While American poets were experimenting with epic form, the concept of epic itself became increasingly influential in cultural spheres beyond that of poetry, and indeed beyond that of literature, as the term was coming to be defined in the early nineteenth century. Perhaps the most significant one, though previously unrecognized by scholars, is the influence of ideas about epic on the ratification and early interpretation of the United States Constitution. As the first written constitution for a national polity, the proposed document that emerged from a secretive convention in 1787 introduced difficult hermeneutic problems for its early interpreters. One of the most intriguing of these problems was the capacity of a written text to create a nation as well as a state; although the putative purpose of the Constitution was to establish a legal basis for national government, from very early in the ratification process it was clear that the cultural values that stood behind those laws—what Kenneth Burke calls “the Constitution-behind-the-Constitution”—evinced a developing but contested national culture that the new government and its plan would help instantiate. The Constitution had to be suited to the people, but what was the best way for laws to be thus adapted? At the same time that the new document had to address what Arthur Lee called “the
genius of the people,” meaning the unique, collective quality of the nation, it was also very quickly wrapped in celebrations of the genius of its Framers, in the sense of extraordinary ability to produce something great. In engaging with both senses of “genius” at the same time, epic entered the discourse as an analogy as well as a source.

Even before the new Constitution was drafted, John Adams had considered the question of the relationship between the genius required to compose a great epic and that required to produce a great constitution. In the first installment of his *Defence of the Constitutions of the United States* (1787), Adams championed the theory of mixed government that informed many of the American state constitutions and would inform both the new federal constitution and Madison and Hamilton’s defense of it in the *Federalist*. Part of Adams’s strategy in making his case was to take on modern political philosophers one by one, showing how weak their own systems were compared with those developed by the hard-won wisdom of Americans in the wake of the Revolution. His usual structure was to point out how impressive an individual’s intellectual accomplishments were, in order to cast into stark relief the errors of that person’s constitutional thinking, thus countering opponents’ citations of European luminaries by pointing out that “[c]himerical systems of legislation are neither new nor uncommon, even among men of the most resplendent genius and extensive learning.” One of Adams’s cases in point was Milton: “A man may be a greater poet than Homer, and one of the most learned men in the world; he may spend his life in defence of liberty, and be at the same time one of the most irreproachable moral characters; and yet, when called upon to frame a constitution of government, he may demonstrate to the world, that he has reflected very little on the subject. There is a great hazard in saying all this of John Milton; but truth, and the rights of mankind, demand it.” Adams not only hails Milton’s work on behalf of the English Parliamentarians, his morality, and his prodigious learning but also places Milton above Homer as the greatest of poets, as the Connecticut Wits had done in their collegiate writings. Adams lifts Milton up to the top of the canon in order to show how much more a great constitution requires compared to a great epic. For Adams, constitutions take more than genius and labor.

Adams’s main objection to Milton’s plan for a constitution—that a unicameral legislature made up of life-term members invited either oligarchy or mob rule—presents Milton as an aristocrat more so than most critics would, but Adams’s own reading of *Paradise Lost* may have influenced his reading of Milton’s constitutionalism. As a Harvard graduate in 1756, Adams noted in his diary
after reading *Paradise Lost*, “[Milton’s] Soul, it seems to me, was distended as wide as Creation. His Powr over the human mind was absolute and unlimited. His Genius was great beyond Conception, and his Learning without Bounds.”

As Lydia Dittler Schulman has pointed out, while Jefferson scoured Milton’s epic for philosophical truths that led him toward an interest in the Miltonic Satan, Adams understood the poem as a sheer act of sublimity and self-assertion: the hero for Adams was indisputably Milton. Another way of putting Adams’s comments in *Defence* is that while the power of the individual’s own confidence makes for remarkable poetry, it was a poor substitute for the proper kind of reflection that works like *Defence* and the *Federalist* sought to show had generated the US Constitution and its state-level counterparts. Adams’s elevating and deconstructing of Milton’s genius also enacted a version of the ancients-moderns debate that in many ways defined Adams’s generation, and in which Adams himself often favored the ancients—partly out of his middle-class awareness that access to the classics meant upward mobility in eighteenth-century America. If Adams had found power in Milton as a young country schoolmaster, he carefully respected the power in classical learning that had helped him to become a famous politician. While Adams revered Milton’s political prose as well as his epic, he would grow old with Homer, even debating with Jefferson the Greek poet’s metrics in their extensive correspondence. Like Jefferson, Adams throughout his life sought to balance his admiration for modern genius (like Milton’s) and the wisdom of the classics, which his education had taught him to use as “equipment for living.”

