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Ethics of Employment in the U.S. Restaurant Industry

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Thesis Abstract

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Title:

Ethics of Employment in the U.S. Restaurant Industry

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Reader: Dr. Jason Taylor

My experiences and exposure to the U.S. restaurant industry have led me to believe that the average U.S. restaurant employee is grossly mistreated. There are several issues of concern that span the industry. Some issues are based around minimum wage, others around poor benefits, to name a few. All of these issues stem out of a lack of a consistent system of ethics within the industry. I chose to analyze the issues in the United States' restaurant industry, with intent to propose a solution at the end of my thesis. From here, I compare and contrast the U.S. industry with the French restaurant industry and their systems of employee treatment. The French system contains many desirable aspects that may be used to improve our own industry. From here I compare possible ethical solutions in relation to two frameworks of justice theory: Rawlsian Liberalism and Libertarianism. These polarized and competitive viewpoints offer the most diverse range of possible solutions to the U.S. restaurant industry's issues. To conclude, I propose solutions that were inspired by the French industry and can work in conjunction with Rawlsian Liberal and Libertarian viewpoints. These solutions would ideally improve the U.S. industry for the long term.

ETHICS OF EMPLOYMENT AND PAYMENT IN
THE UNITED STATES' RESTAURANT
INDUSTRY

**A thesis submitted to the Regis University
Honors Program in partial fulfillment of
the requirements for Graduation with
Honors**

By Matthew T. Hildebrandt

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Preface

If anything is good for pounding humility into you permanently, it's the restaurant business.

-Anthony Bourdain

The restaurant industry is brutal.

-Rene Redzepi

I don't tip because society says I have to. All right, if someone deserves a tip, if they really put forth an effort, I'll give them something a little something extra. But this tipping automatically, it's for the birds. As far as I'm concerned, they're just doing their job.

-Mr. Pink, Reservoir Dogs

I love the restaurant and hospitality industry. My family and I have spent years in one establishment or another, including running our own restaurant. Committing to the industry is no easy task, but I have chosen to do so in the long run. However, I am well aware of the industry's reputation, especially in regards to employee treatment. What can be done about this reputation?

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Restaurant Workers Everywhere,

Simply put, it's a hell of a way to make a living. Thank you for doing what you do.

Introduction

The United States' restaurant industry is massive; accounting for \$709 billion in sales per year and represents a massive part of our economy. As a collective, "the American restaurant industry represents the United States' second largest private-sector employer, employing more than 13 million people, or ten percent of the U.S. labor force" (National Restaurant Association). These are the people that are paid to serve the rest of us, the customers. The question is whether or not these employees are being properly treated proportionally to the work that they are performing.

Restaurant employees are not known for being especially well-paid. The majority of employees only see minimum wage or less, if they receive tips as well. Federal minimum wage, currently being \$7.25 an hour, is not regarded as a payment that is substantial enough for the restaurant field. Both the U.S. House of Representatives and the Senate have introduced bills that call for a massive increase of the federal minimum wage. The Fair Minimum Wage Act of 2013 (now 2015-it has yet to be passed into law) would call for the minimum wage to be increased incrementally over two years and three months to \$10.10 an hour with provisions to adjust according with inflation rates for each following year. This bill would especially impact the restaurant industry in that it would call for the minimum wage of tipped employees (\$2.13 an hour according to the U.S.

Department of Labor) to effectively triple to seventy percent of the federal minimum wage - \$7.07 by the bill's full effect (National Restaurant Association).

The general fault within the greater portion of the restaurant industry is a lack of a consistent code of ethics that dictates how employees can and should be treated. The lack of such a code all too often results in ethical violations including, but not limited to, lack of payment, lack of benefits, poor working conditions, and inconsistent hours in relation to payment. Simply put, I believe that such inconsistencies are unfair to the many employees in the industry who may not only be seeking payment for their hard work, but may also be seeking long-term careers (thus unfulfilled and stifled by these issues) within the restaurant industry. Such violations do occur in a variety of establishments, ranging from large, multi-operation chains to smaller family owned establishments.

Having spent a significant portion of my life working in or being exposed to the restaurant industry, I have come to the conclusion that the profession of the average American restaurant worker is riddled with a number of unacceptable inequalities and injustices. For a profession that consistently requires a unique skillset, the majority of restaurant workers do not receive substantial credit or compensation for their work. My goal is to shed light on this issue and why it is of great importance to our country, and to propose what I believe is an appropriate ethical solution. In this paper I analyze US restaurant treatment of employees from an international, legal, and ethical perspective. In the first section, I will explain the problem of low wages, non-existent benefits, and poor

working conditions that confront restaurant employees. I will also review the laws that are supposed to help these workers, but do not fulfill their purpose.

In section two, I will show comparisons, and even conflicts, between the modern U.S. example and the modern French example in order to exemplify this point. The French, the forerunners of what is considered to be the modern restaurant, present an example that is in great contrast with the American example in regards to employee treatment and legal protections.. In the third section I evaluate the U.S. restaurant situation from two ethical perspectives: libertarianism and Rawlsian liberalism. The purpose of the ethical evaluation is to explore possible solutions that can resolve specific injustices. I conclude with recommendations for making the restaurant industry more just.

Section 1: Wages, Benefits and Working Conditions in the U.S.

Simply raising the minimum wage may seem like an ideal solution to many restaurant employees' woes. However, this action would have a number of impacts, some of them potentially damaging and counter-intuitive, to the industry as a whole. As we already know, restaurants throughout the United States employ millions of people, be they waiters, dishwashers, cooks or bakers. The industry is renowned for being extremely labor intensive. The minds behind the National Restaurant Association and some other groups believe that the harms would outweigh the benefits.

One-third of sales revenue on average is already devoted to wages and benefits. These benefits are variable and will be elaborated upon later. Pre-tax profit margins are also stated to be very low, three to five percent (National Restaurant Association). Restaurateurs fear that they would be forced to limit hiring, increase prices, or cut employee hours in order to compensate for a wage increase (National Restaurant Association) Indeed, following the 2007 minimum wage increase, a reported fifty-eight percent of restaurant operators increased menu prices, while 41 percent of restaurant operators were forced to cut employee hours (National Restaurant Association).

On a more personal level, I can attest to the difficulties that restaurant operators may face with the implementation of a wage increase. Several years ago, my family used to operate a small, independent restaurant. Even though we were well-regarded, hiring

additional employees – or even giving raises – was difficult, if not impossible. Even when we employed only one additional, extremely productive worker, we could not afford to increase his payment much more above California’s minimum wage of \$8.00 an hour. Hiring employees was out of the question as well, as we certainly could not afford to pay for the wages of two additional employees, despite the fact that they were logistically necessary to our business.

As we can see, certain organizations, such as the National Restaurant Association, do not believe that a minimum wage increase would be the ideal solution to the issue of fair payment within the restaurant industry. In many regards, their beliefs are justified. It is extremely difficult for smaller restaurants to pay for such a substantial wage increase, even over a period of two and one-half years. However, critics of this idea claim that larger organizations, including the larger chains of restaurants, can pay for these wage increases, and have organized for the application of a \$15 an hour minimum wage (Greenhouse. CNBC).

This request has caused uproar amongst industry officials, especially within the fast food industry. They suggest that a sixty-seven percent price increase would defeat the concept of fast-food, claiming that prices for the consumer would rise dramatically. In addition, there are fears that employment would also be impacted, as workers would have to be laid-off in order to compensate for the increased wages. Stephen Caldeira, of the International Franchise Association, estimated that \$15 an hour wages would result in

twenty-five to fifty percent increases in prices. “It would definitely hurt the consumer...Increasing the cost of labor would lead to higher prices for the consumer, lower foot traffic and sales for franchise owners and ultimately lost entry-level jobs” (Greenhouse. CNBC).

Other sources do not believe the consumer would be as negatively affected, that the increase in prices for the consumer would not be as substantial, and that there would, in fact, be several benefits to such high wages. David Neumark, an economics professor at UC Irvine, claims that one advantage would be that higher wages would result in saved money for the government, and that workers would likely be less reliant on aid programs such as food stamps (Greenhouse. CNBC). However, even Neumark and other professors are concerned about such drastic wage increases because so few studies have speculated the impacts of such a substantial wage hike and its relation to such a large group of individuals (Greenhouse. CNBC).

