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CULINARY JURISPRUDENCE AND NATIONAL IDENTITY:  
PENNY PETHER ON *THE TASTE OF COUNTRY COOKING*

NAN SEUFFERT\*

IN recent years interdisciplinary scholarship on “foodways”—encompassing the cultural, economic, and social practices and politics of the production, distribution, preparation, and consumption of food, as “a window onto our most basic beliefs about the world and ourselves”—has blossomed.<sup>1</sup> Yet, the “curious link between food and law” is underexplored.<sup>2</sup> Penny Pether’s manuscript-in-progress, *A Seat at the National Table: The Culinary Jurisprudence of Edna Lewis*, sets out to establish the critical links between law, food, race, and family in forging national identity in the United States.<sup>3</sup> The manuscript uses a critical law and literature approach to read Lewis’s book, *The Taste of Country Cooking (Taste)*,<sup>4</sup> in a manner that “accounts for and places the work of . . . the groundbreaking 20th Century African-American chef, food writer, and memoirist of black Southern post-Emancipation communities, in the various historical, literary, legal and political traditions engaged by [*Taste*] . . . .”<sup>5</sup>

We should all be interested in this exciting project. Drawing on Peter Goodrich’s historical work on the role of food in the Inns of Court and on minor jurisprudences, Robert Cover on narrative and law, and a wide range of other scholarship from a number of disciplines, the aim of the manuscript is to inaugurate a new area of scholarly inquiry, which Pether calls “culinary jurisprudence”—the interweaving of law, food, and nation.<sup>6</sup>

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\* Professor and Director, Legal Intersections Research Centre, University of Wollongong School of Law. This article is dedicated to Penny Pether. Thanks to Villanova Law School, the *Villanova Law Review*, and David Caudill for including me in the Norman J. Shachoy Symposium.

1. PATRICIA HARRIS, DAVID LYON & SUE McLAUGHLIN, *THE MEANING OF FOOD* xiii (2005); *see also, e.g.*, FROM BETTY CROCKER TO FEMINIST FOOD STUDIES: CRITICAL PERSPECTIVES ON WOMEN AND FOOD (Arlene Voski Avakian & Barbara Haber eds., 2005); DORIS WITT, *BLACK HUNGER: FOOD AND THE POLITICS OF U.S. IDENTITY* (1999); Andrew P. Haley, *The Nation Before Taste: The Challenges of American Culinary History*, 34 *PUB. HISTORIAN* 53 (2012).

2. PETER GOODRICH, *LAW IN THE COURTS OF LOVE: LITERATURE AND OTHER MINOR JURISPRUDENCES* 5 (1996) [hereinafter GOODRICH, *COURTS OF LOVE*].

3. Penelope Pether, *A Seat at the National Table: The Culinary Jurisprudence of Edna Lewis* ch. 1, at 16 (2014) [hereinafter Pether, *Seat*] (unfinished manuscript) (on file with author).

4. EDNA LEWIS, *THE TASTE OF COUNTRY COOKING: 30TH ANNIVERSARY EDITION* (30th Anniversary ed. 2006) [hereinafter LEWIS, *TASTE*].

5. Book Proposal from Penelope Pether to Univ. Ga. Press, *A Seat at the National Table: The Culinary Jurisprudence of Edna Lewis* 2 (2011) [hereinafter Pether, *Proposal*] (on file with author).

6. *See id.*; *see also, e.g.*, STEVEN HAHN, *A NATION UNDER OUR FEET: BLACK STRUGGLES IN THE RURAL SOUTH FROM SLAVERY TO THE GREAT MIGRATION* (2003);

Moving interdisciplinary scholarship in law and literature onto new ground, Pether's thesis is that "nation is made in law and food, and [ ] Edna Lewis's 'constitutional epic,' *The Taste of Country Cooking*, has something critical to tell us about that founding."<sup>7</sup> Reading *Taste*—ostensibly a recipe book—as a constitutional epic, or a text that constitutes the American nation *through* culinary jurisprudence, is a bold, even radical, undertaking. Pether's manuscript makes a compelling case for this project. Further, her critical law and literature methodology, originally developed with Terry Threadgold in 1999, is situated in the broader field, and, in its novel application to a cookbook written by an African American woman, makes a significant contribution to critical scholarship in the interdisciplinary and across other disciplines, such as history and politics.<sup>8</sup> Pether's manuscript brilliantly and ethically attends to the particular configurations of race, gender, class, and sexuality mediated by Lewis in all of *Taste's* historical and political contexts, while simultaneously making the case for *Taste's* national significance as a constitutional epic.

The project of this Article, as part of a collection of articles from a symposium in memory of Penny Pether, is to prioritize her voice from this unpublished manuscript. By focusing on just two aspects of this complex and nuanced manuscript, this Article attempts to highlight the radical potential of the development of culinary jurisprudence and its links to national identity. It begins with Pether's case for *Taste* as a constitutional epic, which includes traversing Lewis's life and outlining Pether's proposed book. It then explores the two readings of *Taste* that Pether offers in the unfinished manuscript as both a "culinary pastoral" and a "radical culinary pastoral," as well as a project of culinary jurisprudence. In the first reading of *Taste* as a culinary pastoral, Pether asks whether Lewis's project is a utopian or redemptive one, offering "nostalgic" solutions to the "radically incomplete" project of redressing black American inequal-

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JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY, FROM SLAVERY TO THE PRESENT (rev'd ed. 2010); Philip D. Morgan & Michael L. Nicholls, *Slaves in Piedmont Virginia, 1720–1790*, 46 WM. & MARY L.Q. 211 (1989). See generally GOODRICH, COURTS OF LOVE, *supra* note 2; NARRATIVE, VIOLENCE, AND THE LAW: THE ESSAYS OF ROBERT COVER 95–172 (Martha Minow, Michael Ryan & Austin Sarat eds., 1995); Peter Goodrich, *Eating Law: Commons, Common Land, Common Law*, 12 J. LEGAL HIST. 246, 260 (1991) [hereinafter Goodrich, *Eating Law*].

7. See Pether, *Seat*, *supra* note 3, ch. 1, at 16. The phrase *constitutional epic* is one used by Pether in earlier scholarship drawing on the work of Robert Cover. See Penelope Pether, *Comparative Constitutional Epics*, 21 LAW & LITERATURE 106, 109–12 (2009) (citing Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 9 (1983)); Penny Pether, *The Prose and the Passion*, 66 MEANJIN 43, 44 (2007) [hereinafter Pether, *Prose and Passion*]. For a further discussion of the concept of constitutional epic, see *infra* notes 20–69 and accompanying text.

8. See Pether & Threadgold, *Feminist Methodologies in Discourse Analysis: Sex, Property, Equity, in CULTURE & TEXT: DISCOURSE AND METHODOLOGY IN SOCIAL RESEARCH AND CULTURAL STUDIES* 132, 134 (Alison Lee & Cate Poynton eds., 2000) (setting forth critical law and literature methodology).

ity.<sup>9</sup> In the second reading, which Pether characterizes as “significantly more radical,” she argues that Lewis’s project is in displacing, or interrupting “the law that made Jim Crow, the hunger that characterized it, and persisting inequality[,] possible” with her culinary jurisprudence.<sup>10</sup> This Article expands Pether’s reading by including threads from Sarah Ahmed’s essay *Feminist Killjoys*<sup>11</sup> and Jacques Derrida’s *The Politics of Friendship*.<sup>12</sup>

Pether’s manuscript devotes a full chapter, two, to methodology, perhaps unusually for a law and literature text. She develops a critical law and literature method from “a fragmented, or liminal, or protean form of interdisciplinary textual practice.”<sup>13</sup> Calling for reading both intertextually and against the grain of literary and legal canons, Pether reads *Taste* intertextually with other texts, both law and literature, and in context, recognising that “text and context make each other, iteratively,” as part of the “ideological and praxiological work in forming the subjects who constitute the nation.”<sup>14</sup> Reading “against the grain” involves reading texts beyond the law and literature canon and reading the canon itself differently by using critical feminist and other practices.<sup>15</sup>

One of the central points of Pether’s methodology is the argument that all law and literature methods are “interested”: at risk of bringing old contexts with them and of being remade in new contexts. Both outcomes “may either systematically produce injustice, or make ‘transformative justice’ possible.”<sup>16</sup> “[S]cholarship [that] interrogates and makes plain its politics, . . . conceding the contingency of any reading” is therefore more valuable than scholarship that does not.<sup>17</sup> Pether’s aim in this project is to “‘make visible and audible . . . networks of meaning and representation,’ and embodied subjectivity . . . .”<sup>18</sup> Her politics are aimed at “‘*changing the law’s patriarchal and discriminatory discourses and practices*,’ and also reconstituting the embodied subjects, who make the law, [and] constitute the nation, in its turn.”<sup>19</sup> Like all of her work, this manuscript is steeped in Pether’s emphatic commitment to unearthing and revealing the politics of

9. See Pether, *Seat*, *supra* note 3, ch. 1, at 19.

10. *Id.* at 20.

