

THE RIGHT TO DINE: WHY NEW YORK CITY'S RESTAURANT CULTURE IS WORTH SAVING

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I. INTRODUCTION

"Let me be surrounded by luxury, I can do without the necessities!" – Oscar Wilde¹

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Like a well-trained hostess, I would like to begin this discourse with an *amuse-bouche*. It is only fair that I cleanse your palate with an anecdote that concerns food and conversation. A fine small meal, a snack per se, a mist of fondness, a drizzle of hedonism, and notes of gastronomic pleasure. In some ways this is not really a story at all but an exchange which reads,

Not for tonight, or Thanksgiving, but we need to make shrimp scampi again.

Lashings of garlic, cracked pepper, a healthy pour of white wine.

Served with some thick crusty bread.

And extra Parmesan.

The point of this exchange is simple: in just a few words, you are invited to join a meal, bearing hope, texture, and promise. The joy from such a meal as this, while only imagined, finds its substance in the memory of past meals, culminating in a universal truth: food is music for the soul.

A. Background

Paris and New York City (“NYC”) are two cities with reputations for the best food, served by the world’s best restaurants. Without food, their identities lack an essential ingredient of their definition.² Even before the coronavirus pandemic, the restaurant industry in the United States (“U.S.”) and in France started to feel strained. In the U.S., restaurant culture felt the heat of demands for social justice as industry workers began to expose deep-seeded issues in their work environments.³ In France, there was concern about how the European “café”⁴ could remain socially relevant in the face of industrial

¹ GOOD READS, <https://www.goodreads.com/quotes/608782-let-me-be-surrounded-by-luxury-i-can-do-without> (last visited Jan. 13, 2021).

² Lucy Williamson, *Coronavirus: Paris Returns to Café Life With New Normal*, BBC (June 6, 2020), <https://www.bbc.com/news/world-europe-52935145>; Ben Yakas, *NYC Restaurant Industry Implores City & State for Immediate Plan On Resuming Indoor Dining*, GOTHAMIST (Aug. 19, 2020), <https://gothamist.com/food/nyc-restaurant-industry-implores-city-state-immediate-plan-resuming-indoor-dining>.

³ Eater Staff, *America’s Restaurants Are Worth Saving. Here’s How.*, EATER (Sept. 1, 2020), <https://www.eater.com/21395619/americas-restaurants-are-worth-saving-heres-how>.

⁴ Throughout the course of this paper I will use the term “café” according to its broader definition as an eating and drinking establishment, serving more than just

changes.⁵ Then, the COVID-19 pandemic hit. With mandatory lockdowns and stay-at-home orders in place, the restaurant industry's resilience was thoroughly tested. In NYC, however, the impact of the pandemic went beyond financial strain on small businesses. It threatened the identity of a city once acclaimed for its art, its music, and, above all, its food.

In Paris, the need to preserve cafés is connected to a cultural understanding that the café is an "important" and "essential" part of life.⁶ This intense belief is mutual amongst fellow Parisians.⁷ Due to the pandemic, cafés were required to temporarily shutter their windows as the French government took charge to contain the spread of the virus.⁸ On the other hand, restaurants in NYC remained open throughout the entirety of intermittent lockdown periods because they were considered essential businesses.⁹ Although this was better than being unemployed for some restaurant workers,¹⁰ others were put in a position where they were asked to choose between their own health and safety, and their employer's eligibility for government-issued loans.¹¹

The Paycheck Protection Program ("PPP") required restaurants to keep a majority of their staff on payroll in order to be eligible for

coffee. See *Café*, BRITANNICA, <https://www.britannica.com/topic/cafe-eating-and-drinking-establishment> (last visited Jan. 14, 2021).

⁵ Noemie Bisserbe, *France Says Au Revoir to the Cafe*, WALL ST. J. (Feb. 7, 2020, 11:13 AM), <https://www.wsj.com/articles/france-says-au-revoir-to-the-cafe-11581091992>.

⁶ John Irish & Noemie Olive, '*We Need a Social Life' — French Stick to Café Culture Despite Coronavirus*', REUTERS (Mar. 13, 2020, 1:05 PM), <https://www.reuters.com/article/us-health-coronavirus-france-cafes/we-need-a-social-life-french-stick-to-cafe-culture-despite-coronavirus-idUSKBN2102R7>.

⁷ *Id.* In this article, the journalist goes so far as to say, "The city without cafés is like a house without walls or the sky without stars: It cannot stand, and it just does not shine as bright." This statement captures the French sentiment about cafés and their irreplaceable role in daily life.

⁸ *Covid-19: Soutien aux Entreprises Parisiennes*, PARIS (Nov. 26, 2020), <https://www.paris.fr/pages/coronavirus-soutien-aux-entreprises-parisiennes-7678>.

⁹ *Governor Cuomo Issues Guidance on Essential Services Under the 'New York State on PAUSE' Executive Order*, NEW YORK STATE OFF. GOVERNOR (Mar. 20, 2020), <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>.

¹⁰ See generally, e.g., Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. §§ 9001-9141 (2020).

¹¹ Elazar Sontag, *Is the Government Just Going to Watch the Restaurant Industry Die*, EATER (Aug. 28, 2020), <https://www.eater.com/21401244/the-restaurant-industry-is-in-desperate-need-of-a-federal-bailout>.

loans.¹² This type of condition-based aid put restaurants in a complicated position; specifically, the staff were not free to look for new employment, as the restaurants then risked losing eligibility for the PPP loans.¹³ While the economic outlook for Parisian cafés and restaurants is far from perfect, there is still a sense that Parisians are willing to work together to ensure the best possible result.¹⁴ More importantly, however, both the European Union (“E.U.”) and the French government took the necessary steps to implement regulations to mitigate the strain of unemployment during the height of the pandemic.¹⁵ The same cannot be said for the U.S., or NYC.

This Note will argue that NYC’s restaurant culture should be valued as highly as Paris’s. The measures taken by state and local governments to provide a solution for the impending failure of hundreds of restaurants should be revised not only to help restaurateurs avoid closure, but also to bring back the aesthetic of a city with an appreciation for a lifestyle nourished by rich dining experiences. This Note will highlight shortcomings in the laws currently in place in New York and will provide potential solutions that mirror the laws in France. This Note will conclude with a discussion of how New York could design a legal “toolbox” to properly address this issue by following in France’s footsteps.

I will begin by examining the history of workers’ rights in France, as the French dedication to ensuring that its citizens’ needs are protected provides a valuable juxtaposition to the American view of workers’ rights. Next, I will provide an in-depth overview of the history of the French café, coupled with a brief history of how French food garnered a reputation as the best food in the world. This Note will then proceed with a discussion of the measures put in place to deal with the impact of the coronavirus on the French dining culture. After laying out the European legal measures for handling the financial

¹² *Id.*

¹³ *Id.*

¹⁴ Williamson, *supra* note 2.

