Wartime Prisoners and the Rule of Law
Andrew Jackson’s Military Tribunals during the First Seminole War

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In April 1818, during the First Seminole War, General Andrew Jackson captured and executed two British allies of the Seminoles in Spanish Florida. During the months following the executions, Americans vigorously debated the validity of Jackson’s conduct, contesting and defending the general’s decision to deny Alexander Arbuthnot and Robert Ambrister the rights normally accorded to prisoners of war. The extensive congressional discussion of the executions and the comprehensive newspaper coverage indicate that the incident was prominent and important to contemporaries. As the Boston Intelligencer observed, the public mind was “in a ferment” on the subject.¹

Jackson’s conduct during the war—his invasion of Florida, seizure of Spanish forts, and treatment of prisoners—occasioned the first major investigation by Congress, as well as the lengthiest debate engaged in by the House of Representatives up to that date. In the winter of 1819, House and Senate committees investigated the matter and issued reports summarizing their findings, and the full House discussed the issues raised by Jackson’s actions in the Seminole War for three weeks, from January 18 to February 8, 1819. Because many newspapers were edited by close allies of party leaders, the fiercely partisan views they expressed often paralleled those articulated in Congress. Beginning in the summer

of 1818 and continuing into 1819, the papers extensively covered the war, the executions, the congressional debate, and the larger questions of who qualified as a prisoner of war and what rights and protections wartime prisoners legally held. In fact, in some newspapers, the Seminole War debate attracted even more attention than the issue of Missouri’s admission as a slave state.²

Although published scholarship provides excellent accounts of the First Seminole War, including general descriptions of the events and proceedings leading up to the prisoners’ deaths, scholars have paid little attention to the contemporary debate and the conflicting ideas it revealed. Some commentators, for example, condemned Jackson for his failure to provide proper legal process to the two Britons. Arbuthnot and Ambrister were tried and convicted by a military tribunal, a process that these critics claimed violated the Constitution, federal statutes, and the laws of war and undermined the very principle of rule of law. Other writers derided the critics as obsessed with meaningless legal technicalities and praised Jackson for having achieved important national goals through the executions. The rhetoric of the commentaries evinces the early emergence of important ideals that later came to be associated with Jacksonian America. Occurring at the midpoint between Thomas Jefferson’s and Andrew Jackson’s presidencies—a decade after Jefferson left office, and a decade before Jackson became president—the executions came at an important moment in political, legal, and social developments of the early national period. The ensuing debate marked an important

stage in the transition from Revolutionary to Jacksonian America, because it provided an opportunity to express core American values, with the sharp disagreement among commentators revealing how those values were changing.3

Alexander Arbuthnot was a Scottish trader who had been based in the Bahamas before going to Spanish Florida to sell goods to the Seminoles. He had also become a spokesman for the Red Stick Creeks who had fled to Florida in the wake of the disastrous Creek civil war of 1813–1814. U.S. troops led by General Andrew Jackson had played a role in that war, killing hundreds of Red Stick fighters at the decisive Battle of Horseshoe Bend. In Florida, Arbuthnot served as an advocate for the restoration of Creek lands in Alabama and Georgia, which they had

ceded to the United States in the 1814 Treaty of Fort Jackson. Robert Christie Ambrister, a native of the Bahamas, was a former naval officer who had served with the British marines against the United States during the War of 1812. After helping to train the pro-British Creek Indians to fight against the Americans in 1814, Ambrister returned home to the Bahamas at the end of the war. In 1818, he was engaged in filibustering activities with George Woodbine in Florida, working with Indians and blacks to drive the Spanish out of Florida.4