At one level, it seemed natural that Adams would discuss the writing of epic and constitutional theory on the same page. Gentlemen of his day were raised on Homer and Virgil. Other key epic works in a gentleman’s education of the time included not only *Paradise Lost* but also the Roman republican Lucan’s *Civil War*, both poems written by defeated republicans whose prophetic anger against tyranny and commitment to republican government provided powerful rhetorical ammunition for eighteenth-century Federalists and Republicans alike. In the eighteenth century, such study was a matter not only of learning stories and language but also of understanding the moral and rhetorical power that such stories and language wielded, and so to find James Madison, Adams, and other members of the founding generation talking about epic when they talk about constitutions should not come as a surprise. In the face of an unprecedented genre, and one of such importance to national identity, epic was a useful analogy for developing new interpretive canons. More surprising is the fact that
early interpreters of the Constitution actually articulated an epic genealogy for the document, tracing its generic and philosophical origins to Homer and Virgil. The groundbreaking work of Eric Slauter has opened up new avenues of inquiry into the sources of the Constitution, especially the metaphors that dominated constitutional theory and polemical debate in the eighteenth century.10 While Carl Richard has helpfully illuminated how the Framers used the classics as models for writing and thinking, Slauter’s work goes beyond typical source criticism to trace the rise of thinking of a state as an art object produced by legislators, a departure from earlier, anatomical notions of constitution, such as Hobbes’s Leviathan, made possible in part by the increasing importance of written documents produced by identifiable (if still collective) authors. Something like the US Constitution could be treated as a work of art because its creators (Madison, Franklin, Washington, etc.) could be identified, even as those creators aimed to produce, as Jefferson said of the Declaration, “an expression of the American mind.”11 The concept of taste was vitally important for the discussion of politics in the late eighteenth century, as it was based on exclusion—only those privileged and experienced enough could be said to have it—and at the same time allowed for the assumption of common consent that claimed immunity from factional wrangling.12 If the classics served as a “calculus of motives”13 for the Framers, taste was the language of consent by which they accepted the classics. To understand the pleasures and power of Homer, then, was a political act couched in the language of aesthetics. This chapter presents two veins of this aesthetic discourse, versions of what I term constitutional epic, the use of canonical epic narratives and devices to substantiate the Constitution as a text and a cultural talisman. The first vein involves the tracing of the Constitution’s genealogy back to Homer, a strategy employed in the Federalist and in early Supreme Court case law. The second vein emphasizes the visual discourse of constitutional epic, particularly the importance of Achilles’s shield as a national symbol and the borrowing of Joshua Reynolds’s notions of Grand Manner and epic style in the visual arts by the Marshall Court and its later commentators. Together, these two traditions highlight just how far beyond poetry epic was absorbed into American culture; they also show that the deployment of creative works, often in moments of crisis, has always made the Constitution a text among texts, dependent not only on legal intertexts but on a vast network of cultural discourses for its legitimacy and efficacy.
From Homer to Columbia: Epic’s Legal Genealogies

As a gentleman’s son in colonial Virginia, Madison received an education concentrated on the study of Latin and Greek. According to biographer Ralph Ket- cham, by the time Madison entered Princeton as an undergraduate he had a considerable command of both languages and probably had committed large portions of Virgil and Cicero to memory, perhaps even before he had read many of the English classics. Madison put that deep knowledge of the classics to good use in his writings during the ratification debates; as George Kennedy has observed, the presence of classical allusion and convention in the *Federalist* was in great part a rhetorical device for “making the papers acceptable to educated men of the age as the effort of reasonable, literate, and humane men of manners and learning.” For Publius and “his” audience, classical literature was a way of life, not only as a lens for understanding the world, but as a cultural code by which members of the educated class could recognize and communicate with each other.

Well over a third of the essays contain references to classical figures and works; from the legislative feats of Lycurgus and Solon to the legal researches of Polybius, the authors of the *Federalist* drew both their ideas of good government and their evidence in the comparative study of constitutions from the ancients, supplementing with moderns such as Hume, Blackstone, and Montesquieu. Madison’s knowledge of classical history and letters has been well documented, as has that of his *Federalist* coauthors, Alexander Hamilton and John Jay. However, very little has been written on the peculiar classicism of *Federalist* 47, in which Madison, in the process of defending a doctrine of the separation of powers, departs from the canon of history and biography to an epic canon with profound implications for the nationalist thrust of Publius’s argument.

Madison frames *Federalist* 47 as the beginning of his analysis of the “particular structure” of the proposed government, and the first objection that he faces is the charge that the Constitution does not maintain a proper separation of powers between the three branches of government. Madison’s ventriloquism of his opponents’ argument bears the neoclassical hallmark of conflating the interests of liberty and government with the aesthetics of beauty and balance: “In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution [separation of powers] in favor of liberty. The several departments of power are distributed and blended in such a manner, as at once to destroy all symmetry and beauty of form; and to expose some of the essential
parts of the edifice to the danger of being crushed by the disproportionate weight of other parts” (323–24). And rather than dismiss aesthetics as a red herring, Madison embraces it: “No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded” (324). Aesthetics was certainly of great concern to and had rich political implications for Madison’s generation; Robert A. Ferguson has shown the centrality of aesthetics to John Jay’s contributions as “the forgotten Publius” and to the Federalist as a whole, and Slauter has demonstrated how prevalent the state-as-architecture motif had become by the time Madison wrote his essay. The idea of the aesthetic model or canon as an authoritative standard in constitutional theory is indeed at the core of Madison’s argument in Federalist 47. As the essay develops, it reiterates the canonical model several times, using politics, aesthetics, and literature together in forming a new canon for constitutional interpretation.

To answer his opponents’ argument, Madison asserts that “the sense, in which the preservation of liberty requires” the separation of powers be ascertained. He then pursues this sense in one of his favorite authorities: “The oracle who is always consulted and cited on this subject, is the celebrated Montesquieu.” (324). Madison’s use of “oracle” here highlights the historical range from classical to modern that figures like Montesquieu, Pufendorf, and Blackstone represented to eighteenth-century legal scholars. Montesquieu rhetorically absorbed classical legal thought as the foundation for his Spirit of the Laws, a work that brought the comparative study of constitutions into the Enlightenment and established the concept of positive law as an extension of national identity. The encyclopedic form of Montesquieu’s Spirit of the Laws, like Blackstone’s Commentaries on the Laws of England—which served as the core of legal education in the United States and in Britain at least through the 1860s—provided a hierarchical system for understanding the relationship between natural and positive law and among various elements of positive law. This form also established its authors as unquestionable experts on their subjects, invaluable references to be “always consulted and cited,” to use Madison’s phrase. In describing Montesquieu as an “oracle,” the American author uses the eighteenth-century sense of the word, a revered and reliable authority on a particular topic. However, the classical sense of a prophetic or divinely inspired voice hovers in the background, as the actions of consulting and citing apply not only to modern reference works but to the ancient appeal to the oracle for wisdom and the possession-by-quotiation of the oracle’s words as uncontestable truth.
The question as to whether an oracle is an authorial or a scribal voice also emerges in Madison’s praise of Montesquieu. He says of the French scholar, “If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying, and recommending it most effectually to the attention of mankind” (324). Montesquieu is the source of wisdom on the doctrine of separation of powers, at least for Madison, but even such a devoted reader of Spirit of the Laws concedes that this wisdom is not an author’s genius but what Alexander Pope might term a critic’s wit. Madison’s praise of Montesquieu’s “displaying” and “recommending . . . most effectually” echoes the famous lines from Pope’s Essay on Criticism:

