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Rhetorical constructions of tipped worker wages: A comparative analysis of restaurant opportunities centers United's and National Restaurant Association's tipping arguments

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RHETORICAL CONSTRUCTIONS OF TIPPED WORKER WAGES:
A COMPARATIVE ANALYSIS OF RESTAURANT OPPORTUNITIES CENTERS
UNITED'S AND NATIONAL RESTAURANT ASSOCIATION'S TIPPING
ARGUMENTS

by

Kendall R. Shurance

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Kendall R. Shurance

DEDICATION

For my parents, without whom none of my education would have been possible. Thank you.

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This paper would not have been possible without my classmates' and professors' supportive and constructive advice. I am indebted to my advisors Polly and Paul, for bearing with me through the wandering drafts that finally resulted in this thesis. Thank you for your clarifying and challenging advice. Thank you to Michelle Branch for working with me from the early stages of this project until completion. And, to the friends and family who endured my complaints and fears of never finishing, thank you.

Rhetorical Constructions of Tipped Worker Wages: A Comparative Analysis of
Restaurant Opportunities Centers United and National Restaurant Association's Tipping
Arguments

Abstract

by Kendall R. Shurance

University of the Pacific
2018

This thesis highlights the distinct methods of persuasion employed by the National Restaurant Association and Restaurant Opportunities Centers United in their arguments related to tipping. Both parties limit the strength of their arguments by ignoring the opposition's case, selecting instead facts and evidence that construct a persuasive, yet incomplete picture of tipped wages, the tipped worker, and the restaurants that employ these workers. I propose a focus on dialogic interaction which I define as the obligation of the rhetor to respond to available counter-claims, to be open to questioning, and to be truthful. Reclaiming dialogic interaction between parties and will improve the quality of the individual arguments and the debate overall. It will point toward a more complete understanding of the data, arguments, and players involved in framing the issue of restaurant worker wages.

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Chapter 1: Introduction

“Alright, everybody cough up some green for the little lady.”
 [Everybody whips out a buck, and throws it on the table. Everybody, that is, except Mr. Pink.]
 “C’mon, throw in a buck.”
 “Uh-uh. I don’t tip.”
 “You don’t tip?”
 “No. I don’t believe in it.”
 “You don’t believe in tipping?”
 “You know what these chicks make? They make shit.”
 “Don’t give me that. She don’t make enough money, she can quit.”
 - Quentin Tarantino’s *Reservoir Dogs*

So opens Quentin Tarantino's *Reservoir Dogs*, released in 1992. The men in this scene go on to discuss the server's merits, and whether or not she deserves a tip. Does she make enough money without being tipped? What constitutes a job that should be tipped? Why is waitressing such a popular job for women if they don't make much money? Finally, the men leave a tip, if only out of a sense of duty to do so.

In this scene, Tarantino captures a sense of what questioning this unquestioned American practice looks like, and, through these men's informal discussion, he reflects a larger discussion that has emerged. The present research will examine the works of two groups that are shaping the nature of this discussion in the present times. These groups are the National Restaurant Association (NRA) and Restaurant Opportunities Centers United (ROC). In some ways, the men in the scene above represent the opinions voiced by these groups, albeit with Tarantino's signature irreverence. One man sees no problem with skipping the tip because, after all, this woman makes enough to justify continuing to work. The others, by contrast, feel the necessity of leaving a tip because she depends on

the tip money for her livelihood, or so the case goes. Similarly, the National Restaurant Association frames tipping as an American institution that benefits restaurant workers, customers, and restaurateurs alike. Restaurant Opportunities Centers United, by contrast, argues that tipping is a fundamentally discriminatory practice that should be abandoned. Employers, they argue, should be the ones responsible for paying servers a living wage.

Tipping has re-emerged as a topic of discussion in the United States in response to a larger disagreement about wage reform and labor standards. In the restaurant industry, labor advocates fight for wages that more accurately represent employees' costs of living while businesses and trade organizations try to advance policy that will protect the financial viability of restaurants. Tipped workers are unique in the discussion about wage reform, making tipped worker wages an important topic to be considered specifically in the overall discussion about wages and labor. First, tips are collected and distributed differently than other wages. After tips are collected as a supplement to the price of the goods and services, they are distributed back to the employee who earned them, except in the case of a valid tip pooling arrangement. Tips are the property of the employee rather than the employer. The method of collection and distribution produces conversations specific to tipping as tip pooling and property questions are considered. Another special consideration regarding tipping has to do with the special minimum wage for tipped workers in the United States. In 43 of the 50 states, tipped workers are paid less than that state's minimum wage by their employer. Federally, the tipped minimum wage is \$2.13 per hour at the time of this writing. Tips are used to make up the difference between the subminimum wage and cash minimum wage, which is currently \$7.25 per hour federally. In effect, this leaves customers, rather than employers, to pay the majority of tipped

workers' wages. The differing minimum wage and customer responsibility for wages raises unique questions of employer responsibility for paying the wages of their employees.

My research questions are these: What rhetorical approaches do NRA and ROC use to construct their arguments for and against tipped wage reform? How can the rhetors improve their arguments? In order to answer the first question, I employ rhetorical analysis to examine the arguments made by the National Restaurant Association and Restaurant Opportunities Centers United. Rhetorical analysis is a means by which to engage with texts to discover the elements of persuasion and to evaluate the degree to which the parties argue their positions well. As each organization selects rhetorical strategies with which to advance their cases, the evaluation of the two organization's arguments side by side reveals a significant problem. The NRA and ROC, though seemingly sincere in their advancement of their own cases, ultimately ignore and dismiss the opposing party's arguments, and in doing so, leave significant and important portions of the overall discussion regarding tipped worker wages out of their arguments. The arguments produced are coherent, yet ultimately incomplete. I answer the second research question with suggestions on how the rhetors might improve their own arguments and the overall quality of the discussion about tipping through dialogic interaction. I define dialogic interaction as the responsibility of rhetors to respond to opposing arguments, to be truthful, and to be open to questioning, building off Habermas' work of the healthy public sphere. Such dialogic interaction is not only beneficial for public deliberation but necessary if the organizations are to uphold their responsibility for a healthy public sphere.

It is no secret that the internet is changing the means and content of communication at a rapid rate. Carefully curated feeds can severely limit the perspectives, ideas, and even facts and statistics to which one is exposed. Many users of the Internet who are trying to uncover facts and arguments to help them make informed decisions live inside echo-chambers, engaging only with ideas that already affirm previously held beliefs. Instead of being the great connector it was expected to be, the internet allows for communication that has created many smaller tribes who come together over special interests (Papacharissi 17). When placed against this backdrop, dialogic interaction, as defined as the response to the ideas of another, becomes increasingly important. The goal of this research is not necessarily to solve the problem of tipping through the examination of these sides or to propose reform that both parties might agree on. Rather, it is to call the parties to bolster their dialogic interaction so that they might develop more sophisticated views and acknowledge their role as meaning-creating entities.

Scholars have evaluated tipping issues from economic, social, and political perspectives already, but a rhetorical perspective will bring clarity to the individual arguments and to the debate overall. Food Studies embraces all of these approaches, making use of many theoretical approaches to understand food issues. Rhetoric has been used in Food Studies as an approach to understand messaging about food and food systems (Greene 75; Parasecoli 155; Dubisar 118). This thesis contributes to Food Studies by using rhetoric to bring further understanding to a key element of labor input in the food system. Tipped workers make up a unique demographic of labor in the food industry given how their wages are garnered. An analysis of the relevant rhetoric will be

beneficial to understanding conceptions of tipping, tipped workers, their wages, and restaurants as employers.

Chapter Two will offer context for the discussions about tipped worker wages in the restaurant industry. Chapter Three will offer a review of the literature and reveal scholarly disagreement regarding tipping. Chapter Four will detail my methodological approach including the rhetorical theories I employed and my selection of the texts from the NRA and ROC related to tipping. I will present the results of the analysis in Chapter Five as well as a discussion toward developing dialogue, both epistemologically as an adaptation to the current rhetorical climate and practically as a means of improving the quality of the discussion by capturing a more complete view of the issues. Finally, Chapter Six will conclude and review the study, offering opportunities for future research.

Chapter 2: Background

No act of rhetoric can or should be understood outside of the context in which it occurs. This chapter will provide background to the contextual elements that inform the written reports and publications of the National Restaurant Association and Restaurant Opportunities Centers United that are the topic of this thesis. I first briefly look at the history of tips in America, and then explore the unique legal structures governing tipped employees and the restaurants that employ them. Finally, I conclude the background chapter with a more detailed introduction to the backgrounds of the NRA and ROC.

History

The discussion and debate over tipped restaurant worker wages is one that is periodically taken up in American society when certain triggering events and ideologies make its relevance apparent. Kerry Seagrave recounts these debates throughout the history of tipping in his book, *Tipping: An American Social History of Gratuities*. Tipping began in the United States in the early 1900s as a cultural practice borrowed from Europe and was debated when it first became a well-accepted practice. Many thought that the practice violated the American ideals of democracy and equality by emphasizing that the tipper was in a higher social position than the one receiving the tip. Issues of class were salient, and tipping, it was argued, encouraged servitude among those being tipped (4-10). In 1904, commercial travelers and businessmen formed the Anti-Tipping Society of America, and its 100,000 members committed to not tip for a period

of twelve months. Their motivations were both financial and social; they called tipping a constant drain on their resources, but also suggested that they would gain “respectful attention from hotel employees” (29). Six states eventually proposed anti-tipping laws, with three ratifying. These laws ultimately went unenforced, however, and were repealed later on (37-38). For a time, discussions about abandoning tipping waned, but were later picked up in the 1960s when the US government began to increase enforcement for collecting taxes on tips (98). A Tip Income Provision passed in 1965 required employees to report tips monthly (103). The 1970s were marked by much back and forth as to the reform of tip credits. Finally, arguments re-emerged in the 1980s when restaurants began to institute no-tipping policies. New laws required restaurants to take responsibility for paying taxes on tip income, and eliminating tipping eliminated the extra liability (127-129).

Currently, the U.S. restaurant and fast food industries are responsible for providing services at over one million establishments, employing over 14 million people, and for generating almost \$800 billion annually to the U.S. economy, about 4% of the total GDP (“Economic Engine”). This is no insignificant sum of people or economic activity. Of these employees, approximately three million work for tips (Allegretto & Cooper 7). Tipped workers are unique among all employees, requiring particular consideration. I now turn to the modern legal and social structures of tipping in the United States to examine the unique laws governing tips, tipped workers, and restaurants employing tipped workers.

What is a Tip?

A tip, as defined by the U.S. Department of Labor, is “a sum presented by a customer as a gift or gratuity in recognition of some service performed for him” (29 C.F.R. § 331.52). A tipped worker is one who earns over \$30 per month in tips each month out of the year (29 C.F.R. §531.56). The Fair Labor Standards Act (FLSA) is the primary piece of legislation that shapes the nature of restaurant worker wages nationwide. The most recent revision of this law established the federal cash minimum wage at \$7.25 per hour. It also left the tipped minimum wage at \$2.13 per hour. According to the FLSA, it is the responsibility of the employer to ensure each employee earns the federal cash minimum wage, whether the employee is paid the wage directly from the employer or receives it through a combination of employer contributions and tips. The employer has no right to keep the tips and may not count these moneys as profit for the company. Employers may do three things with tip money. First, they may give the funds directly back to the employee who earned them. Some employers may redistribute the tip funds in a tip pool. Finally, some may use the tips to take a tip credit toward meeting the minimum wage requirements. These options vary from state to state, with some states opting for more strict standards that disallow for some of these uses of tips. I will explain the implications of each option in the following pages.