The result is that there is a collective concern that such a wage increase, if enacted, would theoretically impact one group in a positive way-providing higher wages, but potentially impact another group in a negative way-adding to consumer costs. Whether or not the wage increases should be enacted depends on one question: do the benefits to one group outweigh the harms to the other? Perhaps, in light of the complicating factors of what degree of payment is fair to both parties, it would be more appropriate to consider other ways in which employees may benefit.

Benefits such as time-off, insurance, 401Ks, or stock options for most restaurant workers are not standardized. They almost always vary from restaurant to restaurant, even for the same position (foodservicewarehouse.com). It is uncommon for lower tier workers, such as waiters, dishwashers, and line cooks to receive paid time off of work or major insurance coverage. These are usually reserved for upper tier personnel, although there are certainly exceptions to this. Long-term benefits such as 401Ks are extremely uncommon due to the comparatively high turnover rate of restaurant employees and that the typically younger workers may not be wishing to make a career out of restaurant work. The same can be said for stock options, which are typically reserved for the most upper echelons of restaurant corporate ladders.

There is an exception to this, however. In 2000, a bipartisan bill was passed in order to amend the *Fair Labor Standards Act*. This amendment allows, but does not necessarily require, restaurant owners to offer stock options to their employees, assuming such options do exist. (foodservicewarehouse.com). As wonderful as stock options may seem, however, they are not being implemented in a way that solves the greater problem. This, and other benefits, are not consistently regulated and are, in some cases, completely disregarded.

In 2010, the Restaurant Opportunities Centers United (ROCUnited) published a report which revealed that ninety percent of restaurant staff in the United States are not offered health insurance or paid sick days. Additionally, some sixty-seven percent of

workers go to work sick while thirty-eight percent have reported being forced to work off the clock and not receive any pay for their time worked (Black. Washington Post). There are additional statistics which are of concern as they reinforce the flaws in the existing system.

The Restaurant Opportunities Centers United reported that twenty-one percent of restaurant workers live below the U.S. poverty line. It has additionally been reported that an estimated forty-four percent of tipped workers (including but not limited to restaurant workers) are educated at the college level and that the median age of these workers is 31 years old (ROCUnited). From this we can infer a number of resulting issues. These are at least semi-skilled and trained employees. If the median age is 31, these employees are likely at the age when they will be starting families, if they have not already. Even a small family cannot be expected to survive on such inconsistently given benefits in addition to minimal payment. It should be noted that this median age is not the same as an average. There are high and low ends of employment ages for restaurant workers. The industry still has a reputation for employing consistently younger employees than most other industries.

That said, across the industry, extending to servers, cooks, dishwashers, etc., the median pays are consistently low- \$18,000-\$20,000 yearly (bls.gov). This is well below the 2012 U.S. annual median wage for all workers; \$34,750 per year (bls.gov). This data, though a mere representation of the greater issues, serves to express the negative impact

of such an inconsistent and imperfect system of employee treatment. However, there is groundwork from a variety of different sources that dictates how certain things, such as employee handbooks, can and should be drafted. A number of industry texts are extremely critical of how employees are treated within the industry.

One such example, *The Restaurant: From Concept to Operation* clearly outlines how employees should be interviewed, selected, hired, trained and treated in accordance with current laws. While most of these guidelines dictate the proper training of a given team of employees, they also outline the various laws that employers are required to follow. These include, but are not limited to Civil Rights laws, Equal Employment Opportunity laws, Americans with Disabilities laws, and others.

Even prior to the creation of these laws, there were guidelines in place to solidify some forms of proper work environments for restaurant employees. The 1945 publication *How to Get and Keep Restaurant Employees*, has devoted a chapter around “How to Keep Employees Happy.” The writer acknowledges the fact that “employees want good working conditions...When an employee finds that his job does not measure up, he becomes dissatisfied and loses interest. Without interest, even the most unskilled job will suffer in both quantity and quality of work done” (Curtis. Dahl 64-65). The writer has clearly determined that, as each employee represents a piece of the greater machine, their wellbeing should be preserved, lest the machine fail. The writer goes on to mention that it is expected that employees want, among other things, equal pay for equal work, fairly

divided work, and “a fair compensation policy includ[ing] something beyond merely paying certain minimum wages” (Curtis Dahl 65).

Even this somewhat dated example proves that there are standards and laws that dictate, to some idealistic degree, how restaurants should be run. We see these laws today in the forms of the *Fair Labor Standards Act*, which establishes rules regarding minimum wage, overtime pay, detailed recordkeeping, and child labor laws. Another example of extreme importance within the industry is the *Occupational Safety and Health Act*, which lays down rules for safe working environments, rest periods, meal periods, protective equipment, medical supplies, and hazard communication. Lastly, the *Equal Employment Opportunity Commission* is instrumental to the restaurant industry in that it makes it illegal to discriminate against any protected criteria of *Title VII of the U.S. Civil Rights Act*, especially regarding the facets of hiring, firing, compensating, recruiting, and providing benefits to employees.

While all employees have the right to file if these rights are violated, there are complications to consider when we examine how these rights apply to the industry’s undocumented employees. It is here when the existing laws and inconsistent standards regarding compensation, payment, employment, and benefits may be disregarded or ignored for the sake of efficiency or profit. The results of these actions negatively impacts employees, as their treatment and payment may be further jeopardized.

Consider the *Immigration Reform and Control Act of 1986*. This law “makes it illegal for employers to employ undocumented aliens” while stating that “it is the employers responsibility to verify the prospective employees” legal status and right to work in the United States” (Walker 332). While this law is intended to ensure that undocumented immigrants are not employed, the result is far different. In 2010, two thousand and seventy-three businesses were investigated by Immigrations and Customs Enforcement, on the grounds that they were employing undocumented immigrants (Kershaw. New York Times). In 2008, the Pew Hispanic Center estimated that of two and a half million chefs and cooks alone, twenty percent are undocumented. (Kershaw. New York Times). This pattern continues throughout the restaurant industry, resulting in the conclusion that a substantial portion of industry workers overall are undocumented.

How is this a problem? Some would argue that undocumented immigrants need jobs as much as anyone else. This may be true, but they are being put in a position where they can be taken advantage of to the same degree or more than an American worker. As one anonymous Manhattan restaurateur claimed “We always, always hire the undocumented workers...it’s everybody in the industry. First, they are willing to do the work. Second, they are willing to learn. Third, they are not paid as well. It’s an economic decision. It’s less expensive to hire an undocumented person” (Kershaw. New York Times). It is very easy for an undocumented worker to be hired. The restaurant owners may turn a blind eye to a lack of necessary documentation, and in turn they will usually

pay in cash to a worker who is theoretically less likely to question a lack of payment or benefits, lest he or she be threatened with deportation.

This is not to say that the employer can hire workers without risk to their own business. If Immigration and Customs Enforcement finds a restaurant guilty of having hired undocumented workers, the results can be disastrous. Fines ranging into the millions are common, as is jail time, legal fees, negatively impacted restaurant image, or complete closure of the offending establishment. This means that restaurateurs must be very careful in order to ethically make profits. However, profit margins amongst almost all restaurants are dangerously thin once factors such as overhead are taken into account, and it is those restaurants that are efficient, even stingy, down to every detail that survive the longest. As Joe Bastianich, the business partner of celebrity chef and restaurant owner Mario Batali, believes “You have to appear to be generous, but you have to be an inherently cheap f**k to make it work” (Wilson 182).

Based on the plight of documented and undocumented restaurant workers, the ethical question that we see coming into play is: how efficient is too efficient? Is it right to limit the payment and benefits that my employees receive in order to maintain that slim profit margin? Do I risk it getting slimmer, or even lose money, by providing more for my employees? How else can I maintain profits without harming my employees?

Looking beyond the issue of efficiency, the American system has a well-documented history of various disputes and injustices across the restaurant industry;

ranging from the single restaurants to massive chains. Some of these major issues can be found in the following cases. Upon review, we will learn that these cases reveal a clear need for changes in the way restaurant employees are treated in the U.S.