*True Wit is Nature to Advantage drest,*
*What oft was Thought, but ne’er so well Express,*
*Something, whose Truth convinc’d at Sight we find,*
*That gives us back the Image of our Mind.*

Montesquieu provides a model for understanding constitutional theory, but that model is belated, merely casting in an Enlightenment idiom the wisdom of the ages. As Madison’s remark on the number of “enlightened patrons of liberty” suggests, the appeal to Montesquieu is not a matter of choosing the right answer out of a cacophony of political views but an affirmation of the rational consensus that Spirit of the Laws rhetorically represents, a consensus momentarily forgotten in the heat of passionate debate over ratification.

Montesquieu’s own views do point to an origin, however, in the example of Britain’s constitution, which enjoys the status in Spirit of the Laws of the most perfect legal expression of a nation. The legal genre of the constitution in Montesquieu’s thought takes shape, according to Madison, through an inductive logic similar to that of Aristotle’s Poetics:

The British constitution was to Montesquieu, what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal Bard, as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged; so this great political critic appears to have viewed the constitution of England, as the standard, or to use his own expression, as the mirrour of political liberty; and to have delivered in the form of elementary truths, the several characteristic principles of that particular system. (324–25)
The language of this remarkable passage requires careful attention. Here Montesquieu, the “great political critic,” more fully takes on that role as he displays not only wit and judgment but also the didactic impulse shared by Pope’s ideal critic and Enlightenment legal commentators alike. Blackstone and Lord Kames were standard reading for students of law in the English-speaking world of Madison’s time, and the fact that Kames authored not only *Historical Law Tracts* and *Principles of Equity* but also the equally influential *Elements of Criticism* likely surprised few of Madison’s contemporaries. But to compare Montesquieu directly with “the didactic writers on epic poetry” put him in the company of Kames, Dryden, Addison, and Blair, as well as the celebrated French critics Voltaire and René Le Bossu—as one of a class of writers who argued for a genre’s definition based on a single model, and who could use such a model to educate the thinkers of an entire century on his subject. For Madison, Montesquieu’s power, as well as the power that he bestowed on his revered British constitution, was the translation of the “several characteristic principles of a particular system” into “elementary truths.” In Kenneth Burke’s terms, the god-terms that held the British constitution together as a national calculus of motives transcended, in Montesquieu’s hands, the boundaries of national difference, just as the calculus of motives within Homer’s epics was apotheosized into the gold standard for Western narrative literature by Renaissance readers of Aristotle and by later Enlightenment critics.

Yet Montesquieu’s achievement, like those of Kames and Voltaire, did not solve the problem of difference between species for Madison, in either literary or constitutional discourse. Homer’s works constituted “the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged.” Or did they? Most critics followed Aristotle in basing their rules for epic poetry on Homer’s *Iliad*, but from the Athenian Lyceum down to Madison’s day, the amorphous structure and uneven pacing of Homer’s *Odyssey* created difficulties for the argument for epic symmetry. And yet Virgil based the first half of his *Aeneid* on the structure of the *Odyssey*, and Milton packed the *Iliad* into a single melodramatic book of *Paradise Lost*, while giving over the rest of the poem to scenes of domesticity, legality, scholarship, and several iterations of the *Odyssey* narrative. Further, the *Iliad* (possibly paired with the *Odyssey*) was the model by which to judge “all similar works.” As has been shown earlier in this book, the question as to what was similar enough to merit the term “epic” was a matter of contention by the mid-eighteenth century—as was the question of whether works such as Fénelon’s *Telemachus* or Ossian’s
Fingal could be judged in light of Homer’s work(s), whether they were “actually” epics or not.

The implications for Madison’s analogy were profound: the proposed constitution was a constitution, indeed one based in large part on the British constitution, but was it close enough in content and form to the British constitution to merit comparison? Could the US Constitution be held to the “mirrour” of its British counterpart? The oracle of Montesquieu, while “always consulted and cited,” might not always have the answer to fit the unprecedented events surrounding the United States’ creation. In *Federalist* 14, Madison praised Americans’ pragmatic attitudes toward precedent: “Is it not the glory of the people of America, that whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?” (88). Despite Madison’s own veneration for Montesquieu, his resistance to the transcendence of political ideals advocated in *The Spirit of the Laws* lies in his understanding that analogies can at best only approximate the American situation. The young nation’s new constitution, while born out of a long tradition of constitutionalism, must make at least a few choice radical breaks from that tradition in order to work effectively.\(^2\)

Yet Madison was careful to use tradition as his means for breaking with it. In comparing Homer with the British constitution, he set up a remarkable analogy that reflects the confluence of historical trends in shaping the United States’ proposed constitution; this analogy is nothing short of claiming epic status for the American constitution, not in the line of Homer but in the line of Virgil, the literary epicist who refashions his ancestor’s poem into a more civilized, literate, and politically useful work—and who combines multiple models (*Iliad* and *Odyssey*) in doing so. If Britain’s constitution, based in the orality of common law and centuries of tradition, was the gold standard for Enlightenment constitutionalism (as was Homer’s *Iliad* for neoclassical critics), the new American constitution even more fully realized Enlightenment ideals by incorporating the best of British constitutional wisdom into a documentary body, one capable of rapid reproduction through printing and distribution technologies unavailable in the early years of Britain’s constitution. This embodiment, this self-consciously textual constitution, further heralded the culmination of the Enlightenment because the “barbaric” errors of the British constitution, shaped as the latter was by feudalism and monarchy, had been written out of the United States’ text, even as
such classic doctrines as the separation of powers were rewritten into the American document—cited, not copied.

