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# From Ward to Nation:

Nullification, Sectionalism, Tariff Bills, and *Worcester*,  
1828-1832

Jeremy Matthew Knake

### Introduction

3 March 1832, Chief Justice John Marshall approached the chambers of the Supreme Court to deliver the opinion in the case of *Worcester v. Georgia (Worcester)*. Samuel A. Worcester, missionary and supporter of Cherokee independence, had been arrested and sentenced in 1831 to hard labor for his presence in Cherokee territory “without a license or permit from the Governor of the State, or from anyone authorized to grant it, and without having taken the oath to support and defend the Constitution and laws of the State of Georgia, and uprightly to demean himself as a citizen thereof, contrary to the laws of the said State.”<sup>1</sup> While the seventy-six year old Chief Justice’s decision promised a definitive conclusion to the incarceration of Worcester, it was suggested that Marshall’s opinion signaled a defeat for the “deep laid scheme of cruelty and usurpation” perpetrated on the Cherokee people.<sup>2</sup>

As Marshall got to his place he furtively glanced around the chambers, took his chair, and proceeded to deliver his opinion. “The act of the State of Georgia, under which the plaintiff in error was prosecuted,” Marshall stated, “is consequently void, and the judgment is nullity.” To be sure, Worcester’s incarceration was terminated but Georgia’s “usurpation” of Cherokee territorial control was determined to be unconstitutional. Furthermore, Marshall determined the Georgia statute unconstitutional because it “interfere[s] forcibly with the relations established between the United States and the Cherokee Nation, the regulation of which, according to the settled principles of our Constitution, is committed exclusively to the Government of the Union.”<sup>3</sup>

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<sup>1</sup> *Worcester v. Georgia*, 31 U.S. 515 (1832).

<sup>2</sup> “Georgia and the Missionaries,” *The Religious Intelligencer*, March 17, 1832.

<sup>3</sup> *Worcester v. Georgia*, 31 U.S. 515 (1832).

## A Reversal of Opinion

Marshall's legal holding in *Worcester* however, was markedly different than the opinion he gave less than a year prior in *Cherokee Nation v. Georgia* (*Cherokee Nation*). In December 1828, the Georgia legislature enacted a bill that placed legal and political restrictions on Cherokee peoples and reversed their political autonomy within the state. The 1828 and consecutive 1829 bill "add[ed] the territory lying within the chartered limits of Georgia, now in the occupancy of the Cherokee Indians, to the counties of Carroll, De Kalb, Gwinett, Hall, and Habersham, ...extend[ed] the laws of this State over the same, ...annul[led] all laws and ordinances made by the Cherokee Nation of Indians, ...and regulate[d] the testimony of Indians." On March 5, 1831, the Supreme Court heard oral arguments in the suit brought by the Cherokee Nation which argued Cherokees were "a foreign state, not owing allegiance to the United States, nor to any State of this Union" and that the Cherokee were "a sovereign and independent state."<sup>4</sup>

While Marshall upheld Union exclusivity in relations with the Cherokee in *Worcester*, in *Cherokee Nation* he tacitly ruled in favor of Georgia and, consequently, states' rights through his dismissal on jurisdictional grounds. Marshall believed that the Cherokee Nation was not a "foreign state" as was outlined in the Constitution. Rather, the relationship between the Cherokee Nation and the United States was more like that of "a ward to his guardian." Continually, Marshall was more deferential to states rights throughout the remainder of the opinion. Marshall, feeling that the "propriety" of judicial restraint and "interposition by the Court" on the "Legislature of Georgia" would be "well...questioned," believed that overturning the Georgia

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<sup>4</sup> *Cherokee Nation v. Georgia*, 30 U.S. 1(1831).

statute “savours to [*sic*] much...political power” for the Judicial Department.<sup>5</sup> Yet, less than a year transpired between *Cherokee Nation* and *Worcester* and *Worcester* was an unambiguous support of Federalism, Congressional and Constitutional supremacy in a political environment where growing sectionalism and concerns of state sovereignty were the issues *de jure*. What accounts for Marshall’s reversal of opinion between *Cherokee Nation* and *Worcester*? I suggest that *Worcester* was seen by individuals in the North as a case regarding nullification “by some other name” because of interconnections drawn by southern critics upon the Tariff Bill, Cherokee Removal, and federal infractions on state sovereignty.<sup>6</sup> Moreover, I argue that Marshall’s opinion in *Worcester* was judicial commentary on the the escalating 1830s Nullification Crisis sparked by South Carolina’s protests and threats of nullification over the Tariffs of 1828 and 1832—South Carolinians termed them the Tariff of Abominations—that used Georgia’s Cherokee statutes and the subsequent case as the framework to assert federal supremacy. In short, Marshall’s “ardent [and] unbending”<sup>7</sup> Federalism prevented him from idly allowing an “idea...so repugnant to the existence of Union” to gain prominence without commentary.<sup>8</sup>

### South Carolina and Georgia: The Language of Nullification

South Carolina and Georgia saw the 1828 Tariff Bill in sectional terms. After the passage of the 1828 Tariff Bill, South Carolina immediately began to hold public protests that sought repeal and instructed participants to “resist the impositions of this tariff.” Georgia, in an expression of solidarity, held protests “demanding the repeal of an act, which has already

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<sup>5</sup> *Cherokee Nation v. Georgia*. 30 U.S. 1(1831).