¹⁵ Council Regulation 2020/672 of May 19, 2020, On the Establishment of a European Instrument for Temporary Support to Mitigate Unemployment Risks in an Emergency (SURE) Following the COVID-19 Outbreak, 2020 O.J. (L 159); *SURE: The European Instrument for Temporary Support to Mitigate Unemployment Risks in an Emergency (SURE)*, EUR. COMM’N, https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financial-assistance-eu/funding-mechanisms-and-facilities/sure_en (last visited Jan. 13, 2021) (“The establishment of SURE is a further tangible expression of Union solidarity, whereby the Member States agree to support each other through the Union by making additional financial resources available through loans.”).

impact of business shutdowns caused by the coronavirus, I will review Governor Cuomo's efforts to protect the health of New Yorkers during the pandemic. Finally, I will discuss my proposal for long-term efforts to restore NYC to the vibrant city it once was; steeped in appreciation for the aesthetic and alimentary, gourmet and gastronomic plenitude of cuisine. Linking Paris, NYC, and the restaurant industry in both cities, I will discuss implementing a support regime for restaurants which goes beyond providing a simple relief package for adapting to a new "normal" of periods with constant business interruption. Through this Note, I hope to demonstrate why New York should take substantive measures to not only sustain what is left of the restaurant scene in NYC, but also to invest in the revivification of its identity.

II. BUILT FOR SUCCESS

A. A Brief History of Workers' Rights

From the perspective of protecting workers' health, the lockdown measures in France align with the Country's dedication to ensuring a safe work environment, a concept which takes precedence over other social values. The preamble of the French Constitution lays out the relationship between the government and the rights of the citizen, stating, "to the end that the demands of the citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and happiness of all."¹⁶ In furtherance of this goal, employment status in France covers employees who are under a contract of employment, agency workers, the self-employed, and independent contractors.¹⁷ As a result, the scope of employment benefits (i.e., minimum wage, restrictions on working time, holiday entitlement, illness and injury of employees, and statutory rights of parents and caretakers) is not limited to salaried employees.¹⁸

Even before the coronavirus pandemic led to forced business closures on a level never experienced before, the concepts of unemployment benefits that matched workers' salaries, universal

¹⁶ CONSEIL CONSTITUTIONNEL, DECLARATION OF HUMAN AND CIVIC RIGHTS OF 26 AUGUST 1789, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/cst2.pdf.

¹⁷ Joël Grangé, *Employment and Employee Benefits in France: Overview*, THOMSON REUTERS (Jan. 1, 2019), <https://uk.practicallaw.thomsonreuters.com/0-503-0054>.

¹⁸ *Id.*

health care, and industry-specific relief funds used to prepare for emergency situations were not novel ideas. In fact, these concepts already existed in French employment laws.¹⁹ As a result, when the French government instituted lockdown measures that included restaurant and café closures, the French were frustrated by this disruption to their daily routines.²⁰

In contrast, the U.S. Constitution does not hold the government affirmatively responsible for the welfare of its citizens.²¹ This is different from the approach taken by many European countries, including France, in which the national constitution recognizes a state's obligation to provide welfare services to individuals.²² The 1791 French Constitution prescribed specific governmental welfare obligations; for example, the State was expected to "provide work for the able-bodied poor who may not have been able to obtain it for themselves."²³ The benefit of enumerated governmental welfare obligations is most obvious during a time such as this, when employment interruptions are necessary for the protection of citizens.

B. Understanding the Origin of the French Café

Dining is a critical and irreplaceable social space for the exchange of ideas.²⁴ This quality can be traced to the origin of the French café as a predominantly political space intended for conversation and the exchange of ideas and beliefs that were otherwise better left unsaid for the sake of peaceful interaction.²⁵ Intellectuals like Voltaire, Rousseau, and Diderot visited cafés to discuss their revelations; be they personal, theoretical, or even physiological.²⁶ The cafés were viewed as places of freedom and privilege, ranging from ornate and

¹⁹ *Id.*

²⁰ PARIS, *supra* note 8.

²¹ See NORMAN DORSEN, MICHEL ROSENFELD, ANDRAS SAJO, SUSANNE BAER, & SUSANNA MANCINI., COMPARATIVE CONSTITUTIONALISM: CASES AND MATERIALS 1401 (3d ed. 2016).

²² *Id.*

²³ *Id.* at 1398.

²⁴ Thierry Rigogne, *The Creation of the French Café in Myth and History*, Clark Quarterly Lecture, UCLA (Feb. 21, 2013), <http://www.1718.ucla.edu/events/quarterly-rigogne/>.

²⁵ Tara Sivamani, *The French Café*, NCSU, https://faculty.chass.ncsu.edu/marchi/fl_216/French%20Cafes.pdf (last visited Jan. 13, 2021).

²⁶ *Id.*

renowned cafés of the elite to the more humble and quaint cafés of the working-class.²⁷

The first Parisian cafés opened their doors in the 1600s, modeling their design and purpose after the coffeehouses that previously flourished in both the Ottoman Empire and in England.²⁸ However, cafés' real value and their transformation into staples of French culture did not appear until the Enlightenment and the French Revolution.²⁹ Cafés created an opportunity for public discourse that was open yet respectable.³⁰ Initially, their clientele was limited to an amalgam of the elite and middle classes.³¹ Cafés were intended to facilitate conversation—"the polite and pointed discussion of ideas, news, and literature that marked an important stage in the spread of civility."³² Because the French were restricted from engaging in the open discourse of politics and other sensitive topics—including religion, the economy, and other aspects of public life³³—the café was a safe space where the exchange of opinions was both welcomed and encouraged.³⁴

The social value of cafés continues to hold meaning as a core component of French identity.³⁵ This can be explained through an understanding of what the café has come to represent, in terms of France's appreciation for an opportunity to compare and exchange ideas, to debate one's philosophical views, and to partake in one another's anguish or melancholy.³⁶ All done while enjoying *un café*. Without the ambiance of a café, much of the aesthetic value of the café experience is lost. In many ways, French café culture is rather vain and superfluous, as those who partake in the experience are largely motivated by a desire to be seen and heard.³⁷ However, it seems hardly appropriate to condemn such behavior when it contributes to the cultural landscape on a level unmatched by any other social

²⁷ *Id.*

²⁸ Rigogne, *supra* note 24.

²⁹ *Id.*

³⁰ Thomas Brennan, *Coffeehouses and Cafes.*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/acref/9780195104301.001.0001/acref-9780195104301-e-137> (last visited Jan. 13, 2021).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *The Café Culture in France*, CAFÉ DE FLORE (May 12, 2012), <http://www.cafe-de-flore.com/the-cafe-culture-in-france/>.

³⁶ *Id.*

³⁷ *Id.*

engagement.³⁸ It would be absurd to deny the inherent relationship between luxury and success, enticing all of society to partake in the traditions of the elite.