Although neither Arbuthnot nor Ambrister acted in an official capacity for Britain, their activities in Florida resembled previous British practices in areas adjacent to the U.S. borders. Between 1783 and 1815, Britain had traded actively with North American Indians and worked to prevent U.S. expansion. British agents had provided support to escaped slaves and to various Indian tribes, and in return won those groups’ allegiance. By the mid-1810s, Seminoles and Creeks in Spanish Florida were actively petitioning the British for help in resisting Americans’ intrusions on their territory, and although the British government declined to endorse official action in support of the Red Sticks or the Seminoles, Arbuthnot and Ambrister continued to offer private assistance to the Florida Indians. Formerly, the United States had been in no position to effectively counter such activities, but the relationship between the United States and Britain shifted with the end of the War of 1812, when Britain abandoned many of its post-Revolutionary goals and policies relating to the United States. By 1818, Jackson was ready to act decisively against Britons who remained along the southeastern U.S. border. Meanwhile the recent provisioning and sheltering of Red Sticks by Spain, along with that nation’s inability to prevent Indian depredations from Florida into Georgia and Alabama and failure to close off the province to runaway slaves from the United States, had prepared Jackson to supplant Spanish rule in the territory.5

In the spring of 1818, Jackson invaded Florida with the stated goal of stopping the ongoing border conflict with the Indians, but with the additional underlying objectives of ousting the Spanish from Florida and

4. See the sources listed in note 3.
ending the territory’s role as a sanctuary for fugitive slaves. During the conflict, Jackson’s troops destroyed a number of Seminole and Maroon towns; killed or captured many Seminoles, Creeks, and blacks; summarily executed two prominent Red Stick prisoners (Hillis Hadjo and Homethlemico); seized the Spanish fort at St. Marks; and occupied Pensacola, the main seat of Spanish government in West Florida. Jackson’s troops snared Alexander Arbuthnot at St. Marks on April 8 and caught Robert Ambrister ten days later near the Suwannee River. Then on April 26, Jackson convened a court of twelve officers, with General Edmund P. Gaines presiding, to hear the charges against the two Britons, and within two days they were found guilty of aiding and supplying the enemy. Arbuthnot was also convicted of “exciting and stirring up the Creek Indians to war against the United States” and Ambrister of leading the Creeks in war against the United States. The officers initially sentenced both men to death but, upon reconsideration, reduced Ambrister’s sentence to 50 lashes plus confinement for a year at hard labor. Jackson approved the death sentence for Arbuthnot but changed Ambrister’s punishment to death by firing squad. On April 29, Arbuthnot was hanged from the yardarm of his ship and Ambrister was shot.6

In 1818, no Anglo–American treaties provided clear guidance on the legality of Jackson’s execution of the two British men; the laws of war

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6. Ambrister had the honor of execution by firing squad rather than by hanging because of his military status. The proceedings of Arbuthnot’s and Ambrister’s trials are in American State Papers: Military Affairs, 1: 721–34. Other sources for the information in this paragraph are listed in note 3. Having examining all the evidence, Frank Owsley concludes that the case against Arbuthnot was weak and he should not have been executed. However, he says, the execution of Ambrister, who had trained and incited Indians and blacks in Florida, might have been justified. In addition to the legality of the Arbuthnot/Ambrister executions, Jackson’s conduct in the Seminole War also raised the question of whether Jackson exceeded or disobeyed his orders when he occupied Spanish forts. Because this article focuses on the executions of Arbuthnot and Ambrister, it does not examine the issue of whether the Monroe administration authorized (or intended for) Jackson to seize Florida, but it is an interesting and controversial topic on which the evidence is inconclusive. For different interpretations, see Heidler and Heidler, Old Hickory’s War; Remini, Andrew Jackson and His Indian Wars, 137–41; Hewitt D. Adams, “Did Jackson Disobey Orders,” Proceedings of the South Carolina Historical Association (1968), 44–51; and Missall and Missall, The Seminole Wars, ch. 3.
were not definitively laid out in official documents. Although there were some bilateral international agreements regarding relations between countries in the eighteenth century, multilateral treaties that codified broadly applicable international legal principles would only appear in the mid nineteenth century. At the time of the First Seminole War, the laws of war were composed of rules drawn primarily from jurists’ treatises and unwritten customary practices. The foremost authority on the laws of war was the Swiss legal scholar Emmerich de Vattel (1714–1767), and the most frequently used reference point for American traditions and customs of war was the Revolutionary War.