Various forms of wage theft, the subtraction by management from employee wages, are surprisingly common within U.S. institutions of all shapes and sizes. Beginning at the smaller end of the spectrum, there are occurrences within a number of smaller single-location restaurants. One anonymous New York restaurant is, as of August 2013, being sued for failing to make minimum wage payments and overtime payments in accordance with the *Fair Labor Standards Act*, in addition to failing to distribute gratuities (tips) correctly amongst various staff members (Fitapelli, Schaffer. FS Law Firm).

A few years prior to this lesser-known case, celebrity chef Mario Batali and his business partners became embroiled in a lengthy lawsuit in which several workers from a number of his restaurants across New York claimed that a consistent pattern of ‘tip skimming’ had occurred. They claimed that Batali’s restaurants frequently took between four and five percent of tips from servers in order to pay executive salaries (Satran. Huffington Post). A settlement of over five million dollars was reached in order to cover damages to employees. The irony of this massive settlement and dispute is that one of Mr. Batali’s business partners is Joe Bastianich, who earlier gave his own theory regarding the operation of a successful restaurant. As he said, “You have to appear to be

generous, but you have to be an inherently cheap f**k to make it work” (Wilson 182). One might argue that stinginess for the sake of restaurant survival does not constitute taking a percentage of your employees’ tips to pay for salaries.

Moving away from smaller restaurants, we see similar issues occurring within entire restaurant chains. In 2010, a case was brought to the U.S. Supreme Court in which the chain, *Applebee’s* was accused of underpaying more than 5500 of its workers, the majority of which relied on tips for wages (Stohr. Bloomberg Business Week). This dispute again brought U.S. minimum wage laws into play, as there were evidently a number of discrepancies regarding the official definition of a tipped employee and whether or not a number of affected workers were being paid appropriately in regards to their work.

To be clear, a tipped employee, as defined by the U.S. Department of Labor, is any employee “who customarily and regularly receive[s] more than \$30 per month in tips” (U.S. Department of Labor). Employers are likewise prohibited from using employee tips for any purpose other than tip crediting. Tip Crediting was one of the key disputes of the *Applebee’s* case. Tip crediting is defined as when an employer “take[s] a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (which must be at least \$2.13) and the federal minimum wage. Thus, the maximum tip credit that an employer can currently claim under the FLSA (Fair Labor Standards Act) is \$5.12 per hour (the minimum wage of

\$7.25 minus the minimum required cash wage of \$2.13)” (U.S. Department of Labor).

Applebee’s does take such tip credits from its tipped workers, which is theoretically acceptable, until another issue is considered.

There is another factor within the full outline of what defines a tipped employee. One such rule is the dual-jobs rule. The dual-jobs rule, again according to the Department of Labor is:

When an employee is employed by one employer in both a tipped and a non-tipped occupation, such as an employee employed both as a maintenance person and a waitperson, the tip credit is available only for the hours spent by the employee in the tipped occupation. The FLSA permits an employer to take the tip credit for some time that the tipped employee spends in duties related to the tipped occupation, even though such duties are not by themselves directed toward producing tips. For example, a waitperson who spends some time cleaning and setting tables, making coffee, and occasionally washing dishes or glasses is considered to be engaged in a tipped occupation even though these duties are not tip producing. However, where a tipped employee spends a substantial amount of time (in excess of 20 percent in the workweek) performing related duties, no tip credit may be taken for the time spent in such duties (U.S. Department of Labor).

And that was what was occurring at *Applebee’s*. A number of workers filed suit as far back as 2006, claiming that they had performed a number of duties, yet were still paid a

reduced tipped wage of \$2.13 an hour. They claimed that they “were/are directed or permitted to perform duties that would not generate tips such as general maintenance and preparatory work in excess of twenty percent (20%) of their shift without paying them at least the minimum wage” (Fast v. *Applebee’s*. U.S. Department of Labor). The general consensus following this litigation is that *Applebee’s* was in paying employees less wages per hour worked under the guise of tip crediting.

These few occurrences that we have discussed are but a handful of other employee rights violations within the American restaurant industry. There are many more, exploring a wide range of scenarios and circumstances. As mentioned, some receive attention while others do not. What these cases, in addition to the statistical data presented in the beginning of this thesis, serve to prove is that the American restaurant industry has a major problem in regards to the consistent upholding of employee rights. One of the major factors to consider is that certain aspects of the industry are only being made worse by the various social/workers’ rights issues of recent debate (i.e. our problematic minimum wage laws).

The unfortunate result is that amongst the many hundreds of thousands of restaurants in the United States, whether they are chains or not, there are a variety of owners and managers that are making a variety of different decisions as to what they believe is best for their company, or even themselves. The employees are bearing the unfair treatment we have discussed as a result of the decisions of management and

outdated or loosely enforced labor standards, especially as they apply to this particular industry. However, it is a major issue of concern when a reported ninety percent of restaurant employees are not offered health insurance or paid leave (ROCUnted). It is equally troubling that sixty-seven percent of workers go to work sick (in proximity to the consumers' food no less) while thirty eight percent have been forced to work off the clock without compensation (Black. Washington Post). Clearly, what we are starting to see is the need for a massive overhaul of the industry and the way it is regulated in regards to employee treatment.

Section 2: Are French Employment Structures More Just?

Having discussed some examples of the injustices which restaurant workers are facing in the United States (there will be plenty more though), I would like to establish the need for us to compare the United States' relationship with restaurants and their employees to the same relationship as exhibited by the French. These two cultures: major figures in the restaurant industry, share a love (albeit not necessarily identical) of food and restaurants. However, these two cultures, as we will learn have very different methods and ideals regarding the operation of restaurants and the treatment of employees. In this regard, by examining these differences we may be aided in finding a solution to the general issue of American restaurant employee treatment. This is why the French example was selected in this matter.

As mentioned earlier, the French are widely considered to be the forerunners of the concept of the modern restaurant; believed itself to be a direct byproduct of the French Revolution. As the French concept of the restaurant developed, so too did the manner in which employees were to be treated. Firstly, a French work week at its minimum, is thirty-five hours (for comparison, the U.S. work week is stated to be forty hours), achieving – through collective agreements – an absolute maximum of forty-eight hours (Gola. CFE.org) – for all employment sectors, including the hospitality and restaurant fields. Additionally, overtime in incremental payment levels is legally required

after the thirty-sixth hour of work up to the forty-eighth. Overtime aside, other benefits such as increased nighttime (between 9:00pm and 6am) payments, paid leave, sick leave, and daily as well as weekly “rest-periods” are all legally required within all French employment sectors (expatica.com).

Theoretically, these requirements make it so that French employees are not only maintaining fair and manageable schedules, but are receiving a substantial amount of compensation and benefits. As could be expected, however, these benefits in relation to hours worked make French employees extremely expensive to hire, more so than in America, especially when France’s (roughly) \$12 an hour minimum wage is taken into account (Boesler. Business Insider).

There are other conflicts to consider, especially regarding French and American wage and payment laws and regulations. One such example is that tips do not impact minimum wages in France, as they do in America, where the federal \$2.13 tipped minimum wage law exists. In France, tips are usually factored into a patron’s restaurant bill automatically (15% is the going rate), although it is customary to leave a little bit of an extra tip as a “thank you” (Daly. Huffington Post).

Outwardly, it would seem that the French system of employee treatment is automatically more ideal; employees work fewer hours, get paid comparatively more, and have a variety of universal benefits in place for their own protection. However, this system is not without its critics or its flaws. As mentioned earlier, all of those benefits

make employees much more expensive to hire. This can dramatically impact profit margins for French restaurant owners. We are already aware of how slim the profit margins for restaurants in general are. This may also impact employment as it could be difficult to hire more necessary employees if their initial minimum wage is so high.

However, one could also infer that an employee who is aware that his or her services are not cheap might be willing to perform more efficiently or productively. It would also be possible to simply train employees in such a way that they perform with such efficiency or productiveness as well. This appears to have been the general case in France and a number of other European countries, where the majority of those countries whose employees work comparatively fewer hours are in fact more productive in terms of GDP per capita (McDonald. BBC).

