

**A Seat at the Table:
An inquiry into the treatment of restaurant workers
and the “high road” restaurant movement**

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Abbreviations and Acronyms

BOH	Back of house (refers to sphere of restaurant labor the includes kitchen workers)
EPI	Economic Policy Institute
FLSA	Fair Labor Standards Act
FOH	Front of house (refers to sphere of restaurant labor that includes service workers)
NELP	National Employment Law Project
NRA	National Restaurant Association
PPA	Per-person average (refers to the average dollar amount spent by per customer)
ROC	Restaurant Opportunities Centers, United
TWMW	Tipped worker minimum wage

Abstract

The restaurant industry is essential to the daily lives of millions of Americans, as consumers and as members of the labor force. Yet, despite the growth and success of the restaurant industry, its workers are paid subminimum wages, lack access to subsidized health insurance and other benefits, and suffer discrimination that occurs along intersecting lines of race and gender. These practices, termed “low road” by Saru Jayaraman, impede the realization of socially just “high road” restaurant. Using grounded theory methodology, literature review and scoping review methods, this research addresses the injustices occurring in full service restaurants by determining what restaurant owners and operators are doing to reject the exploitative status quo and take the “high road”, and how policy reform can aid in their efforts to bring about a socially just restaurant industry that offers adequate wages, benefits, and the opportunity to live with dignity, regardless of race and/or gender.

Keywords: tipped restaurant workers, Fair Labor Standards Act, subminimum wage, full-service restaurants, marginalization of food workers, “low road”/“high road” practices, human rights standards,

Chapter 1: Introduction

The restaurant industry has become an underpinning of modern American culture, providing over one million gathering places where people satisfy their hunger for food, drink, and social interaction (NRA, 2016). Whether having lunch with a friend, popping by happy hour, or enjoying an evening of fine dining to celebrate a special occasion, dining out has infiltrated the every day life of Americans. Half of consumers state that restaurants are essential to their lifestyle (NRA, 2016) and food expenditure data show that spending on food away from home surpassed food at home by at least \$12.4 billion in 2016 (USDA, 2016). And so, the embedded nature of eating out is an undeniable truth in this age of the foodie, where celebrity chefs sign high dollar television contracts and cookbooks make bestseller lists.

However, the restaurant industry does not just provide leisure and indulgence. It also provides jobs. The food preparation and service sector employed an estimated 12.5 million people in 2015, a number that is projected to increase to 14.4 million in 2016 (NRA, 2016). And yet, as foodie culture spreads, the farm-to-table movement grows and the restaurant industry booms, consumers and policymakers alike pay little attention to the large number of people who make their living by preparing and serving meals on a daily basis.

As of 2014, the food services sector comprised 32.7 cents of the USDA food-marketing dollar (USDA, 2017). This sector is responsible for more than twice the next ranked sector, food processing, which comes in at 15.3 cents. This means that food service is responsible for a huge chunk of the market value of food within the food supply chain. The National Restaurant Association predicts that sales will total \$782.7 billion in 2016, which totals 4% of the United States gross domestic product. And yet, despite the influence of food service on the food supply chain and the apparent growth of the restaurant industry, it is the lowest paying employment

sector in the United States (Jayaraman, 2016, 7). Because of the part-time, seasonal, or immigration status of many restaurant workers, benefits like subsidized health insurance, paid sick leave and paid vacation are unavailable (Batt, Lakhani and Lee, 2014, 15). What's worse is that this lack of protections is the direct consequence of public policy that allows it to continue. Furthermore, the restaurant industry is divided along intersecting lines of race and gender (ROC, 2014, 11) reproducing discriminations and injustices that afflict American society as a whole. These employment practices, termed "low road" by Saru Jayaraman (2016), are problematic and impede the realization of "high road" restaurants with socially just labor practices. It is clear that the restaurant industry plays a huge role in the United States food system, labor force, and economy, but what of its workers? Do they make a living wage? Do they have access to adequate healthcare? Are they treated equally and with dignity? These are important questions because, in the same way that we are conscious about the food we consume, we must also be conscious of the people serving it.

This research addresses the injustices and oppressions in existing "low road" wage and benefit practices of the full service restaurant industry in order to learn about opportunities for more just practices, so that viable opportunities for restaurants to take the "high road" may be provided, and reinforced by fair and ethical policy. The two central questions that guide this research are:

- **How are restaurant owners and operators already pursuing "high road" employment practices?**
- **How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?**

The chapters that follow answer these questions using critical inquiry and comprehensive research guided by carefully selected methodology and methods. Chapter 2 provides the background and social significance of existing, often exploitative, labor and wage practices

within restaurants. Chapter 2 begins with a general overview of the restaurant industry and an introduction to a high road/low road framework for understanding labor practices in restaurants. Next, an overview of the current federal tipped worker minimum wage, and an overview of healthcare and benefit access for tipped workers are provided. A human rights framework is also introduced in this section to better understand how existing United States wage and labor policy surrounding restaurant workers engages with the Universal Declaration of Human Rights. Then, the division of restaurant work along intersecting lines of race and gender line is explained. Finally, a sector/sphere framework of the full service restaurant industry is introduced to identify and better understand the varying positions in, and models of, restaurants.

Chapter 3 discusses the methodology and methods selected to answer the research questions. It explains my positionality in regard to this research, an introduction to grounded theory methodology, an overview of how grounded theory guided my research to address the research problem, and an overview of the literature review and scoping review methods used, organized by research question.

Chapter 4 provides review and analysis of the data collected to answer both research question, organized according to the frameworks introduced in Chapter 2. Chapter 4 also articulates the contribution that this research makes to further social justice and social change in the food system. The contribution of this research takes the form of two frameworks for thinking about restaurant labor. The *sector/sphere framework* brings perspective to the abilities and restrictions of restaurant sectors and the role that sphere plays in the experience of restaurant labor. The *human rights framework* provides a new lens for advocating for socially just policy reform. The consideration of these two frameworks has the potential to bring about new ways of thinking when discussing the achievement of a “high road” restaurant industry. Chapter 5

concludes the research, summarizing key findings and reminding readers of its importance in creating a more just food system. Chapter 5 also discusses the limitations of this research, and suggests future work to be undertaken in the realm of the full service restaurant industry.

In summary, this research enters the conversation about restaurant labor, aiming to construct theories about what policy changes are needed to improve the status quo, and how to most effectively and expeditiously bring those changes about. It also aims to establish a framework that helps to better understand different kinds of full service restaurants in operation, including their abilities and limitations when attempting to operate outside of the “low road” status quo. Creating a united front comprised of effective federal policy, and employer-advocates that implement “high road” practices could give the restaurant industry the push it needs to reach its potential as a socially just employment sector that offers adequate wages, health benefits, and the ability to live with dignity, regardless of race and gender. However, before such a front can be created, we must first understand the restaurant industry in its current state of operation.

Chapter 2: Background & Significance

The issues [food] laborers face, such as low wages, unsafe work conditions, as well as racial and gender discrimination, are indeed important, and continue to impact the marginalized groups that sustain our food system. Tipped restaurant workers endure similar hardships: the lowest and most historically stagnant wages, harsh work environments, and risk of sexual violence (Hunt 2016, 66-67).

The considerably small presence of the experience of full service restaurant workers in existing literature does not denote full awareness or concern for the exploitation that occurs in the restaurant industry. Despite the apparent growth and success of the restaurant industry, it is the lowest paying employment sector in the United States (Jayaraman 2016, 7) and many of its workers do not have access to benefits like subsidized health insurance and paid sick leave (Batt, Lakhani, and Lee 2014, 15). Furthermore, the restaurant industry is divided along intersecting lines of race and gender (ROC United 2014, 11), reproducing discriminations and injustices that afflict American society as a whole. Addressing these issues and injustices would improve the lives of millions of American restaurant workers.

The sections below explore each of these issues in greater detail. First, an explanation of the importance of the research problem and a general overview of the restaurant industry, including an introduction of high road/low road framework for understanding labor practices in restaurants, will be provided. Next, an overview of the current federal tipped worker minimum wage and its implications, an overview of tipped workers access to health benefits, and an overview of intersectional racial and gender discrimination will follow. After that, a sector/sphere framework of the full service restaurant industry will be introduced so that the varying positions in and models of restaurants may be identified and understood. Finally, a list of research questions will be provided to guide further research. Each of these sections is essential to understanding the existing status quo of the restaurant industry, the ways in which this status

quo is problematic, and how these “low road” practices can be altered to create a more socially just food system.