In describing the laws of war in his book *The Law of Nations*, Vattel made a number of points relevant to Arbuthnot and Ambrister. Private individuals, according to Vattel, could not lawfully make war on their own, without their sovereign’s order. Meanwhile, although every nation had the right to defend itself by repelling enemy violence, responding to injuries received, and countering violations of its national rights, it could only undertake such actions as were “necessary” for achieving those lawful goals. Vattel further contended that nations normally had no right to kill prisoners of war or take the life of enemies who had surrendered and laid down arms, although a nation could lawfully execute enemy prisoners who were war criminals, that is, if they had personally violated the laws of war and their crimes warranted the death penalty. But, Vattel argued, a nation could also execute prisoners in retaliation if its enemy had killed prisoners, while in more general terms a nation was not obliged to adhere to the rules of war if the enemy ignored those rules.7

7. Emmerich de Vattel, *The Law of Nations, or Principles of Natural Law, Applied to the Conduct and Affairs of Nations and Sovereigns* (London, 1797). This was an English translation of *Le Droit des gens; ou, Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains*, which Vattel published in French in 1758. On the subjects mentioned in the text, see book 3, ch. 1, sec. 4 [3:1:4] and 3:15:223 (limitations on private individuals); 2:4:49, 3:1:3, and 3:3:26 (national self-defense); 3:3:136–37 (requirement of necessity); 3:8:149 and 3:8:140 (prohibition on taking the lives of prisoners of war or other men who have surrendered); 3:8:141 and 3:8:149 (punishment of war criminals); 3:8:142 (retaliation); and 3:8:141 (treatment of savages who did not follow the rules of war). As Vattel explained the last issue, if a nation is “at war with a savage nation, who observe no rules, and never give quarter, we may punish them in the persons of any of their people whom we take (these belonging to the number of the guilty), and endeavour, by this rigorous proceeding, to force them
Other legal commentators, less well known in the United States but occasionally cited there, such as Georg Friedrich von Martens (German), Hugo Grotius (Dutch), and Cornelius van Bynkershoek (Dutch), embraced similar principles in guiding nations at war. But the United States and British governments had never formally agreed on a set of principles, and neither the Revolutionary War nor the War of 1812 offered clear standards of customary practice that would have been applicable to prisoners in Florida in 1818. Rather than providing guidance for establishing a principled approach to treatment of prisoners, newspaper articles describing British treatment of prisoners during these two wars had highlighted the worst atrocities—especially the horrendous conditions on British prison ships where thousands of Americans had perished during the Revolution, the killing of American prisoners in Dartmoor prison during the War of 1812, and the British use of Indian allies who had committed brutal acts against captives during both wars.\(^8\)

Moreover, it was not clear how rules of war would apply to men like Arbuthnot and Ambrister, nor was it obvious whether the U.S. Constitution and federal statutes were applicable in their cases. The two men were not American citizens or subjects of an enemy country, nor were they acting on American soil, and yet they had assisted and allied with a group of Florida Indians and fugitive slaves hostile to the United States, so their legal status and rights were ambiguous. Other facts were unclear: Were they making war against the United States, and, if so, was it as


agents of Britain or as private individuals? Were they affiliating themselves with the Seminoles and Red Sticks rather than with Britain, and, if so, were the Seminoles a “nation” bound by the rules of war? Did Seminole attacks on Americans in Florida and along the frontier constitute acts of offensive war? Were those acts justified and lawful, or did they violate the laws of war? If the latter, were Americans consequently unrestrained by the laws of war in their dealings with the Seminoles and Red Sticks, and if Arbuthnot and Ambrister closely allied with the Indians, were the Americans also legally unrestricted in their dealings with them? Was it “necessary” to execute the two men; were they prisoners of war, war criminals, or civilian bystanders? The ambiguity of these issues left room for conflicting interpretations of the legality of the executions, with Jackson’s critics as well as his defenders both citing Vattel to support their arguments and referring to past precedent from the Revolutionary War for justification. The two sides reached different conclusions on the main issues in dispute: the applicability and relevance of constraints based on law and precedent, and the effect the executions would have on the United States.

Many commentators, including members of Congress and newspaper writers, expressed great concern about the legality of the executions of Arbuthnot and Ambrister. Attacking Jackson most aggressively in Congress was Speaker of the House Henry Clay; the most detailed and persistent criticisms in the press were published as essays in the Richmond *Enquirer* by Benjamin Watkins Leigh writing as “Algernon Sidney.” Clay, “Sidney,” and other critics argued that the legal process provided to Arbuthnot and Ambrister did not meet minimal standards of due process and was inconsistent with federal laws, the Constitution, and the laws of war. These analysts identified six procedural problems.