Giving Funds to the Employee. In the most straightforward version of tip distribution, all of the tips are retained by the employee who earns them. The employee is responsible for reporting all tips over \$20 per month to the employer and for reporting total tip income on their tax return. Employers are required to maintain a record of the

employee tips and to withhold the income tax on the wages and tips. They are also required to pay the employer portion of social security and Medicare taxes on all wages and tips (“Topic No. 761 Tips”).

Tip Credits. Section 3(m) of the Fair Labor Standards Act specifies how the tipped minimum wage is calculated through a system of “tip credits.” An employer can use the employee's tip money to contribute to her minimum cash wage requirements in the 43 states that allow tip credits. The employer must pay \$2.13 per hour toward the employee’s minimum wage, and the other \$5.12 that is required to reach the minimum cash wage can be made up through tips. This \$5.12 is called the tip credit, as the money that comes from tips are “credited” toward the employer’s responsibility to pay its employee the federal minimum wage. Customers, then, rather than employer, pay for the vast majority of minimum wage through their tips. The cash minimum wage plus tips is expected to meet overall minimum wage requirements, and it is the employer’s responsibility to ensure that the cash wage plus tips meets the minimum wage standards and to report such wages appropriately. The employee must be notified of this tip credit in advance, and the tip credit is not permitted to exceed tips received. Employers cannot take a tip credit through a tip pooling system, but only through the direct distribution of tips to the employee (29 U.S.C.A. § 203m 2006).

When the tip credit was first established with the amendment to the Fair Labor Standards Act in 1966, it was variable, set at 50% of the regular minimum wage, which was \$1.00 in restaurants. As the minimum wage changed, so did the tipped minimum wage as a 50% credit toward the regular minimum wage. From 1980-1989, the tip credit provision dropped to 40% of minimum wage requirements, meaning employers would

pay 60% of the minimum wage, with tips filling in the final 40%. In 1996, the tipped minimum wage was frozen at a fixed price (\$2.13) rather than at a percentage of regular minimum wage. As the tipped minimum remains fixed, the percentage of wages an employer must pay in cash has diminished over time. Currently, tip credits can meet up to a maximum 70% of an employee's paycheck, requiring the employer to pay only 30% of the employee's final wages. Figure 1 illustrates the relationship of the tipped minimum wage to cash minimum wage over time. Note that these numbers are adjusted for inflation.

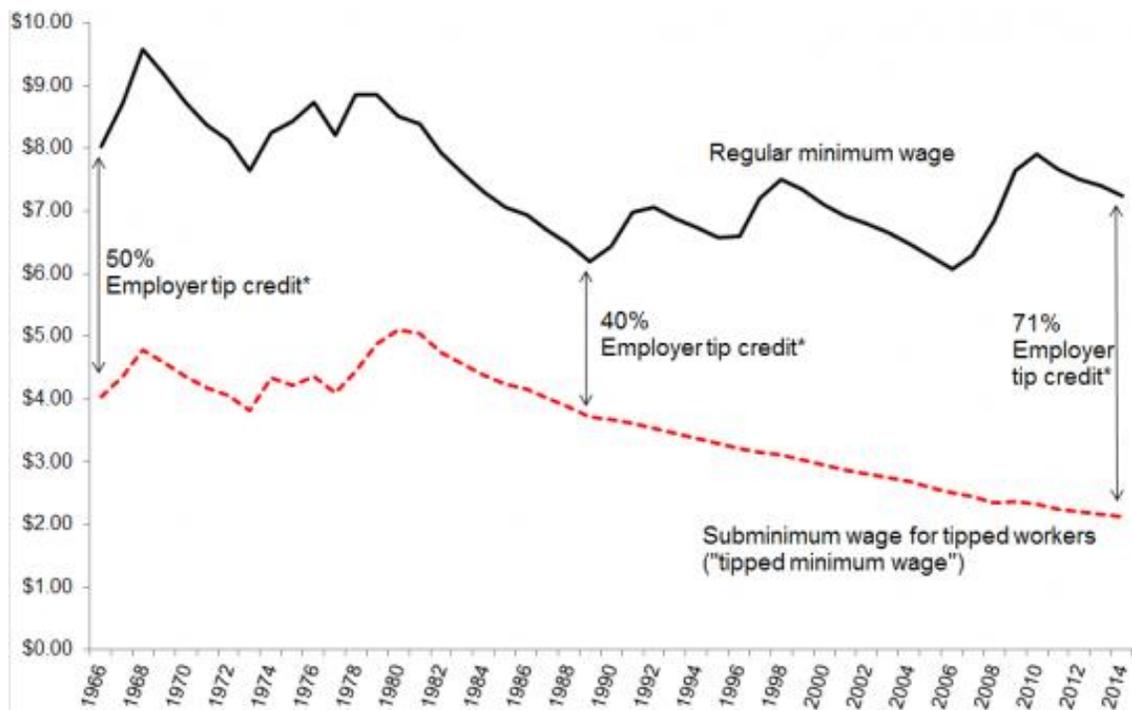


Figure 1. History of Tip Credit, Economic Policy Institute, “Twenty-Three Years and Still Waiting for Change.”

States’ Approach to Tip Credits. Many states have chosen to adopt minimum wage policies above the federal requirements. Twenty-one states have chosen to retain the federal standards for minimum wages and tipped workers. Twenty-two states enforce

a minimum wage for tipped workers between the federal minimum and the state's minimum cash wage. Seven states have chosen to require the same minimum wage for cash and tipped workers, thereby eliminating the tip credit system. Figure 2 illustrates the state-level requirements regarding wages for tipped employees. See Appendix A for a complete list of states' minimum wage and tip credit requirements.

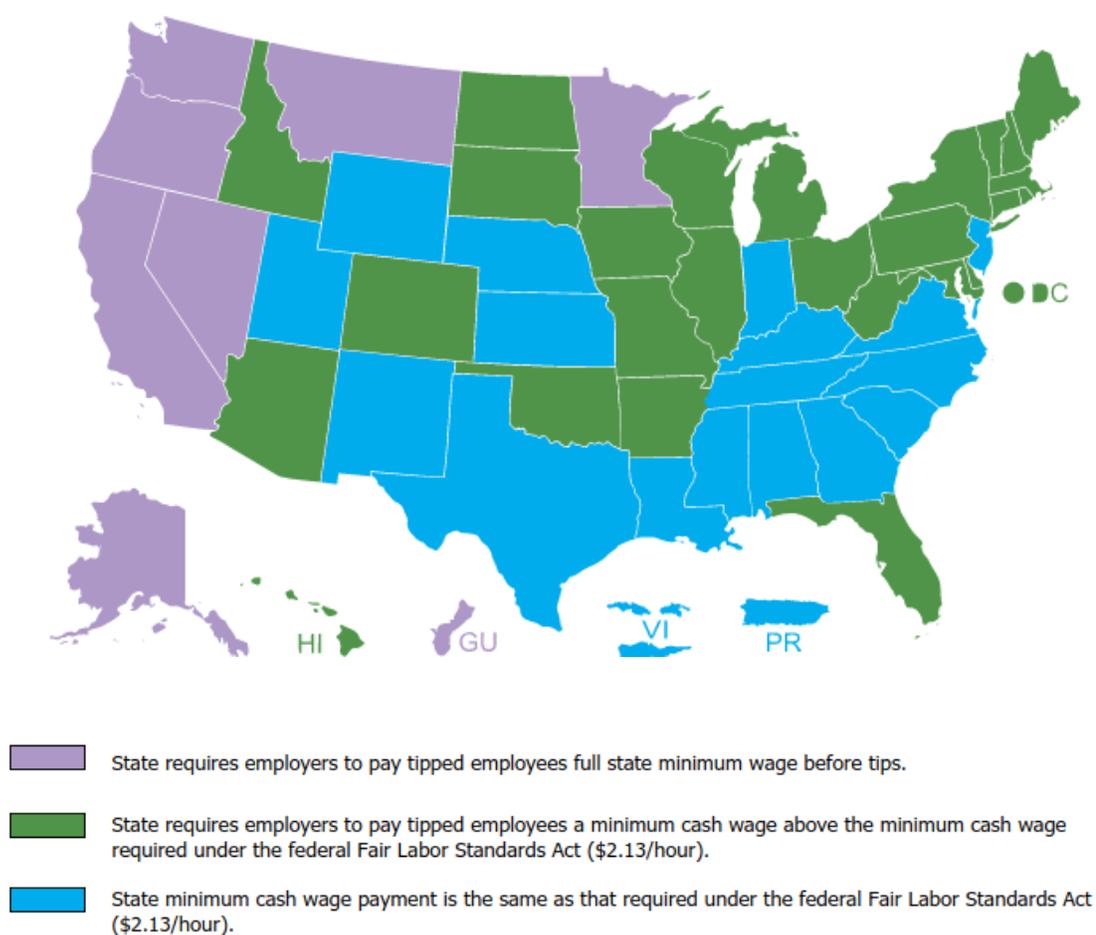


Figure 2. Tipped Employee Wages by State. U.S. Department of Labor, “Minimum Wage for Tipped Employees,” accessed April 23, 2017, <https://www.dol.gov/whd/state/tipped.htm>.

Tip Pooling. Tip pooling refers to a system of tip distribution in which all tips collected are pooled together and redistributed among all tip-earning employees, regardless of each employee's individual tip earnings. The 1974 amendment to Section

3(m) of the Fair Labor Standards Act provided for tip pooling among employees who are customarily and regularly tipped. “DOL has recognized that the following occupations may participate in a tip pool: (1) Waiters/Waitress (2) Bellhops (3) Counter personnel who serve customers (4) Server helpers (busboys/girls) (5) Service bartenders” (U.S. Dept. of Labor, 1982; U.S. Dept. of Labor 1978; U.S. Dept. of Labor, 1976). Instances of private litigation followed to clarify which groups would be allowed to share in the tip pools. For example, the 2009 appeal of the California case *Chau v. Starbucks* determined that shift supervisors who performed much of the same tasks as baristas who are customarily tipped could participate in the tip pool. In restaurants that paid employees the full minimum wage with no tip credit, the question arose as to the distribution of tip pools between front and back of house employees and among managers. In the 2010 case *Cumby v. Woody Woo, Inc.*, the United States Court of Appeals for the Ninth Circuit ruled that it would be permissible for restaurants that did not take a tip credit to split tip money between front of house and back of house positions. Barack Obama’s Department of Labor decided in 2011 that even restaurants that did not use tips to pay minimum wage could not redistribute the tips to workers who were not customarily tipped, citing the common argument that tips are the property of the employee who earned them. A class of hospitality organizations challenged the Ninth Circuit’s policy (*Oregon Restaurant & Lodging Assoc. et al. v. Perez*) in 2012 and the courts in the Ninth Circuit ruled alongside the DOL in 2016, reversing its previous decision and preventing restaurants that did not take a tip credit from distributing the tips between the front and the back of the house (Fu, “Department of Labor”). The Restaurant Law Center then filed a petition to have this decision heard by the Supreme Court (“Restaurant Law Center Files Petition”). Donald

Trump's Department of Labor then issued a proposal on December 5, 2017 to legalize tip pooling among front and back of house staff in restaurants that take no tip credit. The NRA published briefs in favor of this update as it might benefit restaurants and lessen the pay discrepancy between the front and the back of the house (Strong, "Trump is About to Make Tip-Pooling Legal"). ROC, however, was concerned about the lack of limitations in the proposed legislation and about the property rights of workers to their tips ("Trump Labor Department Responds"). For example, there was no provision within the law as written that would prevent managers from sharing in the tip pool. The legislation received over 375,000 responses during its public comment period asking for significant amendments to be made. Meanwhile, information emerged that the DOL had performed a study as to the economic impact of their new regulatory interpretation and found that workers could lose billions of dollars annually (Fu, "Department of Labor"). The final regulation passed by the DOL specifies that employers cannot pocket employee earned tip money, though tips may now legally be distributed among front and back of house employees in restaurants that do not take a tip credit (Consolidated Appropriations Act 2018).