11. See SARA AHMED, *Feminist Killjoys*, in *THE PROMISE OF HAPPINESS* 50–88 (2010).

12. JACQUES DERRIDA, *THE POLITICS OF FRIENDSHIP* (George Collins trans., Verso 2005) (1994).

13. Pether, *Seat*, *supra* note 3, ch. 2, at 4.

14. *Id.* at 13, 16.

15. See *id.* at 16–19.

16. *Id.* at 11 (footnotes omitted) (citing Pether & Threadgold, *supra* note 8, at 134, 135); see also *id.* at 13.

17. *Id.* at 14.

18. *Id.* at 11 (first alteration in original) (quoting Pether & Threadgold, *supra* note 8, at 139).

19. *Id.* at 11 (emphasis added) (footnote omitted) (quoting Pether & Threadgold, *supra* note 8, at 139).

race, gender, sexuality, and class in the law and the founding violence of colonization that shaped both the United States and her native Australia.

### I. TASTE AS A CONSTITUTIONAL EPIC

What does Pether mean by a “constitutional epic,” and what is the basis for her reading of *Taste* as a narrative critical to the founding of the nation in law and food?<sup>20</sup> Pether’s work has emphasized how law and literature, in its “Constitutional Law and Literature variant, can inform our understanding of the nation, its constitutive law, and the cultural stories . . . that critically supplement (legal) constitutional texts.”<sup>21</sup> Cover argues that the rules, principles, and formal institutions of the law, and the conventions of social justice, are important to, but only a “small part” of the *nomos*, or normative universe, and that “[n]o set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic . . . .”<sup>22</sup> These narratives, which are “trajectories plotted upon material reality by our imaginations,” supplementing, as well as co-constituting legal texts, are the constitutional epics to which Pether refers.<sup>23</sup>

Pether’s case for reading *Taste* as a constitutional epic involves, first, recognizing it as much more than a “cookbook.” Recipes are often seen as an inferior literary genre, linked to gendered-domesticity, a “minor and/or feminized genre” not worthy of serious academic study.<sup>24</sup> Writers of recipe books, however, are traditionally figured as male—the embodiment of the distinction between professionalism and haute cuisine on the one hand and amateur housewives on the other.<sup>25</sup> Women who write recipe books as serious cuisine may be seen as infiltrating a world of male writing, disrupting it. Reading a recipe book as something other than the inferior genre of “consultable” text, as literature, and certainly as a constitutional epic, also involves infiltration—the disruption of the core of law with its “outside” literature, which was already there; this is Pether’s co-constitutiveness of law and literature, law and context, constitutional epic, and legal subject.

*Taste*, Pether contends, is a hybrid of recipe book and memoir of Lewis’s childhood in Freetown, local and family history, and culinary juris-

20. See *id.* ch. 1, at 16 (referring to *Taste* as “constitutional epic” (internal quotation marks omitted)).

21. Pether, Proposal, *supra* note 5, at 2; see also Pether, *Prose and Passion*, *supra* note 7.

22. Cover, *supra* note 7, at 4 (footnote omitted).

23. *Id.* at 5; see also Pether, *Prose and Passion*, *supra* note 7, at 44.

24. See MIREILLE ROSELLO, INFILTRATING CULTURE: POWER AND IDENTITY IN CONTEMPORARY WOMEN’S WRITING 128–29 (1996). The term *recipe* when used in relation to literature also has negative connotations: “[I]n literature, resorting to ‘recipes’ is either a parodic stance or a failure.” *Id.* at 128.

25. See *id.* at 110.

prudence.<sup>26</sup> Positioning *Taste* as a hybrid takes it outside of the genre of cookbooks at the same time as it questions the category of that genre, offering the possibility of re-reading cookbooks as literature, memoir, history, and law. Reading *Taste* as a constitutional epic, national literature that supplements the law, is a bold and potentially radical move.

Pether's manuscript presents the case for *Taste* as a constitutional epic; here I sketch some of that argument, drawing from different chapters and providing a window into the extraordinary scope and depth of Pether's analysis. *Taste* changed the way the nation saw southern cooking and, as both Lewis and Pether contend, established southern cooking as *the* American national cuisine.<sup>27</sup> Lewis wrote:

Every group has its own food history . . . . Our condition was different. We were brought here against our will in the millions, and through it all established a cuisine in the south, the *only* fully developed cuisine in the country.<sup>28</sup>

The argument for the national significance of *Taste* and southern cooking includes tracing the genealogy of the cuisine back through the African-American chefs who served the nation's "founding fathers." The tables at which the founding fathers ate and drank together were crucial in fuelling the deal that made the American Constitution.<sup>29</sup> These chefs "toiled in bondage and produced superb food" and "were at once critical supporters of two of our archetypal constitutional fathers, *and* locked in often-unregistered yet acutely politically dangerous struggles with them," including George Washington's enslaved chef known only as Hercules, and James Hemings, chef to Thomas Jefferson.<sup>30</sup> They nourished the founding of the nation and supported its founding fathers by refraining from bringing them down "for breaking laws and taboos that Washington's and Jefferson's own conduct and correspondence and other contemporary docu-

26. See Pether, *Seat*, *supra* note 3, ch. 1, at 8.

27. See, e.g., Eric Asimov & Kim Severson, *Edna Lewis, 89, Dies; Wrote Cookbooks That Revived Refined Southern Cooking*, N.Y. TIMES, Feb. 14, 2006, [http://www.nytimes.com/2006/02/14/national/14lewis.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2006/02/14/national/14lewis.html?pagewanted=all&_r=0); Vertamae Grosvenor, *Memories of Southern Chef Edna Lewis*, NAT'L PUB. RADIO (Feb. 17, 2006, 9:00 AM), available at <http://www.npr.org/templates/story/story.php?storyId=5220898>; see also Edna Lewis, *What Is Southern?*, 19 GRANTMAKERS ARTS READER (2008) [hereinafter Lewis, *What Is Southern?*], available at [http://www.giarts.org/sites/default/files/What\\_is\\_Southern.pdf](http://www.giarts.org/sites/default/files/What_is_Southern.pdf) (containing unpublished essay discovered after Lewis's death). Lewis states, "[i]t is also interesting to note that the South developed the *only* cuisine in this country." *Id.* at \*2 (emphasis added).

28. Pether, *Seat*, *supra* note 3, ch. 1, at 7 (emphasis added) (quoting letter from Toni Tipton-Martin to Edna Lewis (1995), available at <http://thejemimacode.com/2009/11/20/edna-lewis-a-mentor-for-all/>) (internal quotation marks omitted).

29. See *id.* at 2 (citing RICHARD BEEMAN, PLAIN, HONEST MEN: THE MAKING OF THE AMERICAN CONSTITUTION (2009)).

30. See *id.* at 2–3.

ments clearly show threatened their prestige and power. . . . [as] symbols of the nation.”<sup>31</sup> Pether traces Lewis’s genealogy from these nation-nourishing chefs “through that of African-American chefs and food writers including Robert Roberts, Malinda Russell, Tunis Gulin Campbell, Abby Fisher, and Rufus Estes.”<sup>32</sup> Lewis also invoked an expanded version of this genealogy, stating, “The early cooking of southern food was primarily done by blacks, men and women. In the home, in hotels, in boarding-houses, on boats, on trains, and at the White House.”<sup>33</sup>

Lewis placed her own life in the genealogy of black southern cooking. Narratives of Lewis’s life and work are partial and contested; Pether traces the outlines of Lewis’s story, calling her a “reserved if not elusive authorial subject” and noting that her life story is “a world of uncertainty, of stories contradictory and tattered at the edges . . . .”<sup>34</sup> Lewis was born in 1916, and grew up in Freetown, a farming community originally established by her grandfather and other freed slaves after the emancipation of 1865, near Lahore, in Orange County, Virginia.<sup>35</sup> Virginia was *the* archetypal slave state, and race-based chattel slavery was crucial to its social, civic, political, and legal order, which was distinctively violent. Freetown was shaped by the history of slavery and the malnourishment of slaves, and in opposition to it, as a safe haven in perilously violent times, when food, family, and abundance were important markers of freedom.<sup>36</sup> Lewis states that it was founded by black people who wanted “to be [their] own mayors, and [make] laws that benefit[ed] them.”<sup>37</sup> In chapter four, Pether situates Freetown in the broader establishment of “autonomous communities [founded] by emancipated slaves,” framing Lewis’s narrative as an example of strategies of resistance, agency, recuperation, and redemption that responded to violent legalized interventions into black family life, and making the case for *Taste* as a constitutional epic.<sup>38</sup>

From Freetown, accounts of Lewis’s life often skip to the period when she established her reputation as a chef and co-owner of Café Nicholson on East 58th Street in Manhattan between 1949 and 1953—a restaurant which was patronized by the likes of Marlene Dietrich, William Faulkner, Gore Vidal, Lillian Hellman, Truman Capote, Tennessee Williams, and Eleanor Roosevelt, to name a few.<sup>39</sup> Her membership in the Communist

31. *Id.* at 5–6.

32. *Id.* at 6.

33. Lewis, *What Is Southern?*, *supra* note 27, at \*2.

34. Pether, *Seat*, *supra* note 3, ch. 3, at 1.

35. *See id.* at 9 (citations omitted).

36. *See id.* at 18–19 (citations omitted).