First, they claimed that the court lacked jurisdiction over both the subject matter of the proceedings and the defendants themselves. The jurisdiction of courts martial, as defined by Congress, did not include war crimes by the enemy. Specifically, as a number of congressmen pointed out, there was nothing in the federal law governing the army that made inciting Indians or aiding and supplying the enemy a crime that could be tried before a court martial, nor was there any provision allowing noncitizens, who owed no allegiance to the United States, to be
charged with conspiring against it outside of U.S. borders, nor did courts martial have authority to prosecute people categorized as “pirates.” In Arbuthnot and Ambrister’s cases, only the charge of spying was potentially within the court martial’s jurisdiction and, as the court itself conceded, that allegation lacked sufficient grounds for prosecution. Courts martial, which were intended for U.S. soldiers and officers, were simply not the proper venue for trying enemy combatants or civilians. Because Arbuthnot was a civilian who had committed no military offenses and Ambrister was an enemy combatant who became a prisoner of war upon capture, neither could be subject to a court martial, the critics argued. Finally, they rejected the claim that the court was just a board of officers who collected evidence and advised Jackson. Because the body that conducted the trials was composed as a court martial, operated as a court martial, and was referred to as a court martial by Jackson, as well as President James Monroe and Secretary of State John Quincy Adams, critics argued that it was in fact a court martial. As such, its jurisdiction was limited in accordance with the federal statute. The tribunal had no lawful jurisdiction, so the proceedings were invalid and the executions illegal.9

A second legal concern with the Arbuthnot/Ambrister trials was that the court ignored normal rules of evidence, resulting in proceedings that some claimed were devoid of proper legal process. Critics argued that, like civil cases, military proceedings had to adhere to basic principles of due process. Yet the prosecutors used hearsay evidence, while posing leading questions and questions that solicited expressions of opinion rather than facts. Making the process even more suspect was the introduction of hearsay evidence from Indians, who would not have been

treated as competent witnesses in most American courts. Furthermore, Arbuthnot was denied the right to call Ambrister as a witness, and the court inappropriately admitted as evidence certain letters ascribed to Arbuthnot, without proof that he was the author. Additionally, critics alleged, the testimony of William Hambley and Peter Cook, the principal witnesses against the men, was unreliable because of their bias against Arbuthnot. As Representative Joseph Hopkinson of Pennsylvania concluded, “[t]wo lives have been sacrificed, on evidence that would not have been listened to in the most petty court of our country, trying the veriest wretch in our community, on the most petty accusation.”

Jackson’s detractors also complained that the proceedings failed to satisfy due process requirements because they were governed by the will of one man. Contrary to the normal separation of roles in a legal process, Jackson controlled every aspect of the proceedings, including determining the rules, bringing the charges, choosing the judges, appointing the prosecutor, assessing the appropriateness of the sentence, and enforcing the punishment. The *New-England Palladium* identified the key question: whether the Arbuthnot/Ambrister trials were “such as our republican systems require—whether it is consistent with American principles that one man should possess such power over human life.” Crowning his exclusive control of the trial proceedings, Jackson then denied the defendants any right of appeal. Why, critics asked, did he carry out the capital punishment with such “indecent haste”? Would it not have been a good idea to obtain President Monroe’s input in such an unusual and

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10. Ibid., 517–18 (House Committee Report), 817–18 (Mercer), 1067 (Reed), 892 (Hopkinson); “Political, From the Union,” Dedham (MA) *Gazette*, Dec. 18, 1818; “Arbuthnot and Ambrister,” *Columbian Centinel* (Boston, MA), Dec. 19, 1818; Letter to the Editor from Algernon Sidney, “General Jackson,” *Richmond Enquirer*, reprinted in *Northern Whig*, Jan. 12, 1819. On the lack of credible evidence, see also the allegations in the memorial of Robert Ambrister’s father. James Ambrister—who had lived in South Carolina until leaving for the Bahamas with other Tories at the end of American Revolution—referred to the proceedings as a “flagitious mockery of justice” and called for a royal inquiry. James Ambrister to Governor of the Bahama Islands, June 29, 1818, printed in “Arbuthnot and Ambrister,” *New-England Palladium* (Boston), Sept. 29, 1818. Most critics of Jackson presumed that a court martial had to follow the same rules of evidence that governed regular civil courts (House Committee Report, Cobb, Mercer) or criminal courts (Reed). *Annals of Congress*, 517–18 (House Committee Report), 585 (Cobb), 818 (Mercer), and 1067 (Reed).
sensitive case with its potential international repercussions? Beyond the demands of prudent policy, there was another reason for referring the case to the president: The federal statute governing courts martial required that sentences be submitted to presidential review before being implemented. Instead, Jackson quickly went ahead with the executions.\(^\text{11}\)