The restaurant industry: an overview

The restaurant industry is essential to the daily lives of millions of Americans. Half of consumers state that restaurants are essential to their lifestyle (NRA, 2016). Food sales away from home increased 8.2 percent in 2016, surpassing food at home by \$12.4 billion (USDA, 2016). The food service industry comprises a huge chunk of the market value of food within the food supply chain (USDA, 2017) and annual sales were expected to approach \$782.7 billion in 2016 (NRA, 2016). It is a large employment sector in the United States (Bureau of Labor Statistics, 2015) and because of its continued growth, it has displaced manufacturing as a primary driver of the economy (ROC United 2014, 7). But despite its overwhelming presence in American infrastructure, restaurant workers are not afforded the same legal protections that manufacturing workers fought to obtain and certain problematic practices of the restaurant industry have gone unfettered. The restaurant sector is the lowest paying employer sector in the United States, paying wages that have not been raised in 21 years, and workers do not have access to important benefits like subsidized health insurance and paid sick days (Batt, Lakhani, and Lee 2014, 15). These financial hardships endured by restaurant workers, who are essential actors in the success of an establishment, are not often realized or addressed.

Saru Jayaraman (2016) writes, “Workers, consumers, and even employers have been gouged...by low standards for employee treatment that have been set by the largest companies in this industry” (3). In her book, *Forked: A New Standard for American Dining*, Jayaraman (2016) introduces a “low road”/“high road” framework for thinking about restaurants. Many restaurants today are following the example of large corporate restaurants by taking the “low road” to

profitability; that is, choosing unjust employment practices to cut costs and maintain profit margins. There are a number of “low road” practices, including heavy workloads, minimal attention to safe and legal working conditions, paying only the subminimum wage and offering no benefits to employees (4). The two latter practices are the subject of this research, because they disproportionately disadvantage women and people of color the most and thus reinforce some of the deepest food system inequities.

Even though “low road” practices have become the status quo, there are some restaurant employers that have chosen to take the “high road,” paying well above the subminimum wage and providing better benefits and working conditions to their employees. This research will also introduce some of these “high road” employers, in order to address the success and sustainability of their alternative practices, and compile a set of recommendations for other employers. However, under the Fair Labor Standards Acts (FLSA), restaurants owners are free to continue down the “low road” and without strong, carefully considered policy reform, there is no way to ensure that the restaurant industry will reroute towards the socially just “high road”. For many restaurant workers and their advocates, the first step to initiate a change in direction is to raise, or eliminate completely, the tipped worker minimum wage.

The subminimum wage

In 1966, Congress acted against the wishes of service industry employers and extended the protection of the FLSA to tipped workers, creating the two-tier wage system that exists today. Because of the erratic and uncertain nature of tip income, the tipped worker minimum wage (TWMW), also know as the subminimum wage, was introduced and set at 50% of the full minimum wage, as a way “to guarantee a stable base income that employers must pay their workers at all times, regardless of how much tip income they receive” (Batt, Lakhani, and Lee

2014, 4). Though the TWMW was increased to 60% of the full minimum wage in 1980, the two were successfully uncoupled in 1996 by restaurant industry lobbyists, and the TWMW has not changed since. Under the current Fair Labor Standards Act, the TWMW sits frozen at \$2.13 per hour, a mere 29% of the full minimum wage of \$7.25 per hour (US Dept of Labor 2014).

This subminimum wage is strongly contested by food labor advocates because of the unstable and vulnerable nature of tipped income. Tip income is extremely volatile and can vary based on economic trends, seasonality, shift schedule, and even assigned table section of a server (Nayak and Sonn 2009, 7). The inadequacy of the TWMW, combined with the instability of tip income, lowers the living standards for millions of restaurant workers, depriving them of their right to receive fair pay and live with dignity.

The 2015 median hourly wage (direct wages and tips) for tipped restaurant workers was a mere \$9.07, compared with \$17.40 when considering all workers (BLS 2015, OES) and the nationwide poverty rate for tipped restaurants sits at 23.7, nearly double the rate of workers overall. The percent of tipped restaurant workers, specifically servers, that rely on food stamps is 16.4, again nearly double that of the general population (Dershowitz et al 2015, 11-18). Jayaraman (2016) calls the system “totally dysfunctional” because it displaces responsibility for the worker from employer to consumer. Restaurant patrons subsidize restaurant owners in two ways: by paying their workers’ wages when they tip on the bill and ensuring their workers’ livelihood through public assistance paid for by the peoples’ tax dollars, including food stamps and Medicaid. In short, a tipped restaurant worker’s well being is placed in the hands of hungry people walking in off the street. It is ironic that an industry built upon the notion of caring for others doesn’t provide an infrastructure like a fair wage, subsidized healthcare and paid sick

days, to care for its own employees. The next section discusses the contradiction between the notion of hospitality and the ability of restaurant workers to live a healthy life.

Healthcare access and paid sick days

International human rights standards state that everyone has the right to a healthy life, an experience that requires nutritious food, housing, water, healthy working conditions and access to basic healthcare. Yet, no federal (FLSA) or state legislation mandates paid sick days for workers. As a result, many restaurant workers go to work ill, so as not to lose income or lose their job for leaving their employer short-staffed. Hunt (2016) argues that this common practice “neglects the effect of food industry labor on employees’ health, and hides how customer health and safety is interconnected with that of the restaurant staff preparing and serving their food”. Restaurant workers become a public health risk when they have no choice but to work while sick because a restaurant’s staff is directly connected to the customer who dines there. A risk such as this, being a result of tipped worker income inequality, suggests that subminimum wage reform “not only benefits food service workers, but consumers as well” (173).

The issue of tipped workers’ well-being extends further, to the realm of affordable healthcare. Restaurant workers are only one quarter as likely to have an employer-subsidized health insurance plan than the workforce as a whole (Nayak and Sonn 2009, 13). This is likely because they are often part-time or seasonal workers, so employers are not obligated to comply with federal requirements for health insurance benefits (Hunt 2016, 167).

Dershowitz, Rangel-Medina, and Tang (2015) condemn these “low road” practices, posing that because restaurant workers have limited access to affordable health insurance and sick days, they are subject to unjust instances of economic insecurity and compromised well-being (15-16). In applying a human rights framework to this issue, which includes the right to decent work, the

right to a healthy life, and the right to live with dignity, it becomes clear that the pressure applied to service employees to work while sick not only compromises their well being, but also their very basic right to live with dignity. Women and people of color are particularly devastated by these circumstances by what Restaurant Opportunities Centers (ROC) United (2014) calls *The Great Service Divide*. This marginalization is explored in greater detail in the next section.

The marginalization of restaurant workers

The restaurant industry boasts a diverse workforce, relying heavily on both women and people of color for many positions in all areas of the restaurant (ROC United 2014, 11). In 2015, food preparation and serving related occupations as a whole had a minority population equaling 45.2%¹ and a female population equaling 54.5% (BLS 2015, table 11). When breaking down this sector into its many individual occupations, these percentages shift to reveal disparities that appear to negatively impact women and minorities in the restaurant industry. Sachs et al. (2014) acknowledge these disparities and address the “socio-spatial” organization of restaurants, arguing that divisions between front-of-house (FOH) and back-of-house (BOH) positions reinforce inequality along the lines of gender and race and ethnicity (4). The divisions along these lines often unjustly determine a tipped worker’s place of employment, their position there, and subsequently their income. In the subsections that follow I explore gender- and race-based restaurant industry inequities, in turn.

Sexism and gender proxy in restaurants

The restaurant industry is rampant with gender discrimination. This is marked by “low road” standards of wage inequality, gender proxy, unequal opportunity, and sexual harassment that reproduce the marginalization of women.

¹ This figure includes Black/African American and Asian race and Hispanic/Latino ethnicity.

The vast majority of tipped restaurant workers are female. Women comprise 70 percent of servers (BLS 2015, Table 11), one of the lowest-paying positions within a restaurant. This disparity is compounded by a gender wage gap of 18% (BLS 2015, Table 39), a gap that is wider for women of color (ROC United, 2012, p. 17). As a result, they “bear the brunt” of poverty level wages perpetuated by the TWMW (ROC United, 2012, p. 7). Female non-tipped restaurant workers are also negatively impacted by “low road” practices. 82% of host positions, which stand along side server as one of the lowest-paying positions within a restaurant, are occupied by females (BLS 2015, Table 11).

The unequal distribution of women as servers and hosts is a direct result of the value placed in appearance for these positions. When interviewing applicants, restaurant employers tend to place value on an applicants “perceived attractiveness,” which often turns the hiring process into an audition, meant to evaluate their sex appeal. This practice serves as a “proxy for gender” that is disproportionately applied to women over men. The concentration of women in sexualized, low-paid positions, both tipped and non-tipped, is just one example of gender proxy in action. Consequently, this gender proxy is further responsible for instances of unequal opportunity, oftentimes keeping women out of higher paid managerial positions (ROC United 2014, 19).