Of course, such statistics are not the 'be all-end all' in terms of employee productivity. France, like any other country, has had its own share of economic ups and downs and its long-standing tradition of keeping employee hours comparatively low has led to other countries, including the U.S., to question their system or refer to their employees as downright lazy. Indeed, some of these accusations may be somewhat justified as the French international economy has a reputation for being extremely under-competitive and critics have stated that if the French want to see economic recovery, they had best make radical changes to their labor laws. For contextual sake, "the average French employee worked just 1,476 hours in 2011, according to the French labor

department. In contrast, workers in the U.S. [worked] 1,704 hours per year, 21% more than their counterparts in France” (Sanati. CNN Money). If the employees are very efficient and productive, then the hourly data may not matter as much.

However, this was not the case for France. “Labor productivity...in the U.S. from 2001 to 2011 grew twice as fast as it did in France. That means the U.S. will most likely widen its lead over France in the years to come unless [France] makes some big changes to its labor laws” (Sanati. CNN Money). This data, when combined with the hourly data mentioned above, points out that the French system not a perfect system either.

With that in mind, the action of simply cutting-and-pasting the French system onto our own economy and culture would be highly ineffective. Solving the problem of employee treatment is far more complex than simply saying “our system is wrong – their system is right, let’s use their system.” Looking at one such factor, the 35 hour labor law that exists in France, we can observe the potential for small businesses, most notably restaurants, given their aforementioned low profit margins, to be negatively impacted if employees find themselves working overtime, and that’s not taking into account the fact that minimum wage is already \$12 in France.

The attempted application of such a system in the U.S. would likely result in a massive socio-political battle that is not being seen as much in France. This is due in part to the fact that labor unions are considerably more prevalent in French society and its government than they are in the U.S. Indeed, this can be partially proven by the fact that

France spends an unmatched 2.6% of its GDP on labor market programs, compared to roughly 1% within the U.S. What this means is that France's government has made the decision to allot more of their available GDP to the employment programs that we saw earlier (paid leave, 35 hour weeks, social security programs, and the like), than the U.S. has.

But does this increase automatically make for happier employees? The answer is more complicated than we may be led to believe. Despite all of their supposed benefits, higher payments, and shorter working hours, French employees are not necessarily happier. The French polling organization, BVA, conducted a poll of workers opinions on company management. While countries such as Germany and the U.S experienced roughly two-thirds of polled employees claiming that they had friendly relations with their managers, less than one-third of French workers claimed such friendly relations (Schumpeter. The Economist). In fact, the same poll claimed that 40% of French employees actively do not like their upper management.

From this, we can infer two concepts. First, if there is such dissatisfaction in French business, we can likely assume that this dissatisfaction can extend to the restaurant and hospitality industry, and that many of the same institutional problems that occur within the American industries are in fact occurring within the French industry as well. We will elaborate on this later. Secondly, simply having all of these benefits and higher payments in place within a society does not immediately lead to the direct

betterment of any groups of employees. While something may seem fully beneficial on paper, in practice, a ‘better’ system such as what the French are using may in fact, be subject to the same flaws as any other system.

Based on these two inferences, we realize that the French system, once it is applied to the restaurant industry, may be experiencing the same social/structural problems as the American system. I have not elaborated on examples of any cases in which French employees experienced negative treatment similar to the examples I presented in Section One. This is not to say that these occurrences do not occur. It is highly likely that they do as they would anywhere else to varying degrees. France experiences similar factors that impact its own restaurant industry: illegal immigration, the employment of said immigrants and the consequences that come with that, high labor/material overhead costs, mismanagement, or anything as simple as human greed in regards to profiteering. Indeed, a noticeable issue among French restaurants has been the conflict between the overhead costs of food and employees versus the desire for profit. Such was the case when a substantial number of France’s restaurants revealed that a number of their menu items were, in fact, industrially pre-prepared frozen meals.

Such meals would theoretically remove the need to purchase fresh ingredients and the trained personnel to cook them, instead replacing several employees with one person to man the necessary microwave to reheat the prepared meals. As noted in one article, “Businesses are making an economic choice,” said Hubert Jan, a representative of the

French restaurant and hotel union UMIH. Labor costs including taxes have increased 40 percent since 2000, accounting for about 45 percent of a restaurant's costs, while raw materials prices are rising. "So kitchens don't have as many employees," he said. In addition, "there is a dearth of skilled kitchen workers and people aren't willing anymore to rise at 2 a.m. to make bread or pastries" (Alderman. New York Times). So, with such factors impacting the restaurant industry, it makes sense why so many restaurants in France (and undoubtedly America and many other countries), are choosing this more economically palatable option.

Food issues aside, it has proven somewhat of a challenge to find any examples (again, I am not saying that they do not exist) where French restaurant employees were treated in a way that seemed at all unfair. Now, why is this? Surely French employees may experience underpayment, wage theft, or any of the issues of poor employee treatment that we discussed earlier. We have to review the French system and fashions for employee treatment in order to best answer this question. What we will learn is that the French have yet another unique factor of employment that acts in a way to completely discourage poor treatment of employees.

We have already discussed the various benefits that French employees receive (higher minimum wages, paid sick leave, predetermined tip percentages, etc...), but we have yet to consider how employees are actually inducted into their work. The French stress the importance of contractual agreements in almost all forms of employment.

While there is no set format to such contracts, French law requires that nearly every specific detail of a person's employment and agreement with their employer be documented (in print) and archived for future use. This likewise implies that employees must be informed in writing of certain factors of their employment.

Such factors almost always include: identities of the parties; place of work; title, grade, nature or category of the work; date of commencement of the contract; expected duration of the work if it is a temporary contract; amount of paid leave; length of periods of notice; information regarding the salary and the frequency of its payment; working hours; collective agreements governing the conditions of employment (Gola.CFE.org). This is important to have in writing because if any of these factors is violated, the employee or employer can review the archived document and make resolutions as necessary. Or, if that fails, the offended party may take the other to court with said documentation.

This would be ill-advised, at least on the part of the employer. As one French employment article stated, "the French worker is protected on all sides and it is always the employer who is looked upon with suspicion" (Expatica.com). Perhaps this is why there are fewer readily available examples of employee-employer conflicts in restaurants. The employers are heavily pressured by French laws to follow the rules and are placed under much scrutiny, should they fail to do so. Therefore, perhaps few cases do end up

going to higher court in light of the fact that the employer is almost certainly placed in a losing battle.

I have shared with you the various differences, similarities, and conflicts between the French and American theories of employment and their treatment of restaurant employees (or employees in general, given the bigger picture involving the hiring process and minimum wage laws). I have expressed my belief that neither system is perfect. Additionally, completely replacing the American system of employee treatment with that of the French is almost entirely infeasible. I have elaborated on a mere fraction of the examples of poor employee treatment in American restaurants. So, what does it all mean?

We know that the French, on paper, pay their employees a higher minimum wage than is paid in the U.S.; \$12 compared to \$7 (or \$2.13 tipped). They work fewer hours (only 48 at the absolute maximum per week). Of course, they receive more benefits as required by French law; and, by documenting all employee/employer agreements, provide what could theoretically be called better protection for employees. However, this has not resulted in a perfect system. Employees are not automatically happier, as we've learned. There are still problems revolving around concepts such as illegal immigration, personnel training, and the application of pre-made foods as an economic decision. So while we know that there are many seemingly positive aspects of the French methods of employee treatment, we are now aware of some of the negative aspects as well. With this

in mind the relationship/contrasts between the French and American restaurant industries becomes even more complex.

It is tempting to suggest that French principles and theories of employee treatment and minimum wages be incorporated into the American concept; however, this is easier said than done. Even looking at the single concept of minimum wage, the French minimum wage being close to \$12 an hour, it is difficult to see how such an increase over the \$2.13 an hour tipped minimum wage could be considered possible. Calling for such a wage increase will almost certainly become a social justice question as it is now with the suggested increase of the minimum wage to \$15 an hour. The difference between those two issues, however, is that French principles would be introduced that would radically modify American employment and labor theory, not just the minimum wage.