It is worth noting here that Madison’s focus on Homer, like Adams’s focus on Milton, reflected a highly exclusive canon of epics with which the Constitution could actually be compared in public discourse. As experimental and genre bending as the Constitution may have been, it was essential for its early supporters to put it in a relationship to the traditional canon that had formed their schooling and gentlemanly reading. Jefferson’s approach to this canon is typical. In 1773, Jefferson had praised Ossian as “the greatest Poet that has ever existed,” and he collected epic poems by his countrymen throughout his life (many of them unsolicited gifts, but he kept them). Nevertheless, by the time he was serving as an ambassador in Paris, Jefferson had settled his canon into the top three—or two—worth reading more than once, his ultimate criterion of literary excellence. By way of celebrating in his “Thoughts on English Prosody” the English language as “the only one which has dignity enough to support blank verse,” the diplomat extolled the form’s ability to leave the poet “at liberty,” “unfettered by rhyme,” as if exacting forms and political oppression were related. They were, at least in the case of Jefferson’s prime example of “the most precious part of our poetry,” John Milton. The opening passage from *Paradise Lost* is quoted at length as an instance of extreme poetic liberty, for Milton here “even throws off the restraint of the regular pause.” Yet for Jefferson, the ultimate measure of literary art is not the author’s daring but the effect the poem has on the reader. Specifically, he looks to effects over time, as personal development establishes the canon diachronically: “What proves the excellence of blank verse is that the taste lasts longer than that for rhyme. . . . When young any composition pleases which unites a little sense, some imagination, and some rhythm, in doses however small. But as we advance in life these things fall off one by one, and I suspect we are left at last with only Homer and Virgil, perhaps with Homer alone.” Jay Fliegelman has argued that Jefferson saw in Homer the paragon of natural language, as well as natural genius; that Homer seemed to speak with the voice of the people only underscored his importance as a poet for a new nation, or the politicians that would guide that nation. So Milton represented the pinnacle of English poetry, Homer that of all poetry, and Jefferson the sage that pored over them both again and again, reducing his canon, like his political philosophy, to the core values of liberty and populism. While not everyone of his generation held Jefferson’s political views, few members of the new nation’s government would have quibbled with the exclusivity (not to say the elitism) of his canon.
Not least of the ideological goals that Madison and his pro-Philadelphia constitution contemporaries faced was an attempt (resembling that of the Bloomian strong poet) to “misread,” and thereby usurp, the authority of a predecessor. Milton’s legacy as a combiner of classical epic and biblical narrative was seminal in American letters, as we have seen in chapter 1; however, his example as an ambitious rewriter of both traditions held particular significance for members of the Constitutional Convention and for those who, like Madison, defended and expounded the convention’s proposals in the ratification debates. Madison himself, as Publius, was already rewriting the constitution that he helped draft, itself a rewriting of the British constitution. The name “Publius,” which Hamilton chose as the pseudonym for the Federalist authors, has often been read as an allusion to Publius Valerius Poplicola, the Roman consul that Plutarch celebrated as one of the republic’s saviors during the fallout at the end of Tarquin’s tyranny. The historical events, together with Hamilton’s known penchant for adopting pseudonyms from Plutarch’s Lives, lend support for this reading, but the nature of what both the convention and Publius were doing, as Madison describes it in Federalist 47, suggests that a more famous Publius might be implied: Publius Vergilius Maro, or Virgil.

After the passage comparing the British constitution to Homer, Madison spends the balance of his essay outlining the specific applications of the separation of powers doctrine in the British constitution, as well as in the state constitutions then in effect in the United States. While pointing out the strengths and weaknesses of each, Madison’s central goal is to build a case for the flexibility of legitimate methods for establishing the separation of powers. As he says at the end of the essay, “What I have wished to evince is, that the charge brought against the proposed constitution, of violating a sacred maxim of free government, is warranted neither by the real meaning annexed to that maxim by its author; nor by the sense in which it has hitherto been understood in America” (331). Madison opened his essay with an aesthetic argument; he then moved into literary criticism. He now concludes with a philological argument for the Constitution, in order to avoid a constitutional version of the “pedantry” of epic criticism that Hugh Blair had bemoaned. This combination would prove essential not only for American epic composition for the next generation; it would help define the idiom of American constitutional law for at least one generation more.

Madison’s own association with Homer would continue into his presidency through an unusual gift. On the occasion of his inauguration as president in 1809, Madison received a folio edition of Homer’s Iliad as a gift from the publishers
Bossange, Masson, and Besson of Paris. The imprint consisted of only twenty-five copies, and the publishers did not put them up for commercial sale but chose rather to give them as gifts to elite patrons or prospective patrons. The book was a sumptuous presentation of Charles LeBrun’s 1776 French prose translation of the poem, though it was clearly meant to be looked at, not read: along with a complete set of Henry Flaxman’s thirty-four illustrations for the *Iliad* in full-size plates, the book boasted separate title pages that were printed respectively in black ink and gold leaf, the latter adorned with a bust portrait of Homer drawn and signed by Adèle Masson (presumably a daughter of one of the publishers).  