The respect given to the food culture in France is tied to the relationship between the dining experience and the pursuit of social enrichment.³⁹ To share a meal in France goes beyond the acts of eating and drinking. The real experience lies at the heart of what the sharing of food can accomplish. For the French, the café is about social development—specifically, the exchange of ideas in an environment tailored to encourage conversation.⁴⁰ And, through the sharing of ideas, the undeniable enhancement of society.⁴¹ The café curates a sense of freedom to engage in a discussion and to hold independent beliefs.⁴² The food itself plays an accompanying role as an elixir to soothe any discomfort caused by the engagement in free discourse. At times when there may be little else for anyone to agree about, it is the sharing of a meal that justifies the experience. Without food and a place to meet to enjoy a meal, engage in conversation, and voice opinions, there is a limitation on what society can accomplish on a more abstract level.⁴³

C. A Global Reputation of Greatness

With the intellectual novelty of the café, the gastronomical novelty of “haute cuisine” stands in stark contrast to the discourse-driven appeal of the café.⁴⁴ While the Parisian cafés created an intersection for social and culinary life,⁴⁵ haute cuisine was reserved for those largely concerned with luxury and wealth.⁴⁶ The invention

³⁸ *Coffee and Café Culture in France*, FRENCHENTRÉE (Jun. 5, 2015), <https://www.frenchentree.com/living-in-france/food-recipes/french-style-coffee/>.

³⁹ Brennan, *supra* note 30.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *What is Haute Cuisine?*, AUGUSTE ESCOFFIER SCH. CULINARY ARTS (Oct. 20, 2014), <https://www.escoffieronline.com/what-is-haute-cuisine/>. Throughout the course of this paper I will use the term “haute cuisine” according to its well-recognized translation as “high cuisine,” emphasizing small menus with high-end ingredients and refinement.

⁴⁵ *Parisian Café*, WIKIPEDIA, https://en.wikipedia.org/wiki/Parisian_café (last modified Jan. 13, 2021).

⁴⁶ *History of Gastronomy: The Birth of the Haute Cuisine*, GASTRONOMOS, <https://gastronomos.fr/en/culture/history/history-of-gastronomy-the-birth-of-the-haute-cuisine/> (last visited Jan. 13, 2021).

of haute cuisine began as what can only be described as a competition between the new elites of the Industrial Age and the bourgeoisie vying to prove to one another that their sense of what qualified as “good taste” was best.⁴⁷ The mission to codify the cuisine of the aristocracy served as the foundation of an aesthetic of cooking that would not only define the art of fine dining within France, but also come to define fine dining internationally.⁴⁸ Haute cuisine transformed Paris into the “culinary center of the world.”⁴⁹ Today, to think of French food is to think of fine dining.⁵⁰

Unlike its democratic counterpart, haute cuisine is steeped in a tradition of excess and exclusion.⁵¹ Unlike traditional dining ideology, dedicated to a narrative of nourishment,⁵² haute cuisine places all the emphasis on style and appearance, minimizing the substantive value of consumption to complete irrelevance.⁵³ In many ways, the concept of conspicuous consumption now associated with dining culture as a whole is a direct descendent of the haute cuisine traditions in France.⁵⁴

D. Local Tourism: France’s Campaign to Preserve the French Identity

A national campaign lies at the center of efforts to resuscitate the nation’s tourism industry geared specifically towards getting the French to explore France.⁵⁵ In other words, the French Government has embraced the pandemic’s restraints as an opportunity to turn the hearts of the French back to France. The desire to “meet up, eat well and have a chat” captures the heart of the French identity.⁵⁶ The toll of the pandemic is most visibly pronounced in its prohibition of activities on which the French way of life depends. While this campaign is portrayed as a bailout for the Country’s tourism industry, the crux of

⁴⁷ AMY B. TRUBEK, HAUTE CUISINE: HOW THE FRENCH INVENTED THE CULINARY PROFESSION (2000).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ AUGUSTE ESCOFFIER, *supra* note 44.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Henry Samuel & Nick Squires, *France Unveils €18 Billion ‘Marshall Plan’ to Save Tourism*, THE TELEGRAPH (May 14, 2020), <https://www.telegraph.co.uk/news/2020/05/14/france-unveils-18bn-marshall-plan-save-tourism/>.

⁵⁶ *Id.*

the tourism industry is undoubtedly cafes, bars, and restaurants.⁵⁷ The government's initiative to incentivize local tourism in France is directly connected to the government's understanding of the essential nature of the businesses which constitute the essence of "French pleasure."⁵⁸ There is a connection between the government and the needs of its citizens that reaches beyond the scope of the campaign, since the values of the citizen and the state are mutually expressed.

III. THE ROLE OF GOVERNMENT AND THE PROVISION OF ECONOMIC RELIEF IN RESPONSE TO COVID-19

A. *The E.U.'s Stance on Financial Assistance*

On April 2, 2020, the European Commission proposed the creation of a new instrument that would provide temporary support to member states facing unemployment risks following the COVID-19 outbreak. The instrument, titled "Support to mitigate Unemployment Risks in an Emergency" ("SURE"),⁵⁹ was approved by the Member States of the Council shortly thereafter.⁶⁰ The instrument was intended to provide financial assistance to the Member States to help mitigate the "negative economic and social consequences" of COVID-19.⁶¹ It provided up to 100 billion EUR in loans from the E.U. to affected Member States to "address sudden increases in public expenditure for the preservation of employment."⁶² The official text of the instrument outlined conditions for using the instrument, the form of financial assistance, and the procedure for requesting financial assistance, all of which were intended "to mitigate the direct economic, social and health-related effects of the exceptional occurrence caused by the COVID-19 outbreak."⁶³

Simultaneously, the European Commission proposed a long-term recovery plan for Europe to help repair the economic and social repercussions of the coronavirus.⁶⁴ It did not take long for the

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Council Regulation 2020/672, *supra* note 15.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Recovery Plan for Europe*, EUR. COMM'N., https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe_en (last visited Jan. 13, 2020).

proposed plan to be approved, as E.U. leaders agreed on the need for a recovery plan to be in place to “lead[] the way out of the crisis and lay[] foundations for a modern and more sustainable Europe.”⁶⁵ To ensure that the E.U.’s response remained effective in providing relief to everybody who requested assistance as well as its global partners, the European Commission coupled its long-term budget with the NextGenerationEU initiative, a temporary instrument designed to boost the recovery of the economy.⁶⁶ The Commission’s two-fold proposal combined a 750 billion EUR recovery instrument intended to boost the E.U. budget with new financing raised on the financial markets for 2021 to 2024, with a reinforced long-term budget of 100 billion EUR for the E.U. for 2021 to 2027.⁶⁷

The NextGenerationEU initiative is expected to be spread out between 2021 and 2027,⁶⁸ and will be rolled out under three pillars, all of which are geared toward “investing in a green, digital and resilient Europe.”⁶⁹ The three pillars, as detailed by the Commission, include: (1) supporting member states in their recovery, (2) kick-starting the economy and helping private investment, and (3) learning lessons from the crisis.⁷⁰ Each pillar will receive funding from a source which directly correlates to the intended financial impact of the program.⁷¹ For example, the pillar focused on supporting member states will receive funding from public investment, as public investment has “a vital role to play in a balanced and sustainable recovery.”⁷²

On the other hand, the E.U.’s long-term budget lays out the financing policy for the bulk of the proposed measures, with the program’s ultimate goal being to relieve the financial strain on the Member States as a result of the coronavirus pandemic.⁷³ By coupling the long-term budget with the NextGenerationEU initiative, the E.U.’s

⁶⁵ *Opening Remarks by President von der Leyen at the Joint Press Conference with President Michel Following the Special European Council Meeting of 17-21 July 2020*, EUR. COMM’N (July 21, 2020), https://ec.europa.eu/commission/presscorner/detail/%5Beuropa_tokens:europa_interface_language%5D/statement_20_1388.

