became Prime Minister in 2010, moves to implement the ‘no advantage policy’ were quickly made. The *Migration Act* was amended⁴³ and the entire mainland of Australia was excised for the purposes of migration.⁴⁴ Asylum seekers and refugees who arrived by boat were ‘barred’ from lodging a ‘valid’ application for asylum. The ‘no advantage’ slogan was often repeated publicly in order to spread the message that boat arrivals were taking the place in the queue from refugees who were waiting in countries overseas. In addition to these changes, the ‘Malaysia Solution’ was briefly introduced; fundamentally the same policy as the Pacific Solution, only conducted in one country in particular. During the implementation of this policy, a plan was made to swap 4000 ‘genuine’ refugees for 800 ‘less deserving’ onshore entrants; basically allowing particular refugees to ‘jump’ the Government’s queue in order to demonstrate that boat arrivals had ‘no advantage’ and would be sent to refugee camps to wait their ‘turn’. Gillard warned:

Anybody who pays a people-smuggler and risks their life on a boat is running a risk they end up in Malaysia where there are many refugees already processed who have been there for a longer period of time. They will go to Malaysia at the back of the queue.⁴⁵

Some of the most recent moves to keep refugees away are by far the harshest. The Abbott Government prided itself on this fact.⁴⁶ Under Tony Abbott’s leadership, the Government body that deals with immigration and refugees was renamed to the Department of Immigration and Border Protection (hereafter DIBP). The Department’s webpage was immediately updated with a new message: ‘No Way. They will not make Australia home ... Australia has the toughest border protection measures ever’.⁴⁷ The current arrangement is that no person arriving by boat can be processed on Australian territory or allowed to lodge a ‘valid’ application for asylum. Instead, all men, women and children are subject to mandatory detention on Manus and Nauru Islands. No one is exempt. Under the current policy, even if a person is later found to be a ‘genuine’ refugee, they will never be allowed to settle in Australia. Despite receiving condemnation from the United Nations, refugee lawyers, and human rights groups, the Australian Government has yet to change its harsh policy. Further, they have taken no responsibility for the impacts of their actions. Placing refugees at the end of the ‘queue’ in what are essentially isolated prison camps, has resulted in a

⁴³*Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013.*

⁴⁴Kevin Rudd temporarily took office once again from June to September 2013 because he was thought to be a stronger candidate to run against Tony Abbott. Both sides of Government conducted campaigns to ‘stop the boats’.

⁴⁵Packham and Wilson (2011). See also Ackland (2011).

⁴⁶During the editing of this article, the Abbott was replaced as Prime Minister by Malcolm Turnbull in a leadership spill. However, there is no evidence to suggest that this new Government will take a position that is less harsh on refugees.

⁴⁷DIBP (2014).

large groups of people remaining unprotected, invisible and susceptible to mistreatment and violent attacks.⁴⁸

While it may be easy to visualise the Government's proposed end of the refugee queue – those places as far away as possible from the border – the middle and beginning of that queue are much more difficult to point out. In the Pacific region most refugees transit through South East Asia in order to reach Australia. This region has a mixture of complex migration systems that are not favourable for refugees seeking protection. For instance, in Bangladesh, Burmese refugees are not allowed to register for asylum. In Malaysia refugees lack access to public services and are at risk of arrest, detention and deportation. Countries such as Indonesia do not have national refugee legislation and procedures. Waiting in overseas refugee camps to be selected for 'official' refugee status or resettlement into a third country like Australia is a difficult demand. Many of these camps are places of drought, hunger, disease and widespread violence. In short, seeking assistance through the UNHCR or at foreign embassies in these countries is an impossible task. Crock, Saul and Dastyari point out that:

The hard reality is that these avenues often fail to deliver the protection a person needs. There is no 'immigration queue' for these people, no 'proper channels' available which will provide them with safety.⁴⁹

In other words, it is not simply that the 'queue' is difficult to find. The truth is (and there is no other plausible alternative to consider) the 'queue' *does not* exist at all. Seeking asylum is not an organised and linear 'queue'. Instead, refugees come in groups, in families or as individuals from all over the world. When people arrive – and there is no singular or legitimate arrival point – they do so by foot, by plane or boat. Some may document while others may not.