In the copy given to Madison, the black-ink title page has a further hand-drawn illustration, a ship under full sail facing the viewer; the mainsail is monogrammed “JM” and an inscription to “Maddison” from the publishers is written beneath it (fig. 3). The book testified to Homer as a source of elite cultural capital, and in this case of conspicuous consumption as well. As a gift to a head of state by private citizens of another country, the book also made clear the international and public importance of Homer and his works as universally recognized signifiers in the realms of power and privilege at the turn of the nineteenth century. Madison, who twenty years earlier had argued that Homer could be used to understand the significance and international standing of the Constitution, became graced with Homer as a token of his accomplishment and status as the newly sworn defender of that Constitution.

Epic was part of the language of power in the late eighteenth century, and it would receive its greatest elevation into American legal discourse by James Wilson. One of the most talented—and most overlooked—of the Founders, Wilson was a Scottish immigrant trained at the University of St. Andrews and considered the greatest legal mind of the early republic. Having signed both the Declaration of Independence and the Constitution, and having played a central role in orchestrating the 1789–90 Pennsylvania state constitutional convention, he undertook a series of law lectures as the College of Philadelphia’s first law professor in 1790—the same year he sat on the first US Supreme Court as an associate justice. Planning his lectures not as a technical exercise but as “a rational and useful entertainment to gentlemen of all professions,” Wilson clearly had literary ambitions for his series.  

Indeed, because of his public standing, luminaries including Washington and Adams attended the inaugural lecture, many bringing their wives.  

And Wilson played to his audience, using wit, humor, and rhetorical flourishes to show the intellectual excitement of law for him. In discussing the Constitution’s age requirements for public service, he

Special Collections and College Archives, Skillman Library, Lafayette College.
reflected on the oddly arbitrary nature of such requirements, not just in the Constitution but throughout known history:

How differently is the same object viewed at different times and in different countries! In New York, a man is deemed unfit for the first offices of the state after he is sixty: in Sparta, a man was deemed unfit for the first offices of the state till he was sixty. Till that age, no one was entitled to a seat in the senate, the highest honour of the chiefs. How convenient it would be, if a politician possessed the power, so finely exercised by the most beautiful of poets! Virgil could, with the greatest ease imaginable, bring Æneas and Dido together; though, in fact, some centuries elapsed between the times, in which they lived. Why cannot some politician, by the same or some similar enchanting art, produce an ancient and a modern government as cotemporaries? The effect would be admirable. The moment that a gentleman of sixty would be disqualified from retaining his seat as a judge of New York, he would be qualified for taking his seat as a senator of Sparta.30

The power of poets in this passage is the ability to select and combine from reality, to behave (to paraphrase Jefferson) unfettered by history. The result, Wilson points out, is “convenient,” and the blending of ancient and modern, a practice he traces back to Virgil, becomes the vehicle of political ambition—an ironic move, considering the number of classical genealogies that had been traced by Publius and other supporters of the Constitution during the ratification debates that had only concluded the year before.

The irony is almost certainly intentional, leaving Wilson’s position on the relationship between law and literature ambiguous. Should the power of poets enter the political or legal realms? Earlier in the same lecture, Wilson suggests that such a blend not only should be but in fact was the case. As he considers the legal definition of “the people,” as the Constitution’s preamble identified them, Wilson turns to Athens, but rather than quote from an Athenian orator, which he does elsewhere in his writings, he turns to an epic account of the pan-Hellenic armies aligned against Troy: “When Homer, one of the most correct, as well as the oldest and one of the most respectable, of human authorities, enumerates the other nations of Greece, whose forces acted in the siege of Troy; he arranges them under the names of their different kings: but when he comes to the Athenians, he distinguishes them by the peculiar appellation of ‘the people.’” For Wilson, Homer’s use of a different term (identified in a footnote as demos) to refer to Athens’s contingent signified not only a different political structure but a different attitude about
the nature of humans in society. The collective mattered more than the metonymic head of the group. Wilson expects this sudden foray into literary criticism to surprise his audience, and he immediately defends his chosen source:

Let it not surprise you, that I cite Homer as a very respectable authority. That celebrated writer was not more remarkable for the elegance and sublimity, than he was for the truth and precision, of his compositions. . . . From one of the orations of Æschines it appears highly probable, that in the Athenian courts of justice, the poems of Homer, as well as the laws of Athens, were always laid upon the table before the judges; and that the clerk was frequently applied to, by the orator, to read passages from the former, as well as from the latter. On the authority of two lines from Homer’s catalogue of the Grecian fleet, was determined a controversy between the Athenians and the inhabitants of Salamis.

Homer’s utility, as it turns out, traces back to ancient Athens, where literature served as a legal precedent on a par with the city’s laws, much as John Marshall would use the *Federalist* on a par with the Constitution itself for interpretive assistance. But this is not merely a historical curiosity; Wilson concludes his discussion of Homer by praising him as a harbinger of enlightenment in a dark age, and thus eminently useful to progressive moderns: “His immortal poems, like a meteor in the gloom of night, brighten the obscure antiquities of his country.”

The immortality of the poems, their canonicity, illuminates the modern era as well, as Jefferson had suggested in “Thoughts on English Prosody.” For Wilson, however, this illumination is not about personal edification but sound political judgment.

