Sensing the Nation's Law
Historical Inquiries into the Aesthetics of Democratic Legitimacy
Studies in the History of Law and Justice

Volume 13

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Sensing the Nation’s Law

Historical Inquiries into the Aesthetics of Democratic Legitimacy
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Stefan Huygebaert
Angela Condello
Sarah Marusek
Mark Antaki
Contents

1 Introduction .................................................. 1
Mark Antaki, Angela Condello, Stefan Huygebaert
and Sarah Marusek

Part I Revolution, Constitution, Republic

2 Monument, Portrait, Tableau: Making Sense of and with
Jacques-Louis David’s Tennis Court Oath .................. 11
Mark Antaki and Catherine Le Guerrier

3 The Quest for the Decisive Constitutional Moment (DCM) .... 45
Stefan Huygebaert

4 Courbet and the Nude Republican Master ................... 85
Oliver Watts

Part II The Aesthetic Constitution of Office

5 Justice Petrified: The Seat of the Italian Supreme Court
between Law, Architecture and Iconography ............... 117
Stefania Gialdroni

6 Visual Rhetoric as “A Space-in-Between”: Semiotic
Account of French Official Presidential Photographs ........ 153
Anne Wagner

Part III Untimely Reflections on the Nation’s Law

7 Here and Now: From “Aestheticizing Politics” to
“Politicizing Art” ............................................ 175
Desmond Manderson
8 A Hypothesis on the Genealogy of the Motto “In God We Trust” and the Emergence of the Identity of the Church ................. 191
   Paolo Napoli

Part IV Out of Many, One

   Sarah Marusek

10 Internormative Gastronomies: Law, Nation and Identity ........ 237
   Richard Mohr and Nadirsyah Hosen

Part V Consensus

11 Aesthetic Mediation: Towards Legitimate Power ................. 265
   Angela Condello
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Chapter 1
Introduction

Mark Antaki, Angela Condello, Stefan Huygebaert and Sarah Marusek

Abstract We are said to live in an age of democratic legitimacy. The rightfulness of a political and legal order is meant to reside in a widespread belief in the rightfulness of democracy. Contemporary democratic legitimacy is tied, among other things, to consent, to representation, to the identity of ruler and ruled, and, of course, to legality and the legal forms through which democracy is structured. The nation, its unity, and whatever democratic legitimacy its form of rule enjoys, become tangible and emerge as much in shared taste, in the pre-supposition and generation of aesthetic con-sensus, as in the formation or execution of a common will or the inculcation or reasoning of a common reason. This introduction presents the ten chapters of the edited volume, each of which engages with the intersection of aesthetics and law, and, more specifically with the question of how the nation—and its (fundamental) law—are ‘sensed’ by way of various aesthetic forms.
We are said to live in an age of democratic legitimacy. The rightfulness of a political and legal order is meant to reside in a widespread belief in the rightfulness of democracy.\(^1\) Contemporary democratic legitimacy is tied, among other things, to consent, to representation, to the identity of ruler and ruled, and, of course, to legality and the legal forms through which democracy is structured.\(^2\) While this kind of conventional wisdom may be questioned, e.g. we may be seeing rescue displace democracy as what legitimates rule,\(^3\) our goal here is not to upend this conventional wisdom but to challenge and expand the ways in which we can understand and appreciate democratic legitimacy. If (democratic) communities are “imagined”,\(^4\) we argue that their “rightfulness” must be “sensed”—analogously to the need for justice not only to be done, but to be seen to be done.

Democracy and democratic legitimacy are not simply conceptual or rational achievements. As participants—subjects, citizens—of political and legal orders, we are not interpellated merely conceptually or rationally but also sensually and aesthetically. In this volume, we seek to draw attention to the aesthetics of democratic legitimacy and to the way democracy and law are sensed, felt, embodied, experienced.\(^5\) Chapters primarily focus on the sense of sight rather than engage with the full spectrum of the human sensorium.\(^6\) However, using the “visual” as an entry-point into the “sensorial” and “sensual” more broadly leads us to discover the consentirer or feeling together at work in consent and consensus. It encourages us to interpret political and legal representations\(^7\) as always already aesthetic and bound up with modes of making present that are historically and culturally located and contingent. Likewise, it moves us to look into the practices of sensual identification that come along with the identity of ruler and ruled.