⁶⁶ EUR. COMM’N, *supra* note 64.

⁶⁷ *Id.*

⁶⁸ *The EU Budget Powering the Recovery Plan for Europe*, EUR. COMM’N (May 27, 2020), https://ec.europa.eu/info/sites/info/files/factsheet_1_en.pdf.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

intention is to increase flexibility mechanisms in preparation for unforeseen needs that might arise.⁷⁴

In addition to the recovery plan agreed upon for the E.U. as a whole, French lawmakers have approved another 100 billion EUR package to bolster the Country's economy.⁷⁵ Under this package, businesses hardest hit by confinement requirements will get 10,000 EUR per month, and "their payrolls will be effectively nationalized, so that employees who cannot work may keep their jobs."⁷⁶ The employment-related measures have focused on tax breaks and payments to furloughed staff, including time limits for the payment of social and fiscal installments, direct tax breaks, support from the State and the Bank of France, and simplified and reinforced short-time working schemes.⁷⁷ All of these government efforts echo President Macron's understanding that small and medium-sized businesses may receive additional financial aid as "[t]he economy must not come to a halt."⁷⁸

B. The American Model of Relief

In response to the coronavirus pandemic, on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.⁷⁹ This Act provided for an economic relief package of over 2 trillion USD, intended to protect Americans from "the public health and economic impacts of COVID-19."⁸⁰ The Paycheck Protection Program ("PPP"), established by the CARES Act was implemented to provide "small businesses with funds to pay up to 8 weeks of payroll costs including benefits."⁸¹ Funds were permitted to

⁷⁴ EUR. COMM'N, *supra* note 15.

⁷⁵ *France Braces for Economic Suffering as Lockdown Returns*, N.Y. TIMES, <https://www.nytimes.com/live/2020/10/28/business/us-economy-coronavirus> (last updated Nov. 17, 2020).

⁷⁶ *Id.*

⁷⁷ *France: Government and Institution Measures in Response to COVID-19*, KPMG, <https://home.kpmg/xx/en/home/insights/2020/04/france-government-and-institution-measures-in-response-to-covid.html> (last updated Sept. 30, 2020).

⁷⁸ N.Y. TIMES, *supra* note 75.

⁷⁹ *About the CARES Act and the Consolidated Appropriations Act*, U.S. DEP'T OF TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act> (last visited Jan. 13, 2020).

⁸⁰ U.S. DEP'T OF TREASURY, SMALL BUSINESS PAYCHECK PROTECTION PROGRAM (2020), <https://home.treasury.gov/system/files/136/PPP%20-%20Overview.pdf> (last visited Sept. 22, 2021).

⁸¹ *Id.*

be used for paying interest on mortgages, rent, and utilities.⁸² However, in order to remain eligible for PPP, small businesses had to maintain a majority of their staff on payroll.⁸³

C. NYC and the Ramifications of Limited Economic Relief

The time constraints on the CARES Act, as well as the eligibility requirements for PPP, placed a larger burden on small businesses, compared to the relief provided. The filing of a class action lawsuit by hundreds of NYC restaurants is evidence that both the state and federal governments failed to provide adequate assistance to small businesses in NYC. On Friday, August 31, 2020, 350 restaurant owners joined a three-story Italian restaurant in Queens in filing a \$2 billion lawsuit against city and state officials of New York, alleging that New York “violat[ed] the constitutional rights of over 150,000 [NYC] restaurants” by not permitting indoor dining.⁸⁴ This lawsuit signaled a breaking point for restaurateurs who had been anxiously awaiting news of when they would be able to resume indoor dining.⁸⁵ Despite the risks involved with the reintroduction of indoor dining, restaurateurs were starved for information about when they could expect indoor dining’s return.⁸⁶

This desperation originated from postponements in the previous plan to allow restaurants to reopen for indoor dining—albeit at reduced capacity—as part of Phase Three on July 6, 2020.⁸⁷ For these small business owners, reopening was not a matter of personal preference,⁸⁸ the economic consequences of not being permitted to reopen placed them in a Catch-22 situation. Specifically, the options were reopen and assume the risks involved with operating a restaurant

⁸² *Id.*

⁸³ *The New Federal Loan Program Just Might Give NYC Restaurants a Fighting Chance*, EATER (June 5, 2020), <https://ny.eater.com/2020/6/5/21281328/stimulus-paycheck-protection-program-overhaul-covid-nyc-restaurants>.

⁸⁴ Kelly McCarthy, *New York City Restaurants File \$2 Billion Lawsuit Amid Growing Calls for Indoor Dining Plans*, GOOD MORNING AM. (Sept. 3, 2020), <https://www.goodmorningamerica.com/food/story/york-city-restaurants-file-billion-lawsuit-amid-growing-72795923>.

⁸⁵ Kelly McCarthy, *New York, New Jersey Restaurateurs Respond to Indoor Dining Delays*, ABC NEWS (July 1, 2020), <https://abcnews.go.com/Business/york-jersey-restaurateurs-respond-indoor-dining-delays/story?id=71557372>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Ben Yakas, *Queens Restaurant Leads \$2 Billion Indoor Dining Lawsuit Against NY*, GOTHAMIST (Sept. 1, 2020), <https://gothamist.com/food/queens-restaurant-leads-2-billion-indoor-dining-lawsuit-against-ny>.

at this time, or to go bankrupt.⁸⁹ While no one could have predicted the delays in reopening indoor dining, the strain on the NYC restaurant industry is in large part caused by the absence of a plan.