37. *Id.* ch. 1, at 11 (alterations in original) (quoting FRIED CHICKEN AND SWEET POTATO PIE 5:50 (BBarash Prods., LLC 2008) [hereinafter FRIED CHICKEN], available at <http://www.gourmet.com/magazine/video/2008/01/Edna.html>) (internal quotation marks omitted).

38. *See id.*, ch. 4, at 1.

39. *See id.* ch. 3, at 1, 3. Pether notes that Lewis’s Café Nicholson era “lasted at most 5 years . . . but perhaps as little as half that time.” *Id.* The Café Nicholson

Party, “the only ones who were encouraging the blacks to be aggressive, and to participate; they gave me a job typing” is rarely mentioned.<sup>40</sup> Also rarely mentioned is the restaurant she opened in Harlem, after living there part time in a rented room in 1967:

It was the first time I had lived in Harlem and I was deeply disturbed by the uncountable problems and deprivations faced daily by the people living there. I wanted to do something to improve the quality of their everyday life, and I decided to open a restaurant.<sup>41</sup>

The Harlem restaurant did not succeed.<sup>42</sup> Lewis’s commitment to social justice, reflected in her concern for the quality of food and everyday life in Harlem in this quote, endured, reaching beyond the realm of the culinary. She worked for Roosevelt and marched with Martin Luther King, Jr. in the Poor People’s March in Washington in 1968.<sup>43</sup> In 1986, she adopted a young adult man from Eritrea shortly after he arrived in the United States to study; Dr. Afeworki Paulos was a lecturer at the University of Michigan when Lewis died.<sup>44</sup> Paulos said after her death that, for him, her commitment to social justice preceded her cooking: “[Y]eah, the cooking is there, . . . but the way I remember her is as a woman who was very deeply involved in social issues.”<sup>45</sup>

Lewis’s professional profile was raised by the publication of *Taste* in 1976. The book is now “widely hailed as one of the most important cookbooks of the 20th century . . . .”<sup>46</sup> The first edition was reprinted seven times. The thirtieth anniversary edition, released in 2006, had an “initial print run of 15,000.”<sup>47</sup> Lewis was the executive chef, beginning in 1989, at the “‘venerable’ Gage & Tollner [restaurant] in Brooklyn . . . .”<sup>48</sup> She was

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archive is located at New York University. See FALES LIBR. & SPECIAL COLLECTIONS, *Café Nicholson Archive*, N.Y.U. DIGITAL LIBR., <http://dlib.nyu.edu/findingaids/html/fales/nicholson/> (last visited Aug. 24, 2015).

40. FRIED CHICKEN, *supra* note 37, at 6:15.

41. Pether, *Seat*, *supra* note 3, ch. 3, at 3 (quoting EDNA LEWIS & EVANGELINE PETERSON, *THE EDNA LEWIS COOKBOOK* xiii (1989)); see also *id.* at 1, 3–4, 15 (discussing Harlem restaurant).

42. See *id.* at 15 (citing LEWIS & PETERSON, *supra* note 41, at xiii–iv) (noting restaurant’s failure within year of opening).

43. *Id.* at 6 (quoting KIM SEVERSON, *SPOON FED: HOW EIGHT COOKS SAVED MY LIFE* 168 (2010)).

44. See Asimov & Severson, *supra* note 27.

45. *Id.* (internal quotation marks omitted).

46. Tim Mazurek, *Back of the Bookshelf: The Taste of Country Cooking*, *SAVEUR* (Mar. 27, 2013), <http://www.saveur.com/article/Kitchen/Back-of-the-Bookshelf-The-Taste-of-Country-Cooking>.

47. Pether, *Seat*, *supra* note 3, ch. 1, at 9.

48. *Id.* ch. 3, at 4 (citing Jack Hayes, *Edna Lewis: The Soul of Soul Food*, 28 *NATION’S REST. NEWS* 33 (1994)).



referred to as a “great African-American chef”<sup>49</sup> and was the recipient of numerous national and international awards in these later years, including the International Association of Culinary Professionals Lifetime Achievement Award in 1990, the first James Beard Living Legend Award in 1995, the Grande Dame des Dames d’Escoffier International,<sup>50</sup> the inaugural Southern Foodways Alliance Lifetime Award in 1999, and the Women Chefs and Restaurateurs Barbara Tropp President’s Award in 2002.<sup>51</sup> With close friend Scott Peacock, a white, gay chef, she helped create the Society for the Revival and Preservation of Southern Food.<sup>52</sup> “She was also the author of *The Edna Lewis Cookbook, In Pursuit of Flavor*,<sup>53</sup> and, with [ ] Peacock, *The Gift of Southern Cooking*.”<sup>54</sup> She retired to Decatur, Georgia, where she suffered dementia from about 2003 and died in February 2006.<sup>55</sup> Pether notes that this type of brief biography elides many aspects of Lewis’s life, including the time and motivation for her leaving Free-town, and the periods in which she was unemployed, ill, and underemployed, a trajectory of an adult life marked by a search for work, with any reference to “retirement” as a time of repose supported by adequate finances, a myth.<sup>56</sup>

49. Laura Shapiro, *Staying on Alone*, GOURMET (Jan. 2008), [http://www.gourmet.com/magazine/2000s/2008/01/stayingonalone\\_shapiro.html](http://www.gourmet.com/magazine/2000s/2008/01/stayingonalone_shapiro.html).

50. The Les Dames d’Escoffier International was formed in the 1970s as part of the extraordinary social upheaval which included the feminist movement, when [w]omen began to rebel against the reality that their professional aspirations were stymied by a society that did not recognize their importance in the work place or allow them to advance into management roles. . . . [T]he group’s goal was to help open the world of food, wine and hospitality to women. They planned to form an organization that would provide women with education, mentoring and networking opportunities as well as scholarship support and information on career trends. They also wanted to showcase the talent and achievements of women throughout the culinary and hospitality field.

Katherine Newell Smith, *Les Dames d’Escoffier International—A History*, LES DAMES D’ESCOFFIER INT’L, <http://www.ldei.org/index.php?com=aboutus&c=history> (last visited Aug. 25, 2015). Dame Julia Child was the first recipient of the Grand Dame award in 1977. *Id.*

51. See *1999 Lifetime Achievement Award Winner: Edna Lewis*, S. FOODWAYS ALLIANCE, <http://www.southernfoodways.org/awards/edna-lewis-1999-lifetime-achievement-award-winner/> (last visited Aug. 25, 2015) (citing Bailey Barasch [sic], *Lewis, Edna*, in 7 THE NEW ENCYCLOPEDIA OF SOUTHERN CULTURE: FOODWAYS 193-95 (John T. Edge & Charles Reagan Wilson eds., 2007)). For a list of Lewis’s awards see *About Chef Edna Lewis*, EDNA LEWIS FOUND., <http://ednalewisfoundation.org/about-chef-edna-lewis/> (last visited Aug. 25, 2015); Asimov & Severson, *supra* note 27; Brett Moore, *Edna Lewis*, ABOUT.COM, <http://gourmetfood.about.com/od/chebiography2/p/ednalewisbio.htm> (last visited Aug. 25, 2015).

52. See FRIED CHICKEN, *supra* note 37, at 16:40; Moore, *supra* note 51.

53. EDNA LEWIS WITH MARY GOODBODY, IN PURSUIT OF FLAVOR (1988).

54. Pether, *Seat*, *supra* note 3, ch. 3, at 7; see also EDNA LEWIS & SCOTT PEACOCK WITH DAVID NUSSBAUM, THE GIFT OF SOUTHERN COOKING: RECIPES AND REVELATIONS FROM TWO GREAT AMERICAN COOKS (2003); LEWIS & PETERSON, *supra* note 41.

55. Pether, *Seat*, *supra* note 3, ch. 3, at 7 (quoting LEWIS, TASTE, *supra* note 4, at 271) (referencing “A Note About the Author” section).

56. See *id.* at 8.

After Lewis's death, in January 2012, the Edna Lewis Foundation was established.<sup>57</sup> In 2013, *Dinner with Edna Lewis*, a one-woman play written by Shay Youngblood for the Southern Foodways Alliance, premiered at its fall symposium.<sup>58</sup> In September 2014, Lewis was commemorated, along with four other American chefs—including Julia Child and James Beard—on a U.S. Postal Stamp “Celebrity Chefs” series remembering those who “revolutionized [the nation’s] understanding of food.”<sup>59</sup>

Pether contends that Lewis's life is central to reading *Taste* as a constitutional epic. It provides inspiration for the redemption of the national table and is integral to understanding her life work.<sup>60</sup> Pether focuses on the elective family that Lewis created with her adopted son, Dr. Afeworki Paulos, and Scott Peacock, now a celebrated southern chef in his own right, with whom she cooked for many years, and with whom she lived in her last decade.<sup>61</sup> Central to Pether's argument is that Lewis,

[l]ike Hercules and James Hemings, [ ] nurtured symbols of the nation. In her case, what she created with love, in food (its crafting and inscribing) and in her parallel repeated construction of elective families that crossed lines of race, nation, sex, class, and sexual orientation, is the embodiment of a nation at last promising the achievement of redemption from what, in Thurgood Marshall's judgment, rendered it “defective from the start.”<sup>62</sup>

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57. See *About the Foundation*, EDNA LEWIS FOUND., <http://ednalewisfoundation.org/about-the-foundation/> (last visited Aug. 25, 2015).