The nation, its unity, and whatever democratic legitimacy its form of rule enjoys, become tangible and emerge as much in shared taste, in the pre-supposition and generation of aesthetic con-sensus, as in the formation or execution of a common will or the inculcation or reasoning of a common reason. In a like manner, representation answers the challenge of actualizing, making present (and therefore tangible) this con-sensus, and not simply such things as pre-existing “preferences” or “interests”. History provides us with diverse forms of national representation, themselves often tied to focal moments in which the nation is conceptualized, embodied, enlivened and forged through sensory means. These moments, as they involve understandings and enactments of order, power, and control, are properly understood as key legal moments, as matters of concern for legal historians and scholars.

This edited volume brings together ten essays, each of which engages with the intersection of aesthetics and law, and, more specifically with the question of how the nation—and its (fundamental) law—are ‘sensed’ by way of various aesthetic forms. They are written by scholars in law, political science, history, art history and philosophy, each of whom works in an inter-disciplinary fashion or with an inter-disciplinary sensibility. The main chronological focus is on the post-revolutionary period spanning from the late eighteenth and early nineteenth century’s age of revolution until our own age of contested democratic legitimacy, although several authors demonstrate how specific aesthetic forms feature much older roots, going back as far as early Christianity. The chapters engage with different parts of the so-called Western world, namely Europe, North America, and Australia and explore the rich contextualizations of law that happen in these places.

Part I, Revolution, Constitution, Republic, gathers three chapters, each of which grapples with the question of (republican) foundation and the sensing of the res publica. Within each chapter, the authors engage with the transition from revolution to constitution and the resulting republic and/or nation-state, as reflected in art works from the long nineteenth century and—more particularly—from the age of revolution as defined by Eric Hobsbawm. 9

Mark Antaki and Catherine Le Guerrier treat Jacques-Louis David’s unfinished Tennis Court Oath as an attempt to capture the moment in which the new republican sovereign is presaged or emerges. Taking David’s “corporeal aesthetic” as their entry-point, Antaki and Le Guerrier present and examine three inter-related modes of engagement with or appreciation of the Oath. They consider the Oath in turn as Monument, as Portrait, and as Tableau in order to engage with some of the layers of sense and sensibility at work in the Oath. For instance, considering the Oath as Monument raises such questions as the liberties David took to immortalize liberty. Considering it as Portrait leads one to ask whether and how it participates in

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the political theological logic of incarnation that animates the King’s Portrait. Considering it as Tableau leads one to ask about its ties to theatre and Diderot’s aesthetics and to wonder whether it does away with representation as incarnation.

Stefan Huygebaert examines events and moments from constitutional history, their depiction and their relevance within the history of the nation and its fundamental law, the constitution, by way of the artistic device that he calls the Decisive Constitutional Moment. The meaning of this device lies in the interplay between monument and memory, between commemoration and communication, and between the moment of depiction and the depicted moment. Huygebaert treats different artistic media (painted, engraved, sculpted) and ends his chapter with an analysis of the competition entries for the Belgian constitutional monument known as the Congress Column, following the pan-European 1848 revolution.

Like Antaki and Le Guerrier’s, Oliver Watts’ chapter concerns a painting in France, a country with a long tradition of kings’ portraits. Like Huygebaert’s case study, it concerns the 1848 revolution and its aftermath. More specifically, it looks at the 1848 appropriation of the revolution of 1789. Watts extends Hélène Toussaint’s iconological analysis of Gustave Courbet’s famous Allegory (Paris, Louvre). In his chapter, Watts interprets the nude woman in the painting as an effigy of the republican Marianne, “the body of democratic France”, a portrait rather than an allegory. Using Lacanian theory, Watts explores the sovereignty within the painting and calls for attention to the notions of natural law and social contract. In the case of Courbet’s Allegory as well, the moment of creation and the specific historical context of France in the aftermath of the 1848 revolution and imperial take-over prove vital for an understanding of the sensation of the nation. As opposed to the official visual rhetoric, which Huygebaert deals with for the Belgian case, Watts provides the reader with the means to grasp the subversive quality of a non-official work of art, and traces the representation of the French nation therein.