Wilson was so convinced of this last point that he recycled his philological gloss of Homer’s use of “the people” in his opinion in *Chisholm v. Georgia* (1793), often considered the first major constitutional law case before the US Supreme Court, and the most important case before *Marbury v. Madison* in 1803. While the case itself made its greatest mark on history by being overturned by the Eleventh Amendment, Wilson used the occasion to more succinctly, and more forcefully, explain Homer’s relevance to American law. Using the example of toasts to the United States, rather than to the people of the United States, Wilson argued that cultural conventions and common language usage were the root cause of the “confusion and perplexity” over the source of national sovereignty. The Constitution, in its preamble, decides the question in its opening phrase, pointing to what Wilson calls “the first great object in the Union,” since while “A State . . . is the noblest work of Man . . . Man himself, free and honest, is, I speak as to this world, the noblest work of GOD.” The language of great objects brings Wilson’s
opinion into the discourse of aesthetics, and his theological justification for viewing the people as the preeminent object is, he argues, “not only politically, but also (for between true liberty and true taste there is a close alliance) classically more correct.” Here Wilson’s use of the word “classically” suggests that he is using a preeminent authority in Homer, and one distinctly aesthetic. Like Jefferson, who explains the merits of blank verse in terms of “liberty,” and Madison, who assumes aesthetic analogies to governmental organization, Wilson nearly equates taste and political freedom. To my knowledge, no Supreme Court justice ever again would turn to Homer as a precedent, but Wilson’s practice on the first Court was indicative of a generational trend. Epic was a model for law, a prop to law, an analogy to law. Though the personal pleasures of reading epic were not lost on Wilson, Madison, or their contemporaries, that pleasure always had a larger, more public purpose: the shaping of citizens and of a nation. One of the most remarkable examples of the dictum that literature is “equipment for living” was in the use of literature to define and deploy the Constitution as a document of immense cultural power and generic authority.

Visualizing Constitutional Epic

Direct comparisons between the Constitution and epic form faded in American legal discourse after 1800, but the concept of the Constitution as an art object had considerable longevity, and throughout the nineteenth century commentators would continue to use epic conventions to create images of the Constitution-as-art, often at moments of tremendous tension. One of the most striking of these moments came at the end of Daniel Webster’s “Constitution and Union” speech, which the Massachusetts senator gave as his entry into the debate over the 1850 Compromise; thanks in part to Webster’s support, that legislative package reinstated the Fugitive Slave Law in what Northern supporters saw as a desperate effort to preserve the Union. Twenty years before, Webster had famously exchanged a series of speeches with Senator Robert Hayne on the question of constitutional nullification, and on the strength of his victory for pro-Unionist Whigs, Webster believed the nation and its constitution to be at last unshakable. For reasons still unclear, Webster changed his mind in early 1850, as the Senate debated Henry Clay’s compromise proposal. On March 7, Webster gave what is perhaps still his most famous peroration, in which he argued that dissolving the Union was impossible—despite the fact that he was then speaking precisely because he no longer believed in the impossibility of secession. Webster’s argument for the impossibility was
grounded in the tautology of national identity; the Union was the Union, and thus it could not be dissolved and still be the Union. This matter of identity extended to Webster’s own self-image as a citizen: “Peaceable secession! . . . Why, what would be the result? . . . What States are to secede? What is to remain American? What am I to be? An American no longer? Am I to become a sectional man, a local man, a separatist, with no country in common with the gentlemen who sit around me here, or who fill the other house of Congress? Heaven forbid!” At the same time, Webster’s tautology extended to fill the whole cosmos: “[H]e who sees these States, now revolving in harmony around a moon centre, and expects to see them quit their places and fly off without convulsion, may look the next hour to see the heavenly bodies rush from their spheres, and jostle against each other in the realms of space, without causing the wreck of the universe. There can be no such thing as a peaceable secession” (546–47). Yet while Webster argued for peaceable compromise, for “forbearance and moderation” (548), at the close of his speech he prepared for the worst.

Horrified by the spectacle of imagined secession, Webster constructs his final paragraph as a series of denials: “And now, . . . instead of speaking of the possibility or utility of secession,” which was only too obvious by this point, “let us come out into the light of day; let us enjoy the fresh air of Liberty and Union” (550), the famous paradoxical pair from the senator’s “Second Reply to Hayne.” Such freedom comes at the price of constant security measures: “We have a great, popular, constitutional government, guarded by law and by judicature, and defended by the affections of the whole people” (550; emphasis mine). Webster’s closing flourish depicts the government (disguised as the nation with an ambiguous “it”) as a colossal Greek hero strutting on the world’s stage:

> Its daily respiration is liberty and patriotism; its yet youthful veins are full of enterprise, courage, and honorable love of glory and renown. Large before, the country has now, by recent events, become vastly larger. This republic now extends, with a vast breadth, across the whole continent. The two great seas of the world wash the one and the other shore. We realize, on a mighty scale, the beautiful description of the ornamental border of the buckler of Achilles:—
>
> “Now, the broad shield complete, the artist crowned
With his last hand, and poured the ocean round;
In living silver seemed the waves to roll,
And beat the buckler’s verge, and bound the whole.” (551)
Webster makes the closing lines, taken from Alexander Pope’s translation of Homer’s *Iliad*, do enormous rhetorical work, though filled with contradictions and ambiguities. Moving from the youthful hero to the “mighty scale” of the continent on the globe, Webster declares that the fulfillment of Manifest Destiny in acquiring land across the continent brings the country (or the government? or the people?) to “realize”—to make real—the “beautiful description” of Achilles’s shield. But even as Webster proleptically creates the shield of Union to fend off the threat of “impossible” secession, he attempts the truly impossible: rendering Homer’s legendary *ekphrasis* real.\[^{35}\]