What is not a tip? There are some cases in which customers may leave money above the cost of goods sold and services rendered and yet not be considered a tip. This exception typically occurs when the extra money left is not optional, as in the case of mandatory service charges (like those that might be applied to large groups) and automatic gratuities. In this case, restaurants report this money as income. Because it is not the property of the employee, it is not required to be returned to the employee. If the money is given back to the employee, it is distributed as a wage and not a tip ("Reporting

Tips Versus Service Charges”). This form of distribution has implications for overtime calculations, as all wages must be considered when calculating overtime pay rate, while tips are not (*Searle v. Wyndam Int'l*). New York State has created a law which mandates that automatic gratuities and mandatory services must be returned to the employee. Certain cities in California such as Santa Monica, Emeryville, and Oakland enforce similar policies, but no such protection for employees in this matter exists statewide.

With this understanding of the structure of the legislation regarding the distribution of tips, we now take a look at some of the special considerations and issues that enter the debate when talking about tipped worker wages: poverty, pay discrepancy between the front and the back of house, discrimination and harassment, and property rights.

Concerns About Tipping

Poverty. According to the Economic Policy Institute, while all non-tipped workers experience poverty at a rate of 6.5%, tipped workers experience poverty at a rate of 12.8% (Allegretto & Cooper, 9). The median wage of workers in the United States is \$16.48. According to the US Department of Labor, the median wage for tipped workers is \$10.22 (inclusive of tips), and for waiters and bartenders this figure is \$10.11. Restaurant and food industry workers make up some of the poorest employees in the United States. Out of the approximately 4.3 million tipped workers in the United States, about 2.5 million are waiters and bartenders (Allegretto & Cooper 7). No state’s minimum wage meets its own living standards, and tips don’t always make up the difference between the minimum wage and the living standard (Shierholz 18).

Pay Discrepancy Between Front of House and Back of House. At most restaurants, employees are divided into front and back of house workers. Front of house employees are those who engage face to face with customers. These jobs include wait staff, reservation and hosting staff, and bartenders. Back of house staff are those performing tasks that are essential to the functioning of the restaurant but will not be seen by customers. Positions included in the back of house are chefs, line cooks, and dishwashers (“Front of House vs. Back of House”). Due to tip income and variable minimum wage, there is a pay discrepancy between front of house and back of house workers, with tip income helping waiters and waitresses reach a higher income than the back of house staff who work for minimum wage with no tips. Just how large this discrepancy is, however, is up for debate. Tipped workers consistently under-report their wages, so an accurate picture of incomes is difficult to gauge (Lynn 123). Some restaurants offer this discrepancy as a reason for abandoning tipping altogether in favor of a mandatory service charge or higher menu prices (“Letter from Danny Meyer”). Danny Meyer, in a letter reflecting his decision to transition his restaurants to a no-tipping, service-included system, describes his motivations to promote a more equitable share of wages between the front and the back of the house. “We believe hospitality is a team sport, and that it takes an entire team to provide you with the experiences you have come to expect from us... [the back of house’s] contributions are just as vital to the outcome of your experience at one of our restaurants” (“Letter from Danny Meyer”).

Agency, Discrimination & Harassment. The food industry reports more instances of sexual harassment than any other industry (Thuy Vo, “Government Data on 20 Years of Workplace Sexual Harassment Claims”). A paper by Korczynski & Evans

suggests that the current tipping system encourages serving staff to endure sexual harassment that would not normally be tolerated within an institution in which employers are responsible for paying wages. Servers, the study suggests, feel limited in their ability to report such instances because they are dependent on these customers for their income, and a complaint against a customer means not getting paid (Korczynski & Evans 772). The magnitude of this problem is reflected in the research that shows nearly 80% of women and 70% of men working in the restaurant industry had experienced some form of sexual harassment, defined as “unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature” (“The Glass Floor”). Many high-profile sexual harassment claims have emerged against famed chefs and restaurateurs such as Mario Batali, John Besh, and Ken Friedman who have used their power and privilege to make unwanted advances on the women who worked in their restaurants (Severson, “After Apologies”).

Property. As defined in the FLSA, tips are the property of the employee. The employer exceptions, however, begin to create room for employer ownership. If employers can redistribute tips among other employees or use them for a tip credit, then true ownership gravitates toward the employer, and not the employee. In restaurants that have chosen to abandon tipping in favor of higher menu prices, what once was money given directly to the employee as her property becomes the property of the employer, who can use the funds as it wishes. Surely the rate of turnover would be very high should an employer choose to not return any of the money earned from higher menu prices to the employee who would have earned the money under the traditional tipping system, so

there may be benefits to the employer in using some of the money for wages. However, there is no law which says it must do so.

The concerns of poverty, pay discrepancy, agency, and property mentioned above highlight the unique considerations that must be understood when discussing tipping. I now turn to reactions to these issues and policies that have been proposed to mitigate the issues and concerns present in the tipping system.

Proposed Reform

Part of the motivation for my thesis is to understand the discussion regarding reform of the tipping system. Several alternatives have been suggested by restaurateurs and politicians as replacements for the current system, including reforming or eliminating tip credits (such as New York Governor Andrew Cuomo), eliminating tips altogether (such as Danny Meyer in Union Square Restaurant Group), and reforming tip pooling (such as the recent legislation from Trump's Department of Labor). One proposed solution to the problems with the tipping system is eliminating the tip credit system and mandating one minimum wage completely paid by the employer. Seven states legislate paying one minimum wage at the time of this writing, and several others (including D.C., Michigan, New York, and Massachusetts) are considering legislation to join the seven states with no tip credit. Although this would raise the rates that servers make in states that currently allow for a tip credit, this solution might exacerbate the pay discrepancy between the front and the back of house workers because tipping would still be allowed on top of the minimum wage (Lynn 152). Tipped workers, however, would benefit from the higher wages. In states that mandate a \$2.13 minimum wage, tipped workers experience poverty at a rate of 18%. For states with a tipped minimum above the \$2.13

but below the full minimum this figure is reduced to 14.4%. Finally, tipped workers experience poverty at a rate of 10.2% when they are paid the full minimum wage by their employers plus tips (Cooper, “Waitstaff and Bartenders”).

Several U.S. restaurants have instituted reform at the business level by abandoning tipping in favor of higher menu prices or mandatory service charges such as Seattle restaurants Dahlia Lounge and the Walrus and the Carpenter and New York’s Union Square Hospitality Group. Other restaurants such as Joe’s Crab Shack and San Francisco’s Bar Agricole have attempted the switch to no-tipping but reverted back to a traditional tipping model. Some do so in an effort to stay ahead of rising minimum wages, and some state that the goal of the policy is to promote equitable wages across the front and the back of the house, as all employees work cooperatively to ensure a quality guest experience (“A Letter From Danny Meyer”). One could also offer the degrading nature of working for tips on principle as a reason for abandoning the system, as well as the unpredictability of wages (“The Glass Floor” 17-25; Lynn 125-126). Lynn comments on the overall advantages and disadvantages of such a system, saying that the differences between tipping and no tipping have negligible effect on important social factors such as employee attraction and retention, service quality, customer satisfaction, and costs of operation. From his data, he states that the most compelling reason for a restaurant to abandon tipping is so that it could increase revenue through keeping the “excessively high” tip income compared to other restaurant employees (Lynn 152). On the other hand, the primary reason Lynn sees for keeping the tipping system in restaurants is reduced menu prices, which increases demand. So, he concludes, getting rid of tipping makes the most sense when the customers are not price-sensitive (Lynn 153).

Some propose tip-pooling reform as an alternative to banning tipping, suggesting that allowing restaurants to distribute tips between front of house and back of house employees would “promote the cooperative endeavor underlying the provision of service in settings like restaurants” (Estreicher & Nash 3). If higher wages for back of house staff is a primary goal, some suggest that reforming tip pooling laws to include those who are not “customarily tipped” is a better solution than doing away with tipping altogether and raising the base minimum wage for all employees (Estreicher & Nash 3). While tip-pooling solutions might raise wages for those working in the back of the house, most tipped workers would take a pay cut under this reform.

I now turn to the organizations whose work will serve as the unit for analysis, providing background on their history, mission, and structure.

National Restaurant Association

Founded in 1919, the National Restaurant Association (NRA) is the leading trade and lobbying organization that works on behalf of the restaurant industry. “We represent and advocate for foodservice industry interests,” they describe, “taking on financial and regulatory obstacles before they hit our member’s bottom line” (“About Us”). Boasting 40,000 members representing nearly 500,000 foodservice establishments with annual revenue approximating \$70 million, the NRA represents some of the largest restaurant chains in the United States including Darden Restaurants (Olive Garden, Longhorn Steakhouse, Yard House), McDonald’s, and YUM! Brands (Taco Bell, KFC). In 2013 and 2014, the NRA spend \$2.2 million and \$2.5 million on lobbying efforts, respectively. Lobbying on the restaurant industry’s behalf, the organization primarily focuses on issues

of taxes, food industry regulations, and health (Dixon, “Restaurants, Lobbying, and the Politics of Persuasion”).

A few of the primary issues the National Restaurant Association focuses on are Americans with Disabilities Act violation lawsuits, commodity and ethanol programs, data security, dietary guidelines, food donation and food waste, menu labeling, taxes, tourism, and overtime (restaurant.org). The NRA operates the industry’s largest trade show, promotes food safety and training certification programs, and promotes healthful eating through its Kids LiveWell program. Its comprehensive “State of the Industry” report highlights economic performance of restaurants by state and predicts trends and other factors that may be important for the industry in years to come (restaurant.org). In the wake of the #MeToo movement and the public cases of sexual misconduct from restaurateurs and chefs, the NRA launched a ServSafe Workplace program to educate employees and employers of appropriate workplace behavior (“Association Execs Tackle Harassment”).

The NRA generally opposes measures related to raising minimum wage, opting to keep the subminimum wage for tipped workers and standard minimum wage at the rate at which it is currently fixed. In 2014, it opposed the Minimum Wage Fairness Act, which would have raised the federal minimum wage from \$7.25 to \$10.10 and was supported by then President Barack Obama (“Why a \$10.10 Starting Wage is Bad for Federal Contractors”). It supports tipping and tip pooling in restaurants that do not take any tip credit.

Restaurant Opportunities Centers United

Restaurant Opportunities Centers United (ROC) organizes restaurant workers to advocate for better working conditions and pay. Their mission is to “improve wages and working conditions for the 14 million people who work in America’s restaurant industry” (“About Us”). Their stated history reveals the organization’s growth over time:

The Restaurant Opportunities Center of New York was initially founded in New York City by Fekkak Mamdouh and Saru Jayaraman after September 11th, 2001 to provide support to people who work in restaurants who were displaced as a result of the World Trade Center tragedy. Based on our successful efforts in New York City, many who worked in restaurants in several other cities approached ROC about initiating chapters in their cities. Thus, in 2008 we launched the Restaurant Opportunities Centers United, which has grown into a national organization with over 25,000 members who work in restaurants nationwide.

ROC’s work includes seeking to win back misappropriated tips and wages and win discrimination lawsuits. It partners with restaurants to suggest policy change, promote legislation to raise the minimum wage, and fight for paid sick leave. They advance what they call a High Road business model in which restaurants pay their employees livable wages, maintain a healthy workplace through offerings such as paid sick days and health benefits, and create room for growth and mobility. It creates learning opportunities for restaurants seeking to improve conditions for employees and provides networking opportunities so that the restaurants can learn from one another’s experiences. ROC’s 30-plus reports on the state of the restaurant industry inform legislators and the general public about issues such as sexual harassment, discrimination, poverty, and health (rocunited.org).