Even women who do join the managerial ranks aren’t economically level with their co-workers. They pay a gender tax of nearly 17 percent, representing an income disparity between their earnings and the earnings of their male counterparts (BLS 2015, Table 39). Women are also 17.1 percent less likely to work in the upscale fine dining sector, where the industry’s highest paying jobs are concentrated. Even women who do work in upscale fine dining restaurants

inhabit non-managerial positions and are white or light-skinned, another example of the intersection of racial and gender discrimination (ROC United 2014, 9).

Female restaurant workers are also vulnerable to sexual harassment from management, coworkers and customers, and the restaurant industry has earned a reputation as the largest source of sexual harassment claims (ROC United 2012, 23). This harassment takes the form of inappropriate and/or unwanted touching (kissing, pinching, slapping) and inappropriate remarks about appearance. This harmful objectification of women is due in part to lack of sexual harassment policy that determines protocol for filing claims, handling claims, and protection for complainants against retaliation (ROC United, 2012, p. 25).

These “low road” practices seem to be embedded in the restaurant industry and have created biases, conscious and unconscious, that marginalize both women and people of color. The issue of racial discrimination presents itself in ways similar to gender discrimination, which is discussed at length in the next section.

Racism in Restaurants

Like gender discrimination, the reproduction of racial discrimination in the restaurant industry is undeniably pervasive and problematic. It is the product of multiple converging factors, including discriminatory hiring practices and geographic location. The consequences of these factors manifest on many levels, determining a worker’s position, and the type of restaurant in which they work. In many cases, workers of color are marginalized by “low road” practices such as wage inequality, unequal opportunity, and “socio-spatial” segregation.

These three practices are indicative of one another, often happening simultaneously. ROC United (2014) uses the fine dining restaurant sector to illustrate this in their study, *The Great Service Divide*, because despite its relatively small size within the industry as a whole, it is a

trendsetter and offers the most living wage jobs (9). In the minority-majority cities of Chicago, Metro Detroit, and New Orleans, it was found that people of color comprised only 22 percent of tipped front-of-house (FOH) workers in fine dining restaurants (ROC United, 2014, 12). Instead, they are hired for back-of-house (BOH) positions, creating spatial divisions within the restaurant that keep marginalization out of sight (Sachs et al 2014, 12-16). The important distinctions between these spheres will be discussed further in the next section, but it is important to invoke them briefly here because Jayaraman (2013) regards this racial segregation as “one of the restaurant industry’s most pressing, deep-seated problems, and part and parcel of every other pattern of injustice in the industry” (106).

Within the BOH sphere, minority workers are further locked into low-wage positions like prep cook and dishwasher, which pay considerably less than supervisory positions such as sous chef. A national survey conducted by ROC United in 2011 found that while white workers receive a median wage of \$14 an hour, people of color received only \$9.88 an hour (Jayaraman, 2013, 117). The study of minority-majority cities referenced above found that only 44 percent of restaurant workers of color earn a living wage (ROC United, 2014, 12). These data can be attributed to both discriminatory hiring practices and geographic location.

Racial discrimination during the hiring process keeps people of color out of higher paid tipped positions. Using matched-pair testing of employment practices in fine dining, *The Great Service Divide* found that in Chicago, Metro Detroit, and New Orleans, white applicants were twice as likely than applicants of color to receive “favorable treatment” in the form of interviews or job offers (ROC United, 2014, 15). The same tests found that applicants of color were only 73 percent as likely as equally qualified white applicants to receive a job offer (ROC United, 2014, 15). Even workers of color that do inhabit FOH positions experience wage inequality.

Considering the added value of education in tipped FOH positions, people of color pay a “race tax” of 56 percent, representing an income disparity between their annual earnings and the earnings of their white male counterparts with the same qualifications (13). This is because employers often assign great value to “soft skills,” like personality and attitude, when considering applicants for FOH positions (18). These notions are “riddled with class and race-based assumptions” about an employee’s ability to interact appropriately with customers (18). In other words, many restaurant employers make hiring decisions based on what sort of social interaction customers will be comfortable with. While this may seem sensible, the reality is that they are hiring employees based on status and appearance, rather than qualification and experience. This is discriminatory, and disproportionately affects workers of color.

Neighborhood demographics also play a role in the marginalization of workers of color. White workers tend to live in higher income neighborhoods, with better access to high-paying restaurant positions at fine dining restaurants. Conversely, workers of color tend to live in lower-income neighborhoods, where lower-priced, lower paying family-style restaurants are more common. Fine dining restaurants (and thus, opportunity for adequate wages) are few and far in between neighborhoods such as these (Jayaraman, 2013, 116-117). This forces workers to commute to find better jobs, something that is not always readily available to those living in low-income neighborhoods.

Based on the data provided here, it is clear that marginalization in the restaurant industry is a complex issue, and is perpetuated by a number of interrelated practices and characteristics of the restaurant industry. Applying a sector/sphere framework will help us better understand these attributes, and provide a clear, organized picture of the best course of action for bringing about change.

The sector/sphere framework

In order to gain a more complex understanding of the status quo that exist in restaurants, as well as the marginalization of female and minority restaurant workers, a sector/sphere framework can be applied to restaurants to better understand the “low road” practices mentioned above. There are different sectors of the restaurant industry, and different spheres within the restaurant itself. The sector and sphere in which a person works significantly affects their earnings, and the race and/or gender of a worker significantly affects the sector and sphere in which they work.

Sectors

Within the full-service restaurant industry, there are three commonly acknowledged sectors: family-style dining, casual fine dining, and upscale fine dining (Batt, Lakhani and Lee, 2015; Jayaraman, 2016). Family-style restaurants are regarded as moderately priced establishments that “populate the middle ground between fast food and fine dining” (Jayaraman, 2015, 27). The median age of workers is 27 years. 47.6 percent are female and 54.6 are minority. 48.2 percent are full-time (Batt, Lakhani and Lee 2014). The per-person average (PPA), or the average dollar amount spent by per customer, is \$17.50.

Fine dining, also referred to as “white table cloth,” is the other end of the spectrum. According to ROC, the characteristics of the fine dining sector are “high quality service, talented—oftentime celebrity—chefs, name recognition or notoriety and unique restaurant concepts” (2014, 9). Cost per person in a fine dining restaurant, which includes drinks but not the cost of tip, is estimated by Batt, Lakhani and Lee (2014) to sit around \$40, but prices are rising as the industry grows and evolves, creating expensive niche dining, I would argue that upscale fine dining sits closer to a minimum \$50 per person, and can extend much higher to over \$100.

To cover the spread between family-style and the fine dining sector, fine dining has splintered into *upscale* fine dining and *casual* fine dining.

The newly emerged casual fine dining sector is defined by high quality food and service in a relaxed or thematic setting. The median age of workers is 29 year. 37.9 percent are female and 53.6 are minority (Batt, Lakhani and Lee 2014). Because casual fine dining is a fairly new sector that inhabits a considerable gap between family-style and upscale fine dining, PPA data varies across a large spectrum. Within this framework, PPA is estimated to be \$33.75, exactly halfway between the family-style and upscale fine dining sectors. To understand how restaurant sector can affect workers, we must also look at the two spheres that exist with restaurants.

Spheres

Within the full-service restaurant industry, regardless of sector, there are two spheres. These spheres, front-of-house (FOH) and back-of-house (BOH), are divided, both physically and symbolically by the kitchen door: The FOH sphere is comprised of tipped and non-tipped workers and occurs in visible, public space. It involves direct customer interaction and includes hosts, bussers, food runners, servers, bartenders and bar backs (ROC United, 2012, p. 10). The BOH sphere is comprised solely of hourly wage workers and occurs in the kitchen, a space clearly designated as separate from the public and most often hidden from the view of customers. It involves very limited direct customer contact and includes dishwashers, preparatory cooks, line cooks, sous chefs and head chefs. The sphere of a worker shapes their daily job experiences through their position's roles, wages, and working conditions (ROC, 2014, 9).

In the same way that sector affects the worker, so does it affect the restaurant. More specifically, it can affect the likelihood of a restaurant taking the “high road” by paying higher wages, providing subsidized healthcare and paid sick days, or creating a diverse, equitable

workforce. When a sector/spheres framework is applied while analyzing a restaurant’s employment practices, certain abilities and restrictions created by sector characteristics like ownership, geographic location and price point, and sphere distinctions like pay grade and access to benefits, become apparent. Keeping these variables in mind while exploring the data uncovered in this research will create a comprehensive yet clear picture of what restaurants can do to take the “high road.”