The account of Achilles’s shield in *Iliad XVIII* is one of artistic creation; the narrator follows Haephestus’s own composition process as he exquisitely crafts the scenes on the wondrous shield. Yet as critics have often pointed out, the narration of the shield cannot be visually represented, though many artists have tried.\[^{36}\] Even Pope tried; in his confusion over visualizing what Homer was actually describing, he drew his own visual interpretation of the shield in the manuscript of his *Iliad* translation, thus making his own translation an *ekphrasis* based on a reverse *ekphrasis* of Homer’s *ekphrasis*.\[^{37}\] In a similar rhetorical sleight of hand, Webster “realizes” the shield by speaking that reality into being, rather than drawing, painting, or sculpting it. And *ekphrasis*’s claim to supersede language—to give a picture in words—is what makes Webster’s rhetoric so powerful and so problematic. Like the concept of Manifest Destiny, which uses history to bring about a millennial end to history (what happens when we reach the Pacific?), Webster’s meta-*ekphrasis* tries to freeze America’s youthful vigor into an aesthetic unity of coherent vastness. But Homer’s *ekphrasis* refuses such aesthetic unity. The ocean that covers the rim of the shield is the only located image in all of Homer’s account; the other scenes of fields, herds, trials, weddings, wars, and feasts all flow into and around each other, such that the scenes are narrative, not the tableaus that visual artists must take them for. For instance, in one of the agricultural scenes,

> The artisan made next a herd of longhorns, fashioned in gold and tin: away they shambled, lowing, from byre to pasture by a stream that sang in ripples, and by reeds a-sway. Four cowherds all of gold were plodding after with nine lithe dogs beside them.

On the assault,
in two tremendous bounds, a pair of lions
caught in the van a bellowing bull, and off
they dragged him, followed by the dogs and men.
Rending the belly of the bull, the two
gulped down his blood and guts, even as the herdsmen
tried to set on their hunting dogs, but failed:
no trading bites with lions for those dogs,
who halted close up, barking, then ran back.\textsuperscript{38}

Is this one scene, or two, or more? Is it a magically animated picture, like the
photographs in the \textit{Harry Potter} novels? Such representational problems fill \textit{Iliad}
XVIII, even before Haephestus begins his task.\textsuperscript{39} The dichotomy that Gotthold
Lessing set up in his \textit{Laokoon} between the spatial silence of the visual arts and
the temporal voice of language breaks down in Achilles’s shield, as Homer’s lan-
guage precludes spatial representation. Webster’s claim for realization, like “the
buckler” he cites, exists only in language.

Yet the United States’ dependence as a state entity upon language is one of the
great truisms in American Studies. The rhetorical sleight of hand that Webster’s
speech attempts follows in the tradition of the Constitution’s “We the People,”
the linguistically constructed collective that utters the nation and its founding
document into being (with Homeric origins, as James Wilson argued). The Con-
stitution itself embodies a kind of \textit{ekphrasis}, as it claims to linguistically \textit{represent}
as well as \textit{constitute} the state—to stand in for and to stand as at the same time. The
linguistic construct of the state, which points to itself as a construct par excel-
lence, distracts from the prior construct of the nation naturalized by the process
of ratification; since the Constitution has been constructed by specific, intentional
citizens within the nation, the argument goes, we no longer need worry about the
identity of that nation. And yet the dissonance of the ratification process, the
party wars in the 1790s, the increasing tensions between North and South and the
rising frustrations of those living in the West, slave rebellions, suffrage and aboli-
tion movements, riots, and mutinies all suggest that the Constitution’s ekphras-
tic argument does not quite work. The nation must still be explained by some
extraconstitutional means. In the case of Webster’s speech, he borrowed a shield
from the most famous of the ancient epics, in an attempt to save the Union by
placing it into a narrative grander and more complete than itself.

Webster’s connecting the nation to the shield of Achilles as a way of natural-
izing the Constitution was not mere idiosyncrasy but has literally been cast into
Constitutional Epic

the very architecture of the United States Supreme Court. On the bronze doors of the Supreme Court Building in Washington, D.C., eight scenes of “the evolution of justice” appear, chosen by Cass Gilbert, the building’s architect, and sculptor John Donnelly. The very first scene is labeled “Shield of Achilles” and depicts a trial over the blood price in a manslaughter case, a vignette from the description of the wondrous shield in *Iliad* XVIII that the artists considered “the most famous representation of primitive law.” The drama of the scene has been altered from Homer’s description, however; whereas in the poem a crowd watches the debate between adversaries, and a ring of judges listen as well, the only figures in the door scene are the two adversaries, pacing around a pedestal as if stalking each other (fig. 4). A backdrop of classical architectural facades sets off the two

Figure 4. Detail of “Shield of Achilles” from John Donnelly, doors of United States Supreme Court, Washington, D.C. Cast bronze. Collection of the Supreme Court of the United States.
figures, and on the pedestal they circle are two gold coins, which in the poem are to go to the judge that gives the most just decision. In the scene, the absence of the judges leaves open the question of who the coins are for—is it the blood price? The legal fees due to the victorious adversary? Is this scene in fact a competition for a monetary prize? Ambiguous though it is, the *Iliad* scene sets the tone for the depictions of Roman antiquity and early modern England, the scenes culminating in Joseph Story and John Marshall discussing *Marbury v. Madison* in front of the Capitol. The structural connection between the *Iliad* and the *Marbury* scene is clear: two figures balanced by classical architecture. Yet while the conflict between the Greek figures and the amity between the Americans come through in the pictures, the gold coins from the *Iliad* leave in question what the meaning of the Constitution’s epic origins actually is. As a story about a stolen wife that opens with quarrels over booty, is the *Iliad* the best choice for a literary ancestor to the Constitution? In seeking to connect the Constitution to the grandest of origins and the most illustrious of cultural artifacts, the rewriting of the Homeric original threatens to rewrite the story of America as well. And all of these rewritings played into the redefinition of epic itself across the Constitution’s history. The closing example in this chapter is that of John Marshall, perhaps the most famous rewriter of the Constitution next to the *Federalist* authors (partly thanks to his liberal use of *Federalist* quotations to gloss the document in his opinions).