ROC consistently advocates for the elimination of tipping in favor of paying employees a higher, fixed rate of pay to create income stability, more equitable pay between front and back of house, and to reduce the prevalence of sexual harassment in

the industry (“Our Work”). It also seeks to eliminate the subminimum wage for tipped workers, working toward the same minimum wage for tipped and non-tipped workers through their One Fair Wage campaign (“Our Work”).

In subsequent chapters, I examine several of NRA and ROC’s publicly available reports for how they rhetorically construct their arguments to reveal policy positions. A rhetorical analysis will allow a thorough description of argumentation. First, however, it will be helpful to introduce some of the theoretical contributions that make this work possible.

Chapter 3: Review of the Literature

In this literature review, I explore the complexity of tipping as an element of restaurant worker wages by summarizing the existing research. Tipping has been explored through numerous academic fields, the review of which will reveal the disagreement and division even among scholars. The review will also reveal an opportunity for contribution when it comes to rhetoric and the evaluation of arguments.

Tip Definition and Motivations

Research about tipping usually begins with an attempt to define the practice and explain motivations for this irrational behavior, as suggested by traditional economic theory. What is a tip, and why do people do it? Lynn and McCall, prominent scholars in the field of tipping research, define tipping as “voluntary payment for people who have served” and “giving sums of money above and beyond the contracted prices of the services” (203). Azar delineates several kinds of tipping such as reward-tipping, price-tipping, tipping-in-advance, bribery-tipping, holiday-tipping, and gift-tipping (Azar 255-260). Relevant to this thesis is what is known as reward-tipping, in which tips “are given after service is rendered to induce good service” (Azar 255). Those who approach the topic of tipping from an economic perspective label the practice as puzzling (Azar 250). Indeed, from a rational economic perspective, tipping stands opposed to what might serve the best interest of the tipper. It is money left above and beyond the price of the goods after the goods have already been received. Despite the seemingly illogical practice, tipping remains a regularly practiced norm in the United States. In an effort to explain

this practice, economists must expand their motivational framework to include motivations which may not necessarily be linked to saving as much money as possible (Azar 256).

Motivations stated by diners for tipping are to help servers, to reward service, to gain or maintain future preferential service, to gain or maintain social esteem, and to fulfill obligations (Lynn, 78). About seventy percent of US consumers cite helping servers as a motivation for tipping, and eighty percent cite rewarding service (Lynn 437). Research verifies the relationship between rewards for service and tips, showing a statistically significant relationship between tip size and service evaluations, though the number is smaller than most expect (Lynn & McCall 203). The theory of gaining or maintaining future preferential service is cited by sixty percent of diners as a motivation for tipping (Lynn 437). From a neo-classical economic perspective, ensuring future service is the only rational motive for tipping (Ben-Zion & Karni, 44). Based on a feeling of reciprocity, leaving a large tip may leave the server feeling obligated to offer better service to the tipping party in the future (Shamir 59). Azar's explanation for tipping behavior suggests that tipping is largely based on custom and on a feeling of a social norm and obligation (256-257). It is imperative, he notes, to view humans as not merely selfish and rational beings, but as those with feelings and influences that may lead toward an irrational behavior such as tipping (263). Finally, a sense of obligation motivates tipping for about fifty percent of US consumers (Lynn 437).

Tipped Worker Wages. A foundational element in which literature on tipping displays disagreement is how much tipped workers are ultimately paid. A study conducted by the IRS shows that restaurant workers consistently under-report their tips in

order to reduce tax liability (IRS “Tip Income Study”). Such under-reporting makes assessing the true wages of tipped workers difficult, and also might skew data regarding poverty levels of tipped workers (Lynn 123). Sylvia Algretto and David Cooper voice concern over tipped worker wages, using U.S. Bureau of Labor Statistics’ data to show that the percentage of tipped workers earning poverty level wages is twice that of non-tipped workers (12.8% vs. 6.5%) and that tipped work earns an average of only 60% of the median wage in the US (\$10.11 vs. \$16.48) (3). Others argue with these statistics, citing the complications with tip reporting (Lynn 122). For example, Bureau of Labor Statistics reports suggest that waiters and waitresses make less than cooks (\$9.01 vs. \$10.16), but similar non-governmental reports demonstrate that the actual wages earned by servers are substantially more than cooks (“Occupational Employment Statistics”, “New York City”; Batt, Lee, & Lakhani 13; “Payscale”).

Because tips and wages combined are expected to meet minimum wage standards for the state, Lynn argues that problems with poverty have more to do with minimum wage than with tipping itself (122). He even goes so far as to argue from an economic perspective that tipped workers are over-paid as “tipping pays restaurant servers more than is necessary to ensure a sufficient number of workers” (Lynn, 123). Some restaurateurs, he says, feel that tipping is unfair because their income often far exceeds that of “equally skilled and important non-tipped restaurant workers” (Lynn 123; O’Neil “Pitting Poor against Poorer”; Wells “Leaving a Tip”)

Consumer Attitudes Toward Tipping. Tips may or may not have an effect on the quality of a customer experience in restaurants. Some argue that tipping is good for the social structure of restaurants, saying that tipping “allows customers to monitor

service where management cannot” thereby improving overall quality of service (Estreicher & Nash 3). Customers appear to favor the ability to give tips, as they cite higher levels of satisfaction in meals in which they are allowed to tip (Lynn 130-131). There is opposition to the research that suggests customers benefit from the ability to tip, however. Frumkin argues that some customers dislike tipping, so the social pressure to tip may lead to a more negative experience (113). Tipping might also create inauthenticity in service as servers work for tips rather than to please the customer (Frumkin 113). Tipping may also discourage teamwork among servers who are motivated by tips (Frumkin 113).

Scholars also disagree on the effect of tipping on quality of employee attracted. Because tips are performance-based wages, it is suggested that higher quality employees would participate in these jobs as they stand to reap the most economic benefit (Lynn et al. 1890). Contradicting this, it is also argued that tipping attracts lower quality workers given the unpredictability of the wages (cited by Lynn 125-126).

Effects of Tipping on Restaurant Employees. Of concern to scholars and activists alike are the discriminatory practices that often accompany tipping behavior. Some frame the issue of tipping as a way to increase employee agency, as servers assume that they can make more money in tips through strategic choices (Brewster & Wills 205; Paules). Restaurant servers may experience the potential to manipulate their wages through actions such as touching the customer, wearing makeup, exposing cleavage, using the customer’s name, and adapting to each group’s demeanor (Brewster & Wills 202).

Counter-evidence suggests that servers are subject to harassment not only from customers, but from managers, owners, and other staff within the restaurant as well (“The Glass Floor” 17-25). Very little research exists regarding gender discrimination and tipping, so I focus here on the emerging literature about racial discrimination and tipping. Racial bias significantly affects an employee’s experience of working in a restaurant environment for tips. There is evidence to suggest that race rather than merit may be the better predictor of the employee’s take home pay; for example, three foundational studies indicate that both black and white customers tip white workers more than black workers (Ayres, et al. 1663; Lynn, et al. 13; Brewster & Lynn 24-25). Lynn et. al specifically look at tipping in the restaurant industry and find that tipping behavior is consistent with racially discriminatory patterns. In their study of 140 tipping transactions in the American South, they find that black servers are tipped less than white servers with the same skill level and service quality, and the racial division of wages is the greatest in larger groups of diners and when the service is rated highly (Lynn et al. 12). Black servers were tipped on average 16.6% of the bill size for both perfect and less than perfectly rated service, while White servers were tipped 16.8% for less than perfect service and 23.4% for perfect service (Lynn et al. 11). The study was then replicated with a larger sample size in the Midwest and an expanded definition of service quality and found similar results that customers tipped less to black servers than to white servers at a comparable service level (Brewster & Lynn 24-25). A summary of these studies calls out that these results should cause concern given that the result of such tipping behavior is akin to wage discrimination based on race (Kline 1679). Grounds exist, according to the study, to file a lawsuit for discriminatory practices and to ask the employer to justify

keeping a tipped wage policy instead of an alternative such as a tip pool, flat rate tip, or doing away with tipping altogether (Kline 1679).

Conclusion

Though the literature describes restaurant worker wages from a variety of perspectives, including economically, sociologically, and legally, no study has yet looked at these issues rhetorically, examining the arguments that frame the debate that arises even within the scholarly literature. This paper seeks to fill this gap in the literature by using rhetorical criticism to understand the perspectives argued in the tipping debate. Such an analysis will aid in understanding the goals of the rhetors and what dialogic interaction looks like in this present age.

Chapter 4: Methods

In this chapter I explain my methods for research, offering justification for why I selected these methods. I chose to evaluate the texts through a rhetorical criticism lens, choosing theories and frameworks that help to illuminate the constructed realities the texts create through their language. I first offer an introduction to rhetorical criticism, then outline the key theories that will make up the framework from which I work. I then offer background to dialogue which will ultimately help frame my discussion on dialogic interaction. Lastly, I offer an introduction to the texts I have chosen to evaluate for the body of this thesis.

Rhetorical Criticism

Contrary to common use of the word as evoked in phrases like “empty rhetoric,” the use of rhetoric in no way inherently implies misleading or deceptive tactics of communication. Rather, Sonja K. Foss’ working definition depicts rhetoric as “the human use of symbols to communicate” (3). Key to this research and to rhetoric more broadly is the symbolic use of language. Humans construct meaning around these symbols and creatively use them to convey meaning. Rhetorical criticism, then, is the systematic analysis of these rhetorical acts with the goal of understanding more about the rhetorical process (Foss 3-6).

Key Theories

Foundational to the study of rhetoric and to this thesis is Aristotle's treatise on the subject. In it, he defines rhetoric as "discovering the available means of persuasion" (*Rhetoric*). The ancient canons of rhetoric, his rhetorical genres, and the modes of persuasion have aided speech-makers and scholars alike for centuries, though of course they have not been without critique (Black 33; Walter 162). I use Aristotle's frameworks when they are helpful, not enumerating every element of Aristotle's work as in a pure Aristotelian critique but selecting and elaborating on the aspects of his work that will illuminate the texts at hand.

Cicero's five ancient canons of rhetoric, including invention, arrangement, style, memory, and delivery, serve as a foundation for looking at the elements of persuasion (*De Inventione*). Because I look at written texts rather than speeches, the canons of memory and delivery (typically understood to be the verbal and non-verbal cues when a rhetor delivers a speech) serve little purpose for understanding the texts. Invention, or the art of creating arguments; arrangement, or the organization of arguments for effect; and style, or the means of presentation of the arguments including word choice, all provide language with which to point out just how rhetors attempt persuasion.

Aristotle also breaks down his theory of three rhetorical genres: deliberative (or legislative), judicial (or forensic), and epideictic (or ceremonial) (Bk. 1, 1358b, 1-8). Deliberative rhetoric refers to concern over action for things that will occur in the future; forensic, to understanding things that have occurred in the past; and epideictic, to expose both praise and blame in the present (*Art of Rhetoric*). The writings being presently critiqued primarily take an epideictic approach, offering up praise and blame on the

subject of tipping, tipped workers, and the restaurants that employ them. Secondly, some of the arguments in the writings offer arguments of the past when they talk about the history of tipped workers. Finally, some of the arguments take on a deliberative approach in their emphasis on how to change policy and practice. An understanding that the writings being analyzed belong to the epideictic genre tells the reader to be aware of instances where goodness, excellence, shame, honor, virtue, and vice are exhibited within the work.

Aristotle sorts the available means of persuasion into three categories of appeals: ethos, pathos, and logos. His explanation is as follows:

Of the modes of persuasion furnished by the spoken word there are three kinds. The first kind depends on the personal character of the speaker [ethos]; the second on putting the audience into a certain frame of mind [pathos]; the third on the proof, or apparent proof, provided by the words of the speech itself [logos]. Persuasion is achieved by the speaker's personal character when the speech is so spoken as to make us think him credible (*Rhetoric*).