FAMILY STYLE	CASUAL FINE DINING	UPSCALE FINE DINING
<i>PPA:</i> \$17.50 <i>Employee Demographics:</i> Median age: 27 years Full-time: 48.2 Female: 47.6 Minority: 54.6 <i>Hourly Wages:</i> FOH (not including tips)-\$7.30 BOH-\$10.00 <i>Weekly wages:</i> FOH (including tips)- \$464 BOH-\$360 <i>Annual wages:</i> FOH-\$24,123 BOH-\$18,720 <i>Location:</i> Unknown	<i>PPA:</i> \$35 <i>Employee Demographics:</i> Median age: 29 years Full-time: 53.1 Female: 37.9 Minority: 53.6 <i>Hourly Wages:</i> FOH (not including tips)-\$5.30 BOH-\$11.00 <i>Weekly wages:</i> FOH (including tips)-\$673 BOH-\$402 <i>Annual wages:</i> FOH-\$34,990 BOH-\$20,902 <i>Location:</i> Unknown	<i>PPA:</i> \$50+ <i>Employee Demographics:</i> Median age: 32 years Full-time: 58.5 Female: 30.5 Minority: 57.5 <i>Hourly Wages:</i> FOH (not including tips)-\$5.00 BOH-\$11.50 <i>Weekly wages:</i> FOH (including tips)-\$792 BOH-\$441 <i>Annual wages:</i> FOH-\$41,184 BOH-\$22,932 <i>Location:</i> Affluent neighborhoods

Table 2. Characteristics of restaurant sectors, wages according to sphere.

Research problem and questions

Considering the explanation of the social significance of existing, often exploitative, labor and wage practices presented thus far, there are several injustices to be addressed in the restaurant industry. An outdated subminimum wage sets the standards of pay, which subjects millions workers to economic insecurity. Gaps and loopholes in federal regulation allow employers to withhold subsidized healthcare and paid sick days, compromising the well being of

workers and the public. And restaurant patrons get stuck with bill, at the end of the meal and the end of the year. These “low road” practices disproportionately affect women and people of color working in restaurants. They create a cycle of discrimination and injustice, deepening the intersectional racial and gender divisions that are made apparent by a sector/sphere framework of the restaurant industry.

Addressing the injustices and oppressions in existing “low road” wage and benefit practices of the full service restaurant industry would improve the lives of millions of American restaurant workers. It is the purpose of this research to engage with federal policy, and with the experimental practices of “high road” restaurant owners, to produce an elevated status quo model reinforced by fair and ethical policy. The following questions are designed to guide the research toward this purpose:

- **How are restaurant owners and operators already pursuing “high road” employment practices?**
- **How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?**

The next chapter, Methodology & Methods, explains how grounded theory methodology, a literature review, and a scoping review, were used to address these questions.

Chapter 3: Methodology & Methods

This chapter provides my positionality in regard to this research, an introduction to grounded theory methodology, an overview of how grounded theory guided my research to address the research problem and questions, and an overview of the literature review and scoping review methods used, organized by research question.

Methodology

Despite the growth and success of the restaurant industry, it is the lowest paying employment sector in the United States and many of its workers do not have access to benefits like subsidized health insurance and paid sick leave. Furthermore, the restaurant industry is divided along intersecting lines of race and gender, reproducing discriminations and injustices that afflict American society as a whole.

In order to further understand these issues and make strides to improve the lives of workers across the country, this research considers the following questions:

- **How are restaurant owners and operators already pursuing “high road” employment practices?**
- **How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?**

The next sections discuss my positionality as a researcher, and the grounded theory methodology I have used to answer these questions.

Positionality

I have been an employee of the restaurant industry for over 10 years, and a majority of that time I have spent as a tipped worker. I belong to a strong community of fellow “industry people”. My dual role as graduate student and food server has situated me at an interesting threshold between researcher and subject. My own first-hand experiences and current

understanding of the restaurant industry provide a particular lens that was useful in my research. Despite their glaring flaws as employment institutions, it is my belief that restaurants are vital to our culture and our job economy and as such, their practices should be held to higher standards.

Grounded Theory

Grounded theory was the guiding methodology used to answer the two research questions listed above. Grounded theory analysis is an ongoing research process that begins with collected data and the questions that are raised when thinking about this data. Collected data and emergent questions shape the additional data that is obtained and how that data is applied and analyzed (Charmaz 2006, 3). A grounded theory methodology was ideal for my research because it allowed me to construct my own theory about restaurant labor and policy reform based on a wide variety of data, rather than relying on existing theories that may have limited my scope of research and my ability to answer my own questions.

Methods

In order to address “low road” practices in the restaurant industry, this research answered two questions using two different methods: literature review and scoping review.

Research Question 1: Literature Review

How are restaurant owners and operators already pursuing “high road” employment practices?

To answer this question, I applied the *sector/sphere framework* introduced in Chapter 2 to a literature review of available media coverage on three different restaurants, plus content on the restaurants’ websites. This approach was intended to reveal data to highlight elements that encourage or inhibit a restaurant’s ability to take the “high road” and reveals two realms of workers that require consideration within a restaurant. Each

restaurant chosen represents one of three sectors that exist in the full service restaurant industry: family dining, casual fine dining, and upscale fine dining. The three restaurants selected for this literature review, respectively, were Joe’s Crab Shack, Busboys & Poets, and The Modern. Within each restaurant, I examined two spheres, FOH and BOH, determining the working conditions for employees within each one.

The materials that I used to conduct these case studies included popular culture articles from publications such as *Eater*, *Restaurant Business*, and *The Washington Post*, restaurant and hospitality group websites, and interviews with “high road” restaurant owners and operators.

I organized and cataloged the data I collected based upon sector traits, placing each restaurant within its representative sector. Sector traits include PPA, employee demographics, average wages and geographic locations. Then, I detailed “high road” practices of each restaurant according to sphere. Finally, I examine successes and setbacks of each restaurant. These data are organized into a table in Chapter 4.

Using the sector/spheres framework throughout the literature review, I was able pinpoint possible reasons why “high road” practices achieve success in some cases but fail in others, and how sector traits contribute to the outcome. This framework also considers the workers of two different spheres of restaurants, and how they are similarly and conversely affected by “high road” practices.

Research Question 2: Scoping Review

- **How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?**

The scoping review method is valuable when research requires a large scope for collecting data to answer questions. Scoping reviews seek breadth, drawing from multiple disciplines and epistemologies (Terstappen et al, 2013, 22) and using a variety of research tools. I chose to conduct a scoping review to answer my second research question regarding the current federal and state policy that shapes wage and labor practices in the full service restaurant industry in the United States.

Recommended research tools for conducting a scoping review include electronic databases, reference lists, existing networks, and relevant organizations and conferences (Arskey and O'Malley, 2005, 24). The research tools I chose to use included the EBSCOhost electronic database, references lists from reports and books found there, and information from relevant organizations and movements uncovered along the way. This produced a variety data pertaining to existing policy and recommendations for policy reform made by labor movements, wage coalitions and other NGOs. These data included current and past versions of the US Fair Labor Standards Act, US Department of Labor reports and research materials, ROC United, #livingofftips, and One Fair Wage websites, reports and research materials, Economic Policy Institute reports and research materials, other data pertaining to the FLSA and the two-tier minimum wage system.

I organized the data I collected according to existing federal policy, namely the TWMW and paid sick day legislation, listing the relevant reform recommendations being made by NGOs and labor movements. To analyze the data I collected, I placed the existing policies and recommended reforms within a human rights framework that includes the right to decent work, the right to a healthy life, and the right to live with dignity. The results of my research, my analysis, and contribution can be found in the chapter that follows.

Chapter 4: Results, Analysis, and Contribution

The problem my research seeks to address deals with existing “low road” practices in the restaurant industry, specifically the subminimum wage for tipped workers and their lack of access to benefits like subsidized health insurance and paid sick leave. These practices, occurring along intersecting lines of race and gender, prevent restaurants from creating fair working conditions and allowing their workers to live with dignity. Replacing these practices with “high road” practices would break down the barrier between the restaurant industry and social justice, bringing necessary change to this large and lucrative sector of the food system.

The two questions I have chosen to guide my research on this problem are:

- **How are restaurant owners and operators already pursuing “high road” employment practices?**
- **How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?**

The following sections provide a review and analysis of the relevant data collected to answer research question #1, a review and analysis of the relevant data collected to answer research question #2, and the contribution this research makes. The contribution of this research takes the form of two frameworks for thinking about restaurant labor. The *sector/sphere framework* brings perspective to the abilities and restrictions of restaurant sectors and the role that sphere plays in the experience of restaurant labor. The *human rights framework* provides a new lens for advocating for socially just policy reform. The consideration of these two frameworks has the potential to bring about new ways of thinking when discussing the achievement of a “high road” restaurant industry.

Research Question #1: Results & Analysis

How are restaurant owners and operators already pursuing “high road” employment practices?

There are a number of innovative restaurateurs who are already seeking to improve the lives of their workers by acting outside the status quo. However, in order to interpret their chosen practices and the success of some practices over others, we must better understand abilities and restrictions of different kinds of restaurants and the positions that workers fill within those restaurants.