This absence was exacerbated by the fact that relief programs like PPP have ended without any follow-up solution to rely on.⁹⁰ As a result, the NYC restaurant industry finds itself in a place where the only way to put pressure on state and city officials is by taking legal action. Regardless of the lawsuit's outcome, it does not change the fact that more money and time must be spent trying to come up with a solution to save an industry that is a core part of NYC's identity. Though the restaurant industry throughout the U.S. has similar constraints, the delayed reopening is what makes NYC's case special. Without indoor dining, restaurateurs will have no choice but to close permanently.⁹¹ Some have already been forced to accept this fate.⁹²

On September 9, 2020, Governor Cuomo held a press conference announcing the much-anticipated return of indoor dining.⁹³ In order to enjoy the benefits of indoor dining, Governor Cuomo reviewed a highly-detailed list of safety protocols such as temperature checks, contact information tracing, and face coverings when not seated.⁹⁴ To ensure compliance with the safety protocols, a team of four hundred enforcement personnel would be deployed throughout NYC.⁹⁵ Guidelines would be reassessed based on the data gathered by the enforcement personnel: if the infection rate remained stable or did not increase, then the percentage of indoor dining capacity would increase.⁹⁶ Governor Cuomo called the initiative "New Yorkers Protecting New Yorkers," placing the New York State Restaurant Association in charge of encouraging compliance with the Governor's guidelines.⁹⁷

In response to Governor Cuomo's order, restaurant associations and hospitality groups celebrated the moment as a sign of hope that

⁸⁹ *Id.*

⁹⁰ US DEP'T OF TREASURY, *supra* note 80.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Governor Cuomo Announces Indoor Dining in New York City Allowed to Resume Beginning September 30 With 25 Percent Occupancy Limit*, N.Y. STATE OFF. GOVERNOR (Sept. 9, 2020), <https://www.governor.ny.gov/news/governor-cuomo-announces-indoor-dining-new-york-city-allowed-resume-beginning-september-30-25>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

NYC might have the chance to rebuild its culinary reputation.⁹⁸ Melissa Fleischut, the President and CEO of New York Restaurant Association, called NYC the “culinary capital of the world,” and Andrew Rigue, Executive Director of NYC Hospitality Alliance stated, “[r]estaurants are essential to New York’s economic and social fabric, and indoor dining is a key component to the industry’s recovery.”⁹⁹

Despite the positivity buzzing around the return of indoor dining, dining out is still being depicted as an “at your own risk” activity.¹⁰⁰ One chef and independent restaurant owner, Kevin Hickey, voiced his concern, stating, “[i]f scientists, experts, [and] government officials, feel that restaurants and bars are the absolute worst perpetrators of the spread of the disease, then they should close us down and they should offer us some sort of financial remuneration to weather this period.”¹⁰¹ Saru Jayaraman, the Director of the Food Labor Research Center at the University of California, Berkley, confirmed that even before the coronavirus pandemic, restaurants were already identified as the primary cause for the spread of the flu during the winter months.¹⁰² The connection between the restaurant industry and the spread of the coronavirus creates a complex situation for identifying whether the restaurant industry is worth the government’s time and investment to properly sustain and protect the industry.

Elizabeth Dunn, writing for the Wall Street Journal, captured the idea that the “draw” of a restaurant goes beyond the food; in her words, it is the “sum of a carefully crafted experience.”¹⁰³ For Ms. Dunn this experience includes, “the maître d’s smile, precisely calibrated lighting, the buzz of a full dining room, a cold drink delivered right on cue.”¹⁰⁴ Chiefly, the restaurant experience goes beyond the obvious appreciation of having someone else cook for you—it is an event. Ms. Dunn acutely voices the importance of viewing the pandemic as an opportunity for innovation, “not merely...a Covid-era Band-Aid, but, rather, a new business model.”¹⁰⁵ While the article buzzes with positivity, the reality of the situation is sprinkled throughout in subtle

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Winter Is Coming: Restaurant Owners Worry About Business Impact*, WALL ST. J. (Sept. 9, 2020), <https://on.wsj.com/3m3xe0x>.

¹⁰¹ *Id.* at 0:00–0:19.

¹⁰² *Id.* at 4:50–5:05.

¹⁰³ Elizabeth G. Dunn, *Is This the Future of Dining?*, WALL ST. J. (Sept. 16, 2020), <https://www.wsj.com/articles/is-this-the-future-of-dining-11600267020>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

hints at the fact that there is not much money being made through efforts to serve a piece of normalcy during a time of adversity.¹⁰⁶ For example, Reverence, a twenty-one-seat dining counter in Harlem, launched a program called “Reverence to Go,” which includes a weekly delivery of ready-to-prepare tasting menus, meal kits, ingredients, and a QR code linking to videos of the chef/owner, Russell Jackson, giving personal preparation instructions above a loud rock soundtrack.¹⁰⁷ Despite only making a fraction of Reverence’s pre-pandemic revenue, Chef Jackson remained intent on offering customers something special.¹⁰⁸ The attention to detail, the sparks of creativity, and the commitment to finding a way to capitalize on a need for reinvention are not lost in the heaviness of a global pandemic.

Unfortunately, from purely a health and safety perspective, the pleasures of dining out are portrayed as nonessential, selfish, inconsiderate, and discriminatory by those who believe that NYC’s entire restaurant industry should have temporarily shut down when other businesses closed their doors.¹⁰⁹ Limiting service to take-out and delivery only interfered with the health-related benefits of a lockdown.¹¹⁰ Others view any form of socializing outside of a few specific parameters—for example, small outdoor gatherings when the food is either take-out or prepared at home—as contributing to the rising number of reported cases.¹¹¹ For some, simply the act of going out to eat at a restaurant with friends hums with irresponsibility.¹¹²

Of course, any argument made for the necessity of aesthetics runs the risk of sounding hollow in the face of more pressing issues. Arguing for the preservation of NYC’s restaurant scene as a key component of NYC’s cultural depth certainly requires some convincing. There is bias. There is privilege. There are external

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Hannah Albertine & Chris Mohney, *NYC Restaurants React to the Return of Indoor Dining*, THE INFATUATION (Sept. 23, 2020), https://www.theinfatuation.com/new-york/features/nyc-restaurants-react-to-return-of-indoor-dining?utm_campaign=nyc-912-zagat-collab-saturday&utm_medium=email&utm_source=newsletter&utm_audience=NYC&goal=0_9a34cec4ec-973ba7f0d1-387885133&mc_cid=973ba7f0d1&mc_eid=1b92359bf2.

¹¹⁰ Jaime Wilson, *I Work in Restaurants and I've Never Felt So Disrespected*, GRUB ST. (Aug. 20, 2020), <https://www.grubstreet.com/2020/08/the-emotional-toll-of-working-in-restaurants-during-covid-19.html>.

¹¹¹ *Id.*

¹¹² *Id.*

influences. From a strictly “essential” point of view it comes across as hard to defend.¹¹³ But as Aristotle famously observed, humans are social beings.¹¹⁴ Everyone shares a desire to interact, communicate, and validate his or her own existence through interactions with others. The need to socialize translates into other needs that are both beneficial and vital.