<sup>6</sup> “Progress of Nullification,” *The Banner of the Constitution*, April 18, 1832.

<sup>7</sup> “Death of Chief Justice Marshall,” *Maine Farmer and Journal of the Useful Arts*, July 17, 1835.

<sup>8</sup> John Marshall, letter to Edward Everett, November 3, 1830, in *The Papers of John Marshall*, eds. Susan Holbrook Perdue and Joan S. Lovelace (Chapel Hill: The University of North Carolina Press, 2002), 11:389.

disturbed the union, endangered the public tranquility, [and] weakened the confidence of whole states in the federal government.”<sup>9</sup> For South Carolina and Georgia, their fears rested in the belief that the 1828 Tariff Bill’s goal was to unfairly place the industrial North in a stronger, comparative position to the agricultural South. “Ruinous to commerce and agriculture,” stated one Georgia newspaper, the Tariff Bill’s purpose was “to secure a hateful monopoly to a combination of importunate manufacturers.” As manufacturing in the 1830s was mostly concentrated in the fledgling industrial centers of the Northeast, Southern concerns expressed not just trepidation of a “hateful” manufacturing monopoly but a “hateful” and “importunate” monopoly vested in Northern interests.<sup>10</sup>

Additionally, South Carolina and Georgia connected the protestation of, and resistance to, the Tariff Bill to that of sovereignty. Specifically, the tariff bill encroached upon state control of commerce control, but it was broadly defined as a federal usurpation of state sovereignty. For example, a South Carolina Anti-Tariff Meeting adamantly claimed that the passage of the “oppressive” tariff was a direct “violation of our sovereign rights.” Moreover, politicians in Georgia, fearing the potential for Georgia to “become a tariff state,” formally protested the tariff with a resolution sent to the U.S. Senate for archival purposes if continued perversion of power “should render necessary, measures of decisive character, for the protection of the people of the state [Georgia].” In short, continued oppressive federal interjection upon state sovereignty would legitimize “measures of decisive character” to protect it and provide for the “vindication of the

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<sup>9</sup> James Raysor, “Anti-Tariff Meeting,” *Niles Weekly Register*, June 28, 1828.

<sup>10</sup> “Legislature of Georgia,” *Niles Weekly Register*, December 27, 1828.

constitution of the United States.” As the 1820s gave way to the 1830s, though, Georgians began to forge connections between an internal territorial issue and state sovereignty.<sup>11</sup>

### Cherokee Removal: Georgia’s Tariff Bill

Georgia, mirroring the same sovereignty arguments as South Carolina against the Tariff Bill, began to shift focus to the territorial issue of Cherokee Removal. On 28 May, 1830, in an effort to ease growing territory disputes and land scarcity, President Andrew Jackson signed the Indian Removal Act. However, unsure if the federal government was going to “carry the provisions” of the 1830s Indian Removal Act “into effect,” Georgia choose to “act on her own responsibility.” A 1830s editorial in the *Georgia Journal* challenged Georgians to “determine whether she will relinquish her claim to the territory forever, or whether she will assert her rights.” Additionally, Georgians, like their South Carolinian counterparts, were encouraged to openly defy and resist laws that were considered inflammatory to the state. Later, the same 1830s editorial resolutely instructed its readers “to defy the threats of hypocritical and jesuitical [*sic*] enemies.”<sup>12</sup> Continually, territorial disputes between Georgia, the federal government, and the Cherokee Nation began to be framed in stronger sovereignty language. As it became apparent that the conviction of Samuel Worcester might receive a review before the Supreme Court, Georgia’s governor, Wilson Lumpkin, made allusions to tariff sovereignty arguments, potential “measures of decisive character,” and nullification. “Any attempt to infringe the evident right of a State,” declared Lumpkin:

to govern the entire population within its territorial limits, and to punish all offences committed against its laws, within those limits...would be the usurpation of a power never granted by the States. Such an attempt, whenever made, will challenge the most

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<sup>11</sup> Ibid.

<sup>12</sup> Hancock, “Cherokee Lands: More Oppugnation or Nullification,” *Georgia Journal*, August 21, 1830.

determined resistance; and if persevered in, will inevitably eventuate in the annihilation of our beloved Union.