Part II, The Aesthetic Constitution of Office, continues one of the themes introduced in part one, namely the embodiment of the nation and its law (e.g. Watts writes about the “body of democratic France” during the Second Empire). The focus of part II, however, is on the embodiment of the nation and its law in “office” and in “official” representations or constructions thereof. ¹⁰

Stefania Gialdroni writes about the Italian Supreme Court building as both a functional Palace of justice or an “office”, and a national symbol of the Italian nation. Just like Stefan Huygebaert, she situates her specific focus within a broader pan-European discussion of the legal-national architecture of palaces of justice. Her treatment of the architecture of palaces of justice is tied to the seeing and sensing of justice, but it is also tied just as much to questions of national and legal unity and unification. Indeed, her chapter invites us to situate traditional moments of what we might call “legal nationalism”, such as codification, within a much broader sensorial context.

Just as the portrayal of the king’s body in his portrait is meant to say something about and even constitute kingship itself, so too does the photograph of a president both comment and establish the office he occupies. Anne Wagner focuses on official presidential photographs of the Fifth Republic (1958–2012). She looks at presidents as office-holders, and scrutinizes how their representation leads us to understand the office itself and, at the very same time, national identity and unity. She interprets the (representation of the) body as a code, and deconstructs the mechanism of coding (encoding; decoding). In so doing, she focuses on “visual elements” in terms of a “consensual symbolism” that contributes to the rhetorical power of images.

Whereas all chapters in the book obviously deal with time and temporality, Part III, Untimely Reflections on the Nation’s Law invite us to consider more radically when and where we are—and do so in very different ways. Desmond Manderson turns to a key thinker on time, Walter Benjamin, and seeks to refine his thinking on the “here and now of the work of art” in such a work as The Work of Art in the Age of its Mechanical Reproducibility (1936). He locates this work in relation to the Mexican mural movement (1935) and the Paris Universal Exhibition (1937). In so doing, he wishes to better call into question the “ideological alliance between art and law”, an alliance we have seen explored in other chapters, so as to draw attention to art’s capacity not simply “to embody and unify the nation, but to disturb and critique it”.

In his chapter, Paolo Napoli proposes a hypothesis regarding the genealogy of the American national motto “In God We Trust”, found among other places, on American coinage and banknotes since 1864. Genealogies too involve a reconsideration of when and where, and therefore who, we are. Napoli’s efforts to understand “common identity through common trust” lead him to focus on the “deposit (of faith)” and its centrality to the “emergence of the Church as an institution”. He explores the relation and intersection of theological and legal rationalities. In so doing, he sheds light on the notions of office and institution, encouraging us to enrich our thinking about the institution of the nation-state as exemplified by the institution of the Church.

Part IV, Out of Many, One engages with the theme of national unity introduced in earlier chapters but with a particular focus on the transformation of plurality into unity, including the perpetual failure and violence of this transformation. In this way, the two chapters invite us to consider the dissensus in consensus. Both chapters treat what we might call the “everyday” and allow us to consider how ostensibly ordinary objects and actions are ripe for interpretation as sources of democratic legitimacy. Law may well need ordinary objects and actions to enliven it as commonsensical. As aesthetics of law, the examples of the coin and regional cuisine are two sources of ontological fodder that sustain or counter the legitimacy of a democracy.

Sarah Marusek’s chapter on American quarters examines the coin as a cultural text of law, an aesthetic which includes legal “statements” about pluralism (i.e. the literal flip side of the coin) as well as, and conversely, the ignoring of realities of conquest, obliteration and slavery (i.e. the figurative flip side: that which is not shown on the quarter, what is not part of the consensus). The design of this cultural
text reminds the viewer of what is vital to the public memory. However, the design, as well as the final product (the coin), is a state-sponsored construction of national identity that is paradoxically rich with (un)intended perspectives and conflicted realities.

Richard Mohr and Nadirsyah Hosen examine food as symbolic and regulated, casting food choices as part of our self-definition. Food and the choice of what to eat offer views on citizenship and justice that exist between “authenticity” and “fusion”. “Our identity is negotiated in the terms of the norms we apply to the food we ingest” and in ways that reveal and reflect the internormative spectrum of gastronomically-determined democratic legitimacy. The heart, as well as the stomach, are keys to national identities that are themselves expanding in ways that generate new tastes.