Critics also argued that the executions violated the laws of war, which were an acknowledged part of the law of nations governing international relations. Specifically, they asserted, the laws of war did not authorize Jackson to kill prisoners under the existing circumstances. The Baltimore Telegraph noted that it had never heard of the doctrine by which Jackson

justified his action. “We should like to know where the general finds such a law or such a principle,” the newspaper stated. Likewise the New York *Daily Advertiser* bluntly declared, “We know of no law of war, of nations, or of civilized society, that justifies, or even excuses, the destruction of the life of a prisoner of war,” and the *Massachusetts Spy* criticized Jackson for trying to justify the executions “by broaching a new principle in the law of nations” by claiming that it was customary practice. In fact, the newspapers pointed out, Jackson misstated the laws of war. Killing prisoners was legally justified only when required for the safety of the army. But the goals of the war against the Seminoles had already been achieved prior to the executions of the two men on April 29—as evidenced by Jackson’s own pronouncements in his correspondence of April 20 and 26. Any threat that the two men may have posed to American soldiers or to the United States had been eliminated by their confinement; their execution was thus unnecessary and unlawful since it neither enhanced the safety of the soldiers nor furthered the goals of the war.12

Critics next alleged that Jackson violated the U.S. Constitution when he executed Arbuthnot and Ambrister. Even when the laws of war justified taking the life of prisoners in retaliation or as punishment to deter further war crimes by a barbaric enemy, the Constitution authorized Congress, not commanding generals, to provide for such executions. Because Article I, section 8 of the Constitution gave Congress the power to declare war and the power to prescribe punishments for violations of the law of nations, a general could retaliate for an enemy’s savage acts or punish a war crime only if Congress authorized such action. By executing Arbuthnot and Ambrister for alleged violations of the law of nations—in the absence of any federal statute permitting such punishment—Jackson had violated the Constitution.13


13. Congressmen explicitly denying a general’s right to execute prisoners included Thomas Williams and James Johnson, ibid., 1097 and 627–28. Asserting
A final concern was that Jackson had overstretched his power and violated basic legal principles when he changed Ambrister’s punishment to death. Citing Alexander Macomb’s book on martial law, the Richmond Enquirer asserted that, by uniform practice, while a general or a president could choose to pardon someone convicted by court martial, he could not impose a harsher punishment than that determined by the court. The Boston Intelligencer expressed a similar view, concluding that when Jackson ordered Ambrister’s execution he arbitrarily violated both the laws of nations and U.S. law. The Massachusetts Spy was more blunt: Altering Ambrister’s punishment was the “most arrogant assumption of power which our country has ever witnessed”; it even “amounted to the crime of murder.” Several members of Congress agreed with the newspapers’ position, while others argued that, even if Jackson had the right to execute the men without any trial, he waived that right when he submitted the matter to the military tribunal. He could not later change the sentence that the court imposed on Ambrister. Once Jackson submitted the matter to a court martial, the executions could no longer be justified as retaliation. The Senate Committee Report accused Jackson of substituting “his own arbitrary will” for the sentence of the court martial.14

These criticisms reflected a deep concern about what was perceived as Jackson’s dangerous disrespect for law. Speaker of the House Henry Clay took the lead in a lengthy speech that touched on almost every argument made by Jackson’s critics, while expressing particular concern about rule of law. “However guilty these men were,” Clay proclaimed, “they should not have been condemned or executed without the authority of the law,” and he delineated the general principles that “No man could be executed in this free country without two things being shown;