58. See Sara Camp Arnold, *Dinner with Edna Lewis*, S. FOODWAYS ALLIANCE (Jan. 3, 2014), <http://www.southernfoodways.org/dinner-with-edna-lewis/> (providing video of play).

59. *Celebrity Chefs*, U.S. POSTAL SERV. (Sept. 26, 2014), [https://store.usps.com/store/browse/uspsProductDetailMultiSkuDropDown.jsp?productId=S\\_472304](https://store.usps.com/store/browse/uspsProductDetailMultiSkuDropDown.jsp?productId=S_472304); see also *The ‘Grand Dame of Southern Cooking,’ Honored with a Celebrity Chef “Forever” Stamp from the U.S. Postal Service*, EDNA LEWIS FOUND., <http://ednalewisfoundation.org/usps/> (last visited Aug. 25, 2015).

60. See Pether, *Seat*, *supra* note 3, ch. 4, at 1 (noting exploration of life of text's author is illuminative as to ideological or political work done by text).

61. Peacock and Lewis moved in together in 1996, ten years before Lewis died; he referred to them as a “happy, almost couple.” See FRIED CHICKEN, *supra* note 37, at 16:40; Shapiro, *supra* note 49 (interviewing Peacock regarding his friendship with Lewis). Peacock was named “Best Chef in the Southeast” at the James Beard awards in 2007. See *id.* (internal quotation marks omitted).

62. Pether, *Seat*, *supra* note 3, ch. 1, at 6 (quoting Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1, 2 (1987)). The full quote is that the Constitution “was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, that we hold as fundamental today.” Marshall, *supra*, at 2; see also Lynn Adelman, *The Glorious Jurisprudence of Thurgood Marshall*, 7 HARV. L. & POL'Y REV. 113, 114 (2013) (arguing that “Marshall believed that the Reconstruction Amendments altered the Constitution in ways that, even now, have not been fully recognized” and that those “[a]mendments transformed the Constitution into a document concerned as much with equality as with liberty”).

Here, Pether emphasizes the connections between Lewis's elective family, her private and professional creation of food, and the nation; this link is explored in the genealogy of southern cooking discussed above and also appears in the title *A Seat at the National Table*. Tables, gender, and nations will be discussed further below.

Organized around the seasons, the recipes in *Taste* are also integral to Pether's argument for Lewis's reimagined nation. The recipes are based on seasonal events in the farming community in which Lewis grew up, such as "An Early Spring Dinner After Sheep-Shearing," "Morning-After-Hog-Butchering Breakfast," and "A Dinner Celebrating the Last of the Barnyard Fowl."<sup>63</sup> Each season's recipes are preceded by a short memoir of community life in Freetown related to the season, the land, and food. Spring held a number of pleasures:

I loved walking barefoot behind my father in the newly ploughed furrow . . . . We would relish a dish of mixed greens . . . . Freetown was a beehive of activity, with everyone caring for crops of new animals, poultry, and garden, gathering dandelions and setting them to wine.<sup>64</sup>

The recipes in *Taste* call for the freshest, highest quality ingredients and are based on the "land's fruitfulness, the rituals of plenty," and, as Lewis writes in the introduction, the bonds that held the community together in Freetown, which had much to do with food.<sup>65</sup> As discussed further below, Lewis's inclusion of Emancipation Day Dinner and Revival Day as key annual festivals contribute to symbolically and materially shaping this community and provide fodder for reshaping the nation beyond its defective origins in chattel slavery and colonization.

The inclusion of these festivals remembering slavery in *Taste*, first published in 1976, as well as Lewis's references back to her childhood in Freetown in the 1920s and 1930s and to the decades before and after the Civil War that shaped and witnessed the foundation of Freetown, Lewis's life, and her text, result in a book that is "uneasily historically situated."<sup>66</sup> The thirtieth anniversary edition, published in 2006, the year of Lewis's death, and her commemoration posthumously, again resituate *Taste* and Lewis contemporaneously. Pether's book frames her analysis of *Taste* in all of these historical contexts.

Chapter six, which was not drafted, was intended to provide a reading of *Taste* intertextually with Daniel Patrick Moynihan's report, *The Negro Family: The Case for National Action*, and seminal histories of chattel slav-

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63. See LEWIS, TASTE, *supra* note 4, at 7–8, 9, 181, 235.

64. *Id.* at 4, 5.

65. Pether, *Seat*, *supra* note 3, ch. 1, at 18 (describing origin of Lewis's recipes); see also LEWIS, TASTE, *supra* note 4, at xxi.

66. See Pether, *Seat*, *supra* note 3, ch. 2, at 24.

ery.<sup>67</sup> Lewis's work—located in the context of slave narratives and women's autobiographical writing in the decades before and after Reconstruction, the archive of early African-American cookbooks and American studies scholarship on slavery and starvation, and the more recent emergence of scholarly interest in cultural studies of food in general and African-American foodways in particular—was to be addressed in chapter seven, only partially drafted.<sup>68</sup> In the final chapter, nine, Pether set out to offer an exploratory and comparative genealogy of “violent legalized interventions” in the lives of black families in the United States and Australia which result in black children, in particular, going hungry in two of the richest countries in the world, mapping “the interconnected roles played by law and food in constituting present-day racial inequality, frequently framed as the result of black pathology or welfare dependency.”<sup>69</sup>

The focus of this Article, on *Taste* as a radical culinary pastoral and as culinary jurisprudence, framed by the broader project of reading it as a constitutional epic, was intended for chapter eight of *A Seat at the National Table*, and is one of the least developed parts of the project. However, its centrality to the project means that it shapes much of the work Pether left in the five more complete chapters, which are drawn on in the next sections.

## II. *Taste* as a Culinary Pastoral

The first reading of *Taste*, as a culinary pastoral and project of “rememory,” might start with the influence on Lewis and *Taste* of Knopf editor Judith Jones, who also commissioned *The Diary of Anne Frank* and Julia Child and others' *Mastering the Art of French Cooking*.<sup>70</sup> Pether suggests that her decision to publish these three texts demonstrates that Jones understood the stories that Americans wanted to hear about themselves in the 1970s; all three are “texts that speak distinctively to and of times and cultures, which participate in reforging national imaginaries . . .”<sup>71</sup> Jones explicitly elicited stories from Lewis of imagined community as part of a parallel project of reforging national imaginaries, demanding

not only the performance of authenticity and the production of a particular (hi)story and voice. She also insisted that Lewis produce “share[d]” “memories,” education in such things as “the proper way to fry chicken . . . [and] the secret of making ‘flannel soft’ biscuits,” an unselfconsciously telling redemptive recovery of an “imagined community” from the inheritances of slavery and

67. See generally DANIEL PATRICK MOYNIHAN, U.S. DEP'T LABOR, OFF. POL'Y PLAN. & RES., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1965), available at <http://www.blackpast.org/primary/moynihan-report-1965>.

68. See Pether, *Seat*, *supra* note 3, ch. 7.

69. See Pether, Proposal, *supra* note 5, at 5–6.

70. See Pether, *Seat*, *supra* note 3, ch. 1, at 1, 9.

71. *Id.* at 9.

what have proved to be the phoenix-begetting ashes of apartheid.<sup>72</sup>

Pether draws on Robert Cover's use of the terms "redemptive" and "redemptive constitutionalism" to signal: first, the unredeemed character of Thurgood Marshall's "defective origins" of the nation; second, a fundamentally different narrative that should take its place; and third, the replacement of one with the other.<sup>73</sup>

This redemptive imagined community is often portrayed as the whole story of *Taste*. For example, this comment from *Saveur Magazine* on the thirtieth anniversary edition of *Taste* states:

The book functions a bit like a fairy tale for adults, telling the story of a time and place long ago and far away. A place deeply connected to the earth and seasons, and full of simple pleasures like wild strawberries, first snows, and harvest time.<sup>74</sup>

In these readings of *Taste*, Lewis's race is effaced, and "slavery is redeemed by a nostalgic national commons, a world of home and hearth, of generic American self-sufficiency that we might all learn to share again . . . ."<sup>75</sup>

Pether characterizes the connection to the earth, seasons, and simple pleasures depicted in *Taste*, and the sense of abundance provided by the land as a "culinary pastoral." The culinary pastoral is linked to the medieval genre of the pastoral text "with its depiction of earth and water yielding abundant food, its orientation around the pleasures and rituals of seasonality suggesting a perfect union of hunger and its satisfaction . . . . [and including] playful small animals and running water."<sup>76</sup> These pastoral texts operated to "manag[e] the forceful and prevailing medieval fear of hunger and scarcity, which in turn were associated with the insecurity of dislocation from home and community, [and] 'the break-up of families and friendships.'"<sup>77</sup> The medieval textual formula "mobilized the representation of eating as a means of forgetting both suffering and evil."<sup>78</sup> Reading *Taste* as a culinary pastoral operates to erase the violent history of slavery and the ongoing racialization of society.