Applying the *sector/sphere framework* I introduced in Chapter 2 to the data collected highlights characteristics that encourage and inhibit a restaurant's ability to take the "high road" and reveals two realms of workers that require consideration within a restaurant. The results section below uses a literature review of available media coverage on three different restaurants, one from each sector, to find out what "high road" practices they are pursuing and how they are empowered or limited by their sector. I have further organized these data according to how these practices benefit or marginalize the workers within both FOH and BOH spheres.

Results

To represent the family-style sector, I chosen Joe's Crab Shack, a national restaurant chain owned by Ignite Restaurant Group. Joe's has 112 locations across America that bring "craveable seafood from the coast to your table" (Ignite Restaurant Group 2017). In August 2015, Joe's was the first major chain to conduct a "significant trial" of a no-tipping policy (Romeo 2015b) at 18 of their Midwest locations in an effort to reduce employee turnover, increase the quality of service, and reduce costs for "generous tippers" (Fuhrmeister 2015). The no-tipping policy did just that: eliminated tipped income and replaced it with a set hourly wage (Romeo 2015b). The starting rate was set to \$14 per hour and menu prices increased 12-15 percent to offset the increase in labor costs (Fuhrmeister 2015, Romeo 2015b). Both Fuhrmeister (2015), Romeo (2015b) and Whitten (2015) point out that Ignite's decision to test out a no-

tipping policy came in the wake of Danny Meyer's "Hospitality Included" model, introduced earlier in the year, which was primarily driven by Meyer's desire to close the wage gap between FOH and BOH workers. However, none of the language provided by then Ignite CEO Ray Blanchette alludes to any concern for the glaring wage gap between spheres (Fuhrmeister 2015, Romeo 2015b, Whitten 2015). And, while he does refer to "traditional tipping methods" as "antiquated," and charged them with creating "an overly competitive environment for workers," there is no emphasis on the social and economic condition of tipped workers and the inability of many to earn reliable income that ensures they have access to basic human rights (Whitten 2015). Instead, the issue of high employee turnover (and though unspoken, undoubtedly the high labor cost associated with it) seemed to be touted as the primary driver behind the no-tipping policy (Fuhrmeister 2015, Romeo 2015b, Whitten 2015).

In May 2016, in response to their first quarter earnings call, Ignite announced the restoration of traditional tipping practices in 14 of the 18 trial locations (Vasel 2016) for reasons concerning labor costs (up 3.2 percent), restaurant income (down 16.2 percent), and customer counts (down 8-10 percent) (Fuhrmeister 2016). After 10 months the test was, for the most part, over. The new Ignite CEO Bob Merritt commented on the rollback: "The system has to change at some point, but our customers and staff spoke very loudly [about the policy], and a lot of them voted with their feet" (Fuhrmeister 2016, Vasel 2016). It is hard to determine if the no-tipping policy is entirely responsible for the sharp decline in Joe's Crab Shack income in the first quarter of 2016. The chain's sales were already down 6.6 percent in the third quarter of 2015 when the no-tipping policy began, and could have very well continued along the same trajectory, tipping or not (Whitten 2015). As of May 2016, four locations were continuing the no-tipping model

after receiving positive responses from customers, though which locations and the degree of success were not discussed (Vasel 2016).

The failure of the no-tipping model at Joe's Crab Shack, though not complete, indicates that perhaps the corporate restaurant model is not yet addressing the issue of tipped income in terms of wage disparity, racial and gender justice, and the quality of life for restaurant workers. If this trial run is any indicator, then national chains existing under parent companies like Ignite Restaurant Group appear more invested in the bottom line than in guaranteeing a secure future for their workers. However, though Ignite missed the mark, there are independent restaurants and restaurant groups that are successfully eliminating tipping to ensure equitable workplaces that pay a living wage.

To represent the fine dining sector, I have chosen The Modern and its parent company Union Square Hospitality Group (USHG). USHG's founder and CEO Danny Meyer has been regarded as a pioneer for challenging restaurant industry standards for many years, and stood in opposition of the American tipping system as early as 1994, calling it "awkward for all parties involved" (Sutton 2015) and "one of the biggest hoaxes ever pulled on an entire culture, the American culture" (Pashman 2017). In October of 2015, Meyer rocketed the elimination of tipping to the foreground of the restaurant industry conversation when he announced that USHG would be implementing a system called "Hospitality Included" at all thirteen of their New York locations (Romeo 2015a, Sutton 2015). In November 2015, the first restaurant to make the change was The Modern, USHG's fine dining restaurant housed in the Museum of Modern Art (Romeo 2015a, Sutton 2015). The rest of USHG's locations were expected follow suit in later months (Sutton 2015). Meyer's reasoning behind the elimination of tips was largely attributed to

the long-standing and ever growing wage gap between FOH and BOH restaurant workers. In an interview with Dan Pashman in a Sporkful podcast (2017), Meyer states:

What is a tip? It's a multiplier of menu pricing and as menu prices have gone up, so too has the multiplier over the course of my career which is now 30, 31 years. Tipped employees, happily for them, are making about 300 percent of what they were 31 years ago. During that same period, everyone in the kitchen — the dishwasher, non-tip eligible employees — have seen their hourly income go up about 20 percent.

According to Meyer, FOH staff are “the diplomats in a much larger body politic,” and while servers, bartenders and the like are essential actors in the restaurant, so too are every other member of the restaurant staff, regardless of sphere (Sutton 2015). For this reason, USHG designed “Hospitality Included” to benefit every individual worker, not just the most visible ones. Meyer also laments high turnover rates and a cook shortage, hopeful that the new system will encourage more workers to apply and, once hired, “stick around” (Sutton 2015).

So, what does “Hospitality Included” look like? For kitchen workers, it manifested as a \$2 per hour raise across the board (Dai 2016). Members of kitchen support staff, which likely includes dishwashers and expeditors, receive a starting hourly wage of \$11 and cooks begin at \$14, with the opportunity to earn time and a half with 10-15 hours of overtime available (Sutton 2015). Dining room staff earned a raise to \$9 per hour, the full New York minimum wage and \$4 above the New York TWMW (Sutton 2015). To account for the increased labor cost, USHG planned to raise menu prices as much as 25 percent, though early predictions were as high as 35 percent. Their ultimate goal was a “true price increase” (or the actual price increase when considering what a customer would spend on gratuity) under 10 percent (Sutton 2015).

The income for both spheres of workers is further fortified by a 13 percent pool share of daily revenue, which is distributed weekly according to hours worked and level

of employment (Cobe 2016). As a result of the revenue share system, workers receive daily updates on the restaurants overall financial performance, and are offered training opportunities to better understand the financial aspect of the business (Sutton 2015). Not only was “Hospitality Included” intended to provide higher, more reliable pay to workers, but to also increase their participation and accountability in the business. And it paid off.

December 2015, just one month in to “Hospitality Included,” was the most profitable month in the history of The Modern. By March 2016, turnover decreased and the volume of applications for kitchen work increased 270 percent (Dai 2016). The instant success even came as surprise to Meyer, who expected the process to be a “long slog” (Dai 2016). He attributed it to the amount of good press that the bold move received encouraged the masses to try out the new system from both sides: consumer and employee (Dai 2016). To date, “Hospitality Included” is fully implemented at seven of the thirteen USHG restaurants.

However, “Hospitality Included” is not the only, nor the latest, of Meyer’s journey down the “high road.” In September of 2016, USHG introduced a new parental leave policy. Under the policy, effective this year, all full-time FOH and BOH employees with over one year’s tenure are offered 100 percent of their base wages for the first four weeks after a child is born or adopted (Morabito 2016). This is especially beneficial to women, providing them the opportunity to maintain financial stability while providing care for their family. USHG also offers qualified employees paid time off, medical, dental and vision insurance, 401(k) with company match and a pre-tax transit program to help bear the burden of commuting costs (Union Square Hospitality Group 2017).

To represent the newly emerged casual fine dining sector I have chosen Busboys and Poets, owned by Andy Shallal. The first Busboys and Poets opened in Washington, D.C. in 2005 (Charles 2015). Since then, it has blossomed into six different locations (Busboys and Poets 2017) and employs over 500 people throughout the DC area (Montgomery 2011). And, its not just a restaurant. Busboys and Poets is also “a bookstore, a gathering place and a community center” (Montgomery 2011) that pays homage to Langston Hughes, who worked as a busboy before his emergence as a great American poet (Charles 2015, Martin 2011, Montgomery 2011).

Shallal is an Iraqi-American entrepreneur and artist who identifies first as an activist (Martin 2011, Montgomery 2011). This amalgam of identities, businessman, creative mind, social justice warrior, are apparent in the Busboys and Poets (2017) philosophy:

Busboys and Poets is a community where racial and cultural connections are consciously uplifted...a place to take a deliberate pause and feed your mind, body and soul...a space for art, culture and politics to intentionally collide...we believe that by creating such a space we can inspire social change and begin to transform our community and the world.