Nevertheless, due to the Australian Government's harsh policies and constant rhetoric, the notion has been firmly established in the minds of many that there is a queue of 'deserving' people waiting for protection in Australia. This has allowed the myth to emerge that people who arrive by boat are less deserving because they are 'jumping the queue' and stealing the places of other, more worthy refugees. This is, of course, all a misdirection employed by the Government in order to limit the amount of people who attempt to come to the country in order to seek asylum.

It is worth repeating: *there is no 'queue' for seeking asylum*. The reality is that refugees flee until they find protection. Thus, the 'queue' for protection between the

⁴⁸Two years ago, Manus Island Detention Centre was a site of devastating violence against asylum seekers. While some of the finer details are still unclear, it has been reported that locals, hired by detention centre security contractor G4S, attacked the compound armed with machetes, knives and rocks. In this attack one detainee was killed and another was left in critical condition. Another 77 were injured; 13 with serious injuries. Unfortunately, this has not been an isolated incident. Last year the UN released a report stating that the Australian Government's policy of mandatory detention and the conditions refugees face there amounts to a breach against the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Abbott's response to these allegations was callous and dismissive. He responded to the allegations by stating that Australians were 'sick of being lectured to by the UN' and that the Government should be commended for 'stopping the boats'. Cox (2015).

⁴⁹Crock et al (2007), p 8.

Australian border and someplace ‘over there’ cannot exist. According to international law, all refugees have the right to ‘seek and enjoy’ protection. However, as shown, the Australian Government continues to publically suggest that there is a refugee queue and subsequently, exclude vulnerable people from receiving assistance.⁵⁰

Following this queue theme, the Government has commented that its refugee policies are ‘in line’ with international Conventions and Protocols. However, it seems that the elevation of a queue mythology actually persists in order to ‘push’ people to the ‘back of the line’. This ‘pushing’ includes detention, deportation, transferring, outsourcing, and ultimately, the denial of internationally protected legal rights. The final result of all this ‘queuing policy’ is that the entirety of the oceans and neighbouring countries that do not offer protection have become a limbo surrounding Australia; between a manufactured (but none-the-less present) refugee ‘hell’ and an asylum ‘paradise’.

There are several comparisons that can be made between the line of Refugee Limbo and the Caribbean Limbo line. As mentioned earlier, while the traditional limbo dance is a performance, it represents and holds within it an inner history of the Caribbean experience. For those players, the line represents the history of being removed from their homes and taken to the slave ships before they are forced below the hulls. When Carib players reach the bar it is a representation of the hull of the slave ship; something that forces them to contort their bodies in order to fit below. Only after this experience may they re-emerge on the other side. Likewise, refugee history contains a painful and historical experience. For refugees seeking protection, the line represents that journey from their home to the place where they attempt to receive protection; all the encounters between those places. As shown in this section, the line is an evolving element of the refugee experience. Refugees may be denied access at one place, shipped here or detained there. However, in order for the ‘game’ of limbo to continue, refugees must be allowed to reach the ‘bar’ so that they too may ‘emerge’ on the other side. Refugees do not come to seek protection in an orderly queue. However, like the Carib experience, once they do arrive, it is an individual endeavour. Each refugee ‘dancer’ must arrive at that place where they may finally negotiate the bar that has been set for them.

The limbo bar

The woman moved forward; compelled to dance along with the others in the line of Limbo. She doesn’t understand the point, but she has no choice. She knows the bar is ahead. She can see it now.

‘Good luck’ she says to the man in front of her, but he was already gone before she could reply. He was on his way to the bar.

‘HOW LOW WILL HE GO? HOW LOW WILL HE GO?’

The two figures holding the bar at either side stood motionless; expressionless; humanless.

The man was arching his back all the while moving forward; preparing for the bar. There were people off the far side of the bar yelling: ‘You can do it! You are almost through! Come join us!’

⁵⁰For instance, see Nicholson (2012).

At that moment she thought she saw one of the figures shoot a quick, knowing glance to the other; and maybe a wry smile. It was so quick, she couldn't be sure.