As part of eliciting this redemptive culinary pastoral, the portrayal of Lewis on the cover for the first edition of *Taste* was also choreographed by Jones. On the first edition of *Taste* in 1976, Lewis wore a white dress, "evidencing an uncharacteristic slip in Jones's control over message."<sup>79</sup> Jones

72. *Id.* at 9–10 (alterations in original).

73. See Cover, *supra* note 7, at 33–35.

74. Mazurek, *supra* note 46.

75. Pether, *Seat*, *supra* note 3, ch. 1, at 9.

76. *Id.* at 19.

77. *Id.* ch. 3, at 39 (quoting HERMAN PLEIJ, *DREAMING OF COCKAIGNE: MEDIEVAL FANTASIES OF THE PERFECT LIFE* 103 (Diane Webb trans., 2001) (1997)).

78. *Id.*

79. *Id.* ch. 1, at 10.

thought the white dress “made [Lewis] look like a servant” and had the photograph re-colored so that it looked pink.<sup>80</sup> For subsequent books, Jones supervised the cover photo shoots and ensured that “Lewis [wore] her signature dress: elegant outfits of her own design, fashioned from African cloth: an unthreatening, decorative symbol of a national fabric not rent by race . . . .”<sup>81</sup>

The portrayal of Lewis as “unthreatening” in “decorative” dress, combined with Lewis’s posture in the photo—head back, wide smile, apparently laughing—may be seen as part of the elision of the violent racial history of the nation. The carefully choreographed, unthreatening, smiling image of Lewis also invites consideration of *Taste* in the context of feminist texts of the 1970s. Discussing feminists’ responses to the myth of the happy housewife in the 1970s, and what she argues is a more recent revival of this myth, Sarah Ahmed posits that good women have the duty to keep happiness in the house, and achieving this may mean performing happiness, or “passing as happy,” in order to maintain the correct order of things.<sup>82</sup> Feminists may “kill joy” simply by finding that the formula for the happy housewife does not work.<sup>83</sup> Ahmed argues that feminists do not even have to say anything in order to be read as killing joy, because “[i]n order to get along, [they] have to participate in certain forms of solidarity: [they] have to laugh at the right points,” and to show signs of happiness, signaling that they are well adjusted.<sup>84</sup> She argues that the figure of the “angry black woman” can be placed alongside the feminist killjoy—even her “proximity gets in the way of other people’s enjoyment of the right things, functioning as an unwanted reminder of histories that are disturbing, that disturb an atmosphere.”<sup>85</sup>

Lewis’s photo on the front of *Taste* is accompanied by this quote on the back cover from American food writer Mary F.K. Fisher:

This book is fresh and pure, the way clean air can be, and water from a deep spring. It is in the best sense *American*, with an innate dignity, and freedom from prejudice and hatred, and it is reassuring to be told again that although we may have lost some

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80. *Id.* (alteration in original) (internal quotation marks omitted); see also Waverly Gage, *Edna Lewis’s Summer Corn Pudding*, PEACE & LOVE KITCHEN (Aug. 10, 2010), <http://peaceandloveinthekitchen.com/2010/08/edna-lewiss-summer-corn-pudding> (displaying cover photograph).

81. Pether, *Seat*, *supra* note 3, ch. 1, at 10; see also Edna Lewis (1916–2006), *Orange County Chef and Author*, LIBR. VA., <http://www.lva.virginia.gov/public/trailblazers/2009/honoree.asp?bio=7> (last visited Aug. 27, 2015) (displaying photograph).

82. See AHMED, *supra* note 11, at 59.

83. See *id.* at 64–65.

84. *Id.* at 65.

85. *Id.* at 67.

of all this simplicity, it still exists here . . . and may be attainable again.<sup>86</sup>

Along with Lewis's smiling photo—laughing at the right point, apparently the embodiment of happiness—this quote is intent on *reassuring* the audience to whom the book is directed that it will not disturb the atmosphere in their homes, or disrupt the (illusion of) harmony in their lives. Lewis's proximity in their households will not get in the way of their “enjoyment of the right things” or the nation's social order.<sup>87</sup> Readers are reassured that Lewis is not an “angry black woman,” in Ahmed's terms.

Ahmed also argues that “feminists are read as being unhappy, such that situations of conflict, violence, and power are read as *about* the unhappiness of feminists, rather than being what feminists are unhappy *about*.”<sup>88</sup> Despite the long history of slavery and its “phoenix-begetting ashes,” as well as legalized white-on-black violence, Lewis and the book are characterized as free from prejudice and hatred, as though the danger of racial prejudice and hatred comes from African-American women, just as Ahmed argues that feminists are seen to cause situations of conflict. Lewis's own authorial elusiveness, mentioned above may be due, in part, as Pether states, to the “work that others made her image do, or to a combination of the symbolic significance of her life and work . . . .”<sup>89</sup>

What is forgotten, elided, or left undisturbed by these dominant mainstream readings of *Taste* as a culinary pastoral, and what Pether reads back in, consists “both of contemporary domestic terrorism and of black inequality, the grim inheritances of slavery and of persisting structural subordination . . . .”<sup>90</sup> Pether references Chris Tomlins's documentation of “the bifurcated labor laws . . . [of] Virginia [as] a slave state, [which] explicitly imposed on the masters of indentured servants a legal obligation not shared by masters of slaves: to feed them.”<sup>91</sup> Post-emancipation, the “slave labor”-type employment conditions were, she says, “vividly captured in Georgia planter Frances Leigh's response to emancipated slaves who resisted working on her estate: ‘it is a well-known fact that you can't starve a negro.’”<sup>92</sup> Also referenced by Pether is the more recent characterization of

ketchup into what “a vegetable” signified in our school-based nutrition program, which is perhaps most critical for the nourishment it provides to the many American children so impoverished, from homes where food is so scarce that the fami-

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86. EDNA LEWIS, *THE TASTE OF COUNTRY COOKING* (1st ed. 1976) (alteration in original) (statement of Mary F.K. Fisher) (displaying image on back cover).

87. See AHMED, *supra* note 11, at 67.

88. *Id.*

89. Pether, *Seat*, *supra* note 3, ch. 3, at 4–5.

90. See *id.* ch. 1, at 20.

91. *Id.* at 15.

92. *Id.* at 12.

lies who dwell in them are euphemized as “food insecure,” [meaning] that absent school feeding they would likely starve rather than merely go hungry.<sup>93</sup>

In these readings of *Taste* as a culinary pastoral, Lewis is represented as unthreatening and conciliatory, smiling and happy, and the “defective origins” of the nation are redeemed, or written over, and replaced with a generic American self-sufficiency that can be shared by all at the same time as it obliterates the history of slavery, white-on-black violence, and malnutrition which continues today. This reading is produced, as Pether states, “*even though the history Lewis herself recounts is of a national table that was distinctly segregated, where nostalgia for a shared seat at [that] table is fantasy.*”<sup>94</sup>

### III. TASTE AS A RADICAL CULINARY PASTORAL

The second reading of *Taste*, as a radical culinary pastoral and culinary jurisprudence, begins with the history that Lewis recounts in the book and elsewhere.<sup>95</sup> This reading attends closely to the work that Lewis (as opposed to Jones) does in *Taste* and to aspects of her life often left out of the short biographies accompanying discussions of her books, referred to above. It begins with Lewis’s introduction to *Taste*, evoking her grandmother’s slavery on page one of the book:

My grandmother had been a brickmason as a slave—purchased for the sum of \$950 by a rich land-owner who had several tracts of land and wanted to build two imposing houses on different locations. Grandmother was put to work molding the bricks, then carrying them and laying them (one of the houses she worked on still stands today, owned and restored by a college professor, but the other was destroyed in the Civil War). It was a job that caused my grandmother great anguish because she would have to go off all day to work on the big house, leaving her babies in their cribs and not returning until late in the evening to feed and care for them. The fact that years later, after her children had grown up and were living in Freetown, she would still take her kerosene lamp and go upstairs to make sure they were there and all right is a measure of the pain she bore. It is no wonder that they decided to build a big house so they could all be together.<sup>96</sup>

This evocative narrative condemns the law of chattel slavery, which provides for the purchase and sale of Lewis’s grandmother and requires her to build not one, but two houses, not for her own family, but for her

93. *Id.* ch. 2, at 3–4.

94. *Id.* ch. 1, at 9 (emphasis added).

95. *See id.* at 20.