Part of Marshall’s mystique as a jurist was his ability to strike grand poses, both on paper and in person. And that is precisely how William Wetmore Story, the son of Marshall’s colleague and first biographer, Joseph Story, chose to depict him in a government-commissioned statue placed in front of the US Capitol in 1884. The statue’s original base included a relief celebrating the divine origins of the Constitution (the Constitution-as-Scripture trope was soon to take hold in public discourse), but it deployed an oddly syncretic notion of authorship. The relief depicted “Minerva Dictating the Constitution to Young America” (fig. 5). The Constitution was an inspired text according to Story, but it was inspired by the goddess of wisdom, the same guide that had informed Elizabeth Graeme Fergusson’s translation of *Telemachus* over a century earlier. The scene shows America in a pose not unlike that of Phillis Wheatley in her frontispiece, blending the icon of the poetess with an image of youthful malleability. Surrounded by conversing philosophers and a pastoral group of women and children gathering a harvest, America’s scribal pose settles between economics and academics. And all this supports the seated statue of Marshall, draped in judicial robes that, in their bronze medium, suggest the draped folds of the philosophers’ togas (fig. 6). Story’s
Figure 5. William Wetmore Story, *Minerva Dictating the Constitution to Young America*, 1884. Plaster relief. Collection of the Supreme Court of the United States.
friend and biographer, Henry James, wrote a characteristic reflection on the effect of the statue in situ: “[Marshall’s statue] has, in a high degree, the mass and dignity prescribed by its subject, and the great legal worthy, seated aloft, in the mild Washington air, before the scene of his enacted wisdom, bends his high brow and extends his benevolently demonstrative hand in the exemplary manner of the recognised sage and with all the serenity of the grand style.” James reads the statue as an expression of gesture, praising Marshall’s raised hand as “benevolently demonstrative” while being “exemplary.” Marshall exhibits interiority, but in
an archetypal manner that obviates the need for such interiority. He is the ultimate public man, and the “serenity” of that publicity is a matter of pose, of style—the “grand style.” As will be explained in the next chapter, the “grand style,” or the Grand Manner, was an aesthetic tradition in the visual arts that theorists such as Joshua Reynolds held up as the epitome of art in a climate dominated by both elite patrons and increasingly broadening middle-class markets for spectacular exhibitions and affordable prints. That Marshall’s statue should embody such a style—one that Reynolds had termed “epic”—places both the man and the memorial to him in a tradition of epic heroism that, like the justice’s gesture, holds history still. And such might in fact be the drive behind Jefferson’s fixation on Homer, Adams’s criticism of Milton, and Madison’s analogy of generic preeminence: a transcendent point of reference that will hold firm in the onslaught of history, a telling metaphor of what the producers of constitutional epic wished the Constitution itself to become—for this kind of epic has always been proleptic in its aims.

James’s associating Marshall with the “grand style” likely would have made aesthetic sense to the judge himself. In *McCulloch v. Maryland* (1819), Marshall’s most famous opinion during his own lifetime, the chief justice opened his opinion with a grand gesture suggesting the intended canonicity of the decision: “The constitution of our country, in its most interesting and vital parts, is to be considered . . . and an opinion given, which may essentially influence the great operations of the government.” And this canonical opinion would be the legacy of a necessarily heroic court: “No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully . . . and if it is to be so decided, by this tribunal alone can the decision be made.” The court’s supremacy is bound up with the supremacy of the Constitution itself, as well as with the document’s totality. Marshall’s description of the Constitution’s totalizing power points up his sense of the ultimate importance of his work: “It is the government of all; its powers are delegated by all; it represents all, and acts for all.”

And yet this totality does not suggest encyclopedic comprehensiveness. The Constitution addresses the nation as a whole, but it does not address every minute detail of that whole—it is not a legal code, but a founding text that gives the shape of the government. For Marshall, it would be beneath a Constitution to provide its own commentary:

> A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried
into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deducted from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. . . . In considering this question, then, we must never forget that it is a constitution we are expounding.43

The nature of a constitution, according to Marshall, is to deal explicitly only with “grand outlines” and “important objects,” leaving the “minor ingredients” to be sorted out by politicians. This language echoes that used by Joshua Reynolds in his explication of grand style in his Discourses: “[I]t is not the eye, it is the mind which the painter of genius desires to address; nor will he waste a moment upon those smaller objects which only serve to catch the sense, to divide the attention, and to counteract his great design of speaking to the heart.”44 As chief justice of the nation’s high court, Marshall claimed authority to pass judgment on what the “grand outlines” were, thus placing himself in the role of Madison’s “didactic critic,” explaining what the narrative of America’s Constitution is, and in the role of Reynolds’s “painter of genius” in “speaking to the heart” in focusing on the grandeur and wisdom of the Constitution. L. H. LaRue argues convincingly that the reason why Marshall’s opinions are so powerful is because they narrativize the Constitution as they theorize it, and the Constitution’s own lack of narrative (aside from the Preamble, which Marshall quotes incessantly) necessitates this—according to LaRue, Marshall “showed us how to combine story and theory and thus re-create the Constitution. As a result, lawyers read Marshall, not the original. His voice is so powerful that it has replaced the voice of the original.”45 Marshall writes himself into the Constitution by transforming law into story and image. Henry James rightly pursued the secret of Marshall’s character through gesture, as the visuality of expounding the Constitution enabled the judge’s authority and connected it to new ways of thinking about the relationship between narrative, authority, and art. This network of relationships is the subject of the next chapter, a history of the “epic style” that Reynolds had espoused in Britain and that would shape the development of American art as a profession and a cultural institution.