IV. CUSTOMIZED RELIEF: WHAT SORT OF ECONOMIC RELIEF POLICY DOES NYC NEED?

A. A Word on Affirmative Action

Affirmative action is defined as, “[a] set of procedures designed to eliminate unlawful discrimination among applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future.”¹¹⁵ The modern concept of affirmative action dates back to 1961, when President John F. Kennedy issued an executive order mandating that government contractors “take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, or national origin.”¹¹⁶ Since then, affirmative action has come to be understood as an essential component to the preservation of fair labor and education practices.¹¹⁷

The full scope of affirmative action is ever-expanding and shifting, largely due to its broad application across employment anti-discrimination laws.¹¹⁸ Still, what constitutes discriminatory labor practices is open to interpretation, as individuals perceive acts of discrimination in very discrete ways.¹¹⁹ At its core, affirmative action is a proactive request that resources (i.e., time and money) be devoted

¹¹³ See Governor Cuomo Issues Guidance on Essential Services Under The ‘New York State on PAUSE’ Executive Order, N.Y. STATE OFF. GOVERNOR (Mar. 20, 2020), <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>.

¹¹⁴ GOOD READS (quoting ARISTOTLE, POLITICS (Benjamin Jowett trans., 2020)), <https://www.goodreads.com/quotes/183896-man-is-by-nature-a-social-animal-an-individual-who> (last visited Feb. 18, 2021).

¹¹⁵ *Affirmative Action*, Legal Information Institute, CORNELL L. SCH., https://www.law.cornell.edu/wex/affirmative_action (last visited Jan. 13, 2020).

¹¹⁶ *Id.* (quoting Exec. Order No. 10925).

¹¹⁷ *Id.*

¹¹⁸ Faye J. Crosby, Aarti Iyer & Sirinda Sincharoen, *Understanding Affirmative Action*, 57 ANN. REV. PSYCHOL. 586 (2006).

¹¹⁹ *Id.* at 598–99.

to ensuring that everyone receives the same opportunities.¹²⁰ The demand for equality of opportunity does not have to be limited to education and employment; rather, it is possible that the same request for resources be expanded to the need for “diversity,”¹²¹ within the “fundamental rights” context.¹²² When equality of opportunity is isolated from its traditional context, it opens other avenues of discourse regarding the government’s role in ensuring that resources are available to those experiencing discrimination. Of course, to justify the request for resources, the opportunity at stake must be important enough to receive special treatment.¹²³ Arguably, those in a position of need should set the standard for warranting legislative action.

For change to be effective, cultural values must align with the suggested form of relief. The French approach to Labor and Employment Law is an extension of the European commitment to ensuring that workers’ needs are met and protected on an institutional level, as they are considered “fundamental rights.”¹²⁴ In a constitutional context, fundamental rights belong in a category of legal protection that is non-negotiable: governments have a duty to guarantee that the fundamental rights of their citizens are protected.¹²⁵ What qualifies as a fundamental right is not the same across national constitutions.¹²⁶ Rather, fundamental rights vary according to the values of a nation.¹²⁷

The U.S. defines fundamental rights as “a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment.”¹²⁸ However, the official list of fundamental rights is limited to issues related to marriage, privacy, and interstate travel.¹²⁹ How a nation perceives which rights belong in the group of fundamental rights serves as a larger reflection of a nation’s values. The list of fundamental rights protected by the U.S. Constitution—outlined principally in the Bill of

¹²⁰ *Id.* at 587.

¹²¹ *Id.* at 588.

¹²² *Fundamental Right*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/fundamental_right (last visited Jan. 15, 2020).

¹²³ Crosby, Iyer & Sincharoen, *supra* note 118, at 588.

¹²⁴ DORSEN, ROSENFELD, SAJÓ, BAER & MANCINI, *supra* note 21, at 1398.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Fundamental Right*, *supra* note 122.

¹²⁹ *Id.*

Rights as “freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom of petition”¹³⁰—does not align with the European understanding of fundamental rights, which primarily focuses on the basic necessities of living and feeling respected as a human being.¹³¹

Most recently, these differences in fundamental rights have been displayed in the government’s preparedness to respond to the financial strain caused by the coronavirus pandemic. Where the European government has managed a nearly seamless transition for rolling out a plan of action with the needs of small businesses addressed at the forefront, the same cannot be said for the U.S. government.¹³² The U.S. government’s shortcoming traces back to cultural values—specifically, the U.S. government does not see the need for government initiative to incentivize investment in the future of small businesses.¹³³

The categorization of restaurants as a luxury, or outdoor dining as a privilege, limits the full realization of what a flourishing restaurant provides for society. In his collection of essays examining how “inequality has manifested itself in our cities, our jobs, in the way we travel—and of course in our politics,” Thomas Frank addressed the relationship between what he called a “vibrant cultural landscape” and a city’s prosperity.¹³⁴ In one essay, Frank told the story of his Kansas hometown which had come to be nicknamed “Cupcake Land.”¹³⁵ In telling the story of the rise and fall of Cupcake Land, Frank contrasted the “dull bureaucrat” with the “creative artist,” coining the phrase, “[l]et them eat art.”¹³⁶ His analysis of the role of art in the City’s vibrancy—specifically, the art and music scene, the audience of prosperous people, and a lot of restaurants—identified how art contributed both to the city’s success as well as its attractiveness. He

¹³⁰ *A Brief History of Human Rights*, UNITED FOR HUM. RTS., <https://www.humanrights.com/what-are-human-rights/brief-history/declaration-of-independence.html> (last visited Jan. 15, 2020).

¹³¹ DORSEN, ROSENFIELD, SAJÓ, BAER & MANCINI, *supra* note 21, at 1398.

¹³² OECD, THE COVID-19 CRISIS: A CATALYST FOR GOVERNMENT TRANSFORMATION? 16 (2020), https://read.oecd-ilibrary.org/view/?ref=137_137545-kybqw3s4l6&title=The-Covid-19-Crisis-A-catalyst-for-government-transformation.

¹³³ *Id.*

¹³⁴ THOMAS FRANK, RENDEZVOUS WITH OBLIVION *passim* (2018).

¹³⁵ *Id.* at 55.

¹³⁶ *Id.* at 62–63.

perceptively concluded that, in reality, art served as a substitute for compensating people properly.¹³⁷

This role of food in enhancing social experiences is already understood in France. The predicament imposed by the pandemic in Paris is not perfect, but the appreciation of culture—of preserving the aesthetic for its intellectual and psychological benefits—does not have to be taught. It is already inherent in their social values.¹³⁸ The vision of the restaurant industry as a beneficiary of affirmative action is rooted in an understanding of the intangible benefits that food provides.¹³⁹

Governor Cuomo's orders for the return of indoor dining and the conditional permission to reopen indoor dining demonstrate the American focus on enforcement and compliance.¹⁴⁰ A team of four hundred enforcement personnel ensuring compliance renders this a militaristic approach to the preservation of an industry that embodies artistic ideals.¹⁴¹ If restaurants are identified as a known cause for contributing to the spread of the virus, and those who embrace the risk of dining out to experience a taste of normalcy are tagged as contributors to the spread of the virus, it should come as no surprise that an industry largely funded by “labor[s] of love” feels strained by a lack of long-term economic support.¹⁴² Convincing the government to invest in the preservation of the restaurant industry requires an alternative approach to traditional investment initiatives. If the restaurant industry is to be understood as an eligible recipient of affirmative action, it will require a non-linear, non-traditional approach to the economic concepts of cost, worth, equity, risk, and reward—just to name a few.