96. LEWIS, *TASTE*, *supra* note 4, at xix.



master: edifices of slavery.<sup>97</sup> It provides a narrative supplement to the laws of chattel slavery, allowing us to look “sideways at law, in textual margins, intertextual resources, gaps and supplements that invite inspection.”<sup>98</sup> Pether identifies this sideways view as a critical law and literature method.<sup>99</sup>

Women and children were over-represented in the early slave population in Piedmont, Virginia; women, men, and children across Virginia were often all put to work making bricks for their masters’ houses.<sup>100</sup> Pether reads this passage from Lewis’s introduction with texts from Frederick Douglass and Booker T. Washington, arguing that Lewis “inserts herself in a genre of passing judgment” on the laws of chattel slavery.<sup>101</sup>

It might be argued that Lewis also responded to feminist debates underway at the time of the first publication of *Taste* in 1976. Lewis published this passage about her grandmother’s labour as a brick mason accruing to her owner and keeping her away from her own children, at a time when the domestic work of housewives—and their happiness—was a topic of great debate among feminists and others; Ahmed’s work on household happiness was discussed above in relation to the first reading of *Taste* as a culinary pastoral.<sup>102</sup> Betty Friedan’s *The Feminine Mystique*,<sup>103</sup> published in 1963 and often credited with launching the so-called “second wave” of feminism, chronicles the unhappiness of married women with

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97. See PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 17–19 (1991) (discussing purchase of author’s great-great-grandmother). Austin Miller, a wealthy lawyer who became a judge, purchased Williams’s then eleven-year-old great-great-grandmother; the subsequent census record lists Williams’s thirteen-year-old great-great-grandmother with an eight-month-old infant as his personal assets. See *id.* at 17–18. Williams asks “[w]hat [it would be] like for my stunned, raped, great-great-grandmother—an unwed teenage mother in today’s parlance—so disliked and isolated from even her own children that the stories they purveyed were of her laziness?” *Id.* at 18. Like Pether and Lewis, Williams “looks sideways” at the law and sees these configurations of race, gender, inequality, and economy today:

I see her shape and his hand in the vast networking of our society, and in the evils and oversights that plague our lives and laws. The control he had over her body. The force he was in her life, in the shape of my life today. The power he exercised in the choice to breed her or not. The choice to breed slaves in his image, to choose her mate and be that mate. In his attempt to own what no man can own, the habit of his power and the absence of her choice.

I look for her shape and his hand.

*Id.* at 19.

98. *Id.* ch. 2, at 19.

99. See *id.*

100. See *id.* ch. 1, at 13; see also *Brickmakers*, COLONIAL WILLIAMSBURG FOUND., <http://www.history.org/Almanack/life/trades/tradebri.cfm> (last visited Aug. 27, 2015) (noting that Thomas Jefferson’s slaves made bricks for Monticello in Piedmont, Virginia and that men, women, and children slaves made bricks).

101. See Pether, *Seat*, *supra* note 3, ch.1, at 13.

102. See *supra* notes 84-90 and accompanying text; see also AHMED, *supra* note 11.

103. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963).

children living in material comfort during that period.<sup>104</sup> She identified the “feminine mystique” as the myth that women were naturally fulfilled as housewives and mothers, noting that the “actual *unhappiness* of the American housewife was suddenly being reported” and arguing that women should be liberated from the domestic sphere.<sup>105</sup>

Black feminists, of course, critiqued Friedan, with bell hooks pointing out that at the time *The Feminist Mystique* was published, one-third of all women, mostly working class and black, were in the workforce.<sup>106</sup> Friedan’s book, hooks argued, although

often quoted to describe the condition of [*all*] women in this society, actually referred to the plight of a select group of college-educated, middle- and upper-class, married white women—housewives bored with leisure, with the home, with children, with buying products, who wanted more out of life.<sup>107</sup>

Audre Lorde delivered her famous paper *The Master’s Tools Will Never Dismantle the Master’s House* in 1979 at New York University, speaking to a group of women, including professors and other academics.<sup>108</sup> She argued that white feminists’ failure to recognise the differences among women when analysing the patriarchy would result in reproducing that same racist patriarchy with change only within the narrowest perimeters. She asked, with reference to poor and black working women, “how do you deal with the fact that the women who clean your houses and tend your children while you attend conferences on feminist theory are, for the most part, poor women and women of Color?”<sup>109</sup>

With the opening passage about her grandmother, Lewis disrupts calls for liberation from the myth of the “happy housewife” with a personal history and genealogy. She prominently positions the figure of her grandmother employed doing the hard labour of a brick mason (not only moulding, but also carrying and laying bricks) on page one of the book.<sup>110</sup> Lewis’s focus on her grandmother’s anguish at separation from her children makes it clear she was not performing domestic labour in her own house for her own children, nor was she performing domestic labour in another woman’s house. Instead she, quite literally, built the master’s houses, not just one, but two.<sup>111</sup> Lorde emphasised that “*the master’s tools*

104. See JUDITH EVANS, *FEMINIST THEORY TODAY: AN INTRODUCTION TO SECOND-WAVE FEMINISM* 1 (1995).

105. FREIDAN, *supra* note 103, at 22, 18–22 (emphasis added).

106. See BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 1–3 (2d ed. 2000).

107. *Id.* at 1.

108. See AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* 110–12 (rev. ed. 2007).

109. *Id.* at 112.

110. See LEWIS, *TASTE*, *supra* note 4, at xix.

111. See *id.*

*will never dismantle the master's house*"; Lewis states that this master could not have built the house in the first place without the work of Lewis's grandmother.<sup>112</sup> Lewis begins her version of *Taste* by reminding her readers that the foundations of the American nation were built by slaves, and that women as well as men did the heavy lifting. This central positioning of African Americans in building the foundations of the nation complements and supplements the claim that the *only* American cuisine is southern cooking, created by slaves and black chefs, discussed above; both support Pether's argument for *Taste* as a "constitutional epic."

One of the "imposing" houses built by Lewis's grandmother is still standing.<sup>113</sup> Lewis's statement that it is owned and restored by a "college professor" resonates with Lorde's comment on feminist academics.<sup>114</sup> The passage may be read as suggesting that the college professor, or academics in general, have the option of sitting in the position of the master, benefitting from the unpaid work of slaves, and restoring the edifices of slavery. It highlights the discrepancy between the founding idea of America as a land of opportunity, where the Lockean premise that each individual owns the product of his labour features prominently, and the fact that Lewis's grandmother, and her descendants, did not own—or have the option of living in—the "imposing" houses built by her grandmother's labour, nor was her grandmother paid for her labour.<sup>115</sup>

More generally, *Taste* also reclaims women's work from the master for the black family. Focused on a community working together in harmony

112. See *id.*; see also LORDE, *supra* note 108, at 112.

113. See LEWIS, TASTE, *supra* note 4, at xix.

114. See *id.*; see also LORDE, *supra* note 108, at 112.

115. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 305–06 (Peter Laslett, ed., Cambridge Univ. Press 1960). Locke states:

[E]very Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state Nature placed it in, hath by this *labour* something annexed to it, that excludes the common right of other Men.

*Id.* Locke's *Two Treatises* are often considered the single most important influence that shaped the founding of the United States. See Donald L. Doernberg, "We the People": John Locke, *Collective Constitutional Rights*, and *Standing to Challenge Government Action*, 73 CALIF. L. REV. 52, 57 (1985) ("It would be difficult to overstate John Locke's influence on the American Revolution and the people who created the government that followed it." (citing DAVID W. MINAR, IDEAS AND POLITICS: THE AMERICAN EXPERIENCE 47 (1964))).

He developed a set of political ideas which has very largely served as the basis for American political values and for the institutional structure which American and British government has since assumed. His importance for American political thought can hardly be overestimated; indeed, there is probably no better short summary of the ideas of Locke than the American Declaration of Independence.

MINAR, *supra*, at 47.

for its sustenance from its own land, it replaces the hunger and family deprivation of slavery, what Pether calls the “fracturing of families,” that was a—if not *the*—mark of chattel slavery, which “pursued [black Americans] from the very start of the Middle Passage” through chattel slavery and beyond, with festivals of celebration and plenty.<sup>116</sup>

*Taste* is also part of a genre particularly suited to reaching a broad spectrum of women. The culinary pastoral aspects of the book which Pether analysed, and Lewis’s introduction, in which she appeals to the young people of the 1970s who are “going back to the land and to the South,” “interested in natural farming” and “how [things were done] in the past,” as well as Jones’s choreography, are part of its framing for a wide audience.<sup>117</sup> As a recipe book, Lewis’s intertextual dialog with both feminist and race debates of the period in which *Taste* was published, lands in the kitchens of the nation, the “heart” of the household, and provenance of the housewife. Intended to be used on a daily basis, the message of the more radical culinary pastoral is repeatedly available.

#### IV. LEWIS’S CULINARY JURISPRUDENCE

It is in the kitchen where at least one aspect of the culinary jurisprudence, as a minor jurisprudence on which Pether intended to focus, is enacted. The chapter on culinary jurisprudence is one of the least developed in the unfinished manuscript; this section draws on Pether’s introductory comments and develops that analysis.<sup>118</sup>

A minor jurisprudence in Goodrich’s terms may be an alternative jurisdiction of judgment, drawn from the diversities of legal and literary pasts, with mixed textual records.<sup>119</sup> They are forms of knowledge that escape the “sovereign and unitary law,” challenging the law of the masters and using literature to suggest “other possibilities for law, other means of expression of law and more profoundly conceptions of value and justice that draw upon a wider variety of experiences of gender, sexuality, ethnicity and lifestyle than are currently available.”<sup>120</sup> Goodrich argues that minor jurisprudences may be found in “radical sources and practices of law . . . [inscribed by] the rebels, critics, marginals, aliens, women and outsiders who over time repeatedly challenged the dominance of any singular system of legal norms.”<sup>121</sup> A minor jurisprudence may be found in contingent and local practices.<sup>122</sup>

116. See Pether, Proposal, *supra* note 5, at 2–3.

117. See LEWIS, TASTE, *supra* note 4, at xxi.

118. See Pether, Seat, *supra* note 3, ch. 7, at 1–5.

119. See GOODRICH, COURTS OF LOVE, *supra* note 2, at 1–2.

120. Pether, Seat, *supra* note 3, ch. 1, at 17 (quoting GOODRICH, COURTS OF LOVE, *supra* note 2, at 6–7) (internal quotation marks omitted).