All three categories of appeals are helpful for achieving persuasion, and they often work together in order to achieve the ultimate goal of persuasion.

In 1925, Herbert A. Wilchens developed a neo-Aristotelian method, which adapted Aristotle's productive methods of constructing speech to a deconstructive method of understanding speech (Foss 29). Critics of the neo-Aristotelian approach pointed out that Aristotle's work was never intended to be used as a tool for appraising discourse (Black 33; Walter 162). The neo-Aristotelian approach also limits the questions that can be asked of a rhetorical act or text to the evaluation of response. A neo-Aristotelian approach can ask, "Did the speech provoke the intended response from the audience?" and "Did the rhetor use the available means of persuasion to achieve the desired response?" (Walter, 162-165). Shifting away from a response-based approach,

rhetorical critics began to expand the means by which they could evaluate rhetorical acts. I do not ask response-based questions of the texts in this thesis, but Aristotle's theories still prove helpful tools for understanding the means of persuasion advanced by the National Restaurant Association and Restaurant Opportunities Centers United.

In the 1960s Kenneth Burke developed theories of symbolic construction and action, which expanded rhetorical theory. Burke's definition of rhetoric is "the use of words by human agents to form attitudes or to induce actions in other human agents," (Burke 41). Language does not merely reflect reality, it selects reality and also deflects reality in the act of selection of terms to reflect values. Speaking, for Burke, is an act of expressing values. Some of these values are deemed to be good, while others are deemed as not good. These good and not good values are what Burke refers to as god and devil terms (3, 10). All good is subsumed in the god term, and all evil is similarly subsumed in the devil term. Aristotle's language of praise and blame may equally serve us here, but Burke's notion of association of terms will also prove helpful in the evaluation of these texts.

One key theory which will be beneficial for the present analysis advanced by Burke is his idea of terministic screens, in which the rhetors' worldview can be understood through the evaluation of the specific rhetorical approaches one chooses (45). The rhetors want the audience to focus on one thing to the exclusion of another thing, and their approach reveals their intent in communicating (Stob 131). The idea came from an experience Burke had looking at the same subject of photographs but with different colored lenses. Each lens, or screen, served to illuminate certain features of the subject while disguising others (45). A terministic screen, then, is a term that is used to direct

attention to one feature of a subject more than another (46). In this way, by looking at the terms a rhetor selects, one can evaluate what values are important to the rhetor and which ones he or she would like to downplay or even hide.

Dialogue in the Public Sphere

My second research question pertains to the improvement of each individual argument and the interaction of the arguments between the parties. I discuss this improvement through the concept of dialogic interaction as a metric to be employed by the rhetor in order to improve argumentation. I introduce dialogue here to provide background to my construction of the idea of dialogic interaction.

The word dialogue comes from the Greek word “*dialogos*.” *Dia* means “through” and *logos* means “the word” or “meaning of the word” (Bohm & Nichol 6). Defining dialogue has proven a difficult task, as philosophers and rhetoricians have used differing approaches in their explanations of the topic. Linell, for example, defines dialogue as “overt interaction through language between two or more co-present persons” (302). The purpose of such external dialogue is for humans to “negotiate understandings (of selves and environments) in order for participants to develop shared understandings or find out how different their understandings are,” (302). Dialogue does not necessarily always lead to shared understanding; it instead seeks social recognition, to understand another’s perspective on the world (Linell 82). Bohm and Nichol suggest a different goal, however. Instead of the goal of shared understanding, they propose that dialogue’s goal is productive, meaning that it should create new knowledge and meaning. *Discussion*, in their definition, is what emphasizes analysis, trade-off, and negotiation (6). I chose to adopt a sense-making approach to dialogue, positing that the goal of dialogue is to

illuminate understanding between self and others. Whether the outcome of dialogue is productive is of lesser importance to the definition of the term in this situation because the dialogues in this case study take place in the public sphere, where the additional factor of the audience complicates the context.

I suggest that the outcome of dialogue between rhetors is of less importance because of the additional factor of an additional party present, the audience. The writings at hand are a part of the public sphere and serve to mediate between the public, the organizations themselves, and the law-making institutions. It is through these meaning-producing rhetors that the public comes to know information (Habermas 412). Political communication has greatly increased in volume in Western society (Van den Daele & Neidhardt). As the means, actors, and content of political communication grow, there is a muddying effect through which readers must wade in search of truth (Habermas 416). The muddying effect is increasingly noticeable with the rise of internet mediated communication. The internet is a new kind of public sphere, it is argued. This sphere is one made up of a plethora of smaller ideological spheres and increasing fragmentation, and not the connected public sphere that was once imagined (Papacharissi 17). Still, Papacharissi sees the internet as a useful public sphere that could enhance dialogue, if not the rational and productive one imagined (18). Habermas here suggests that a social platform will lead to deliberation which could bring about productive and helpful interpretation of political communication, maintaining an idealized perspective of dialogue (414). Critics of Habermas note that the public sphere tends to be a place where the privileged classes exert their power (Lyotard 25-31, Fraser & Calhoun 109). To be

sure, the relative size and income of the NRA is a factor not to be taken lightly when considering the content and style of their rhetoric.

As a debate within the internet-mediated public sphere, the texts being analyzed should be understood to be creators of meaning and dialogue, and as means by which readers and the arguers themselves are participating in sense-making. The idea of dialogic interaction draws upon this recognition and suggests that the rhetors have certain responsibilities as primary meaning creators in this context. As such, dialogic interaction calls the parties to recognize their position within the sense-making public sphere and to respond to the various means of sense-making that are occurring simultaneously in relation to the understanding of a subject. Additionally, the parties also have the responsibility to be honest in their construction of arguments, and to be open to questioning and response from the public and from other arguing parties. With an understanding of the theoretical contributions that make this work possible, I turn now to a discussion of the texts that serve as the basis for exploring meaning.

Selection of Texts

Because tipping has been written about from many different perspectives and approaches, there are many relevant texts from which to choose. I sought to select texts that would be representative of the beliefs purported in the arguments among rhetors. I chose online, publicly available news and policy reports from the two most well-known, nationally representative lobbying and policy making organizations, the National Restaurant Association (NRA) and the Restaurant Opportunities Center United (ROC). I evaluated four policy positions or news reports from each organization on topics related to tipping and restaurant worker wages more broadly. I'll briefly summarize the main

characteristics of the texts here before analyzing them in the following chapter. A summary of the texts can be found in Appendix B.

NRA Texts. The National Restaurant Association publishes news reports and statements that clarify and emphasize their policy positions. For this study, I selected four publications that deal with tips and wages directly, and which collectively serve to reveal the organization's approach to understanding tipped worker wages. I was able to access these publications from NRA's website.

The first of the four publications I looked at is entitled, "Statement on Tipped Wages Study." Published in July of 2014, the article is a statement released in response to a study published by the Economic Policy Institute calling for an end to the subminimum wage for tipped workers. In the response, Scott DeFife, Executive Vice President of Policy and Government Affairs for the NRA, defends tipping as a practice that is engrained in American culture. He calls the idea of a subminimum wage "categorically untrue," calling tips wages that employers and employees pay taxes on. He further defends tipping by acknowledging that servers are often the highest paid workers in restaurants and that raising wages for tipped workers would harm restaurants who are operating with razor thin profit margins.

Next, I looked at an article published in 2013 entitled "Restaurants Offer Fair Wages, Opportunities, NRA Says." The article begins by stating that the NRA welcomes a fact-based conversation on wages and that restaurants pay their employees fair wages. It seems to be written in response to a labor group calling for minimum wage to be raised to \$15. The article goes on to quote Scott DeFife, who calls the restaurant industry an industry of opportunity that provides jobs and room for growth for millions of people.

DeFife says that the reality is that restaurants provide fair wages and room for career growth. “Restaurants are the cornerstones of our communities,” the articles concludes.

The next article, published in 2015, is a personal profile of a restaurateur called “NY Restaurateur: \$15 Minimum Wage Could End My Business.” In it, owner of Sticky Lips Pit BBQ, Howard Nielson, offers his concerns for the effects of a rising minimum wage on his business. His restaurant employs 180 people, and he estimates that the January 1, 2016 increase of minimum wage to \$11.50 would add \$178,000 to his labor costs. He also worries about his ability to implement the Affordable Care Act and feels like he is being penalized for having a successful business with many employees. Nielson testified at a meeting for the wage board about these concerns. He adds that he is not opposed to a minimum wage increase, but that the increase should take place over time with smaller increases. The article concludes with several comments about the unbalanced political position of the wage board. Citing Melissa Fleischut, President of the New York State Restaurant Association, the article points to unfairness in the process, saying “rather than work with the legislator to find common ground through a deliberative process, the governor instead hand-picked a wage board to do his bidding... The board... lacks a single representative from the restaurant industry, and yet has the power to arbitrarily, and unfairly, single out a sector of the industry for an idealized wage hike.”

Finally, the last article from the NRA is simply entitled “Tip Pooling”. Published in 2017, the article lists in bullet points the history of the NRA’s involvement with tip pooling legislation and court cases. Their statement reveals that they have filed a petition to the Supreme Court to hear a case that would determine if restrictions to tip pooling

(preventing managers or back of house staff from sharing in the pool) could be applied to restaurants that did not take a tip credit.

ROC Texts. Restaurant Opportunities Centers United publishes reports that present their research and positions regarding tipped worker wages. I selected four for this study, which are available on ROC's website.

Published in December 2015 as a collaboration between the Food Labor Research Center at UC Berkeley, the International Human Rights Law Clinic at UC Berkeley, and ROC, the first report I examined for this study is entitled "Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards." The authors look at The Universal Declaration of Human Rights which states that everyone who works has the right to just and favorable remuneration to ensure an existence worthy of human dignity. They build a case through establishing the amount of tipped workers living in poverty that the tipped minimum wage violates the standards in the Human Rights Declaration. They suggest that governments should eliminate the tipped minimum wage, ensure that employees are paid a fair living wage, provide healthcare, and promote legislation that would end discrimination based on race or gender.

Next, I looked at a fact sheet called "The Impact of Raising the Subminimum Wage on Restaurant Sales and Employment," which was published in 2013. There are three main facts printed in bold: first, that eliminating subminimum wage for tipped workers does not adversely impact restaurant employment; second, that restaurant sales per capita are higher in states with a higher tipped minimum wage; third, that since the

end of the Great Recession in 2009, employment of tipped restaurant workers grew faster in states with a higher minimum wage.

The next article is called “Picking up the NRA’s Tab: The Public Cost of Low Wages in the Full-Service Restaurant Industry.” The authors estimate the cost of public programs that restaurant employees are enrolled in due to low wages at \$9,434,067,497 annually, which includes services such as public health insurance, federal earned income tax credit, food stamps, basic household income assistance, school lunch program, childcare assistance, low income home energy assistance programs, section 8 housing, and housing choice vouchers. The authors discuss their methods in detail, walking through the math used to reach the conclusions, and also provide case studies of large restaurant chains and how their policies result in such a strong reliance on public assistance programs.

Finally, I looked at “Our Tips Belong to Us: Overcoming the National Restaurant Association’s Attempt to Steal Workers’ Tips, Perpetuate Sexual Harassment, and Maintain Racial Exploitation,” which was published in October 2017 in response to discussion of making changes to tip pooling laws to allow for wider distribution. ROC compares the NRA to the gun lobby by the same acronym, and then goes on to explain the long history of back and forth legislation in regard to tip pooling. ROC then talks about how the NRA’s policies work to perpetuate sexual harassment in the restaurant industry through the maintenance of tip policies.