It is equally important to consider the cultural values that guide both the U.S. and the French, as these cultural values are ideally reflected in the laws of those countries. Take for example, the American slogan of “life, liberty, and the pursuit of happiness.” When we consider these principles, we see more emphasis on the rights of the individual. Whether or not those rights are being violated is another issue entirely. These values are not represented in the same manner for the French, however. The French slogan, “liberty, equality, and brotherhood,” carries a much different meaning than the American slogan. When the terms equality and brotherhood are considered, the emphasis may appear to focus less on the individual and more on the collective body of people. To some, this may

be a socialist perspective, but this is quite debatable. The issue to consider here is that these core principles for each country are very different and carry different theories on how, generally, people should be treated, and how laws should be developed in coordination with that treatment. That said, whether or not these principles are being followed appropriately is another issue entirely.

In light of the fact that these two systems are substantially different it is still obvious that some action must be taken. It must be taken into account that nearly any level of change from the status quo will be met with opposition from some party or another. However, the system of employee treatment within the American restaurant industry cannot be left as it is. It has been left within its own imperfect state for too long, much to the detriment of several thousand employees, as we have learned through the statistics and evidence that has been provided. This issue has evolved beyond a revelation of the discrepancies within the American restaurant industry in comparison to that of the French and has now become a question of ethics. What ethical actions or principles should be considered and taken in order to alleviate the plight of the American restaurant worker?

Section 3: Creating More Just Employment Structures

We have determined that providing a solution to the plight of the American restaurant worker would likely involve changing the employment structures within our own country. With that notion in mind, we are presented with two primary options. One general option would be to change the employment structure to any given degree – no small task regarding the politics of doing so. The other general option is to leave the structure as it is, injustices and all, and allow individual restaurant owners and employees to find their own solutions. In order to evaluate either option, we must first consider the ethical reasoning behind those two options.

It is my belief that two commonly polarized systems of justice, Libertarianism and Rawlsian Liberalism, would offer the most diverse range of potential solutions or approaches to the issues that have been brought forth regarding ethical employment in the American restaurant industry. Since we may only call for either minimal reworking of the American employment system in a way that benefits individual liberty at the expense of no one, or some given degree of reworking of the American employment system that benefits collectives of individuals at the expense of a few, we are left with somewhat polarized solutions in and of themselves. This is what led me to choose to evaluate the principles of Libertarianism and Rawlsian Liberalism as solutions to this problem. Of

course, it is necessary to explain how each of these principles would pair with the given solutions, polarized as they are.

Let us look first at Libertarianism. Libertarian philosophy can be described in a number of ways. At its core, Libertarian philosophy “begins with the idea of self-ownership. Each person owns himself or herself. Therefore, each person has the absolute right to control his or her own life, body, speech, actions, and honestly acquired property” (Bergland 21). This particular definition of Libertarian ideals was cited from prominent Libertarian spokesman David Bergland’s text *Libertarianism in One Lesson*. He goes on to state that “no one can authorize another person to violate someone else’s rights... I cannot authorize my representative in government to violate the rights of another no matter how much good I think it might accomplish” (Bergland 21).

This automatically means that the Libertarian argument, at least according to David Bergland, does not accept any doctrine that would call for more government intervention on the issue of employee treatment. Other arguments, by and large, come to the same consensus – certainly in regards as to how the life of the individual should be carried out. However, there are some varying degrees regarding government involvement that should be considered.

A fairly extreme example comes from Libertarian writer and researcher Aaron Ross Powell, who states that “the Libertarian vision is not to have our particular politics win out. Instead it is to do away with politics, to limit the reach of the state to the

minimum necessary to allow everyone... to live the sort of lives they cherish. The Libertarian dream is to reduce politics to something so minor that it isn't worth investing in. As Libertarians we care about politics precisely so that, we hope, some day we can turn our attention to more valuable things" (Powell. Libertarianism.org).

A more optimistic view of some governing force comes from Libertarian writer and CATO Institute vice-president David Boaz, who claims that "We have less conflict when we have fewer specific rules about how we should live — in terms of class or caste, religion, dress, lifestyle, or schools" (Boaz. Libertarianism.org). Indeed, if governments are responsible for the rules we have, then Boaz may be calling for less government as well. However, he acknowledges the necessity for at least a limited presence, stating that "those simple institutions — property rights, the rule of law, a prohibition on the initiation of force — make possible invention, innovation, and progress in commerce, technology, and styles of living. When Libertarians defend limited government, we are defending freedom and the progress it brings" (Boaz. Libertarianism.org)

A key controversial concept of the general Libertarian argument is the protection of property rights. This concept typically stirs up the most debate between Libertarians and non-Libertarians (especially Rawlsian Liberals). A common Libertarian argument is that because we own ourselves, we also own our property by extension. According to John Locke, we also own our labor and its products. "By 'mixing' our labor with external goods, we can come to own those external goods too. This allows individuals to make

private use of the world that God has given to them in common” (Zwolinski. IEP. Libertarianism).

In theory, based on claims such as those which were mentioned, one would think that the Libertarian principle would be almost entirely on the side of the restaurant owners. Libertarians, in calling for “fewer rules,” consistently disapprove of government taxation and the many programs it funds as well as what they might call government intervention in employment, and the many programs that brings, including all workers benefit programs, claiming that they are, in effect, taboo. Libertarians are also consistently disapproving of the entire concept of minimum wage and any laws tied to that.

Why would this be? The outstandingly controversial Dr. Walter Block of Loyola University New Orleans claims that Libertarians are against minimum wages because such laws “[do] not compel anyone to hire anyone else. It only stipulates who CANNOT legally be employed: no one may be hired for less than the amount stipulated by law. If the minimum wage law is set at \$10 per hour, the law does not require any employer to hire any employee at that wage level. It only FORBIDS employment contracts set at \$9.99 or below” (Block. Economic Policy Journal). This is an interesting statement, claiming that the concept of minimum wage directly interferes with the contracts that may be made between an employee and an employer.

What this may result in is that in society as a whole, Dr. Block claims that unskilled laborers are eventually priced out of the market. As he states, “economists conclude that this law [minimum wage or any increase thereof] will boost unemployment for those with low productivity, and will only raise wages for them temporarily, until employers can substitute away from the factor of production (unskilled labor) now priced out of the market” (Block. Economic Policy Journal). This may result in two particular, potentially problematic issues. One such issue is that fact that some jobs essentially disappear. As Block later states,

When the minimum wage was raised from \$.40 to \$.70 cents per hour (the largest percentage increase so far) we went from manually operated elevators to automatic ones, helping high skilled engineers at the expense of the unskilled manual operators. This transition took a few years, but that was the cause. Initially, before anyone could be fired, wages did indeed rise. If the present minimum wage goes from \$7.25 to, horrors!, \$15.00, people who ask if you want “fries with” that will be supplanted by self serves and automatic machinery which will then be competitive with labor, but cannot now compete with low skilled people. Those jobs will go the same place, namely, booted out of existence, as the ones that used to exist at gas filling stations (Block. Economic Policy Journal).

Block’s concerns may seem radical, but there are relevant examples that support his theory. For example, an expensive heavy-duty restaurant-grade dishwasher can

theoretically be run by one employee, and perform the work of two or more employees devoted to the sole task of washing dishes. If the employees' wages are comparatively low, it might not matter as much. However, it becomes more economically viable for the owner to replace two or three employees who earn \$15 per hour each with an automatic dishwasher which would pay for itself in a much shorter amount of time. Multiplying this across the industry would result in a substantial number of unemployed dishwashers. That is just one example of how automation could replace potentially expensive labor and Block fears, rightly so, that cost-efficient labor replacement could take effect on a massive scale, resulting in high levels of unemployment.