She closed her eyes. She couldn't watch. Images of the man struggling at the bar burned in her mind. It would be her turn soon. That was one thing she was sure of – that, and the fact that she couldn't go back. She didn't have a choice. She had come too far, been through too much. She had to keep moving. There was only the bar and the other side.

We encounter these rigid objects every day. At the zoo, dangerous beasts are secured in their man-made 'habitats' by bars which protect us from the risks they could pose if free to roam at their will. In prisons it is much the same. Iron bars and cement walls are put in place to separate the 'good' from the 'evil'. Scores of music are divided into sections called 'bars' which are indicated by the vertical lines drawn across the stave. In his poem *Crossing the Bar*, Tennyson compares death to crossing the 'sandbar' which lies between the tide of life and the ocean beyond; the 'boundless deep' to which we all someday will return.⁵¹ Physical and psychological bars are not only in our way, but are also at our disposal. Most of the bars we *use* basically equate to 'disengagement' (or an engagement, but only on our own terms). I can bar the windows of my home and I can 'bar' someone by ignoring or refusing to speak to them. Put simply, a bar is a solid or rigid object.

Colloquially, when placed in a legal frame, 'bar' has several other potential meanings. One usage of the word bar suggests a legal standard which has been set in regards to one thing or another; for instance a standard of judgement. When the bar is said to have been 'raised' or 'lowered', it is suggested that a standard of judgement has been raised or lowered. Another use of the word 'bar' in law includes the legal defeat or nullification a claim or action. It may also be used to refer to lawyers collectively or the legal profession in general. The 'bar' in law extends further as a term of art. Prospective lawyers have to sit an examination; to 'pass the bar' (in the United States) before they are allowed to argue on behalf of another party; to be 'admitted' or 'called to the bar'. Once again, this particular etymology stems from the rigidness of the bar, specifically the partitions used in court rooms at which the accused stands and only a few may pass. Bars are used to separate one thing from another: dangerous and safe, pass and fail, right and wrong, innocent and guilty, illegal and genuine, this and that, 'Us' and 'Them'. In short, legal bars are *barriers*; obstacles between one thing from another.

To 'play' the Refugee Limbo a player must approach the bar – every player has to in order for the 'game' to proceed. Each player must negotiate the bar; to avoid the bar without touching it or falling to the ground; the abyss of being placed 'out'. There is a varying degree of difficulty depending on where in the world the 'game' is played. The reason for this is because while the bar remains firm and something out of the player's control, that does not mean that the bar does not *move*. In fact, that is the very purpose of the Limbo bar. Earlier it was mentioned that two people outside (but very much part of) the game hold the Limbo bar. The dancers continue negotiating the bar and on each passing, the bar is steadily lowered in order to make the game more difficult. The same holds true for the Refugee Limbo bar. It too is something that needs to be negotiated and can be moved – raised or lowered – in relation to approaching refugees. More often than not, it is the latter.

⁵¹Tennyson (1889).

I want to continue with this pun on the Limbo ‘bar’ by examining some of the sorts of bars that are used in Australia to restrict people from making claims for asylum. These bars create either create a limbo and/or allow limbo situations to persist. In other words, ‘bars’ are put in place; *moved* into place in order to restrict movement, keep people away, and limit their physical and legal presence.

Perhaps the most appropriate place to begin a discussion of refugee ‘bars’ – the legal restrictions that have been put in place – is to consider the people they affect. Refugees, by definition, begin their attempt to seek asylum when they flee their home country. As such, a refugee’s journey starts in an act of flight, not in an organised line. It is the moment in time when the person decides that they can no longer remain still and wait. According to the official and commonly accepted definition, a refugee is a fearful being; they have fled ‘owing to a well-founded fear’. The UNHCR clearly draws the distinction between refugee and migrant. Refugees ‘have’ to move while migrants ‘choose’ to.⁵² It follows that to be a refugee is to be a person in motion. To be a person in motion means coming into contact with obstacles from time to time. Obstacles can either block one’s path or hinders one’s progress. However, humans are progressive creatures and usually try to find ways to get past obstacles. We look for some sort of passage around or through those obstacles. When a refugee meets the ‘bar’ – that is, any obstacle – she has to keep moving. The Refugee Limbo is too physically and mentally demanding to remain constantly under the bar.