Goals

In looking at the means by which the messages are presented, it is my intention to understand more about the nature of dialogue in the context of ideological bubbles

created by curated and algorithmically chosen social media feeds. My goal is to urge the parties toward rhetorical efficacy through an awareness of and response to the opposing party's arguments. Instead of merely constructing persuasive-sounding arguments within the context of a singular party's narratives regarding tipping, the parties could improve their own arguments as well as the quality of the discussion overall through more thorough response to one another, approaching the construction of their arguments by acknowledging the broader range of perspectives held on tipping.

Those looking for objectivity in the pages of this thesis will, of course, not find it. Regarding the relative objectivity within criticism, Black says, "The methods of criticism need to be objective to the extent that, in any given critique, they could be explicated and warranted. But it is important that critical techniques also be subjective to the extent that they are not mechanistic, not autonomous, not disengaged from the critics who use them," (Black 66). Rhetorical criticism's tool is the rhetor, and the "critic's role is legislative as well as judicial," meaning that the critic must produce not only judgment on the piece but the process by which the piece will be judged (Black 64). Though the practice of criticism is long and well-paved, I wish to admit bias here and presently acknowledge that an attempt at objectivity is impossible for an enculturated observer such as myself. I began research into tipping because of its prevalence in the news as more restaurants abandoned tipping. As I conducted more research and tried to decide where I stood on the issues, I noticed that tipping is a lot more complicated than the arguers here made it out to be. I tend to favor ROC's logic and sympathy toward worker rights, believing that systems that privilege business over the people who comprise such organizations promote abuse and ill-treatment of those without power, privilege, and

wealth. Having worked in restaurants, I personally valued the opportunity to work for tips. I, however, work in California, where there is no subminimum wage for tipped workers. My place of privilege as a young, Caucasian female also I am sure prevented me from experiencing the harmful effects of the tipping system that many others experience. I come into this thesis, then, aware that my experience of working for tips is not a universally shared one, and I am sympathetic to the abuses of power that negatively affect those trying to earn a living through working in restaurants for tips.

Chapter 5: Results

In this analysis, I point out the various means of persuasion employed by the National Restaurant Association and Restaurant Opportunities Centers United, highlighting in particular where the two groups frame their arguments inadequately. I want to acknowledge not only *what* strategies they use, but also *how* those strategies either serve to respond to their opponent or neglect other relevant material. The strategies used include the major arguments, types of evidences, key terms, and god/devil terms. In employing rhetoric that presupposes the values of the organization, it becomes apparent that their purpose in argument is not to convince a reader who might hold opposite views of the issue, but to confirm and re-affirm those who approach the issue with similar values and priorities. My analysis demonstrates that the organizations consistently limit their own strengths and the quality of discussion in their ignoring and silencing of opposing arguments. I first look at the organizations' thematic emphasis, employing Burke's theory of terministic screens and Aristotle's principle of style to demonstrate how the groups' key terms both illuminate some key elements of tipping while disguising other things. I then turn to the organizations' use of personal testimony as a means of generating sympathy and creating organizational ethos. Finally, I examine how each group frames the other's work, suggesting that their belittling and antagonistic rhetoric hinders productive conversation around the topic of tipping.

Key Terms

Restaurant as Opportunity. As a trade organization, the National Restaurant Association primarily employs rhetoric to construct restaurants as places of opportunity. Glorifying business and critiquing policies that regulate and constrict business, the NRA advances a profit-first approach to tipping. The National Restaurant Association consistently frames the ideal restaurant as one that creates *opportunity* and *jobs*. Kenneth Burke's idea of the god/devil term serves to aid in understanding the ideas of supreme value to the organization. Businesses should be advocated for as a good in society, and the ultimate good, or god term, is *opportunity*, as seen in the repeated use of the term. Three out of the four texts specifically bring up opportunity, and the fourth text offers no positive defense of restaurants but summarizes victory in recent tip pooling cases. The terministic screen draws attention to the amount of opportunity the restaurant industry offers and is cited as a good; what *kind* of opportunity is veiled through the use of the term.

The ultimate evil, by contrast, is any restricting policy that might hinder the restaurant's ability to create this opportunity. The authors situate changes to tipping laws and policies within this framework of an evil that would hinder business. Higher tipped minimum wage, higher minimum wage more generally, and the Affordable Care Act are all cited as evils that would directly affect this ultimate good of opportunity. For example, one of the NRA's key arguments regarding wage revolves around the economic results of potentially raising the minimum tipped wage. Raising wages, they say, could put restaurants out of business, thereby eliminating opportunity, and this is a key reason they oppose raising the minimum wage. "We should all focus on preparing Americans

for high-growth positions and help businesses expand, not try to implement policies that would shutter businesses or eliminate jobs,” says Defife, the Association’s executive vice president of policy and government affairs (“Restaurants Offer Fair Wages, Opportunities, NRA Says”). They point out the labor groups calling for a \$15 an hour minimum wage and characterize this rate not by how well it reflects the employee’s living expenses, but in terms of the current minimum wage, that is, “more than double.” The depiction of the proposed new rate in terms of the threats to the restaurant’s financial success rather than in terms of standard living expenses or poverty rates betrays an attitude that denies a need for change and frames those who would propose such change as unrealistic in their understanding on the economic possibility of such a proposal. The NRA cites a personal testimony of a restaurateur who worries that his restaurants will not be able to financially sustain a higher minimum wage in New York.

For those inclined to view businesses as capital-creating, opportunity-creating goods in society, one can imagine that the NRA’s construction of restaurants as sites of opportunity will echo with an heir of hopeful truth. To make the point that restaurants provide opportunity in terms of growth, DeFife says that “ninety percent of salaried restaurant employees started their careers as hourly employees. Eighty percent of owners and managers started in entry level positions as well.” To emphasize how common working in the restaurant industry is, DeFife says, “one of every three Americans gets his or her first job in the restaurant industry.” The authors claim “fair wages” for those working in the restaurant industry, which makes sense according to standard economic theory which suggests if wages weren’t fair then employees would revolt or quit (Lynn 123).

ROC's primary assumption, by contrast, is that the quality of opportunity and job for tipped workers needs improvement. The NRA's choice to not address the lived quality of jobs for tipped workers utterly fails to engage with ROC dialogically and instead advances its own case narrowly. Such advancement of the case leaves the public at a disadvantage when engaging in sense-making about tipping through NRA's documents.

Restaurant as Environment Creation. Restaurant Opportunities Centers United, an organization that works primarily toward improving labor standards, has a different thematic emphasis than the National Restaurant Association. ROC focuses on the individual employees in the restaurants and works toward the alleviation of employment conditions that would leave employees in a less-than-ideal situation. ROC consistently advances a pro-employee ethic that informs the content of their rhetoric. Elsewhere in their website, ROC emphasizes partnership with restaurants in creating ways to implement their suggested policies while maintaining a financially lucrative business. This approach also begins with the employee but acknowledges that restaurants must stay in business to be able to help individual employees. By focusing on the personal level, ROC characterizes restaurants by the environment they create for their employees.

The Tipped Worker. When referring to employees in the restaurant industry working for the minimum and/or tipped minimum wages, the NRA publications emphasize restaurants as places for growth. The assumed natural path for tipped workers is one of improvement and upward momentum. The tipped wage job is a beginning leading to transferable skills or the opportunity to climb the ladder. Employees

here are characterized as “young people” and “those who are finding their economic footing.” The demographic reality, however, is more complex than they make it out to be. A study combining demographic reports of tipped restaurant workers shows that, while the tipped workforce is slightly younger than the rest of the population, at least half of tipped workers are over age 25 and a full 29.3% are over 40 years old (Allegretto & Cooper 9). The NRA would do well to include what the reality of restaurant jobs might look like for the 13 million restaurant employees and 3 million tipped restaurant workers. Framing restaurant workers as merely young people, however, seems to be essential for their case of improvements and opportunity. They downplay personal economics here to uphold their business-as-opportunity construction.

Tippling as American Tradition. According to the NRA, tipping is a “deeply American” practice that is engrained in the “American spirit of hospitality.” It is unclear, however, what is meant by the American spirit of hospitality in this framework. It could indicate that the NRA views tipping as a hospitable practice, or that customers offer tips because of servers’ and restaurants’ hospitality. Being intentionally vague can be a rhetorical strategy to allow audiences to understand their own interpretation of a word, metaphor, or argument, thereby creating multiple and differing understandings (Williams 30). Alternatively, these vague terms can be seen to have meaning which is only found when drawing on the larger narrative of the group. The vague language of hospitality constructs restaurants as the hallmark of the hospitality industry, at once advancing an industry-focused approach to the framing of issues and a view of restaurants as a space for customers to experience a welcoming environment. A traditional view of hospitality revolves around the idea of welcoming and serving the stranger (Lashley 27). However,

the idea is contested by a scholar who suggests that hospitality has been used to justify the conquest of the Americas and can be ideologically deformed to be used toward the oppression of others (Pagden “Lord of all the Worlds”).

The NRA’s characterization of tipping-as-American fits this practice into a neo-liberal model that certainly some of its readership would be persuaded by. Calling on the tradition of tipping in America ignores a few things, however, and in this ignoring its argument is weakened. The NRA regularly describes tipping as a social practice, commenting on the longevity of the practice in American culture. Calling upon the longevity of the social practice for justification ignores that tipping changes over time and that tipping is not merely a social practice but also a legislative issue. Michael Lynn, tipping scholar, notes the evolutionary nature of the practice of tipping when he says, “tipping is normative behavior, but tipping behaviors and the norms governing them are neither omnipresent nor static” (Lynn 85). Though most restaurant customers in America tip without much thought, the NRA completely ignores the history of tipping and that it has consistently been a source of debate. The tipping-as-American-tradition characterization calls upon a sense of national pride, in which case opposing tipping (in practice or as it is currently legislated) is then un-American. The NRA has narrowly defines what it is to be American, equating industry success with a successful country. In doing so, this organization blatantly disregards the displacement and abuse of labor that often leads to the success of businesses.

Tipping as American Progress. As opposed to the NRA’s static rhetoric, ROC necessarily develops a more change-oriented rhetoric with the goal of amending policy. This call to action, however, is advanced using fear tactics. Calling the issue of tipping

and the subminimum wage “urgent,” ROC selects an inflammatory and pressurized word to frame their work. The permanent nature of existing laws stands as a motivator for action; move now for change, lest poor working conditions be “cemented.”

Whereas NRA describes tipping as a “deeply American” practice, calling upon the entrenched nature of the practice in American dining culture, ROC acknowledges the longevity of the practice but calls it a “long and tortured” history. ROC draws attention to the racialized history of tipping. The authors emphasize the spread of tipping following the emancipation of slaves as a means to perpetuate not providing wages to the African Americans who were stuck in serving jobs, unable to find positions for the more skilled work in which they were trained as slaves.

ROC and NRA both depict true elements about the history of tipping, but only the pieces of the history that support their ultimate values. For example, by linking tipping to America’s long history with slavery, ROC draws upon a collective moral. Slavery is bad; therefore, tipping is also immoral. ROC here ignores another relevant portion of the history of tipping in America when it fails to acknowledge that tipping is a practice borrowed from Europe.

Restaurant Opportunities Centers United focuses on workers’ personal economics to the near exclusion of the economic functioning of restaurants. “Poverty” is the ultimate evil, or devil term, in their approximation of the situation, and the ultimate good, therefore, is the alleviation of such poverty. Their main argument is that adequate wages would alleviate poverty. They strongly advise the need to adopt what they call “One Fair Wage,” by which they refer to one minimum wage for both tipped and non-tipped workers. ROC uses several economic metaphors to again draw the reader’s attention to

the personal economics of tipped employees. They describe the “toll” that working for restaurants takes on its employees, and that employers should “invest” in their workforce. Economic value, then, lies in the workforce of the restaurant rather than in the restaurant itself. To form a more complete argument, ROC needs to respond directly to NRA’s claims regarding the potential failure of restaurants if wages were to be raised. There are studies to suggest that should the One Fair Wage policy be adopted, that there would be a loss of employment (Even & MacPherson 2). ROC’s own research in one report analyzed, however, suggests this might not be the case, citing the restaurant industry’s success in states that have adopted the One Fair Wage. It is important to note that this statistic does not describe job loss, but restaurant growth. In addition to depicting the outcomes of the states that have already adopted the policy, ROC also needs to respond to the worry about future states and cities that eliminate the tip credit. It should do this through an analysis of future impact instead of simply looking back at the states that have already adopted the policy.