Lastly, in Part V, Consensus, Angela Condello offers a tentative conclusion. Whereas all of the chapters refer to different aesthetic means of the representation of national identity producing democratic legitimacy, in this concluding chapter, Condello focuses on the interconnection between representation and the consensus on which legitimacy is based. This interconnection, she argues, originated with the birth of the modern state and with the creation of a fictional entity whose legitimacy and power are based on a consensus. Such a fictional entity, be it symbolically represented through a Biblical animal-monster or a Parliament, gains epistemic and ontological validity through different levels of agreement, among which the one constructed on the sensible perception of the rightfulness or validity of the institution plays a central role.

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Fig. 1.1 Schematic representation of the interdisciplinarity of Sensing the Nation’s Law
This collected volume can be situated within a triangular pyramid (Fig. 1.1) with sensing, nation, history and law at its four corners. Part of what we aim to demonstrate in collecting these essays, is that the sensory or sensual is not only the tip of the pyramid or iceberg, but also part of the foundation of the edifice: democracy and the nation’s law need sensory “expression” but, and in addition, sensory experience grounds or makes possible democracy and the nation’s law.

References


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Part I

Revolution, Constitution, Republic
Chapter 2
Monument, Portrait, Tableau: Making Sense of and with Jacques-Louis David’s Tennis Court Oath

Mark Antaki and Catherine Le Guerrier

Abstract On 20 June 1789, the members of the newly-established National Assembly swore the famous Tennis Court Oath: not to separate until they had given the polity a new constitution. This chapter examines Jacques-Louis David’s ambitious—and never finished—attempt to capture this revolutionary moment. It inquires into how his Tennis Court Oath allows and invites one to sense the nation and its sovereignty. It does so by considering the Oath as, in turn, Monument, Portrait, and Tableau.

2.1 Introduction: The Revolutionary Moment?

This chapter examines some of the ways in which Jacques-Louis David’s unfinished Tennis Court Oath allows one to sense the nation and its sovereignty. To adopt and adapt a phrase from Marie-José Mondzain: no new power without a new image.¹ Political power and sovereignty—whether royal, republican or other—are not simply brute facts, doctrinal categories, or even discursive ones. They must be sensed to make sense. To borrow Claude Lefort’s language: their mise en sens goes along with a mise en scène.² David’s projected painting is part of a whole wealth of practices and images that belong to and signal a shift from monarchical to republican

practices and images. The Tennis Court Oath both reflects and imparts a revolution-ary sensibility, thereby conjugating power and representation anew. (Fig. 2.1)³

David’s never completed painting is of no ordinary scene. As we shall see, David dedicates his efforts to immortalizing the moment and to showing its extraordinariness. The moment in question is, of course, the famous Tennis Court Oath⁴ of 20 June 1789, when the members of the newly self-established National Assembly⁵ locked out of their meeting room by royal order, re-assembled in the royal tennis court and swore an oath not to disband until they had established a new constitution for the kingdom. This moment, if not “the revolutionary moment”⁶

Fig. 2.1  David, Jacques Louis (1748–1825). The Oath of the Tennis Court (Jeu de Paume), June 20th 1789. 1791. Pen and wash with brown ink, heightened with white, on paper, 66 × 101 cm, MV8409; INVDessins736. Photo Gérard Blot. © RMN-Grand Palais/Art Resource, NY


⁴We use italics when writing of David’s work and no italics when writing of the event itself. In both cases, we capitalize “Oath”.

⁵The Assembly had only been in existence for three days; it was composed mostly of the representatives of the Third Estate of France, assembled in Versailles for an Estates General called by the King to consult his subjects on the question of the kingdom’s finances—the first Estates General since 1614.

was part of the “remarkably rapid radicalization of the Third Estate.” Only three days prior, the members of the Third Estate and some of the clergy assembled in Versailles for the Estates General had repudiated their former division into Estates and re-constituted themselves into a new body, swearing a first momentous oath “in the name of God, the king, and the nation” to fulfill their functions “faithfully and zealously.” On 23 June Mirabeau would reject the King’s demands that they disband by claiming that the men are present by the will of the people. On 27 June, the three orders would become one as the nobility joined the National Assembly. On 9 July, the Assembly would “adopt the designation of Constituent Assembly.” 14 July, of course, would see the storming of the Bastille. And the next day, Jean-Sylvain Bailly, the famous astrologist who had presided over the Tennis Court Oath, would become the first mayor of Paris.