The fear of the impacts of a new \$15 minimum wage are already being revealed in cities such as Seattle, Washington. This city recently introduced a \$15 minimum wage across all employment sectors, and there is already a divide between groups who support and oppose this action. One opposing group, "The Ethnic Community Coalition," has acknowledged the potential for a wide range of negative side-effects. Unfortunately, many of this ethnic coalition's concerns are mirroring those expressed by Walter Block. Such (abridged) concerns include:

- *We would need to reduce our work force and hire only highly skilled employees. Right now, we hire many recent immigrants who would not likely be able to find other work in such a competitive market. At \$15/hour, we would have to reduce our staff and only hire skilled, experienced workers.*

- *We would upgrade our technology and use machines to do some work formerly done by hand.*
 - *We would halt plans to expand our businesses in Seattle. Ethnic communities have been moving outside Seattle for years because of the city's rising prices.*
 - *We would have to raise prices on an already price-sensitive community.*
- Washington Restaurant Association's survey of 400 restaurant owners showed the wage hike would mean 82 percent of restaurants would raise prices, 69 percent would lay off some staff, and 45 percent would close business, declare bankruptcy, or close a location. (Ethnic Community Coalition. Economic Policy Journal)*

These claims reveal a number of potential problems beyond what was mentioned in the article. If large numbers of employees are replaced by automation or more skilled professionals, what happens to them? They could leave the city in search of work, but if it is not in their abilities to do this, then they may simply join the ranks of the unemployed. Or, in desperation, they may join employers who are willing to violate this minimum wage law in the interest of cheap labor. This may set the employees up to be treated more unfairly. If such employers are willing to violate payment laws, they may be just as willing to violate other laws and not treat their workers fairly.

Since we are on the subject of employees who are put in circumstances where they must work for less, we arrive at another issue of major concern. That is, the issue of

restaurants employing undocumented immigrants. As we have already mentioned, the employment of undocumented workers is extremely common in the restaurant industry because many employers consider it to be inherently cheaper to do so. The problem with this is that these workers are, in addition to those who are documented, subject to cases in which they, and their wages, are being taken advantage of. It is when we see these negative actions on the part of employers when the argument of Libertarianism (although this may extend to other philosophies) begins to run into serious challenges.

As we know, Libertarians are staunch defenders of the concept of the free market. By and large, they believe that freedom of decision making without government intervention results in better lives for all of the involved parties. As Libertarian writer Aaron Ross Powell states;

Sound economies, from the biggest multinational banks to a child's sidewalk lemonade stand, operate on the principles of private property and exchange. These concepts are the building blocks of free societies, and it is the system of countless small trades, taken as a whole, that we call "the market." It is important to note that these trades are positive sum (win-win) situations: each party agrees to a trade because they value what they're getting more than what they're giving up. And when those trades are voluntary—when nothing is preventing people from making trades or forcing people to make trades—that

results in a free market, which makes everyone healthier, wealthier, more peaceful, and more technologically advanced” (Powell. Libertariansim.org).

It all sounds wonderful, yes, but we are left with the question, “What if the free market does not always improve the lives of all?” If we look at the free market as it is applied to the concept of the restaurants, we can begin to see a number of factors that undermine the effectiveness of the free market.

Taking into account the injustices within the restaurant industry that we previously mentioned (generally low wages vs. work performed, wage skimming/theft, lack of benefits, incorrectly distributed gratuities, etc); we can see that the ‘market’ of the restaurant has several instances in which it is not a shining example of Powell’s positive sum/win-win situation for the employee and employer. It can become a win-lose relationship if an employee is working comparatively long hours or in multiple jobs and is only being paid a comparable pittance for their work, or having part of their wages stolen. This results in a violation of Libertarian ideals as a person, the employee, is having what is rightfully theirs taken away from them. If we consider that Libertarians promote ownership of the self and their own property, then any organization that steals said property is committing an injustice – violating ownership of the self – in the eyes of a Libertarian.

Knowing that these injustices are occurring however, there is very little that can be done from a Libertarian perspective to help those restaurant workers who are not being

treated properly. While the Libertarian system of ‘a minimal state,’ “one that enforces contracts, protects private property from theft, and keeps the peace” (Sandel 60), might allow the guilty employers to be punished, it does not offer any permanent changes that may better impact the overall problems within the restaurant industry. For example, minimum wage increases (or having it, really) is still out, as are any programs that would call for direct government intervention, i.e., placing any legal requirements or rules regarding work hours, benefits, pay, etc.

There are options, however, that are in line with Libertarianism. Surprisingly enough, Libertarians are not opposed to the formation of organized unions. “We [Libertarians] support the right of free persons to voluntarily associate in, or not associate in, labor unions. An employer should have the right to recognize, or refuse to recognize, a union as the collective bargaining agent of its employees. We oppose government interference in bargaining.” (On the Issues.org). As long as such unions remain as separate as is possible from the government and were freely organized, they are an acceptable option for distressed employees.

Another, arguably much simpler option that Libertarians could agree with, is to do as is done in France and provide crystal clear documentation of employee employer contracts. Such contracts would theoretically be freely negotiated between both parties, and would provide clear information for courts in the event of a legal crisis the likes of which we discussed earlier. From such contracts, workers would be free to negotiate

terms of payment, benefits, scheduling, and many other factors, and it would all be ideally freely negotiated and in writing, sans government interference.

We can conclude, based on these examples of what pure Libertarians agree and don't agree with, that while the way employees are being treated is not necessarily appropriate, there are not many large scale solutions to the problems and injustices of employee treatment that would involve government intervention except in very limited ways. Further problems are also evident within the Libertarian argument as a whole. Libertarians may have core values as we mentioned earlier, but some values allow for varying, if any, levels of government involvement. The most hardline Libertarians may even call for next to no government which would remove many of the social foundations that are part of this country (minimum wage, social security, employee protection programs, and many others), although there are plenty of Libertarian counterarguments against this. Regardless, it is very difficult for me to endorse a purely Libertarian solution to the issues surrounding employee treatment in the restaurant industry. Perhaps a view of justice that calls for more government intervention is necessary.

We find this view in what is widely considered to be the polar opponent to most Libertarian arguments; Rawlsian Liberalism. Rawlsian Liberalism, referring to the theories developed by American philosopher John Rawls, develops the concept of justice by asking us "what principles we would agree to in an initial situation of equality" (Sandel 140). Rawls essentially asks us to write for ourselves and society as a whole a

social contract, according to a translation by Harvard University professor and author Michael Sandel;

Suppose we gather to choose the principles, we don't know where we will wind up in society. Imagine we choose behind a 'veil of ignorance' that temporarily prevents us from knowing anything about who in particular we are. We don't know our class or gender, our race or ethnicity, our political opinions or religious convictions, [-] whether we are healthy or frail, highly educated or a high school dropout, born to a supportive family or a broken one. If no one knew of any of these things, we could choose, in effect, from an original position of equality. Since no one would have a superior bargaining position, the principles we would agree to would be just (Sandel 141).

Rawls is asking us all to consider that, assuming we were all equal – of course we know we aren't, we have to put that fact aside momentarily – what social principles would we choose to better our own lives while maintaining that equality? Of course, this is not a very easy question to answer, or one that people may be willing to answer. Ideally, having no prior knowledge of any differences in status, we would all agree upon principles that benefitted everyone in general but would be somewhat skewed towards those who could be described as 'the least advantaged' (Constitutional Rights Foundation-USA.org).

John Rawls refers to this as his “Justice as Fairness” Principle. In order for this principle to work, two things must occur. 1) “each person must have the right to the most extensive basic liberty that is compatible with the same liberty for others” and 2) “inequalities of wealth are justified to the extent that they work out to the advantaged of the disadvantaged; and with the proviso that their reduction or elimination would reduce or eliminate this advantage” (Reese 479). If it sounds to you, the reader, like Rawls is suggesting government intervention in our social matters, well then you would be correct. Depending on the severity of whatever injustices or disadvantages we are talking about, Rawls could theoretically go as far as to suggest that the sum of the gains, economic or otherwise, made by those who had a better advantage may have to be distributed amongst those who do not have what could be considered a fair advantage.

This is where Rawlsian theory comes into conflict with the Libertarian concept of property rights. Rawlsian Liberals are not necessarily opposed to the idea that a person should pursue excellence (higher wages, better financial wellbeing). However, Rawls does argue that there may be a point at which people may not deserve the maximum financial benefit of their own, or certainly others’, physical labor or input. To put it in perspective, Rawls might not be comfortable with corporate entities (such as the executive boards of McDonald’s or Darden restaurants) earning millions of dollars while their employees, who are performing the labor, are earning a comparable pittance. Of course, a Libertarian would say otherwise, that the top tier executive boards and the low

tier employees freely negotiated their salaries, work input, and other factors, and the arguably disproportionate exchange is perfectly acceptable. Rawls is strongly in opposition of this way of thinking.