B. A Plea to Order *À la Carte*

When COVID-19 first impacted NYC in March 2020, the policy solution of opening streets and sidewalks for outdoor dining during the spring and summer months was positively brilliant.¹⁴³ Blocking off

¹³⁷ *Id.* at 63.

¹³⁸ PARIS, *supra* note 8.

¹³⁹ *Id.*

¹⁴⁰ N.Y. STATE OFF. GOVERNOR, *supra* note 93.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Jonathan Bowles, Eric Krebs & Emily Eget, *Surviving the Winter: Helping NYC's Small Businesses in the Months Ahead*, CTR. FOR AN U. FUTURE (Oct. 2020), <https://nycfuture.org/research/surviving-the-winter-nyc-small-business>.

streets in Manhattan to dine evoked the charm of travelling to, dare I say, the cobblestone streets of Paris. A summer evening in the West Village, with tables properly spaced out, and diners enjoying meals *pour leur plaisir*, momentarily muted the pain of the pandemic. For a moment, outdoor dining created a renewed sense of hope that NYC could be preserved through its very own “lifeblood.”¹⁴⁴

New York visionaries have an understanding of what needs to be done to help the restaurant scene survive.¹⁴⁵ The New York State Restaurant Association partnered with the National Restaurant Association to develop a roadmap for restaurants’ recovery across the state and country.¹⁴⁶ These associations nicknamed their plan the “Blueprint for Restaurant Revival.”¹⁴⁷ The Blueprint was assembled with input from the restaurant industry itself, and confirmed the need for an additional \$120 billion recovery fund and a second round of PPP funding.¹⁴⁸ While the Blueprint identified what NYC needs to help its restaurant industry survive, the suggestions themselves are somewhat lackluster.

The Real Economic Support That Acknowledges Unique Restaurant Assistance Needed To Survive (“RESTAURANTS”) Act, proposed by Oregon Congressman Blumenauer, is a step in the right direction for providing restaurateurs with economic relief.¹⁴⁹ Under the RESTAURANTS Act, (1) grant values would cover the difference between revenues from 2019 and projected revenues through 2020; (2) Restaurant Stabilization Grants would not need to be paid back and funding would be made available through 2020; and (3) eligible expenses would include payroll (not including employee compensation exceeding \$100,000 per year), benefits, mortgage, rent, utilities, maintenance, supplies (including protective equipment and cleaning materials), food, debt obligations to suppliers, and any other

¹⁴⁴ Linda Gaudino, ‘Panic is Setting In’: A Murky Future Lies Ahead for New York’s Restaurant Industry, NBC (Aug. 25, 2020), <https://www.nbcnewyork.com/news/local/panic-is-setting-in-a-murky-future-lies-ahead-for-new-yorks-restaurant-industry/2584426/>.

¹⁴⁵ Bowles, Krebs & Eget, *supra* note 143.

¹⁴⁶ COVID-19 | Relief Packages, N.Y. STATE REST. ASS’N, <https://www.nysra.org/covid-19-sba-business-resources.html> (last visited Jan. 13, 2021).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ The Real Economic Support That Acknowledges Unique Restaurant Assistance Needed To Survive (“RESTAURANTS”) Act of 2020, H.R. 7197, 116th Cong. (2020).

expenses deemed essential by the Secretary of the Treasury.¹⁵⁰ However, like the CARES Act, the proposed RESTAURANTS Act would only provide relief through December 31, 2020.¹⁵¹ Without a plan that includes long-term relief, the hard deadlines imposed on the government's relief efforts will continue to stunt the efficiency of proposed aid packages.¹⁵²

The focus on drafting a recovery plan for NYC's restaurants finds its meaning in the connection between restaurants and cities and their essential clientele—young, economically successful individuals with a desire to assimilate into a fast-paced, glamorous, and expensive lifestyle historically reserved for the elite.¹⁵³ As a result, restaurants have played a key role in America's urban transformation with their ability to "draw the young and highly educated to city centers."¹⁵⁴ In this regard, restaurants are a "fundamental social glue" in both their function as a democratized urban amenity, as well as source of social engagement.¹⁵⁵ The unique qualities of a place like NYC have transformed the NYC restaurant business into a business unlike any other in the world.¹⁵⁶ Between "the rent structure, the volume of business, minimum wage pay scale, spotlight and notoriety, 3rd party online order, celeb chefs, and delivery platforms, as well as the ever-increasing regulation set forth by NYC,"¹⁵⁷ operating a restaurant in NYC requires a special level of passion and tenacity not needed anywhere else in the U.S.. Therefore, tailoring a recovery plan for NYC restaurants requires thinking outside the traditional approach intended to serve the needs of restaurants across America in one homogenous swoop.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Eduardo Porter, *If Restaurants Go, What Happens to Cities?*, N.Y. TIMES (Nov. 3, 2020), <https://www.nytimes.com/2020/11/03/business/economy/cities-restaurants.html>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Gary Occhiogrosso, *The New York City Restaurant Business is So Much More Than Just the Center of the Plate*, FORBES (Dec. 20, 2019, 1:51 PM), <https://www.forbes.com/sites/garyocchiogrosso/2019/12/20/the-new-york-city-restaurant-business-is-so-much-more-than-just-the-center-of-the-plate/?sh=139878d6639c>.

¹⁵⁷ *Id.*

C. A Palatable Initiative for Relief

While the demand for government-funded relief for small businesses is a reasonable request, it is difficult to envision the success of such a strategy when the requisite cultural understanding is not present at the legislative level. Furthermore, to expect such a dramatic turnaround during a time of crisis is naïve; deep, systematic change is already challenging without the additional pressure created by an international pandemic. As such, the first steps toward saving small businesses must be taken by individuals who recognize the need for personalized intervention. The Barstool Fund is a prime example.¹⁵⁸

Dave Portnoy, the founder of Barstool Sports, started the Barstool Fund as “an initiative to assist small businesses who have been affected by the COVID-19 pandemic.”¹⁵⁹ Portnoy took the initiative to save small businesses when NYC, once again, closed indoor dining in the weeks leading up to the 2020 holiday season.¹⁶⁰ Portnoy argued that small businesses had been left behind by the government, whose policies made it nearly impossible for small businesses to continue operating.¹⁶¹ This void in government-sponsored relief created an opportunity for individual philanthropy. The Barstool Fund was created to help businesses with both rent and tax relief, making the only qualification for financial relief that the business continue to pay its employees.¹⁶² Once qualified, the Barstool Fund promises to help those businesses on a month-to-month basis until “they are able to survive on their own or COVID’s done.”¹⁶³

In many ways, the Barstool Fund is the most “New York” approach to financial relief: it is simple, straightforward, and doused with a healthy dose of classic, New York edginess. In a city where pedestrians dictate the driving rules and everyone knows better than everyone, it seems fitting that the first step towards relief was taken by an unfiltered philanthropist, with a part-time hustle as a self-

¹⁵⁸ *The Barstool Fund*, BARSTOOL SPORTS, <https://www.barstoolsports.com/the-barstool-fund> (last visited Jan. 15, 2021).