The Tennis Court Oath of 20 June is thus one of several important moments in which “the French nation,” by virtue of “its” “representatives”, comes into existence, demonstrates a resolve to exist, and acquires what is perhaps the ultimate political potency and responsibility: that of (re-)founding or (re-)constituting the polity, of giving it a new fundamental law. To be sure, at the time of the Oath, the members of the National Assembly had not yet repudiated monarchy. As Timothy Tackett writes: “Although in constitutional terms the National Assembly had effectively claimed ultimate sovereignty—through its decrees of 17 June and 20 June—most deputies preferred not to consider the full implications of their actions as they concerned monarchy.” Indeed, Bailly recounts how he spoke the Oath so loudly and clearly that his words made their way to the crowd outside the building—which in turn cried “Vive le roi” (“Live the King”). As the quote from Tackett shows, there was an important difference between what the National Assembly “effectively” did and the “implications” the deputies considered.

At the time David began thinking of painting the Oath, probably in spring 1790, he was already famous for his paintings of episodes from Antiquity—but not particularly involved in politics. In October 1790, the recently-established Société des Amis de la Constitution (re-named the Société des Jacobins in 1792) asked him to produce a painting of the Oath (along with a set of engravings was also to be produced). David’s preliminary sketch was first exhibited briefly in David’s workshop in May 1791 and then in September of the same year, at the Salon. On 28 September, the National Assembly decreed that the completion of the painting

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7 Tackett, 1996. 120.  
8  As found in Tackett, 1996. 147.  
9 Tackett, 1996. 211.  
12 Bordes, 1983. 48.  
13 Bordes, 1983. 44.
was to be financed by the Treasury and that the painting would be placed in the future meeting place of the National Assembly.  

David subsequently became a member of the Convention in 1792, of the Committees of General Security and General Instruction, and of the Revolutionary Tribunal. As “Pageant Master” of the Revolution, he was responsible for the organization of festivals, the erection and transformation of monuments, the creation of a new museum and support for the arts. In this capacity, he worked to make the Revolution felt, to give a sensory and sensual presence to the nation and its ideals in France, its buildings, its streets.

David eventually and definitively abandoned the Tennis Court Oath, although it is difficult to know exactly when. He first set aside the Oath sometime in 1792. But he maintained an interest in the project throughout the Terror and, in 1795, even asked for a space to finish it. In December 1801, he became first painter of the Empire, announcing to the press that he had given up painting the Oath. The huge canvas—projected to be six meters tall and ten meters wide—would remain mostly blank. Commentators ascribe its incompletion both to the ambition of the work and, as we shall see, to David’s inability to keep up, so to speak, with the Revolution. In any case, the work and its incompletion are both fascinating and instructive.

The present chapter is divided into three parts. Each part aims to better articulate what the work achieved or could have achieved (and what it never fully became). Each also addresses what it is fruitful to think about in order to attend to what the work achieved or could have achieved. Our emphasis is on the Oath as an entry point and not an endpoint; we are more interested in the questions the Oath raises than the answers it provides. Our chapter invites one to approach, experience, and contextualize David’s work as, in turn, Monument, Portrait, and Tableau. Each part draws out—and draws on—the significance of the Tennis Court Oath’s

19 Bordes, 1983. 30.
20 Bordes, 1983. 86.
21 Bordes, 1983. 85.
23 Bordes, 1983. 54.
24 See, e.g., Loty, 2009. 35.
“corporeal aesthetic” by inviting the reader—and thus the viewer—to different but complementary literatures. The aim of each part is to attend to the significance of the work by way of these keywords and not to replace the viewer’s own encounter with the work and its richness. Their succession ought to deepen one’s appreciation of the work, thereby allowing one to better experience some of the different, albeit inseparable, layers of sense and sensibility to be found in it. Together, the three parts aim to draw attention to the richness and complexity of David’s attempt to capture “the revolutionary moment” of national sovereignty by attending to the *Oath’s* conjugation of power and representation, to the ways in which it shows the reciprocal belonging of the power of representation and the representation of power.