The term ‘limbo’ in fact derives from *limbus*, meaning ‘hem’, or ‘border’. As such, the ‘Limbo bar’ can be viewed as a State’s border. On the one hand it is firm; we can look at a map and determine where a State is said to be. In another sense, it has a fluid nature. As mentioned earlier, Australia has ‘moved’ its own border for the purpose of restricting access. In fact, Australia has several borders: a territorial border, a maritime border, a migration border, and a border which secures ownership over its resources. Each of these borders establishes and seeks to maintain sovereignty over particular national interests and agendas. While some borders manage land and resources, others act as a buffer against responsibilities and international obligations such as seeking asylum. Amendments made to the *Migration Act* that excise Australian territory, diminish the zone of migration and essentially ‘bar’ asylum seekers from accessing protection. According to the Immigration Department, ‘non-citizens who have first entered Australia at an excised offshore place without lawful authority – meaning without a valid visa – are *barred* from making valid visa applications’.⁵³ This ‘bar’ signifies the standard of judgement that is put in place for people who arrive by boat at offshore places. This bar may be raised or lowered. This signifies the ability for standards to be raised or lowered – made more or less strict – in relation to refugees. The Minister may use his judgement and ‘waive the bar’ – or disregard a standard or judgement altogether.⁵⁴ The Government also ‘bars’ refugees from ‘certain legal proceedings’ if they arrive at an onshore place.⁵⁵ In other words, they

⁵²UNHCR (2007), p 7.

⁵³DIAC (date unknown) (Emphasis added) DIAC (Department of Immigration and Citizenship) is the former name of DIBP.

⁵⁴*Migration Act (1958)* s140L-P.

⁵⁵*Migration Act (1958)* s494AA-AB.

are denied access to the courts or legal proceedings because they are seen as a threat or as a matter of national security.

In Australia seeking asylum is considered a migration issue and refugee affairs are a matter for the Minister for Immigration and Border Protection. As such, laws and policies on border protection, terrorism, and people smuggling are all linked with immigration and seeking asylum. The *potentiality* to commit crime; to be a terrorist, to be diseased, or to have poor ‘character’ is justification enough to restrict entry or access to legal assistance. Ahmed states that the ‘slide between the figure of the asylum seeker and the international terrorist works to construct those who are “without home” as sources of “our fear”’.⁵⁶ As such, refugees gathering at the border are seen as a ‘potential threat’.

Probably the most effective ‘bar’ at the State’s disposal is its ability to repeatedly change refugee laws and policies; the ‘rules of the game’. More than this, the rules may be changed in the middle of a person’s turn at the ‘bar’. As refugees approach the bar, not only do they have to negotiate that bar – the standard that has been put in place – they also have to negotiate a standard that can be changed upon their approach. In other words, the legal ‘bar’ can be lowered *onto* them. While refugees sit in detention centres and refugee camps, laws and policies get changed which leave them waiting for longer and longer periods of time. For instance, when the High Court ruled that the Malaysian Solution was not a valid ‘solution’, the Australian Government immediately responded by suggesting that it would look at amending the *Migration Act* as a ‘solution’.⁵⁷ Most recently the *Migration Act* has been amended to reintroduce Temporary Protection Visas and even more shockingly, strips reference to international legal obligations when it comes to the removal of refugees. Specifically, s197C states that ‘it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen’ (refugees). Former Minister for Immigration, Scott Morrison, stated:

The new statutory framework will enable parliament to legislate its understanding of these obligations within certain sections of the Migration Act without referring directly to the refugees convention and therefore not being subject to the interpretations of foreign courts or judicial bodies which seek to expand the scope of the refugees convention ... This parliament should decide what our obligations are under these conventions – not those who seek to direct us otherwise from places outside this country.⁵⁸

It can be considered that with these new amendments, Australia has lowered the bar on its own obligations in international law and treaties of which it is signatory. In short, Australia uses its power to change the ‘rules’ – something it does very often – as a method to keep refugees outside its border and far from humanitarian outcomes.