Whereas the NRA frames tipping primarily as a social issue, actively obscuring the legislative structures that allow for a subminimum tipped wage and its consequences, ROC constructs tipping predominantly in terms of legislation and poverty. The NRA also frames the issue financially, arguing how raising minimum wages would negatively affect businesses. ROC, on the other hand, reveals the historically social nature of tipping, but obscures the entrenched nature of the practice for the modern tipper. Many customers have a hard time giving up tipping or seeing the higher menu prices that are often used to compensate for paying employees more (Lynn 130-131). Tipping is a

social, financial, and legislative issue, and any argument that misses this reality fails to capture the complexity of the issue.

Use of Personal Testimony

In their only personal narrative of the cases studied, the NRA tells the story of a business owner, Howard Nielsen of Sticky Lips BBQ Pit, who is worried that a higher minimum wage would end his business. The personal testimony of the restaurateur depicts him a capable and successful business person, thoroughly aware of his bottom line and how much his costs would increase should new minimum wage, healthcare, and insurance laws come into effect. It also frames him as an ideal public citizen, so concerned with his restaurant that he is testifying at public meetings in defense of keeping the current minimum wage for the sake of the survival of his restaurant. “Because I have been successful and have hired more people, I am getting penalized for having over 50 full time employees,” (“NY Restaurateur: \$15 Minimum Wage Could End My Business”). The use of personal testimony begs sympathy for the owner of the restaurant and his situation. In this way, the NRA makes use of Aristotle’s canon of pathos, convincing readers to side with a position based on emotional appeal. Punishing success certainly seems counter-productive in this business-centered depiction of the issue of minimum wage. In an appeal to logos, the author of the article lists the calculations Nielsen has performed to figure out how much the raise in minimum wage would cost. Between the rising minimum wage, Affordable Care Act, and tax increases in NY state, Nielsen estimates that his costs will go up by \$400,000 annually for his 180-employee, two location restaurants. By linking a personal story with financial

speculation, the NRA creates a convincing case that the minimum wage hike would bring harm to this restaurant owner, and to the people he employs.

Once again, opportunity is called upon as the god term, and laws raising the cost of doing business as well as the people arguing for changes to the laws are seen as a threat to this ultimate good. “The coalition,” the article states, referring to the group Save NY Restaurants Coalition, “is waging an aggressive public education campaign to call attention to the risks the wage increase poses to jobs and opportunity in the state.”

ROC emphasizes the use of personal testimony much more than the NRA, utilizing individual profiles, quotes, and stories in two out of the four selected texts. In general, the quotes are brief and scattered throughout the margins of the texts. They tend to fall into the categories of poverty, lack of access to healthcare, sexual harassment, and the unfairness of the tipping system. “I sacrifice other things so I can afford birth control,” says one 25-year-old, white female who is working as a bartender in Houston, Texas. “It was hard for me to pay my bills,” says a 32-year-old white male working as a bartender and server in Detroit, Michigan. The employees are framed as hard workers who are struggling to make ends meet. This highly personalized approach serves two purposes. First, it generates sympathy from the reader toward the restaurant worker, calling attention to the perspectives and experiences of selected tipped workers affected by policy changes (or lack of changes) and humanizes what could be an impersonal report. The repeated use of personal testimony suggests the normalcy of the difficult experience, building ROC’s case. Pathos, or emotional appeal, is a powerful tool for ROC as it reveals worker’s feelings of fear, insecurity, and hurt in their experiences in the restaurant industry. Second, the use of personal testimony generates a sense of guilt if no

action is taken. Since ROC faces a challenge that NRA does not, that of wishing to change policy regarding tipping and wages rather than maintain it, their rhetoric aims to not only generate sympathy but a sense that action needs to be taken. The testimonies and quotes feature tipped workers who are asking for change, and if one feels sympathy for the situation of the employee, then one must take action or feel the guilt of their own inaction to alleviate the problems.

Both organizations here emphasize players in the situation whose personal testimonies support their own argument. Both work well to support their case, humanizing the problems and generating sympathy for certain players. Such narrow use of personal testimony leaves the reader to recognize that the testimony being read is only a fraction of the story, a fraction of the players affected by tipping. To better represent the players in the situation, the groups need to acknowledge their bias in selecting the personal testimonies used and give mention to other people who are affected. ROC does work with restaurants and could easily include some testimony from owners and managers. ROC would do well to acknowledge benefits and struggles restaurant owners might have with their tipping recommendations, and the NRA's argument would benefit from a mention of the lived experience of the tipped worker.

Facts/Statistics Selected

When it comes to wages, the National Restaurant Association is quick to draw on the language of facts and says that it welcomes a “fact-based conversation.” It is interesting to note which facts are selected, however, as they certainly do not address all facts that could be cited when discussing tipped worker wages. Their brief statements select facts that ground the reader in the pro-restaurant ethic advanced. Linking the importance of facts to the restaurant-as-opportunity value, Defife says, “The facts show

the restaurant industry provides opportunity to men and women of all backgrounds and skill levels. More women and minorities own, operate and manage restaurants than virtually any other industry.” This statement has three large flaws. First, it assumes that women and minorities value the experience of working in a restaurant, ignoring that these are marginalized communities who are less likely to balk at the idea of being paid a sub-standard rate. Second, it disproportionately emphasizes women and minorities as those who own restaurants, ignoring valid concerns from the large demographics of women and minorities who make up the labor pool for restaurants rather than the owner pool. Third, the statement assumes that any business ownership is more important than owning the particular business that one wants to own. American culture consistently marginalizes women and minorities and limits their value in some ways to their production of food. Therefore, the claim that these groups’ restaurant ownership should be celebrated may tell us more about the limited opportunities that are open to these groups than about the inherent opportunity that the restaurant industry provides. The NRA’s argument obscures the racial bias experienced by tipped workers, and the economic reality that the restaurant industry, described by the NRA as a place of opportunity for minorities, has in effect a racially discriminatory wage policy in tipping (Ayres, Vars, and Zakaria, 1663; Lynn, Sturman, Elizabeth, Douglas, and McNeil 13; Brewster & Lynn 24-25).

The NRA cites numerical data that emphasizes the upward trajectory of such jobs: “ninety percent of salaried restaurant employees,” they say, “started their careers as hourly employees. Eighty percent of owners and managers started in entry level positions as well.” These arguments reveal that the National Restaurant Association constructs hourly and tipped jobs as transitional in nature. Calling upon the mythos of American business as a place of self-improvement through hard work, they assume that

the natural path for restaurant workers is upward mobility and an ever-increasing rate and stability of pay. In addition to economic improvement beginning with the restaurant job, the NRA also describes an improvement in job skills through restaurant employment. The NRA here obscures that many tipped employees make very little, and some fall below the poverty line though employed. They ignore demographic information that suggests that not all workers fall into this category of “young people” (Allegretto & Cooper 9).

Another statistic cited, that “one of every three Americans gets his or her first job in the restaurant industry,” similarly reveals carefully chosen evidence. They argue that it is “categorically untrue” that there exists a sub-minimum wage, citing the reasoning that, even if employees are paid a base rate of \$2.13 per hour, the employer is still responsible for making sure that the tips received completely make up the difference to reach the standard minimum wage. “No one is making \$2.13 an hour,” the reports are careful to emphasize. Once more, “Tips are wages,” they say.

ROC conducts its own research and uses these statistics thoroughly in their reports. The reports are statistically dense and together build a strong case. ROC does not advertise its use of “facts” as much as the NRA in its rhetoric, but the authors still rely heavily on facts to structure their arguments. In one article reviewed, ROC gives a summary of the impact of raising the subminimum wage on restaurant employment. They here call out facts, and then use statistics in order to support these facts. By looking at the states that have no subminimum wage, they say, one can see that there is only positive impact from raising minimum wage. Such data seeks to answer an underlying question asked by many from the NRA, “how can restaurants survive an increase in

minimum wage?” Their case is built from the states that have already done away with the tipped minimum wage and makes no effort to predict the results for states that would raise the subminimum wage. It stands to reason, they argue, that all states that raise the tipped minimum wage will experience the same results of the seven states that have already switched – steady restaurant employment, higher restaurant sales per capita, and increasing employment of tipped workers.

Description of the Opposition

In their framing of labor activists such as Restaurant Opportunities Centers United, the NRA describes the “pressure” such activists are placing on lawmakers and restaurants to raise wages, thereby weakening the agency of the politicians and restaurants alike to make their own decisions on the topic. By criticizing tipping, these activists are “devaluing restaurant jobs and attacking small businesses.” Campaigns are “engineered” to influence these parties, and, in contrast to their “fact-based” approach, the activists and those who disagree “hand-select” their panels which are called upon to suggest policy. These words suggest the manipulation, falsification, and elimination of facts. NRA is attempting to discredit and weaken trust in organizations like ROC and political offices favoring regulations that the NRA would oppose. The language of “attacking” and “pressure” frame ROC and likeminded organizations as aggressors. The opposing side wants to change restaurants, the valuable institutions that symbolize American hospitality and opportunity.

ROC’s boldest and most intentional metaphor is their comparison of the National Restaurant Association to the National Rifle Association, calling them “the Other NRA.” Making the direct link to the highly controversial gun lobby, ROC claims that the

National Restaurant Association “wields a similar amount of political influence at both the national and local level yet manages to fly below the radar” (“Our Tips Belong to Us”). By directly comparing the two lobbying organizations, ROC intends to highlight the “horrible tragedy” associated with the one and link it to the other. It makes the comparison of power and influence, and once again draws on fear tactics to convince their readership that action needs to be taken. This fear-mongering language serves to isolate those who feel undecided on what should be done about tipping, linking the two dissimilar issues with one another. Though support for one NRA does not demand support for the other, ROC would draw the link between the two, as if to equate the poor treatment of workers with the deaths and injuries inflicted by gun violence. One must ask if the two organizations or issues are comparable. It would seem as if the connection between the National Restaurant Association and the National Rifle Association does more to obscure what is going on rather than to illuminate it.

ROC highlights NRA’s focus on maintaining the status quo in spite of its negative effects, giving their report the subtitle “Overcoming the National Restaurant Association’s Attempt to Steal Worker’s Tips, Perpetuate Sexual Harassment, and Maintain Racial Exploitation.” The title’s emphasis on perpetuation and maintenance conveys the NRA’s resistance to change in the face of evidence that the status quo is harmful to employees. Whereas NRA describes their policy-maintaining stance as protection of restaurants, ROC sees this policy position as one of active oppression of individuals who work for tips in restaurants.

Discussion

Can the National Restaurant Association and Restaurant Opportunities Centers United improve their arguments by engaging with the opposing party's rhetoric? Arguments that can advance one's own position while fairly and directly engaging with the other position(s) are inherently more sophisticated and therefore better than those that either straw-man or ignore the opposition. Arguments must be more dialogic if they wish to advance the most sophisticated, well-structured argument possible. In an age of internet-mediated communication that often serves to limit rather than expand the perspectives with which readers regularly engage, there must be an emphasis on moving toward dialogue intentionally. As it stands, rather than make attempts to try to reconcile those disagreeing facts, the parties simply select the evidence that most supports their case. Instead of ignoring or dismissing offhand conflicting evidence, the National Restaurant Association and Restaurant Opportunities Centers United must weight, evaluate, and somehow incorporate the data that they have presently chosen to disregard in order to produce more thorough and sophisticated arguments to support their own viewpoints.