Our consideration of this new image of power begins with an attempt to understand better how David wished to monumentalize the Tennis Court Oath. He wished to capture it as an event worthy of memory and repetition, even eternally. In order to do so, we introduce the work and address some of its aspects that contributed to monumentalize the nation’s sovereignty, i.e. to liberty’s event and advent (B). We then consider the *Oath* as a successor to the portrait of the king, as a “visualization of the regenerated body politic” (C). This brings us to consider the *Tennis Court Oath* both in political theological terms and in relation to Abbé Emmanuel Joseph Sieyès’s understanding of the National Assembly. We subsequently turn to the theatrical quality of the work and in so doing, move from Sieyès to Denis Diderot and from the “portrait” to the “tableau” (D). In so doing, we see how the “tableau” implies a turn away from “incarnation”, a necessary keyword in any political theological appreciation of the *Tennis Court Oath*. The last two sections focus less on the work itself and more on what it invites us to consider when we approach it as portrait and as tableau.

As may already be apparent, much is packed into each of these keywords: Monument, Portrait, Tableau. Unpacking them can contribute greatly to appreciating the work, its ambition, and the significance of its incompleteness. Read one way, the sequence of these keywords moves us from the most obvious or accessible—monument—to the least obvious or accessible—tableau—a technical term or term of art tied to Diderot’s aesthetics and probably less familiar to today’s reader. Read another way, however, the sequence moves from the more general to the more specific. And, in so doing, it brings us closer and closer to ourselves, to our own present aesthetic and political sensibilities and to their inter-belonging and intertwining.

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2.2 Monument

To treat a contemporary event as a legitimate subject for high art, as one would a scene from classical history, was unusual. David’s sketch, presented at the 1791 Salon, was among the very few paintings at the Salon that did not borrow their subject from the past. By depicting the Tennis Court Oath, David, a history painter, shone a light on this revolutionary moment, vouching for its great significance and its certainty to be (come) history. In a letter to the president of the National Assembly dated 5 February 1792, he wrote, “Oh my fatherland! Oh my dear fatherland! We will therefore no longer be obliged to go looking in the history of the ancient peoples, for something to paint… No, the history of no people offers me something so grand, so sublime as this Tennis Court Oath… French Nation! It is your glory that I wish to propagate”.29

If the Oath was the most sublime moment in history, both the building and David’s projected painting were to be the most monumental of monuments. So grand and sublime was the moment that David wanted to preserve the building itself as a “temple of patriotism”.30 These words are drawn from the draft of the 28 October 1790 motion presented to the Société des Amis de la Constitution by Dubois-Crancé, which David himself drafted. This temple would offer “the greatest lesson ever offered by a monument”.31 Indeed, David wished that the members of the National Assembly return to the Tennis Court every year to “repeat the oath that saved France”.32 As for the painting of the Oath, it would be “the most useful monument of courage and patriotism that any century ever produced”.33 As Édouard Pommier underlines, the Revolutionary patrimony—eternal and unchanging—to be bequeathed to the future was, at once, the Oath and the building.34 Moreover, as he emphasizes, their monumentalization was part and parcel of an act of erasure: that of, as in the draft Dubois-Crancé speech, “centuries of error”.35 Precisely as a monument, the Tennis Court Oath takes part in the work of inheriting, of remembering and forgetting, and of bequeathing.

29Bordes, 1983. 165: “O ma patrie! O ma chère patrie! nous ne serons donc plus obligés d’aller chercher dans l’histoire des peuples anciens, de quoi exercer nos pinceaux… Non, l’histoire d’aucun peuple ne m’offre rien de si grand, de si sublime que ce serment du Jeu de Paume… Nation française! C’est ta gloire que je veux propager…”
30Bordes, 1983. 149: “le temple du patriotisme”.
31Bordes, 1983. 149: “la plus grande leçon que jamais ait offert aucun monument”.
32Bordes, 1983. 149: “répéter le serment qui a sauvé la France”.
33Bordes, 1983. 150: “le plus utile monument de courage et de patriotism qu’aucun siècle ait jamais produit”.
As Angela Condello does in this volume, we wish to draw attention to the etymology of “monument.” Condello writes:

The very word “monument” derives from “monère” (to remember, to let someone know) and the termination “mēntum” indicates the means through which we remember. Therefore, the monument fixes an instant in its most exemplary form, be it a gesture or a collective action of a group of people (in the Tennis Court, or in the Parliament).36