For Lumpkin, the federal “usurpation” of Georgia’s sovereignty in dealings with the Cherokee Nation within its territorial boundaries was an offense that warranted inevitable nullification.<sup>13</sup>

To be sure, even though Georgian arguments and language mirrored the arguments and language of South Carolina’s nullification campaign, Georgians still maintained that they were not supporters of nullification; rather, they were vehement proponents of state sovereignty. In an effort to solidify this dichotomy, Georgians routinely identified individuals with the “taint of nullification,” clearly stated that they were “clear against being tricked into his [John C. Calhoun] support,” and unambiguously stated that Georgia does “not approve of the doctrine of Nullification.”<sup>14</sup> However, the press campaign to establish an unequivocal separation between South Carolinian “nullifiers” and Georgian sovereignty supporters was derailed by attempts to construct stronger connections between the states. An 1831 editorial in the *Georgia Journal* suggested that “there is no good reason” for sister states who shared “past toils, past triumphs, and present sufferings” to be divided on the “principle” issue of nullification. For Georgians, the “present sufferings” of their home state and South Carolina as a result of federal infringement should unite them in “a peaceable and constitutional remedy.”<sup>15</sup>

Northern perceptions and those outside of Georgia and South Carolina focused on language and action to draw comparisons between South Carolina nullification and identified many Georgians as “*de facto* Nullifiers.” Many pointed to the fact that Georgia had declared an act of Congress unconstitutional and was, consequently, null and void as literal evidence to accuse Georgia of being nullifiers. Moreover, some believed that the only actual “difference

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<sup>13</sup> *Athenian*, December 6, 1831.

<sup>14</sup> *Athenian*, June 28, 1831.

<sup>15</sup> “Georgia and Carolina,” *Georgia Journal*, 1832.



between them [Georgia and South Carolina] was little more than verbal, and that the operations of both is the same.”<sup>16</sup> Surpassing the concerns of literal action, others analogized nullification and Indian removal to the destruction of the Union. “The extinguishment of Indian rights,” opined an editorial in the religious journal, *The Friend*, “...will extend far, and cut the vitals of these United States. It is a twin brother to nullification, which has reared its head, and spoken the discordant sentiments of disunion in South Carolina.”<sup>17</sup> While Georgia carefully constructed its language to avoid the terminology of nullification, many came to understand that “they practice the thing itself, in their own State, but call it by some other name.”<sup>18</sup>

### Worcester and Marshall: A Commentary on Nullification

In *Worcester*, Chief Justice John Marshall was faced with a paragon legal case of emerging sectionalism and a challenge of federal power. Marshall, his fellow jurists, and the entirety of fledging Union were awash in sea of arguments, perspectives, and press. Since the passage of the Tariff of 1828, South Carolina had embarked on a campaign of undermining federal power and calling for the repeal of the Tariff upon sovereignty grounds. Georgia joined the protest and mirrored South Carolina’s sovereignty arguments and clamor for repeal. However, Georgia, dealing with land pressures, decided to shift focus to Indian removal and framed the issue in sovereignty terms. After a series of laws that removed Cherokee independence and self-governance, they passed a law which required permits for white individuals to be present in Cherokee territory. When the Supreme Court chose to hear the case of *Worcester*, Georgia’s governor, Wilson Lumpkin, had a “earnest hope,” if not an expectation based on the previous case of *Cherokee Nation*, that the court would not overturn the conviction

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<sup>16</sup> *Florida Courier*, June 28, 1831.

<sup>17</sup> John Ridge, “From Poulson’s American Daily Advertiser,” *The Friend*, April 16, 1831.

<sup>18</sup> “Progress of Nullification,” *The Banner of the Constitution*, April 18, 1832.

and by extension Georgia's usurpation of federal control of tribal governance.<sup>19</sup> Marshall, seeing error in *Cherokee* and sympathizing with "the cause of these oppressed people," did not realize Lumpkin's "earnest hope." Yet, there was more to Marshall's opinion in *Worcester*; it was a case before the Supreme Court that would provide a vehicle for judicial commentary of the nullification crisis.<sup>20</sup>

The public discourse had already intimately connected nullification, Indian removal, and, by extension, *Worcester*. While nullification and Indian removal were explicitly connected as "brothers" in the 1830s press, the language of sovereignty, the actions of resistance and the voiding of federal statutes, and camaraderie shared in the face of federal oppression were exhaustively recycled to connect South Carolina and Georgia. To what extent John Marshall was aware of the public discourse is speculative at best, however, Marshall did connect Georgia and South Carolina with nullification and Indian removal through his opinion in *Worcester*. Nullification was an issue present in Marshall's personal correspondence. In a letter to Edward Everett, a prominent figure in anti-nullification, in November 1830, Marshall declared that "the idea that a state may constitutionally nullify an act of Congress is so extravagant...and so repugnant to the existence of Union."<sup>21</sup> Continually, in correspondence with John Quincy Adams both men came to agree that, indeed, "no state can by virtue of her Sovereignty nullify any Act of Congress."<sup>22</sup> By the time the court heard arguments in *Worcester*, the nullification crisis was the penultimate political issue. Marshall reversed the lower court's ruling, freed Worcester, and made a stinging indictment towards Georgia's action. "The acts of Georgia," declared Marshall,

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<sup>19</sup> Wilson Lumpkin, *Athenian*, December 6, 1831.