It is necessary to cite, however, that Rawls does not advocate for complete Egalitarianism. Egalitarianism in this case refers to the more-or-less complete equalization of property, status, and financial holdings “throughout the various domains of [peoples’] lives” (Tomasi 18). As mentioned previously, inequalities can still be justifiable, as long as all relevant parties are benefitting from the given scenario. However, Rawlsian Liberal theory supports the idea that a governing body has the authority to become directly involved in personal and corporate financial matters.

A Libertarian, however, is completely against this. For a Libertarian, control over one’s personal finances represents a basic liberty that a governing body has no business intervening in. As Roland Tomasi states, “diminishing personal agency in economic affairs—no matter how lofty the social goal—drains vital blood from a person’s life. When private economic freedoms are curtailed, Libertarians claim, people become in some important sense less free. People in this tradition also emphasize property rights for instrumental reasons: property rights are linked to other basic rights, promote the creation of social wealth, encourage personal responsibility, and mitigate the dangers of concentrated political power” (Tomasi 12).

As far as this concerns the restaurant industry, Rawls' principles thus far would almost certainly advocate for many of the currently existing concepts, such as minimum wage, workers protection programs, and the like, though I believe he would likely acknowledge the injustices within the industry as well, and in response would call for more government intervention in the matter. Rawlsian principles would almost certainly call for an increase in minimum wage, foster the formation of workers' unions, enforce universal healthcare, and reinforce employment contracts for legal purposes. His principles would attempt to alleviate anything that we had previously deemed unfair to restaurant workers or employees in general.

But, again, many of these actions would call for government intervention, and may unnecessarily intrude on the rights and freedoms of employers and employees. This is, not surprisingly, a major area where Libertarianism and Rawlsian Liberalism begin to clash. Libertarians would typically choose to leave peoples' inherent social advantages or disadvantages as they are, while a Rawlsian would prefer to 'level the playing field,' so to speak. Typically, a Libertarian on almost any level would disagree with leveling said field. Such is what economist Milton Friedman claimed in *Free to Choose*.

Life is not fair. It is tempting to believe that government can rectify what nature has spawned. But it is also important to recognize how much we benefit from the very unfairness we deplore. There's nothing fair... about Muhammad Ali's having been born with the skill that made him a great fighter... It is certainly not fair that

Muhammad Ali should be able to earn millions of dollars in one night. But wouldn't it have been even more unfair to the people who enjoyed watching him if, in the pursuit of some abstract ideal of equality, Muhammad Ali had not been permitted to earn more for one night's fight...than the lowest man on the totem pole could get for a day's unskilled work on the docks? (Sandel 165)

Personally, I can only agree with this statement to a point. Life is certainly not fair. Employees in all sectors have the potential to be under – or over – paid in relation to their skills and qualifications. Employees may be working multiple jobs to support families. Managers may be withholding wages, tips, or other benefits that an employee rightly deserves. This is most definitely unfair, but that does not mean that it needs to happen. Such is how John Rawls directly responded to Friedman's comment.

We should reject the contention that the ordering of institutions is always defective because the distribution of natural talents and the contingencies of social circumstance are unjust, and this injustice must inevitably carry over to human arrangements. Occasionally this reflection is offered as an excuse for ignoring injustice, as if the refusal to acquiesce in injustice is on par with being unable to accept death. The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts (Sandel 165-66).

So, while these injustices within the restaurant industry and all others may exist, it is necessary that something be done. Both the Libertarian and Rawlsian principles propose conflicting theories of improving the situation of poorly treated employees. However, I believe neither theory could be fully adopted without a radical change in our government. With that in mind, I believe our government is currently more in line with Rawlsian principles, and any solution to the problems surrounding restaurant employee treatment in this country, would best be drawn from a primarily Rawlsian perspective. The Rawlsian perspective, I believe, may be logistically more feasible to put into action or to develop a solution from. It would be easier to add new programs or legislation that would theoretically protect workers via government intervention. Varying Libertarian perspectives may call for changes which may not be effective enough, while more extreme viewpoints (such as those that call for an abolishment of minimum wages and tax-funded programs) might be effective but would call for radical restructuring of institutions that have stood in this country for generations. Simply put, they would be extremely difficult, if not impossible, to put into action in comparison to Rawlsian suggestions.

While I would certainly support and agree with the Libertarian principles by which contractual agreements between employees and employers should be well documented and enforced, in addition to the belief that employers who fail to treat their employees appropriately should be punished, I cannot endorse the more extreme

examples of Libertarian ideals. In light of the problems at hand, this issue, I believe, does call for a degree of government intervention on the matter, with the introduction of clear and concrete rules for restaurants, and other sectors, regarding such issues as minimum wage, proper gratuities distribution, proper benefits, clear contracts, and a clear system of reprimanding those who fail to uphold these rules.

Section 4: Conclusion and Recommendations

Over the course of this thesis, we have acknowledged that a great injustice towards the restaurant employees in this country is taking place. As mentioned, this is an industry which employs 13 million people – ten percent of the U.S. labor force (National Restaurant Association). Such people in any level of the industry actively serve our needs whenever we choose to eat at any establishment.

We have identified many, albeit a small fraction of the larger sum, of the institutional problems that plague the American restaurant worker (although he or she is not necessarily alone in his plight). The problems which I personally believe require immediate attention are those regarding wages (or lack thereof), benefits that should be included in the industry and the consistency in which payment and benefits are monitored and regulated. Also of note is how those benefits should be applied in regards to the undocumented immigrants who make up a significant portion of the restaurant employee base.

However, the restaurant industry includes many industries, some that employ only a few people at one location, and others who employ thousands of employees on an international scale. Obviously, because of the range of sizes of restaurant operations, it would be extremely difficult for one solution to treat an individual restaurant the same

way it would an international chain; therefore, any solution must take chain size (number of employees/establishments or level of operations) into account.

The institutional problems and injustices do point out the flaws of the restaurant organization as it exists in the United States. These problems, as mentioned earlier, all stem out of our lack for a consistent, developed framework for how restaurants should be operated and how workers should be treated. Clearly the system must be modified, as we discovered that other countries have developed means that, at a glance, are much more protective of their workers.

The French represent the primary example in this case; their workers receive substantially more benefits, including a much higher minimum wage (\$12 an hour). However, with all their benefits, French employees, while certainly treated better, are much more expensive for the employer to hire. There are other issues to consider as well. With such a high minimum wage and existing benefits, it could theoretically become harder for the employer to grant any merit based benefits (a pay raise, for example). Not only do these increased benefits not guarantee better work, they may also not guarantee good employee-employer relationships. Simply put, it may not be enough to simply apply higher minimum amounts of benefits to any group of employees in order to achieve higher employee satisfaction. Realizing that the employment system in France faces its own social problems, we know that it is impossible to completely adopt the French

example over the American example, especially when we consider the very different social structures of the two countries.

This brings me to my first recommendation: the institution and enforcing of employee contracts. As we mentioned, the French have an impressive system of hiring employees into any position. That is, both the employee and the employer document all details of the conditions of employment (Gola.CFE.org). These are freely agreed upon and archived by the employee and employer. I believe that this level of clarity in employment, though it could result in a certain amount of red tape, would provide clear agreements between the employee and employer, so that if either party violated their end of the agreement, there would be documentation to legally fall back on.

Requiring such things as the enforcement of contracts would be somewhat in conflict with the popular American concept of ‘Employment at Will.’ By which “an employer can terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability. Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences” (NCSL.org). While this ‘at will agreement’ theoretically grants the employee and the employer certain freedoms regarding employment status, it may also become very problematic. By allowing these freedoms, an employer effectively has the ability to make a number of decisions, including those related to modifying employee benefits and payment without

employee notice or consent. Enforceable and negotiable contracts, however, would allow for a solidified agreement in writing.