121. GOODRICH, COURTS OF LOVE, *supra* note 2, at 2.

122. See *id.* at 3.

Pether's argument, at its most basic level, is that Freetown can be seen as a minor jurisdiction in which a set of rules for living developed that Lewis recorded in *Taste*. She argued that *Taste* can be read as:

[T]he imbrication of written text and (culinary) material practices characteristic of the recipe book, itself both didactic and law-like in that . . . the iterative embodied practice of working from the texts of recipes leads to variants of culinary practices, subsequently inscribed in texts.<sup>123</sup>

A recipe book provides a set of precedents, similar to a book of cases. A case is didactic in that it teaches the law in relation to a particular set of facts, and requires repetition, or application, of the rule of the case to the next fact situation, although always with some difference since no two sets of facts are exactly the same.<sup>124</sup> The recipe book also provides a set of precedents, or rules that teach the reader how to make a particular dish. Recipes "follow strict rules," as a "rigidly defined cultural genre," and must include a number of mandatory elements.<sup>125</sup> Recipes are also repeated through time, albeit with recognition, as with the doctrine of precedent, that every iteration may be a repetition with a difference, variations that may also be inscribed in new books, or new editions of the same recipe book.

The culinary jurisprudence of *Taste* provides a narrative of the origins of a post-emancipation community. Lewis recounts how her grandfather was one of the first residents of Freetown, which "wasn't really a town"; the name was adopted to signal that the residents "wanted to be known as a town of Free People."<sup>126</sup> It also provides precedents for living in a manner conducive to the production and sustenance of plenty through cooperation, hard work, and attention to—in Pether's words—"Lewis's parents' and grandparents' deliberate and much-practiced codes for living amply and safely [that] provided lessons to be inculcated in Lewis, her siblings, and their Freetown cousins and friends."<sup>127</sup> *Taste* encompasses not just recipes, but also codes about harvesting, raising chickens, listening to the guinea fowls that perform the service of watchdogs (discussed below), and preparing food and people for cooking and eating.<sup>128</sup> The codes form part of the textual and material production of the subject. In the methodological terms of law and literature, "text and context make each other, iteratively."<sup>129</sup> Through the material processes of following the recipes and repeating the instructions for good living and eating, the subjects of

123. Pether, *Seat*, *supra* note 3, ch. 2, at 1.

124. See MARGARET DAVIES, ASKING THE LAW QUESTION 269–74 (1994) (explaining deconstruction, justice, and doctrine of precedent).

125. See ROSELLO, *supra* note 24, at 107.

126. LEWIS, TASTE, *supra* note 4, at xix.

127. Pether, *Seat*, *supra* note 3, ch. 2, at 21.

128. See, e.g., LEWIS, TASTE, *supra* note 4, at 159.

129. Pether, *Seat*, *supra* note 3, ch. 2, at 16.

community and jurisdiction of Freetown are produced and reproduced. Pether likens the codes to the historical and current requirements that lawyers eat, moot, and practice aspects of law at the common tables of the Inns of Court. Goodrich argues that this is an experience of “*doctrination*, ‘an educational practice,’ . . . [that produced a] generic pedagogical code written on the body which in its turn reproduces itself as the jurisdiction’s body of law . . . .”<sup>130</sup>

Freetown is portrayed in *Taste* as a community within a jurisdiction of safety, a haven from the racial violence surrounding it. Lewis’s grandparents’ house sat in the center of a circle of eleven houses, positioned in an attempt at mutual protection. The importance of a haven from violence is highlighted by the contrasts in a documentary made about Lewis titled “Fried Chicken and Sweet Potato Pie,” which, Pether states:

[F]eatures a strikingly salient cross-cutting of pastoral and violence. The viewer is invited by an image of and description of a lavish and elegant spread of food in the churchyard in what appears to be Lewis’s native Freetown, now Unionville, Virginia, marking the celebration of Emancipation, to confront what follows: black and white photographs of Klansmen and of Twentieth Century lynchings, surrounded by white Southerners in picnic-like celebration. Lewis speaks, her tone deliberate, yet quivering, in a voice-over: “When I was a girl they used to hang black men. You couldn’t do anything about it, because they’d kill you. It scared the life out of us.”<sup>131</sup>

The creation of safe communities with self-determining governance and laws, or codes of black separatism and self-determination, that were protective and supportive, provided space beyond violent legalized subordination in an era in which citizenship was negated, opportunities to access the phantasm of equality were circumscribed, and nutrition was often scarce. These communities demonstrated and embodied political agency that is often overlooked in histories of the period.<sup>132</sup> Further, Pether argues that Freetown, “[i]n its praxes of self-determination, applying labor to erase the specters of hunger, and that of nurturing and protecting children [ ] literally constituted another nation.”<sup>133</sup> This reference to *nation* is a reference to a political community purposefully bonded together through the codes of living later set out in *Taste*. This community’s story of origin is a “haunting and radical counter to the totalizing narrative of white racial supremacy, encoded in or transmitted through the enforcement (or its

130. *Id.* at 21 (footnote omitted) (quoting GOODRICH, *COURTS OF LOVE*, *supra* note 2, at 210).

131. Pether, *Seat*, *supra* note 3, ch. 1, at 6 (quoting FRIED CHICKEN, *supra* note 37).

132. *See id.* ch. 5, at 20–21; *see also* HAHN, *supra* note 6, at 1–7.

133. Pether, *Seat*, *supra* note 3, ch. 5, at 20.

failure) of State law, both before Emancipation and after the formal and practical evisceration of the Reconstruction Amendments.”<sup>134</sup>

An example of the links between cuisine, cooking, living safely, and community building can be found in Lewis’s choice of festivals for inclusion in *Taste* and in her treatment of those festivals. Pether argues that Lewis first recounts, and then “emplots,” or replants differently, through these practices of living, the fracturing of black families.<sup>135</sup> Her use of “emplot” is a reference to Goodrich’s work on the cultural relationship of law, land, food, and nation in early English legal historians’ accounts of the common law:

The measurement of Law is the measurement of the productivity of arable land and so it is the plough which dictates the boundaries of a village, a town or a city and its jurisdiction. That precious and closely guarded sense of dimension ties a people to its food and to the quantification of the production of food, for behind every common table is a common land and common food.<sup>136</sup>

This language resonates with the quote from *Taste*, discussed above, in which Lewis recounts the pleasures of walking behind her father through the newly ploughed furrow.<sup>137</sup> Through the sharing of food, “again and again,” communities are constituted and reproduced and the memory of origin and genealogy incorporated within. Lewis’s choice to include Revival Sunday Dinner and Emancipation Day Dinner in the book situates these narratives for the common tables of Freetown as “emplotting” the land, food, people, and law in a jurisdiction.

Lewis’s decision to *exclude* Thanksgiving is also part of her reshaping of the imaginary community of the nation:

A key symbol in our national imaginary, Thanksgiving weaves a fanciful story of connection—familial, both blood and elective; communitarian; between colonizer and colonized—and plenty that is transracial, open to all. It overwrites foundations wrested by law and lore, as through labor and sacrifice, from others and from country, through violence and deprivation, dominance and subordination, terrorism, genocide, and hunger.<sup>138</sup>

In place of Thanksgiving, Lewis’s choice of other festivals linked to the plough, harvest, and community create different stories of origin for a national imaginary, and bond different communities:

134. *Id.* at 12 (footnote omitted).

135. *See id.* at 32–33.

136. Goodrich, *Eating Law*, *supra* note 6, at 260.

137. *See supra* note 64 and accompanying text.

138. Pether, *Seat*, *supra* note 3, ch. 1, at 12.

Our Revival Week always began on the second Sunday in August. Memories of slavery lingered with us still, and Revival was in a way a kind of Thanksgiving. There was real rejoicing: The fruits of our hard labor were now our own, we were free to come and go, and to gather together for this week of reunion and celebration.<sup>139</sup>

In this story of origin, ploughing, land, harvest, food, and festival are linked to a community of sharing that does not erase the history of slavery, as Pether says, “another place in the text where the legacies of slavery take their place in a memoir of community living impelled by a law of love . . . .”<sup>140</sup>

On Emancipation Day, celebrated in September with a “Thanksgiving service,” former slaves told stories in church, followed by food served outside.<sup>141</sup> Pether points out that “Lewis’s menu for the Fall celebration of Emancipation day, while featuring Thanksgiving menu standards like green beans and wild rice, replaces the turkey with guinea fowl, represented both as keeping the family safe from strangers and as constituting links with Africa, and as symbols of freedom . . . .”<sup>142</sup> Lewis states:

Guineas were an integral part of every barnyard in Freetown. They were cultivated because of their watchdog quality; they always made a big fuss whenever any stranger appeared. The guinea fowl has its origin in West Africa and their African link was passed on from generation to generation by Africa-Americans [sic]. They were eaten only on rare occasions and had to be shot, as they lived in trees and roamed the countryside.<sup>143</sup>

The emphases on Revival and Emancipation Days, which “remember” slavery and links to Africa, Pether contrasts with Thanksgiving:

Liberty, mobility, owning oneself and enjoying the fruits of one’s labors, the ability to retain and enrich family and community connections, *rather than surviving the rigors of colonizing*, are the source of this celebration by feasting . . . . Prefacing the recipes in this chapter is a loving description of cooperative communal work and familial life, both nuclear and extended, honoring black men’s labor, foregrounding the central familial role of Lewis’s father, and celebrating her mother’s skilled and careful work in field, kitchen, farmyard, for family and home.<sup>144</sup>

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139. LEWIS, TASTE, *supra* note 4, at 117.