In addition, “monère” in Latin can also mean “to warn” (as in the English “admonition”). As a monument, perhaps David’s Tennis Court Oath attempts simultaneously to erase a past and, at one and the same time, to admonish Frenchmen—to exhort them—to keep and repeat this oath, lest they return to “centuries of error”. Perhaps every monument, as a monument, points to the fragility of the memory to be instilled and the commitment or practice necessary to do so. In the case of the Tennis Court Oath, the monument itself points to and represents what is needed for the memory to remain. David’s challenge, then, was to make the oath eternally present, i.e. both eternally urgent and eternally possible.

So, David saw both the building and his painting as monuments meant to teach and commemorate “courage and patriotism”. Moreover, the painting itself is composed, one might say, monumentally. Dorothy Johnson notes that “[w]hat is most striking visually about the compositional structure of the Oath of the Tennis Court, in fact, is its similarity to the structure of a sculpted pediment”,37 of which president Bailly appears at the apex. The pediment, she explains, “serves an extremely important didactic and ideological function; it communicates in a direct and perpetual manner to the ‘people’ since it is typically placed on public view at an important civic site”.38 Indeed, the structure of David’s composition was so similar to that of a sculpted pediment that David d’Angers—a student of David who among other things was responsible for the pediment relief of the Pantheon—“chose to transpose it to an actual pediment he planned for the Chamber of Deputies”.39

While David did not borrow the subject from the past, he saw his past work as preparing him for the task of being liberty’s artist, of commemorating the Revolution’s key men, moments, and virtues.40 In the draft Dubois-Crancé speech, David wrote that we ought to tell the “true friends of the constitution” that we have chosen “the author of Brutus and the Horati, this French patriot, the genius of whom preceded the Revolution”41 to produce this monument. With The Lictors Bring to Brutus the Bodies of his Sons (Paris, Musée du Louvre), David painted a father’s willingness to sacrifice his own sons for the republic. (Brutus’s sons having

36See Angela Condello’s chapter in this volume (Chap. 11, p. 263).
37Johnson, 1993. 77.
38Johnson, 1993. 77.
39Johnson, 1993. 77. It is worth comparing d’Angers’s pediment relief to Léopold Morice’s high relief at the place de la République.
40See, e.g., Bordes, 1983. 42.
41Bordes, 1983. 150: “vrais amis de la constitution” and “l’auteur de Brutus et des Horaces, ce Français patriote, dont le génie a devancé la Révolution”.
treasonously tried to restore the monarchy Brutus had worked to replace with the republic). With the *Oath of the Horatii*, David painted heroic patriotism, readiness to die, and an oath taken to that effect. The oath, however, was a wholesale addition of David’s to the original tale found in Livy. Thematically, then, David was perhaps the perfect candidate to represent the event in all of its patriotic charge (Fig. 2.2).42

David’s “genius” resided in the manner in which he addressed these patriotic themes: in “a style that would give birth to a new age both in painting and sculpture”.43 Indeed, perhaps of as great or even greater significance than the themes it addressed, the *Oath of the Horatii* anticipated the *Tennis Court Oath* aesthetically. At the Salon of 1791, David would exhibit his sketch of the *Tennis Court Oath* right below that of the *Oath of the Horatii*,44 his earlier and famously “sculpturesque” work.45 This positioning is telling. The *Oath of the Horatii* signaled a “revolutionary, corporal aesthetic” in which the body itself is “eloquent”.46 Johnson recounts how “[a]fter the appearance of the Oath of the Horatii at the Salon, critics … suddenly began to focus their attention on the pantomime of figures in painting, an aspect they had ignored or considered subordinate to physiognomy until David’s daring reforms”.47 And with the *Tennis Court Oath*, as Antoine de Baecque puts it, “[f]or the first time, David meets a contemporary subject that he deems worthy of his “expressive bodies”.48 With the *Oath*, David transforms the bodies of antique heroes into those of contemporary “grands hommes”,”49 for instance by showing muscles bulging under the men’s coats, *culottes* and *haut-de-chausses*; one preparatory study even showing Robespierre as an “antique warrior”.50