However, simply requiring contractual agreements would not, I feel, solve the greater issues at hand. There are still issues regarding the amounts of minimum wages and benefits that employees should receive regardless of any contractual agreement. In order to tackle these issues we must begin to develop a proper solution based on the competing principles and viewpoints presented by two extremes: Libertarianism and Rawlsian Liberalism.

My second recommendation is to support reasonable and targeted minimum wages and to allow workers to join unions. This, in addition to the introduction of contractual agreements, would ultimately be supported by both Libertarians and Rawlsian Liberalism. As we learned, these two views are considerably polarized, each offering very different solutions to the problems that restaurant employees are facing. Libertarianism stresses the importance of 'self-ownership,' pointing out that one cannot violate this right, no matter what 'good' or 'bad' consequences may result from doing so. One's personal rights trump all else and anything that interferes with them is unacceptable.

As we know, Libertarians disapprove of government taxation and many of the programs it brings, such as many workers benefit and protection programs. They also disapprove of minimum wage laws because the employer is being forced to pay a certain

amount without the employee's or their own consent, thus violating the concept of self-ownership.

Ideally, in accordance with Libertarian principles, the employee and employer would be able to freely agree on such issues as payment, benefits, hours, even union organization. However, there are two important factors to consider. One is that the employee and employer may be in conflict. The employer may be engaging in previously mentioned acts such as wage theft, tip skimming, or general poor treatment of his workers, both documented and undocumented. The Libertarian desire for an employer/employee relationship to be win/win may not always be so. An ill-minded or unethical employer can turn the relationship into something very one-sided. If any Libertarian argument for the improvement of the restaurant employee's scenario is to succeed, a compromise involving the allowance of a certain amount of government regulation must be met.

This leads us to the other factor to consider. Minimum wage, as well as many other tax funded benefits, are too highly integrated into American culture and economics to simply be disposed of. It can be modified, although frankly unless there is a massive surge of Libertarianism, radical modifications or removals of such institutions on a national level completely are somewhat out of the question. However, take into account the Libertarian system of 'a minimal state,' "one that enforces contracts, protects private property from theft, and keeps the peace" (Sandel 60) as it relates to issues of wage theft.

Libertarians could compromise and accept, in the interest of protecting workers against wage theft or tip skimming, government enforced regulation of written, contractual agreements between the employee and employer. That way, if a violation occurs, the offender can be brought to justice appropriately and future acts may be discouraged.

Since government intervention of some kind was indeed determined to be a necessity, we can then explore the impact that such principles affiliated with Rawlsian Liberalism may have in this scenario. In an answer to Rawl's question "what principles we would agree to in an initial situation of equality?" (Sandel 140), I do not believe that the end result of those principles would be extremely different to an end result achieved via Libertarian principles. Both parties ideally prefer scenarios in which everyone benefits. The main difference is that Rawlsian Liberalism also prefers that acts of justice be made with particular interest towards those who are at a disadvantage. In this case, those disadvantaged are the collective of restaurant employees.

Rawlsian Liberalism does promote the minimum wage (almost certainly an increase as well) and would advocate for nationally recognized workers' unions, and would also the government enforcement of clear, contractual agreements. In short, these principles 'level the playing field' between the employer and the employee. Ideally, the result is that the end result is fairer for all. As we mentioned earlier, life is not 100% fair, and people do slip through the cracks. Employees may be under – or over – paid in relation to their skills and qualifications. Employees may be working multiple jobs to

support families. Managers may be withholding wages, tips, or other benefits that an employee rightly deserves, out of greed or some distorted view of how their business should operate. Such occurrences are going to happen. How can we minimize them?

We now know that government intervention is necessary, but certain extreme solutions may be out of the question entirely. Regarding minimum wage; should the national minimum (and the tipped minimum) rise? They absolutely should. To leave restaurant employees in a state where they are extremely susceptible to a general lack of payment and benefits would be a colossal injustice, especially considering the labor-intensiveness of the field. However, there is a line at which the minimum wage should not pass. Extreme rates such as \$15 an hour are unacceptable, arguably impossible for many businesses. Consider this factor: if a valuable employee is making \$10 an hour and his manager, equally valuable, makes \$15 (these numbers are purely hypothetical), and the minimum wage increases to \$15, would you be obligated to give the manager a corresponding raise so that he is no longer making minimum wage? What if you have several employees, not just the two mentioned above, and their wages must rise in a corresponding way to a minimum wage increase? To leave their wages at the new minimum would effectively devalue their work thus far. But can you pay for these increases without raising your prices or laying off employees?

One solution would be to simply require larger international companies to have a higher minimum wage than smaller companies. In 2014, Darden restaurants (owners of

‘Olive Garden,’ ‘Yard House,’ and many others) posted a \$280 million net income. McDonald’s one of the world’s largest franchise operations, posted a \$5.6 billion net income (yahoofinance). These net incomes are tallied after factors such as cost of revenue, operating expenses, and a variety of other factors are considered. With such amounts of extra capital available, wouldn’t it be possible for larger chain organizations to provide more for their employees, either in the form of more benefits or increased wages?

One would hope that these larger corporations might take the moral high ground and use their substantial earnings to pay their employees more. Other corporations in other industries do this. An obvious modern example is the CostCo corporation, which pays its employees a substantially high (especially when considering that we are discussing the retail industry) starting wage of close to \$12, plus benefits, with their CEO claiming that “people need to make a living wage with health benefits - It’s really that simple.” (Short. Huffington Post). Despite this, CostCo still managed to post a \$2 billion net income in 2014 (yahoofinance). If one major corporation can do this, especially in field such as retail, why can’t industries in the food and hospitality industry? Why can’t McDonald’s make the moral leap and do what no other major industry in its field has done?

Why these companies refuse to do this may soon not matter. If the recent trends continue, considering the amount of labor strikes that have taken place and advocated for

higher (\$15) minimum wage across the country, we may very well see increased minimum wages if corporations respond positively to the demands of their workers. This may be a double edged sword however, because, as we mentioned, the smaller, independent restaurants and establishments may not be able to appropriately react to a massive wage increase.

The employees who want higher wages have every right to organize, unionize, and petition for higher wages and benefits. In accordance with Libertarian principles, these petitions and negotiations would be part of a free exchange between employees and employers, and each party could openly bring their needs and grievances to be discussed and agreed upon. However, if these negotiations failed for the employees, they would then have every right to petition directly to the government, and us the voters, to intervene and make decisions that would likely breach Libertarian principles and impact the entire industry. Of course, Rawlsian Liberal theory would claim this as necessary for the collective group of individuals who are at a disadvantage.

However, any government action must take into account the smaller industries as well, as they may not be able to provide the same benefits or payment as the larger industries could. There could be a proposal for a bracketed system, based on a few various factors. One factor to consider would be the number of employees of an establishment. Obviously, large chains may employ thousands of workers while individual establishments may employ only a few workers; and there is a lot of grey area

in between those two examples. Another possible factor to consider would be to consider the company's income statement or earnings, with a somewhat radical solution being to review net income and factor minimum wage and benefits based on how much additional net income is available. Of course, these wages would change as net income changes, and this solution which directly subtracts from an industry's net income would certainly violate Libertarian principles as well.

How can all of these changes be realized? I believe they are beginning to be made into a reality as we speak. There are numerous pushes for higher national minimum wages. Seattle, Washington and San Francisco, California have just instituted its own \$15 minimum wage, the effects of which will be fully realized in the near future. And yet, the plight of the restaurant worker themselves remains, on its own, not as noticed in our country. This is problematic, given this country's genuine love of food.

In conclusion, if change for this industry's workers (or those of any industry for that matter) are to be realized the first step is to simply be aware that the injustice is occurring. Ask yourself, the next time you are in any restaurant, if the worker is reaping the benefits of their hard work in such an unforgiving industry. Do these workers, who make up such a large portion of the American workforce, receive a fair level of payment and benefits? Once you have made your decision, it falls upon you – all of us – those who are aware, to share your decision with likeminded individuals and act accordingly. Ideally, you would support employee contracts to protect worker rights and argue for

higher wages for restaurant workers. Or, if you want to make an immediate, albeit smaller impact, you can start by leaving better tips for the employees that serve you.

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