It must be mentioned that the bar may also be lifted for refugees. Pursuant to s46A of the *Migration Act* the Immigration Minister may use discretion and ‘lift the bar’ thus, allowing a person to make a claim for asylum. An earlier page of DIBP’s website stated that the Minister may ‘lift the bar to making a valid visa application if it is believed to be in the public’s interest to do so, which will allow a person to

⁵⁶ Ahmed (2004), p 80.

⁵⁷ A similar thing took place when mandatory detention was introduced to the *Migration Act* in 1994.

⁵⁸ Morrison (2014).

make a valid visa application'.⁵⁹ Yet, what the Minister considers to be in the public interest is a matter of debate. For instance, in 2013 the bar was raised and refugee status 'fast-tracked' for a Pakistani cricketer who was seen as the 'answer to Australia's spin crisis and Ashes hopes'.⁶⁰ While it remains a legal possibility, instances of the refugee 'bar' being lifted are unfortunately few and far between.

Like the bar in the Carib Limbo, the refugee bar is one that a person must negotiate. Likewise, as has been shown, the bar does not remain static. While it can be lifted and made less difficult, more times than not, it is lowered; and potentially lowered at a moment's notice. The bar in traditional limbo dance represents the pain and difficulty of the Middle Passage and the terrible experience aboard the ships. Likewise, the bars that refugees encounter are difficult ones. As has been shown, Australia introduced new laws and policies in order to make the experience of obtaining protection more difficult; if not impossible. In the Carib game, players must prepare themselves for the experience of the crushing force of the bar. It is the same for people who are forced to play Refugee Limbo.

The limbo body *or* being under the bar

It was the woman's turn now. She was so tired already. She had been dancing for so long. She approached the bar and arched her back. The bar was so low; the muscles in her back twitched in shock. People were chanting; their voices booming with the sounds of the drums.

'HOW LOW WILL SHE GO?'

Her knees felt as they would give out underneath her. She heard the man's voice: 'You are going to make it! Hurry now! You are almost through!'

'HOW LOW WILL SHE GO?'

He was right. She was. She was going to make it. Her muscles ached, but she started to straighten her body upright.

'HOW LOW WILL SHE GO?'

Suddenly, the bar came down on her. She hadn't touched it herself; the bar 'pushed' her down.

She sat on the floor crying; exhausted and confused. The bar-holders looked down on her and said; not so much rude, but just matter-of-factly, 'Back of the line.'

She looked for help, but the next dancer was already making her way to the bar. She watched for a moment then stood and re-joined the others in line.

She muttered along with the others as the next dancer approached the bar.

'HOW LOW WILL SHE GO?'

As shown in this article, The Refugee Limbo is indeed a physical game and has required us to do a little *stretching* in order to come to a deeper understanding about what it involves. The whole point of the game of Caribbean Limbo as I described earlier, is to get people 'out' and/or to test their abilities. People are repeatedly cycled under the bar until they are either put 'out' of the game or, if they are lucky, 'win' protection. What does being in limbo require of 'players'? The type of movements that players make in limbo can only be described as 'flexible' ones. As the bar moves, so do the players. In the case of the Refugee Limbo, the only course is

⁵⁹DIAC (date unknown).

⁶⁰Earle (2013).

that each refugee remains ready to do what she must to ‘win the game’. Refugee Limbo is not merely for spectacle. There are real risks and real rewards. Of course, the risks are greater if one chooses not to play. Refugees must remain in a constant state of preparedness; keeping their bodies agile and ready. They must flex, bend, and contort in order to follow the rules as they encounter them and not get ‘caught out’ by the bar. If the rules change, they must adjust their physical selves accordingly. It comes to mind that it is hard to stay limber when one is immobilised (for instance, being kept in detention). After years of playing the Limbo game – making quick decisions on how to *play* their hand and living by their wits – refugees are deprived of agency. However, being limber is also a state of mind. ‘Winning’ the Refugee Limbo not only requires feats of *physical* endurance and flexibility, but considering protracted states of detention and separation from loved ones; it is also a *psychological* one. The word ‘limbo’ may give us something final to consider about the actions of refugees and asylum seekers. Limbo (‘it is said’) comes from *limber* which over time colloquially became *limba* and then *limbo*.⁶¹ The Refugee Limbo requires each refugee to be limber, not the bar. As such, refugees are *limber* in an uncertain world which requires them to be so.