<sup>20</sup> John Marshall, letter to Theodore Frelinghuysen, May 22, 1830, in *The Papers of John Marshall*, eds. Susan Holbrook Perdue and Joan S. Lovelace (Chapel Hill: The University of North Carolina Press, 2002), 11:374.

<sup>21</sup> John Marshall, letter to Edward Everett, November 3, 1830, in *The Papers of John Marshall*, eds. Susan Holbrook Perdue and Joan S. Lovelace (Chapel Hill: The University of North Carolina Press, 2002), 11:389.

<sup>22</sup> John Quincy Adams, letter to John Marshall, September 17, 1831, in *The Papers of John Marshall*, eds. Susan Holbrook Perdue and Joan S. Lovelace (Chapel Hill: The University of North Carolina Press, 2002), 12:97.

“are repugnant to the constitution, laws and treaties of The United States.” Moreover, Georgia “forcibly” interfered with “relations...committed exclusively to the government of the union.” Marshall’s opinion linguistically interconnected nullification and *Worcester*. For Marshall, both the acts of Georgia and “extravagant” nullification were “repugnant” to the Constitution and Union. But, this shared repugnancy was centered in the usage of the ‘doctrine of sovereignty’ in the usurpation of federal exclusivity. While South Carolina cited “sovereignty” in Tariff protest, many anti-nullification arguments centered on the constitutional fact that Congress—i.e. federal government—had constitutional exclusivity to regulate inter-state and foreign commerce. In *Worcester*, Marshall was asserting the federal exclusivity/supremacy of Union control in Indian relations and, by extension, federal exclusivity in regulating foreign trade.<sup>23</sup>

Unambiguously, Marshall was critical of the “doctrine of sovereignty” and nullification. Marshall traced the danger of nullification to its theoretical foundation of unassailable state sovereignty. For Marshall, “the independence of the states” existed as a “graft on the stock of the union of the states” and these two closely connected items “exist, flourish, and must perish together.” Moreover, the fact that radical “extravagancies of the day, including nullification,” used the ‘doctrine of sovereignty’ as their “root” for justification consequently put the entire system in turmoil. Ironically, as Marshall explained, because the “Nullifiers” used sovereignty and state independence arguments to legitimize nullification, the actual nullification of the Union itself would weaken, if not completely undermine, the independence of the states as sovereignty and the Union “perish together.”<sup>24</sup>

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<sup>23</sup> *Worcester v. Georgia* 31 U.S. 515 (1832).

<sup>24</sup> John Marshall, letter to John Quincy Adams, August 9, 1831, in *The Papers of John Marshall*, eds. Susan Holbrook Perdue and Joan S. Lovelace (Chapel Hill: The University of North Carolina Press, 2002), 12:96.

## Conclusion

Marshall could not have anticipated the maelstrom of discontent that arose from his opinion in *Worcester*. After the decision, commentators ironically noted that Georgia's "denial of the paramount authority of the Supreme Court savours amazingly of Nullification"<sup>25</sup> and Wilson Lumpkin vowed, in regards to "unconstitutional encroachment of the federal judiciary," "to meet this usurpation of federal power, with the most prompt and determined resistance."<sup>26</sup> The public discourse had interconnected South Carolina and Georgia with Georgia and Indian removal. South Carolinians and Georgians attempted to unify around a common philosophy of sovereignty and shared experiences of federal oppression. Anti-nullification commentators in the North used similarity of action—acts of resistance to Congressional / Constitutional mandates—to draw connections between South Carolina and Georgia and eventually labeled Indian removal as the "twin brother" of nullification. Marshall's judicial propriety disallowed his participation in press propaganda, but personal correspondence reveals a personal and political aversion to the 'doctrine of sovereignty' and nullification. Marshall's language in *Worcester*, mirrored concerns of nullification present in personal correspondence through an identified shared repugnancy to the "existence of Union" and "constitution."

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<sup>25</sup> "Progress of Nullification," *The Banner of the Constitution*, April 18, 1832.

<sup>26</sup> Wilson Lumpkin, "Legislature of Georgia," *Niles Weekly Register*, November 24, 1832.

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