As the means of communication have so rapidly changed in the last several decades, new challenges emerge for rhetors to adapt to these environments and to use them productively. Much could be said about the effects of internet communication, but I am most interested in the ways that the internet has made it easier to limit one's perspective and the views with which one engages. Network studies reveal homophily from both Republicans and Democrats using Twitter, with Democrats having higher homophily than Republicans, and Republicans following Republican leaders having the

highest rates of ideological sameness (Colleoni, Rozza, & Arvidson 317; Goldie et al. 281). The public sphere is narrowing, becoming more and more specialized rather than more and more unified, as was once thought would be the result of internet-mediated communication (Papacharissi 17). NRA and ROC seem to reflect the landscape of limiting perspectives rather than challenge it. Challenge of one's own perspective would at once improve the rhetor's own arguments and the quality of the debate overall. The organizations must begin to see themselves inside of a dialogue that creates meaning between themselves and audiences. As mediators of public sense-making on issues related to tipping, the parties need to make every effort to be responsive to the arguments that are published already, to be honest and complete in their arguments, and to be open to questioning.

I do not mean to say that a discussion between the parties would produce policy that both sides could come together and agree on. Rather, I think that engagement between the parties' rhetoric that takes into account conflicting evidences would help both groups to produce more sophisticated views to support their own positions and produce more efficacious rhetoric. Linell's perspective on dialogic interaction here illustrates what I believe is possible; the dialogue may not produce complete understanding and agreement but can seek recognition (82). When internet-mediated communication limits perspectives to which one is exposed, it becomes crucial to argue dialogically with other voices discussing the same topic.

Conclusion

The National Restaurant Association takes on the specific goal of framing restaurants as positive places of opportunity while diminishing, villainizing, and muting

the voices of the opposing perspective which would see the working environments of restaurants and wages as being in need of improvement. Restaurant Opportunities Centers United focuses on the economics of the tipped worker, highlighting poverty and the experience of the tipped worker but diminishing or obscuring the perspective of restaurant owners. ROC approaches the rhetoric in a limiting way through their use of fear-mongering, poverty-centered arguments, and attacking metaphor. The National Restaurant Association, through its use of a vague god-term, belittling characterization of disagreeing parties, and highly selective facts, conveys its policy suggestions and perspectives on tipped worker wages in an echo-chamber, making cases which draw upon the tribal narrative of business as opportunity, the American dream of upward mobility, and tipping as American.

Both the NRA and ROC's rhetoric is narrow in scope, constructing cases that support their own arguments persuasively, but engage poorly with the opposing side's rhetoric. To improve the clarity, diligence, and sophistication of the arguments, these organizations need to better consider and respond to the opposition's cases.

Chapter 6: Conclusion

The National Restaurant Association and Restaurant Opportunities Centers United both employ rhetorical tactics that alienate readers who might approach their work holding differing opinions. They consistently straw-man their opposition and sometimes even ignore evidence that conflicts with the overall case they are trying to build. When ROC calls the NRA “the other NRA,” they make an unhelpful comparison between the restaurant organization and the controversial gun lobby that alienates some who might otherwise have been sympathetic to ROC’s position, straw-manning the opposition. The NRA frames restaurants as centers of opportunity, consistently using this terministic screen to distract from the kind or quality of opportunity these restaurants provide. These organizations miss an opportunity for more sophisticated dialogic interaction. The parties must engage with the evidences and narratives presented by the other side. True dialogic interaction aims to engage conflicting parties in an effort to discover more sophisticated arguments and ideas. Should the NRA and ROC abandon their attacking rhetoric, vague language, and isolating ideological roots, then sophisticated argument and a higher degree of responsibility would result. In the age of echo-chambers and fake news, it is more important than ever for groups to pursue engagement rather than taking the easy approach of using these ideological bubbles to their advantage.

Though I posit that the emphasis on in-group focused rhetoric is increasing among lobbying organizations such as these, tracking a change in rhetorical approaches over time may offer some clarification into the changing approach to policy discussions.

Outside of the scope of this paper, but by no means less important, is the impact of the news coverage about tipping as it has re-emerged into public discussion. Looking at news coverage of the tipping debate would offer a more complete understanding of the rhetoric surrounding this issue. Finally, it would be advantageous to use the principles of dialogic interaction to form more complete arguments for and against tipping in scholarship, using knowledge of the gaps in the arguments to construct more complete research.

The goal of this thesis has not been to offer suggestions for tipping policy. Neither is it meant to mediate between the positions of the groups to come to a conclusion that would satiate or create compromise between the sides. Rather, through the evaluation of the rhetorical examples chosen by the NRA and ROC, it is my aim to call the groups to more sophisticated arguments that take into account conflicting evidence presented by the opposition. In an age when it is easier than ever to ignore conflicting arguments and evidence, it is increasingly important to engage in dialogue because without such dialogue, views held become unsophisticated and narrow in scope. To aid readers in making sense of the information circulating about tipping policy, the groups should aim for complete argumentation, taking responsibility for their role in creating meaning for the public and structuring their arguments in ways that do not straw-man, ignore, or misrepresent the opposition, but answer, provide honesty about, and are open to questioning from their argumentative opponent.

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APPENDIX A. STATE TIPPED MINIMUM WAGES

Jurisdiction	Basic Combined Cash and Tip Minimum Wage Rate	Minimum Cash Wage	Maximum Tip Credit Amount
FEDERAL	\$7.25	\$5.12	\$2.13
Alaska		\$9.84	
California (25 employees or less)		\$10.50	
California (26 or more employees)		\$11.00	
Minnesota (Large employer)		\$9.65	
Minnesota (Small employer)		\$7.87	
Montana (businesses with gross annual sales over \$110,000)		\$8.30	
Montana (businesses not covered by the FLSA with gross annual sales of \$110,000 or less)		\$4.00	
Nevada (with no health insurance provided by employer and received by employee)		\$8.25	
Nevada (with health insurance benefits provided by employer and received by employee)		\$7.25	
Oregon		\$10.25	
Washington		\$11.50	
Arizona	\$10.50	\$7.50	\$3.00
Arkansas	\$8.50	\$2.63	\$5.87
Colorado	\$10.20	\$7.18	\$3.02
Connecticut	\$10.10		

<i>Hotels, restaurants</i>		\$6.38	36.8% (\$3.72)
<i>Bartenders who customarily receive tips</i>		\$8.23	18.5% (\$1.87)
Delaware	\$8.25	\$2.23	\$6.02
District of Columbia	\$12.50	\$3.33	\$9.17
Florida	\$8.25	\$5.23	\$3.02
Hawaii	\$10.10	\$9.35	\$0.75
Hawaii note: Tip credit is permissible if the combined amount the employee receives from the employer and in tips is at least \$7.00 more than the applicable minimum wage.			
Idaho	\$7.25	\$3.35	\$3.90
Illinois	\$8.25	\$4.95	40% of the applicable minimum wage (\$3.30)
Iowa	\$7.25	\$4.35	\$2.90
Maine	\$10.00	\$5.00	\$5.00
Maryland	\$9.25	\$3.63	\$5.62
Massachusetts	\$11.00	\$3.75	\$7.25
Michigan	\$9.25	\$3.52	\$5.73
Missouri	\$7.85	\$3.93	50% (\$3.92)
New Hampshire	\$7.25	45% of the applicable minimum wage (\$3.26)	55% of the applicable minimum wage (\$3.99)

New York	\$10.40		
<i>Tipped Food Service Workers</i>		\$2.90	\$7.50
<i>Tipped Service Employees</i>		\$1.75	\$8.65
North Dakota	\$7.25	\$4.86	33% of the applicable minimum wage (\$2.39)
Ohio	\$8.30	\$4.15	\$4.15
Oklahoma	\$7.25	\$2.13	\$5.12
Pennsylvania	\$7.25	\$2.83	\$4.42
Rhode Island	\$10.10	\$3.89	\$6.21
South Dakota	\$8.85	\$4.325	50% (\$4.425)
Vermont	\$10.50	\$5.25	\$5.25
Virgin Islands	\$9.50	40% (\$3.80)	\$5.70
Wisconsin	\$7.25	\$2.33	\$4.92
West Virginia	\$8.75	\$2.62	70% (\$6.13)
Alabama		\$2.13	
Georgia		\$2.13	
Indiana	\$7.25	\$2.13	\$5.12
Kansas	\$7.25	\$2.13	\$5.12
Kentucky	\$7.25	\$2.13	\$5.12
Louisiana		\$2.13	
Mississippi		\$2.13	
Nebraska	\$9.00	\$2.13	\$6.87

New Jersey	\$8.60	\$2.13	\$6.47
New Mexico	\$7.50	\$2.13	\$5.37
North Carolina	\$7.25	\$2.13	\$5.12
South Carolina		\$2.13	
Tennessee		\$2.13	
Texas	\$7.25	\$2.13	\$5.12
Utah	\$7.25	\$2.13	\$5.12
Virginia	\$7.25	\$2.13	\$5.12
Wyoming	\$5.15	\$2.13	\$3.02

Note: The following states do not have minimum wage laws: Alabama, Louisiana, Mississippi, South Carolina, and Tennessee. Georgia has a minimum wage law, but it does not apply to tipped employees.

Source: Division of Communications, Wage and Hour Division, U.S. Department of Labor

APPENDIX B. SUMMARY OF SELECTED TEXTS

National Restaurant Association Texts

Title of Article	Date Published	Author Specified?	Brief Summary
Statement on Tipped Wages Study	July 10, 2014	No, but the main statement comes from Scott DeFife, Executive Vice President of Policy and Government Affairs for the NRA	The left-leaning Economic Policy Institute published a study that revealed that the \$2.13 minimum wage left many in poverty, especially women and minorities. The EPI's report mirrors much of what ROC argues. This statement is the NRA's response to the EPI report.
Restaurants Offer Fair Wages, Opportunities, NRA Says	August 29, 2013	No	Scott DeFife addresses colleagues regarding wages claiming restaurants offer fair wages and opportunities.
NY Restaurateur: \$15 Minimum Wage Could End My Business	June 24, 2015	No	This article profiles Howard Nielsen, owner of a barbeque restaurant in New York state, who is worried that increasing the minimum wage to \$15 so quickly would be difficult to financially manage.
Tip Pooling	January 19, 2017	No	This report summarizes the history of the NRA's position on tip pooling and the victories they've won in court, and the petition they submitted to challenge the Obama-era position on tip pooling.

Restaurant Opportunities Centers United Texts

Title of Article	Date Published	Author Specified?	Brief Summary
Our Tips Belong to Us: Overcoming the National Restaurant Association's Attempt to Steal Worker's Tips, Perpetuate Sexual Harassment, and Maintain Racial Exploitation	October 2017	No	The report argues that National Restaurant Association promotes tip theft, sexual harassment, and racial discrimination.
Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards	December 2015	Food Labor Research Center, International Human Rights Law Clinic, Restaurant Opportunities Centers United	The International Human Rights Standard sets an example for how all humans should be treated and what the rights of each person, including restaurant workers, are.
Fact Sheet: The Impact of Raising the Subminimum Wage on Restaurant Sales and Employment	2013	Restaurant Opportunities Centers United	The fact sheet examines the correlation between raising minimum wages and restaurant success.
Picking up the NRA's Tab: The Public Cost of Low Wages in the Full-Service Restaurant Industry	2015	Mike Rodriguez, Teofilo Reyes, Ariel Jacobson of ROC	This report summarizes the cost of public assistance programs that employees in full-service restaurants use.