In 2011, Shallal received a lot of local media attention for his activism. Most notably, he was arrested during a protest at the White House against an oil pipeline and served breakfast and dinner to Occupy Wall Street protestors camped out at Freedom Plaza (Montgomery 2011). He is also has strong feelings about the TWMW. The lowest hourly wage at Shallal’s restaurants is \$9.25 per hour, a probationary rate that is raised to \$10.25 per hour after a worker’s first three months of employment (Montgomery 2011). The data collected does not provide wages based on sphere, and makes no mention of the FOH/BOH wage gap. However, Shallal has spoken openly about the need to eliminate the TWMW, stating that doing so “represents a more sustainable way to do business” (Shallal 2016). Busboys and Poets’ employees also have access to benefits. All workers

receive paid sick leave and full-time workers have access to medical, dental and vision insurance (Montgomery 2011). Paid vacation, a 401K plan, and life and AD&D insurance are also available (Busboys and Poets 2017).

In the data collected for Busboys and Poets, there is no mention of increased pricing to account for labor costs or other business strategies that sustain Shallal's "high road" practices. Menu items are reasonably priced, falling closely in line with the casual fine dining PPA of \$35 (Busboys and Poets 2017). Perhaps the other aspects of the business, like retail income from the bookstore and room fee income from private events, offset higher-than-normal labor costs. While these details remain unclear, Busboys and Poets is in its twelfth year, making Shallal's "high road" model undeniably successful and sustainable.

Analysis

There are restaurateurs who are pursuing high road practices, such as abandoning tipping for a set hourly wage and offering benefits like health insurance and paid sick days. But some achieve great success, while others fail and repeal experimental practices.

By taking sector and sphere into consideration, we can see why some "high road" practices have a high chance of sustainability in some sectors, but fail in others due to limiting factors such as PPA, ownership and region. Understanding the abilities and limitations of restaurants based on sector can prevent the failure of "high road" practices in future ventures.

For instance, why did Ignite Restaurant Group fail where USHG succeeded? It could be because of geographic location. Perhaps customer and employee bases confined to one large metropolitan area such as New York City are more likely to positively

receive alternative industry practices like “Hospitality Included.” USHG’s success could also be attributed to geographic concentration. They inhabit one geographic area, creating a higher number of loyal, local customers. The same is true of Andy Shallal’s Busboys and Poets in Washington, D.C. Alternatively, Joe’s Crab Shack locations that were included in Ignite’s test run of a no-tipping policy were spread across the United States in smaller cities with less population.

The success of USHG and Shallal could also be attributed to the presence of notable personas. CEO and founder of USHG Danny Meyer has received national acclaim and been regarded as an industry trailblazer for years. Furthermore, the fine dining sector is widely recognized as a leader of industry trends, with restaurants like The Modern setting restaurant standards in every sector. Shallal has a following too, though admittedly more local to the Washington, D.C. area and varied in exploits. Ignite Restaurant Group, however, has no well-recognized personality associated with it, making media coverage less three-dimensional.

A third possibility could be related to the presence or lack of greater social dialogue surrounding alternative practices. While Meyer and Shallal both speak often and publicly about the social implications of implementing “high road” practices, nothing in Ignite’s media coverage nor the language on their website indicates concern for the execution of social justice. Without an understanding of the bigger picture, customers and employees alike are probably less likely to support such jarring changes.

Despite their good intentions, Ignite’s ultimately unsuccessful approach to “high road” practices lacked some essential elements to creating meaningful change in the industry. Their status as a national chain and subsequent geographic limitation, the absence of an influential

persona, and lack of cohesive mission toward social justice were all likely factors in the repeal of their no tipping policy. On the other hand, the presence of these beneficial elements in USHG’s and Busboys and Poets’ efforts likely aids in their continued success, and the restaurant industry's progress towards social justice is much strong because of it.

However, while it is good that restaurant owners are taking the initiative to effect change within their own institutions, this change will remain contained to such progressive groups unless federal policy is also held to “high road” standards.

	FAMILY STYLE	CASUAL FINE DINING	UPSCALE FINE DINING
Representative Restaurant	Joe’s Crab Shack National Chain Ownership: Ignite Restaurant Group	Busboys & Poets Washington, D.C. Ownership: Andy Shallal	The Modern New York, New York Ownership: Danny Meyer/USHG
FOH	<p>“High road” practices: <i>Wages:</i> No-tipping policy brings \$14/hour wages to servers.</p> <p><i>Benefits:</i> None indicated.</p>	<p>“High road” practices <i>Wages:</i> Minimum \$10.25/hr, after 3 month probation at \$9.25/hr.</p> <p><i>Benefits:</i> Paid vacation, paid sick leave, medical, dental and vision insurance, 401K plan, life and AD&D insurance.</p>	<p>“High road” practices <i>Wages:</i> “Hospitality Included” brings \$9/hour wages to servers, plus 13% revenue share.</p> <p><i>Benefits:</i> Paid time off, parental leave, medical, dental and vision insurance, 401(k) with company match, a pre-tax transit program.</p>
BOH	<p>“High road” practices: <i>Wages:</i> None indicated.</p> <p><i>Benefits:</i> None indicated.</p>	<p>“High road” practices: <i>Wages:</i> Minimum \$10.25/hr, after 3 month probation at \$9.25/hr.</p> <p><i>Benefits:</i> Paid vacation, paid sick leave, medical, dental and vision insurance, 401K plan, life and AD&D insurance.</p>	<p>“High road” practices: <i>Wages:</i> “Hospitality Included” brings \$2/hour wage raises across the board, boosting kitchen support staff to \$11/hour and cooks to \$14/hour.</p> <p><i>Benefits:</i> Paid time off, parental leave, medical, dental and vision insurance, 401(k) plan with company match, a pre-tax transit program.</p>

Table 2. Representative restaurants within sector/sphere framework.

Research Question #2: Results & Analysis

How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?

The FLSA is the most significant piece of federal legislation that determines what employment practices are acceptable within the restaurant industry, including hourly wages and access to paid sick days. While cities and states can set their own standards for such practices, the FLSA remains the status quo for restaurant owners and operators across the country and, thus, is a primary focus of this research question.

The current version of the FLSA lacks essential protections for restaurant workers, falling short of International Human Rights that dictate the right to decent work, the right to a healthy live, and the right to live with dignity. By applying a human rights framework to the existing FLSA, the need for reform becomes staunchly apparent.

Results

The FLSA is a multifaceted piece of public policy that sets the national standard for accepted wage minimums for all hourly workers, and determines what benefits workers are entitled to under federal law. According to much of the data presented in chapter two, the injustices experienced by restaurant workers are in many ways the direct result of these policies and correcting them will require reformation of these policies. Fortunately, there are a number of individuals and NGOs already fighting for FLSA reform. The recommendations that follow are compiled from reports and research materials from the Economic Policy Institute (EPI), the National Employment Law Project (NELP), and ROC United and the One Fair Wage campaign.

Recommendation: Raise or eliminate the tipped minimum wage

The existing federal TWMW has been set at \$2.13 per hour for over 25 years. The astounding poverty rate of tipped workers suggests that this subminimum wage should, at the

very least, be raised to a higher percentage of the full federal minimum wage, which sits at \$7.25 per hour. However, it is important to note that under the FLSA, this disparity in wages is justified by affording employers of tipped workers a credit of \$5.13 per hour. This tip credit hinges on tipped workers earning enough in gratuities to raise their hourly wage to the full federal minimum. Employers are legally required to satisfy the full federal minimum in instances where tips earned, combined with their hourly \$2.13, fall short of \$7.25 (Nayak and Sonn 2009, 3).

In a report from the Economic Policy Institute, Allegretto and Cooper (2014) state that the TWMW should be eliminated entirely, noting that “tipped workers would be better off still if we...paid [them] the full, regular minimum wage” (p. 2). ROC United (2014) also makes this recommendation, calling on policymakers to “enact, without delay, one fair wage,” creating one wage floor for all workers, regardless of occupation (p. 27). The National Employment Law Project (Nayak and Sonn, 2009) sets one fair wage as a long-term goal, suggesting first that the TWMW be raised to the “historical level” of the full minimum wage, which in 1991, was 60% and recoupling the two wages, so that when one increases, so does the other (p. 17). Each of these groups attest that raising the wage floor for tipped workers would drastically improve the lives of thousands, perhaps millions, of low-income workers in America.

However persuasive these arguments may be, the calls to raise the TWMW are not without opposition. The biggest contender is undoubtedly the NRA, who successfully lobbied for the TWMW to be uncoupled from the full minimum in 1991. It has been frozen at \$2.13 ever since. The NRA contends that tips work and that wage reform is not what is needed at this time. They argue that the economic strain would be harmful to the restaurant industry.