By way of its corporeal aesthetic, the *Oath of the Horatii* anticipates the *Tennis Court Oath* as capturing a moment of the regeneration of individual bodies and of French society as a whole. As Johnson writes, of the *Oath of the Horatii*, “…The Oath does literally embody pre-Revolutionary radicalism. In *The Oath* David countered prevailing fears of the physical and moral degeneracy that seemed to threaten the very structure of French society, with emblematic images of regenerate man”.51 The revolutionary aesthetic, the regenerate man, also accompanied a new public, a new society. Of the *Oath of the Horatii*, Thomas Crow notes “[t]he alarm,
anxiety and fear expressed by the conservative critics are accompanied by a perception that David has made an unholy alliance with a public whose desires and interests are alien to their own. They sense that this new and imperfectly known public is being appealed to by the violation of those artistic values they most prize.\(^{52}\) This corporeal aesthetic of David’s belonged to “the special language of truth and virtue.”\(^{53}\) Crow goes on: David’s artistic language is Jean-Louis Carra’s—a radical pamphleteer—“langage de la vérité: strained, stiff, awkward, obvious”.\(^{54}\) David’s artistic language is analogous to a political language that attacks and undermines aristocratic pretense and pretension. Political tracts such as Carra’s “read like a particularly fierce variety of anti-Rococo art criticism applied to persons instead of pictures. The insistent emphasis of this literature is on the action of unmasking…”\(^{55}\)

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\(^{54}\) Crow, 1985. 227.

\(^{55}\) Crow, 1985. 221.
If David aimed to depict a contemporary event in all of its greatness, he also took the liberty\(^\text{56}\) of depicting it only so much as it was worthy of memory and greatness. His concern was with what we might call the truth of the event as much as with the event itself. Put differently, he was concerned as much, if not more, with what should have happened as with what in fact happened. For instance, he staged the coming together of the three clergymen (at the front) who symbolically make visible the unification of French society at play in the Oath. One of them, Dom Gerle, moreover, was not even a deputy at the time of the Oath.\(^\text{57}\)

Indeed, David had many decisions to make regarding who to include, to exclude, to make recognizable, to place in a position of prominence. Some, including a representative who was not present at the Oath, asked from the moment the painting was being discussed, to please be included in the work of art.\(^\text{58}\) And, as time went on, the inclusion of certain men - such as Mounier and Bergasse who “did not hide their regret for having taken the oath”\(^\text{59}\)—in the work became problematic given the course of the Revolution as these men abandoned (or were deemed to have abandoned) the truth of the event. By 1791, Bailly had been shunned and guillotined for his implication in the Champ de Mars shootings, involving Lafayette, him and a group of armed men, and a crowd of protesters demanding the King’s deposition.\(^\text{60}\) Barnave was criticized for having developed ties with the royal family as he escorted them to Paris following their failed escape from the city.\(^\text{61}\) Barnave, alongside Mirabeau, had been pantheonized after his death, but both were de-pantheonized later on.\(^\text{62}\) The epithet of “grands hommes”\(^\text{63}\) was being given away and taken back at a rapid pace, and David had, at least at first, attempted to follow this (r)evolution and only give place to “grands hommes”. Indeed, it is fruitful to think about David’s sketch as analogous to the Pantheon,\(^\text{64}\) as testifying to the difficulty of constituting a common sense of greatness and a shared—and stable—“realm of memory”.\(^\text{65}\)

We get a further sense of the liberties David took in order to monumentalize “courage and patriotism”, to immortalize liberty, by comparing his depiction of the Oath with the choices of others who tackled the subject, such as Jean-Louis Prieur

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\(^{56}\)Here as well as two paragraphs below, we borrow and adapt the phrase from Roberts who writes of how “David took liberties”. Roberts, \textit{2000}. 227.


\(^{58}\)Loty, \textit{2009}. 29.

\(^{59}\)Bordes, \textit{1983}. 49: “qui ne cachaient pas leur regret d’avoir prêté le serment”.

\(^{60}\)Presenting a petition David himself had signed. Loty, \textit{2009}. 32.

\(^{61}\)Loty, \textit{2009}. 34.

\(^{62}\)Loty, \textit{2009}. 34.

\(^{63}\)The Pantheon’s \textit{frontispice} reads: “Aux grands hommes, la patrie reconnaissante”.


\(^{65}\)Nora, \textit{1988}. 