140. Pether, *Seat*, *supra* note 3, ch. 3, at 35.

141. See FRIED CHICKEN, *supra* note 37, at 4:30.

142. Pether, *Seat*, *supra* note 3, ch. 5, at 32.

143. *Id.* (quoting LEWIS, TASTE, *supra* note 4, at 159).

144. *Id.* at 33 (emphasis added).



*Taste* reshapes the holidays and festivals that are the key symbols of national identity, remembering slavery and links to Africa as central to the foundations of America. Not only are holidays or festivals key symbols of national identity, but the business of nations and nation building takes place at the tables of these festivals, as recognised in this 1825 quote from Jean Anthelme Brillat-Savarin's *Physiologie du gout*, which has not been out of print since:

the difference between a hungry man and a man well fed is not lost upon [the most eminent men of affairs], and they know that the table establishes a kind of tie between the two parties to a bargain; and after a meal a man is more apt to receive certain impressions, to yield to certain influences; and this is the origin of political gastronomy. Meals are become [sic] a means of government, and the fate of nations has been sealed at many a banquet.<sup>145</sup>

The term *table assemblages* might refer to a critical reading of who is invited, included, and excluded from the raced and gendered tables of the biopolitical family and the nation.<sup>146</sup> The tables at which lawyers are trained, discussed above, and at which nations are made, have not been equally open to all, and not everyone is similarly situated at these tables. For example, feminists may be at odds with the performance of happiness at family occasions, assembled around the dinner table, where “the family gathers, having polite conversations, where only certain things can be brought up.”<sup>147</sup> The feminist killjoy may be disturbed by something said that is problematic, and if she makes it visible, she may be seen as causing the resulting argument. Ahmed specifically discusses tables as places of assemblage within specific cultural contexts and at certain political moments:

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145. JEAN ANTHELME BRILLAT-SAVARIN, *THE PHYSIOLOGY OF TASTE* 37 (Peter Davies, Ltd. & Doubleday & Co. trans., Dover ed. 2002) (1925). The book has been in print continuously since it was first published in 1825, and it has been called the most famous book about food ever written. See *The Physiology of Taste*, PENGUIN RANDOM HOUSE, <http://www.penguinrandomhouse.com/books/18327/the-physiology-of-taste-by-jean-anthelme-brillat-savarin-translated-by-mfk-fisher-introduction-by-bill-buford/> (last visited Aug. 31, 2015).

146. See JASBIR K. PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* xvii, xxii, 173, 193, 196, 217 (2007) (discussing assemblages); see also Jasbir Puar, Ben Pitcher & Henriette Gunkel, *Q&A with Jasbir Puar*, DARK MATTER (May 2, 2008), <http://www.darkmatter101.org/site/2008/05/02/qa-with-jasbir-puar/> (“The critical practice of assemblage is a reading practice, first and foremost, meaning that the implications for gay and lesbian activism is not that it needs to create assemblages but rather that contemporary and historical organizing practices need to be read as always already assemblages, and this re-reading may then open up new avenues of thinking, speaking, organizing, doing politics—lines of flight, affective eruptions, affect, energies, forces, temporalities, contagions, contingencies, and the inexplicable.”).

147. AHMED, *supra* note 11, at 65.

I think of . . . how we become assembled over and by tables. Two women seated together at a table, let's say. Sometimes you might have to wave your arm, your willful [feminist] arm, just to be noticed. Without a man at the table you tend not to appear. For others, to be seated is not only to be seen, *but to be seen to*. You can take up a place at the table when you have already been given a place.<sup>148</sup>

Pether argued forcefully that historically-sedimented limitations, by race, gender, class, and status, on the legal and national communities engaged in eating at the Inns of the Common Courts or these national banquets “pervert the (imagined) community constituted through the sharing of food and drink, of equal protection of national law.”<sup>149</sup>

From a different theoretical position in *The Politics of Friendship*, in analysing the bonds of fraternity as the basis of modern democracies and recognising the absence of women in theories of fraternity, Jacques Derrida asks whether women are the “absolute enemy” of fraternity—perhaps, in Pether’s terms, placing women outside of the national imaginary of democracy, without a seat at the national table.<sup>150</sup> I will come back to Derrida.

Lewis’s *Taste* establishes a minor jurisprudence, a culinary jurisprudence, providing a set of precedents and codes arising out of a story of origin of an imagined community that is reinscribed with each iterative performance of the production of food and festivals linked to land within the jurisdiction of Freetown. In Goodrich’s terms this minor jurisprudence displaces the law of the masters “in the context of . . . the art of life,” with “the labor of love embodied in [Lewis’s] accounting [of] . . . receipts [ ] for Freetown.”<sup>151</sup> Lewis’s organisation of the book around seasons and festivals is a way of evoking a community and providing a story of origin for that community in the misty past of time immemorial, to be invoked in current embodied performances in the kitchen, in the fields, and in the festivals in creating bonds of community. Each enactment of the recipes, both particular and more broadly in codes, shapes and produces the subjects who embody and reproduce both the culinary jurisprudence and an imagined community of nation, providing a vision for reclaiming the American nation from its defective origins.

## V. CONCLUSION

Pether’s *A Seat at the National Table* is concerned with configurations of national identity and the figures of legal subjects made and remade

148. Sara Ahmed, *Selfcare as Warfare*, FEMINISTKILLJOYS (Aug. 25, 2014), <http://feministkilljoys.com/2014/08/25/selfcare-as-warfare/>.

149. Pether, *Seat*, *supra* note 3, ch. 1, at 18.

150. See DERRIDA, *supra* note 12, at 156–57.

151. Pether, *Seat*, *supra* note 3, ch.1, at 20 (first alteration in original) (quoting Goodrich) (internal quotation marks omitted).

through constitutional law and literature, and in particular, *Taste* as a constitutional epic, supplementing the laws constituting the nation. With a parallel focus on “fraternity” as the core of democracy, Derrida asks whether it is possible to retain democracy while at the same time opening it out to a future beyond its foundational limitations on membership in the fraternity:

[I]s it possible to think and to implement democracy, that which would keep the old name ‘democracy’, [sic] while uprooting from it all these figures of friendship (philosophical and religious) which prescribe [this limited] fraternity . . . ?

For democracy remains to come; this is its essence in so far as it remains: not only will it remain indefinitely perfectible, . . . but . . . it will always remain, in each of its future times, to come . . . .<sup>152</sup>

Similarly, perhaps, Pether’s reading of *Taste* as a *radical* culinary pastoral and as culinary jurisprudence, involves reimagining the story of origin of the nation as not just “nostalgic rememory” that elides slavery and racial violence, but as the basis for reshaping the nation into the future:

[T]he transformative reconstruction of a radically unequal imagined nation—where only some experience the land’s fruitfulness, the rituals of plenty, the bonds of community, the protection of law—might entail a genuinely radical materialist pastoral such as Lewis’s, the rewriting of stories of origin critical to America’s “imagined community” that unsettles the way law shapes nation, through “times and rituals of repetition whose power of presence resides in a stylistic conformity to a past that was never present.”<sup>153</sup>

Pether’s critical optimism and commitment to social justice are encompassed in this statement on what the project and its critical law and literature methodology might accomplish:

What this book does, rather [than] offering a totalizing theory of legal subject formation, is pay attention to . . . the embodied experience of the world, mediated through the exchanges between the sexed, raced, classed and historically situated body of the writer, with her texts and with others, and with cultural discourses including those on food, law, race, family and community, nurturance, poverty and plenty, in exploring “the possibilities for transformative justice” such a particularized and attentive close reading of *The Taste of Country Cooking* might offer, and which would enable in its turn changes in the law’s racist

152. DERRIDA, *supra* note 12, at 306.

153. Pether, *Seat*, *supra* note 3, ch.1, at 18 (quoting Goodrich, *Eating Law*, *supra* note 6, at 247).

discourses, and in the embodied legal subjects who draw on their resources in laying down the law in its texts, demarcating ways in which it is and is not presently possible to live subject to the law of the land.<sup>154</sup>

Like Derrida's evocation of "democracy to come," transforming national imaginaries and the laws that produce the legal subject who inhabit and reproduce those imaginaries is a project of uprooting legal subjectivity and national imaginary from the historically entrenched limitations of race, gender, and class, recognising its indefinite perfectibility and always reaching out beyond existing national imaginaries for possibilities for transformative justice.<sup>155</sup>

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154. *Id.* ch. 2, at 17 (footnote omitted) (quoting Pether & Threadgold, *supra* note 8, at 135).

155. *See* DERRIDA, *supra* note 12, at 306.