¹⁵⁹ *Barstool Sports Raises Millions of Dollars to Help Struggling Small Businesses*, KENS5 (Dec. 26, 2020), <https://www.kens5.com/article/news/health/coronavirus/barstool-sports-raises-millions-of-dollars-to-help-struggling-small-businesses/512-e413da81-1b09-4140-abf0-862507aa4e36>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

certified New York-style pizza expert.¹⁶⁴ Therefore, the success of the Barstool Fund derived from Portnoy's identity as somewhat of a New York legend, which translated to his ability to recognize the needs of small businesses on an individualized level that cannot be matched by government-funded relief.

D. A Bouillabaisse of Legislative Relief for NYC's Restaurant Culture

The culinary traditions of France are steeped in a history rich with appreciation for gastronomic benefits on a transcendental level.¹⁶⁵ Fundamentally, to be French and to love food are the same thing.¹⁶⁶ There is a sense of pride and national fulfillment that accompanies the French reputation as a culture dedicated to its culinary heritage.¹⁶⁷ Arguably, this devotion to excellence in the kitchen translates to other areas of life, including intellectual and political discourse. However, the role of food remains consistent: food should both cure and cultivate.

NYC carries its own reputation regarding the aesthetics and aromatics of a gourmet culture. Beyond the stereotypical understanding of its cuisine as pizza, bagels, cheesecake, and Chinese food,¹⁶⁸ the richness of NYC's food culture comes through in the range of ethnicities represented in one city. NYC's status as a "melting pot," where multiple ethnic cuisines come together to represent the city's culinary identity, doubles as a point of geographic pride and cultural complexity.¹⁶⁹ As a result, legislative measures intended to provide financial relief from the coronavirus pandemic beg for an intuitive understanding of what it means to be a small business in NYC.

As of December of 2021, the relief measures in place border on enforcement protocols devoid of cultural sensitivity. NYC's reputation as "an international hub" has drawn all sorts of critiques and suggestions about how to best handle the impact of the

¹⁶⁴ See ONE BITE, <https://onebite.app/restaurant/daves-favorites> (last visited Feb. 18, 2021).

¹⁶⁵ Priscilla P. Clark, *Thoughts for Food, I: French Cuisine and French Culture*, 49 FRENCH REV. 32, 32 (1975).

¹⁶⁶ *Id.* at 33.

¹⁶⁷ *Id.*

¹⁶⁸ *Cuisine of New York City*, WIKIPEDIA, https://en.wikipedia.org/wiki/Cuisine_of_New_York_City (last visited Jan. 15, 2021).

¹⁶⁹ *Id.*

coronavirus.¹⁷⁰ However, a defining quality of all New Yorkers has been, and continues to be, *our* ability to persevere against all odds.¹⁷¹

The French approach to government assistance to ease the financial stress on small businesses is undeniably humanitarian in a way that could only be achieved in a culture where citizens' needs take precedence.¹⁷² This kind of self-awareness starts with an understanding of what values make up the national identity. The relationship between the citizen and the state, therefore, operates as a discourse between equals: to recognize the needs of the citizens is to address the needs of the state.¹⁷³ As a result, any state measures put in place are prescribed with citizens' needs at the forefront of any legislative initiative.¹⁷⁴

While the challenge to curate a European mindset in the U.S. on a federal level could be perceived as a Utopian initiative, the same cannot be said for NYC. For example, Portnoy's decision to start the Barstool Fund using his own money aligns with the European tendency for socialist policies.¹⁷⁵ Of course, as demonstrated through the Barstool Fund, individuals' initiatives are limited in their capacity to provide widespread relief.¹⁷⁶ However, at the same time, the Barstool Fund highlights how accessible relief actually is once the cultural understanding is present.¹⁷⁷ The combination of Portnoy's status as an iconic New York figure and his willingness to, quite literally, "put his money where his mouth is" initiated a path to recovery previously delayed by governmental shortcomings.

V. CONCLUSION

Confinement has led to reflection: self-reflection on who we are. It has raised questions of both identity and community that are usually

¹⁷⁰ Jimmy Vielkind, Joe Palazzolo & Jacob Gershman, *In Worst-Hit Covid State, New York's Cuomo Called All the Shots*, WALL ST. J. (Sept. 11, 2020), <https://www.wsj.com/articles/cuomo-covid-new-york-coronavirus-de-blasio-shutdown-timing-11599836994>.

¹⁷¹ Corina Knoll, *How New Yorkers Found Resolve After 6 Months of Pandemic Hardship*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/2020/09/23/nyregion/new-york-city-coronavirus-six-months.html>.

¹⁷² CONSEIL CONSTITUTIONNEL, *supra* note 15.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Barstool Sports, *supra* note 159.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

left for off-hours. The importance of preserving the restaurant industry in NYC is an outgrowth of the City's identity as a network of individuals with international roots who have come together to create a culture unlike any other in the U.S. As such, the similarities between Paris and NYC are seen in each city's dedication to its culinary heritage as a source of pride and strength. At the heart of both the Parisian and New Yorker identities is an appreciation for the role of food on gastronomic and intellectual levels. Therefore, like Paris, the preservation of NYC's gourmet culture begs for a legislative measure with a palate curated to provide individualized relief.

The French model of economic relief serves as an ideal model for governmental assistance to be provided in response to financial hardships caused by the coronavirus pandemic. The cultural devotion to workers' needs captures the benefits of having a system of governance that views the needs of its citizens as synonymous with the needs of the state. While much can be gleaned from the French approach, applying the same relief principles to NYC requires recognition that culture influences law, particularly pertaining to financial assistance. The similarities between NYC and Paris contribute to the prospect that the principles of relief in one city may be successfully applied to the other.

The point is: food law ought to take account of dining culture. The largely aesthetic importance of having a flourishing restaurant scene is deeper than the superficial qualities of passing time gorging on edible delicacies in the company of others. Perhaps the pulpit of a barstool is the proper model for addressing this failure to understand the crucial role of restaurant culture. Indeed, perhaps is it a *key* social and political tool—like the Parisian café—for dining culture to be better understood, better promulgated. If achieved, there might be less polarization between the state and the citizen, a digestif curing the urge for insurrection. A community can only survive through the celebration of its culinary creations.