Questions

1. On what constitutional grounds were the Cherokees basing their appeal to the Supreme Court? What kinds of cases fall under the jurisdiction of the federal courts?

2. How did Marshall arrive at the conclusion that the Cherokees were not a “foreign state” under the meaning of the Constitution? What was the significance of the “domestic dependent nation” status with regard to constitutional rights of the Cherokee Nation?

3. Andrew Jackson supported Georgia’s claims of state sovereignty in this case and in the 1832 Worcester v. Georgia case; however, he opposed South Carolina’s assertion of state sovereignty during the nullification crisis of 1832–1833. How do you explain this apparent contradiction?

10-9 South Carolina Ordinance of Nullification (1832)

Protective tariffs became a divisive issue after the War of 1812. Beginning in 1816, Congress enacted a series of measures intended to protect domestic iron and textile manufacturers as well as the producers of such raw materials as wool, hemp, and flax. These import taxes found no favor among southerners, who needed no protection for their cotton and were forced to pay higher prices for the protected goods they consumed. South Carolinians, in particular, also viewed the imposition of tariffs as a dangerous encroachment on states’ rights. With an economy and way of life dependent on the presence of slaves, they were fearful that an increasingly powerful federal government might promote a policy of general emancipation contrary to the best interests of the state. Thus when Congress passed yet another tariff in 1832, South Carolina balked. Led by slave owners anxious to contain federal power within narrow limits, the South Carolina legislature called for a state convention to meet in Columbia in November. The following Ordinance of Nullification was passed by the convention on November 24.


An Ordinance to Nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities.

Whereas the Congress of the United States, by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufacturers, and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the Constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the Constitution, which provides for equality in imposing the burthens of taxation upon several States and portions of the Confederacy: And whereas the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the Constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue for objects unauthorized by the Constitution:

We, therefore, the people of the State of South Carolina in Convention assembled, do declare and ordain... That the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities... and, more especially... [the tariff acts of 1828 and 1832]... are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers or
citizens; and all promises, contracts, and obligations, made or entered into, or to be made or entered into, with purpose to secure the duties imposed by the said acts, and all judicial proceedings which shall be hereafter had in affiance thereof, are and shall be held utterly null and void.

And it is further Ordained, That it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this State; but it shall be the duty of the Legislature to adopt such measures and pass such acts as may be necessary to give full effect to this Ordinance, and to prevent the enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States within the limits of this State, from and after the 1st day of February next . . .

And it is further Ordained, That in no case of law or equity, decided in the courts of this State, wherein shall be drawn in question the authority of this ordinance, or the validity of such act or acts of the Legislature as may be passed for the purpose of giving effect thereto, or the validity of the aforesaid acts of Congress, imposing duties, shall any appeal be taken or allowed to the Supreme Court of the United States, nor shall any copy of the record be printed or allowed for that purpose; and if any such appeal shall be attempted to be taken, the courts of this State shall proceed to execute and enforce their judgments, according to the laws and usages of the State, without reference to such attempted appeal, and the person or persons attempting to take such appeal may be dealt with as for a contempt of the court.

And it is further Ordained, That all persons now holding any office of honor, profit, or trust, civil or military, under this State (members of the Legislature excepted), shall, within such time, and in such manner as the Legislature shall prescribe, take an oath well and truly to obey, execute, and enforce, this Ordinance, and such act or acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same; and on the neglect or omission of any such person or persons so to do, his or their office or offices, shall be forthwith vacated . . . and no person hereafter elected to any office of honor, profit, or trust, civil or military (members of the Legislature excepted), shall, until the Legislature shall otherwise provide and direct, enter on the execution of his office . . . until he shall, in like manner, have taken a similar oath; and no juror shall be empanelled in any of the courts of this State, in any cause in which shall be in question this Ordinance, or any act of the Legislature passed in pursuance thereof, unless he shall first, in addition to the usual oath, have taken an oath that he will well and truly obey, execute, and enforce this Ordinance, and such act or acts of the Legislature as may be passed to carry the same into operation and effect, according to the true intent and meaning thereof.

And we, the People of South Carolina, to the end that it may be fully understood by the Government of the United States, and the people of the co-States, that we are determined to maintain this, our Ordinance and Declaration, at every hazard, Do further Declare that we will not submit to the application of force, on the part of the Federal Government, to reduce this State to obedience; but that we will consider the passage, by Congress, of any act . . . to coerce the State, shut up her ports, destroy or harass her commerce, or to enforce the acts hereby declare to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union: and that the people of this State will henceforth hold themselves absolved from all further obligation to maintain or preserve their political connexion with the people of the other States, and will forthwith proceed to organize a separate Government, and do all other acts and things which sovereign and independent States may of right do.

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Questions

1. How did the convention frame its attack on the tariff? According to the Ordinance of Nullification, how was the tariff unconstitutional?

2. South Carolina claimed the Kentucky and Virginia resolutions as precedents for their action, but James Madison repudiated the claim. What differences can you identify between the earlier resolutions and the Ordinance of Nullification?

3. South Carolina was the first state to secede from the Union at the start of the Civil War. How did the Ordinance of Nullification foreshadow this?

Questions for Further Thought

1. From your reading of Documents 10-6 through 10-9 as well as your understanding of the text, is it possible to piece together Jackson's position on the limits of the power of the federal government? On the one hand, Jackson used federal power to act swiftly during the nullification crisis (Document 10-9) and against the Second Bank of the United States; on the other, Jackson claimed that the federal govern-