In 2013, five years after the Great Recession, the Obama administration introduced the Fair Minimum Wage Act of 2013, a bill that would have raised the full minimum wage to \$10.10

per hour, and the TWMW to 70 percent of that rate, \$7.07 per hour (Even and Macpherson, 2013, 633). The NRA released multiple statements of opposition, stating that the restaurant industry “could not support a minimum-wage increase at a time when the economy is still sluggish and small businesses are struggling to succeed” (NRA 2013). An NRA representative called for “other necessary reforms”, such as increasing worker access to beneficial education and job training opportunities, as they are proven more likely to be “effective and targeted ways to help people in poverty and will have a more meaningful impact on an individual’s earning potential” (NRA 2014a). A later statement suggests that tipped restaurant workers regularly receive a wage between \$16 and \$22 per hour, and that “no one is making \$2.13 an hour” (NRA 2014b). The NRA also argued that raising the tipped worker minimum wage to \$7.07 per hour would drastically reduce employment opportunities for tipped workers, as many as 500,000 in 2016 (NRA 2014a).

A study conducted by Even and Macpherson (2013) confirms that higher wages mean fewer jobs. Using data from the Quarterly Census of Employment and Wages and the Current population survey, they were able to make predictions about the effect of such a wage hike on earnings and employment in the restaurant industry (633). While raising the TWMW would surely increase the income of full service restaurant workers, it could in some cases reduce the number of jobs and hours available to them (634). They found the TWMW “elasticity of employment” to be -0.15. For example, a 10 percent increase in wage would yield a 1.5 percent decrease in employment (638). By this formula, ROC’s recommendation to “enact, without delay, one fair wage” would require a 70 percent increase in the TWMW, yielding a 10 percent decrease in employment. The result would be an astounding number of job losses and while many would receive more adequate pay, many more still would be left unemployed. When

considering this data, it is plausible that raising the TWMW too much too quick could mean less work. It would certainly slow the industry's booming growth. However, if the TWMW is raised gradually, the economic strain on businesses and thus the effects on employment will be minimal.

ROC United (2014) rejects these arguments against raising the TWMW, stating that "the restaurant industry can afford to give its employees a raise." They provide employment data from the seven non-subminimum wage states to reveal that their projected job growth outnumbers that of states who still pay subminimum wage by 1.4% (5). ROC United concludes that raising the TWMW greatly reduces "opportunity costs," or the cost of high turnover as workers are constantly moving from restaurant to restaurant to find the highest tipped income. Reducing turnover reduces the costs of hiring and training, "allowing knowledge to increase at the point of service and sales and leading to a more robust restaurant industry" (6).

While raising the TWMW is thought by many to be the first hurdle to achieving a socially just restaurant industry, low hourly wages and living off tips in the restaurant industry are too embedded in the modern restaurant model for change to happen in a fully positive way without the aid of federal policy reform. If labor cost, which is one of the greatest financial expenses to a restaurant, increases by a large amount, other practices within the business cannot stay the same (Pashman 2017). Menu prices will need to increase, and employers must find other ways to cut cost, such as actively seeking to decrease employee turnover or experimenting with revenue shares. It is also important to note that the reported earnings of a tipped worker may be much less than actual income (Even and Macpherson, 2013, 649). Tipped employees receive a considerable amount of cash income, which can be difficult for employers to monitor. As a result, underreporting tipped income to the IRS does occur and many employers are inclined to

do little about it, so long as enough income is reported to satisfy the minimum wage requirement (Even and Macpherson, 2013, 649). Raising the TWMW is certainly a hotbed policy issue at the forefront of reforming the restaurant industry, and necessary to improving the lives of workers, but the appropriate increase remains unclear when considering all of the existing data available to us. Furthermore, the TWMW is only one piece of the puzzle. Worker benefits, such as paid sick leave and employer subsidized health insurance, should also be at the forefront of the restaurant industry conversation.

Recommendation: Establish a national standard for paid sick days

While the FLSA sets standards for wage minimums, it does not require sick pay or fringe benefits be offered to workers. According to Jayaramn (2013), this is problematic because “the health and safety and overall working conditions of restaurant workers in the United States directly affect the health and safety of consumers” (45). According to the Centers for Disease Control and Prevention (CDC), infected food workers cause 70 percent of reported norovirus outbreaks from contaminated food (2014). Statistics like this make something very clear: public health is very much dependent on the health of food workers, and in order to ensure a healthy population we must ensure a healthy restaurant workforce.

One way to do this is to introduce legislation that requires restaurant workers access to paid sick days. ROC (2012) recommends “seven to nine job-protected sick days each year” to allow workers time off work for being sick, for preventative doctor visits, or administering care to family members (p. 29). To help prevent norovirus outbreaks, the CDC recommends that the food service industry “foster a work environment that encourages workers to stay home when sick, by considering such measures as paid sick leave and a staffing plan that includes on call workers” (2013). The Economic Policy Institute (Shierholz, 2014, 23) also recommends

“[passing] legislation requiring all employers to provide sick days to their employees” especially in restaurant occupations where there is a greater chance of spreading illness.

In 2012, the city of Seattle instituted a sick leave ordinance that mandates business with five or more employees to provide paid time off, up to nine days worth, to workers “who are ill, taking care of sick family members, or facing a domestic violence threat, among other reasons.”

Another way to ensure a healthy restaurant workforce is to provide them with better access to affordable health insurance. In 2014, only 14.4 percent of restaurant workers received employer subsidized health insurance, compared with 48.7 percent of other workers (Shierholz, 2014, 20). Unionized restaurant workers receive health insurance through their job at a rate of 41.9 percent (Shierholz, 2014, 20), however the number of union members in restaurant work is very low, falling around less than 2 percent (Shierholz, 2014, 10). Unions not only provide a safer working environment in terms of workers’ health, but also provide clear procedure for filing disputes in cases of unsafe working conditions, including instances of sexual harassment which are discussed further in the next section.

Recommendation: Adopt legislation to prevent sexual harassment

In an ROC survey of approximately 700 restaurant workers, 80 percent reported instances of sexual harassment (Jayaraman, 2016, 38). Jayaraman (2016) suggests that there is correlation between these instances and the TWMW, because dependence on tipped income increases levels of tolerance for inappropriate behavior from customers, who directly determine income through tipping, and from managers, who indirectly determine income through scheduling and floor sections (2016, 38). Because women comprise a majority of tipped restaurant workers, they are particularly vulnerable to instances of sexual harassment. To combat this, the One Fair Wage (OFW) campaign advocates eliminating the TWMW, working to bring about policy on state and

municipal levels that require restaurants to pay their workers the full minimum (One Fair Wage 2017). The campaign's parent, ROC (2012) also recommends mandating employers, or at least offering incentives, for providing employees, "including managers," with training for prevention and handling of sexual harassment in the restaurant (p. 29).

Analysis

Existing federal policy under the Fair Labor Standards Act, allows restaurant employers to take the "low road," preventing restaurant workers from the protections they need to live a healthy and dignified life. This analysis considers existing "low road" practices within a human rights framework, which specifies that these practices deny restaurant workers the right to decent work, the right to a healthy life, and right to live with dignity. The human rights framework that follows is represented by Table 3 at the end of this section.

The Universal Declaration of Human Rights (UDHR), the "founding document of modern human rights," adopted by the UN in 1948 (Soltis, 2013, 5). Article 23:3 of the UDHR states, "Everyone, without any discrimination, has the right to just and favorable remuneration ensuring for himself and his family an existence worth of human dignity, and supplemented, if necessary, by other means of social protection." Under this standard, the status quo wage practices of the restaurant industry are unjust because of the volatile nature of tips, and the inadequacy of subminimum wage. Article 25:1 states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including...medical care and necessary social services, and the right to security in the event of...sickness, disability... or other lack of livelihood in circumstances beyond his control." Under this standard, restaurant industry labor is often unjust because it impedes the fulfillment of a healthy life.

Soltis (2013) addresses the human right to decent work, citing its necessity to achieving full realization of other human rights:

One of the root causes of the growing economic inequality and insecurity in the United States today is the violation of the human rights to decent work... These rights are not only essential to the survival of individuals and their families, they are also necessary in a society where the full enjoyment of many other rights, such as the right to an adequate standard of living, the right to housing, the right to health, and the right to fully participate in the political and cultural life of one's community, is dependent upon the fulfillment of the right to decent work. Securing workers' human rights is therefore fundamental to a society based on fairness and respect for human dignity" (Soltis, 2013, 1).

She goes on to explain that the right to decent work protects fair wages, equal pay for equal work, safe and healthy working conditions, and days of rest. Under this standard, both the status quo wage practices and the lack of access to paid sick leave and subsidized health insurance for restaurant workers are unjust because these practices do not provide safe and healthy working conditions or days of rest.