Play and the conclusion of the refugee limbo

In the preceding sections, there was a discussion of how Refugee Limbo is legally created and regulated as well as how it ‘plays out’ for refugees. I would like to conclude on this notion of ‘play’ and in fact, playing the refugee game. Play is not intended to be merely a clever use of words to associate with the game of limbo. Like the game itself, play has a much deeper meaning. Much of the contemporary literature surrounding play starts with at least some mention of Huizinga’s seminal work, *Homo Ludens*. For Huizinga, the ‘play-element’ links human activities together.

Ritual grew up in sacred play; poetry was born in play and nourished on play; music and dancing were pure play. Wisdom and philosophy found expression in words and forms derived from religious contests. The rules of warfare, the conventions of noble living were built up on play-patterns. We have to conclude, therefore, that civilization is, in its earliest phases, played. It does not come from play ... it arises in and as play, and never leaves it.⁶²

According to Huizinga, ‘all play is a voluntary activity. However, play to order is no longer play: it could at best be a forcible imitation of it’.⁶³ What the Refugee Limbo demonstrates is that it is a game that can be turned on its head. It tests both a refugee’s and government’s legitimacy; their fairness to the game. Huizinga notes that ‘fairness’ is integral to play ‘because despite his ardent desire to win, he must still stick to the

⁶¹I only present these colloquial changes taking place as a possibility. The probability of this etymology has been mentioned by others, but it seems that no one knows for an absolute certainty. Upon looking up ‘limbo’ in the Oxford Dictionary, there is reference to it originating from ‘limber’ sometime around the 1950s. The adjective ‘limber’ has been in use in English since the sixteenth century, with the meaning of ‘pliant and supple; easily bent’. The point here is that this possible etymology furthers illustrates the need for refugees to be ‘limber’.

⁶²Huizinga (1955), p 173.

⁶³Huizinga (1955), p 7.

rules of the game.’⁶⁴ However, as shown, the game itself is not a fair one as the rules – ‘agreed to’ beforehand – can be reinterpreted or amended at a moment’s notice. If it is not an unfair game, it is surely an *uncertain* one. Once a refugee attempts to enter Australia, the Refugee Limbo becomes just what Huizinga says it would: a ‘forcible imitation’ of play.⁶⁵ They are forced to play not by agreed international standards, but by *our rules* – the rules as *we* say they are. As has been shown, these rules continually change. As such, Australia merely pretends to play the protection game; or at least, they put up the illusion that they are somehow playing fairly. They have become, like the child who has decided to take his ball and go home; a ‘spoil-sport’, a ‘false player’ or a ‘cheat’.⁶⁶ This type of attitude ‘shatters the play-world itself’.⁶⁷ It denies refugees an opportunity to fairly engage with the very system that was put in place to protect them.

It goes without saying that Refugee Limbo is a ‘game’ of high stakes. Refugees and asylum seekers ‘bet it all’ when they play the game. If they play well, hopefully they can ‘win’ protection. Limbo is a world of the unknown; the rules can change at a moment’s notice. It is unfamiliar and frightening. It can be a site of confusion and violence. Upon reaching firm obstacles, refugees must try anything in order to proceed. As such, the general quality of the person in limbo is to be *limber*; to be ready for anything. The Limbo chant resonates loudly: ‘HOW LOW WILL SHE GO? HOW LOW WILL SHE GO?’ In the case of the Refugee Limbo, the answer is simple: as ‘low’ as possible – or at least, for as long as the bar is lowered or until protection is received. Australia has adjusted the Limbo bar many times as different groups have approached its border. The most recent changes deny refugees who come by boat the chance to come to Australia at all; to totally exclude them and send them to detention centres where their legal presence is reduced and they become invisible victims of mistreatment and violence. The question persists as to whether or not these people have been placed in a situation in which they have come full circle – forced back to the slave ship and under the bar.

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⁶⁴Huizinga (1955), p 11.

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