However the right to decent work, and other human rights, are declarations "not enforceable by law," but are rather guidelines for writing the law, and tools for oppressed, marginalized people to resist laws that do not reflect a fair society concerned with human dignity (6). Though International human rights standards "lack the teeth" against world powers, like the United States, the human rights framework "provides people with the knowledge that everyone has human rights...[and] supplies methods that empower people to defend their human rights" through networks and advocacy movements (9), such as ROC and OFW.

US fixation on the civil and political rights, while ignoring economic, social and cultural rights, has led to the marginalization of millions of workers nationwide. Restaurant workers are no exception. The United States has yet to ratify the International Covenant on Economic, Social, and Cultural Rights, which means that it is "legally unaccountable to certain rights of its

people, including the right to decent work.” NGOs and labor movements have taken up the cause for FLSA reform, making a wide range of recommendations to legislators and citizens alike in order to further social change in the restaurant industry. While these entities seeking FLSA reform are making important strides for restaurant workers, they could perhaps be doing more to reach people using a human rights framework. Bringing the ratification of the ICESCR to the forefront of political issues may give restaurant workers a better chance of fair recognition by US labor legislation and American society as a whole.

The policy reform recommendations being made by each of these groups warrant careful consideration and would certainly improve the lives of millions of restaurant workers. However, action by federal legislators remains to be seen. These groups may benefit by joining forces within a larger human rights movement to advocate for the reform they seek.

	Human Rights Standard:	Policy Reform Recommendations:
<p>Existing policy: Tipped Worker Minimum wage set at \$2.13/hour.</p>	<p>Human Rights Claim: The subminimum wage is unjust by International human rights standards because it is inadequate in the face of the volatile nature of tips.</p> <p>UDHR, Article 23:3 “Everyone, without any discrimination, has the right to just and favorable remuneration ensuring for himself and his family an existence worth of human dignity, and supplemented, if necessary, by other means of social protection.”</p>	<p>Recommended Policy Reform: Raise the TWMW, or eliminate it altogether and pay workers one fair wage.</p> <p>EPI (Allegretto and Cooper, 2014, 2): The TWMW should be eliminated entirely, noting that “tipped workers would be better off still if we...paid [them] the full, regular minimum wage.”</p> <p>NEPL (Nayak and Sonn, 2009, 17): One fair wage is the long-term goal, first raise the TWMW to the “historical level” of the full minimum wage, which in 1991, was 60% and recoupling the two wages, so that when one increases, so does the other.</p> <p>ROC/OFW (ROC United, 2014, 27): Policymakers should “enact, without delay, one fair wage,” creating one wage floor for all workers, regardless of occupation.”</p> <p>US Human Rights Network: (Soltis, 2013, 16): US government should “raise both the minimum wage and tipped minimum wage to living wage standards that fulfill the human right to a standard of living adequate for food, shelter, clothing, and healthcare.</p>
<p>Existing Policy: No federal mandate for paid sick days or maternity leave, and no protections for part-time employees in subsidized health insurance requirements.</p>	<p>Human Rights Claim: The lack of access to paid sick leave and subsidized health insurance for restaurant workers impedes the fulfillment of a healthy life.</p> <p>UDHR, Article 25:1 “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including...medical care and necessary social services, and the right to security in the event of...sickness, disability... or other lack of livelihood in circumstances beyond his control.”</p>	<p>Recommended Policy Reform: Create national policy that mandates paid sick days for all workers, regardless of employment status. Reduce full-time employment parameters to 30 hours a week so that healthcare protections cover more workers.</p> <p>ROC/OFW: (ROC United, 2012, 29): federal policy should included “seven to nine job-protected sick days each year” to allow workers time off work for being sick, for preventative doctor visits, or administering care to family members. (ROC United, 2015, 27): The federal government should “ensure that restaurant workers and their families have affordable access to healthcare,” and “ensure working mothers are accorded paid leave in order to prevent discrimination against women on the grounds of marriage or maternity.”</p> <p>US Human Rights Network: (Soltis, 2013, 16): US government should “respect the human right to days of rest and protect public health by passing [legislation] which would require employers to provide earned sick days.”</p>

Table 3. FLSA reform recommendations within human rights framework.

Contribution: Not Enough Cooks in the Kitchen

There are many industry leaders and workers' advocates that are aware of the unjust practices that exist in the restaurant industry. Yet legislative action by the federal government remains to be seen. While it is clear that restaurant owners across the country are eager to take a turn down the "high road", they may not be able to adequately sustain the associated practices or effect broader change across the industry as a whole without the aid of federal policy. And while NGOs and labor movements continue to engage policy, their call for reform may fall on deaf ears without a fresh and unifying lens that incorporates human rights movements. Perhaps if more progressive restaurant owners joined forces with NGOs and labor movements to begin advocating industry-wide change through legislation, while continuing contained change through individual action; then restaurant workers around the country stand a chance at improved working conditions and fair treatment as dignified members of the United States workforce.

The contribution of this research takes the form of two frameworks for thinking about restaurant labor. The *sector/sphere framework* brings perspective to the abilities and restrictions of restaurant sectors and the role that sphere plays in the experience of restaurant labor. The *human rights framework* provides a new lens for advocating for socially just policy reform. The consideration of these two frameworks has the potential to bring about new ways of thinking when discussing the achievement of a "high road" restaurant industry.

In summary, this chapter has answered two very important questions, which pave the way for the restaurant industry to take a turn down the "high road" of fair wages and benefits for its workers. These concepts create the potential for important steps to be made in the direction of a socially just food system. By conducting this critical analysis, both about the role of restaurant owners and the role of policy in the lives of restaurant workers, the research has produced new

ways of thinking about the existing Fair Labor Standards Act, the degree to which restaurateurs are currently effecting change, and how both entities can improve.

Chapter 5: Conclusion

Despite the apparent growth of the restaurant industry, the billions of dollars it produces, and its role in the lives of millions of Americans, it continues to fall short of a socially just employment sector. It pays low wages, and benefits like subsidized health insurance, paid sick leave and paid vacation are unavailable to many of its workers. The status quo of restaurant employment practices has many shortcomings; some of which are the direct consequence of public policy. Furthermore, the restaurant industry is divided along intersecting lines of race and gender that marginalize people of color and women.

The research conducted here addresses the injustices and oppressions that occur as a result of the “low road” wage and benefit practices of the full service restaurant industry in order to learn about opportunities for more just practices, so that viable opportunities for restaurants to take the “high road” may be provided, and reinforced by fair and ethical policy. Two research questions were used to address this problem:

- **How are restaurant owners and operators already pursuing “high road” employment practices?**
- **How could policy be reformed to most effectively address the injustices and oppressions occurring in restaurants?**

My response to the first question establishes a framework that helps to better understand different kinds of full service restaurants in operation, including who their employees are and how conditions vary between spheres, and how employers abilities and limitations vary according to sector when attempting to operate outside of the “low road” status quo. The framework reveals that factors such as geographic location, ownership, and cohesive social justice mission, can effect the successful implementation of “high road” practices. The human rights framework applied to answer the second question reveals what policy changes are needed to improve the status quo for restaurant workers, and how those changes can be brought about

swifter when placed within the realm of international human right standards. This framework reveals human rights claims that could be useful when advocating for policy reform. The responses provided to both research questions provide insight into how some restaurant employers are making the much needed changes on their own, and how federal policy can be improved to require other employers to follow suit. The application of the two resulting frameworks has the potential to bring about new ways of thinking when discussing the achievement of a “high road” restaurant industry.

It is easy to be critical of the restaurant industry. Its employee’s hours are long, and late. As a worker, whether FOH or BOH, you must be quick on your feet, good under pressure, and able to work double shifts. Busy times bring high volumes of customers, some difficult to deal with, and slow times don’t bring much of anything. A shift can go from lazy to disastrous in the time it takes to put in an order. Restaurant labor is hard work, so it is no surprise that drug and alcohol use run rampant and that cooks are considered by many to be some of the toughest people in the workforce. But for all its shortcomings, the restaurant industry is to be loved, too. A restaurant not only provides food, but also hospitality, cultural education, community, a place for people to gather and connect. A really good restaurant provides all that not just for the customers, but for the workers, too, and unfortunately this is not always the case. When an employer chooses the “low road,” and the law does nothing to stop them, how can workers resist?

This research does not address the question of what workers can do to improve the restaurant industry. Further research is required on the existence and action of service employee unions, and ways in which workers are organizing themselves to fight exploitation and marginalization in the restaurant industry. Further research on the abilities and restrictions of

corporate and non-corporate restaurants would also be useful to reveal how restaurant owners can pursue “high road” practices, regardless of sector. A united front comprised of effective federal policy, organized restaurant workers, and employer-advocates that implement “high road” practices and support policy reform could give the restaurant industry the push it needs to reach its potential as a socially just employment sector that offers adequate wages, health benefits, and the ability to live with dignity to all its workers, regardless of race and gender.

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