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1st. That the law condemns him to death; and, 2dly, That his death is pronounced by that tribunal which is authorized by the law to try him. These principles would reach every man’s case, native or foreigner, citizen or alien,” were applicable to wartime as well as peacetime, and protected prisoners of war. “The instant quarters are granted to a prisoner,” Clay said, “the majesty of the law surrounds and sustains him, and he cannot lawfully be punished with death, without the concurrence of the two circumstances just insisted upon.” Allowing a general to have “absolute power of life and death, at his sole discretion,” would be “contrary to the genius of all our laws and institutions”; giving one individual the power “to make the rule, to judge, and to execute the rule, or to judge and execute the rule only, was utterly irreconcilable with every principle of free Government, and was the very definition of tyranny itself.” Clay added that it was inconsistent with law and ethics to justify Jackson’s actions by asserting that he had done the right thing but in the wrong way, as Jackson’s supporters contended. “It is not always just,” Clay warned, “to do what may be advantageous.”

Other congressmen agreed. Representative John Tyler explicitly reminded the House of the importance of the rule of law. “We live in a land where the only rule of our conduct is the law,” he proclaimed, and “these proceedings have taken place in the absence of all law.” Likewise, Joseph Hopkinson characterized the proceedings as “the most solemn mockery of all the principles of justice; the most daring outrage upon all the guards of liberty and life, that have ever come to my knowledge.” Henry R. Storrs of Connecticut maintained that the “proceedings are contrary to all those safeguards which the municipal law has provided for the security of personal liberty,” and Virginia Representative Charles F. Mercer concluded that the executions were “a stain on the records of the judicial proceedings of this nation.” The Senate committee, too, expressed concern about the ways in which the trials and punishments of Arbuthnot and Ambrister failed to follow “the usual and accustomed forms,” warning that, in capital cases particularly, a “strict adherence to form” is “the best security against oppression and injustice.”

15. Ibid., 631–55 (Clay’s speech), quotations at 647, 645, and 643.
16. Ibid., 934 (Tyler), 892 (Hopkinson), 752 (Storrs), 645 (Clay), 819 (Mercer). The Senate committee did not elaborate on the specific ways in which Jackson had failed to follow the usual forms of justice. Ibid., 268 (Senate Committee Report).
The press likewise expressed concern about Jackson’s disrespect for law in executing Arbuthnot and Ambrister. Noting that Jackson had misstated the laws of war and committed “an outrage upon the laws of nations,” the Massachusetts Spy concluded that the general was “either very ignorant or very regardless of all laws.” Finding no source for Jackson’s asserted justification in the laws of war, the Baltimore Telegraph declared sarcastically, “We suppose, however, he is the maker of his own laws.” Critics expressed outrage that an American officer could display such disregard for legal process. How could it be, one paper asked, that “in a country which boasts of being the only free country under heaven—the only country where righteous laws are administered with an impartial hand—the subject of a nation with whom we are at peace—taken in the territory of a nation with whom we are not at war, is dragged before an exasperated tribunal of military chiefs; and, not merely upon the testimony of a rooted foe, but upon what such a foe had heard from other foes, is condemned unheard, and hurried to the gallows without respite.” In the Richmond Enquirer, “Algernon Sidney” summed up the common view among the critics when he concluded that the executions were “an act of barbarity glossed over with the forms of justice.”

Naturally, Andrew Jackson’s supporters took a very different view of the executions. They summarily dismissed the due process arguments as irrelevant and inapplicable, while not actually countering those arguments on the merits. The asserted procedural requirements and jurisdictional limitations, they argued, simply did not pertain to Arbuthnot and Ambrister for two reasons. In the first place, the two men did not fall under the protective umbrella of the U.S. Constitution or federal statutes but instead were covered only by the law of nations. Moreover, under the law of nations Arbuthnot and Ambrister were not entitled to protections as prisoners of war because they had committed crimes in violation of the rules of war.

The first contention, according to Jackson’s allies, derived from the fact that Arbuthnot and Ambrister enjoyed no entitlements under the U.S. Constitution or laws because they were noncitizens who were out-

side of U.S. territory. The Constitution distributed authority among the branches of government but nowhere took the power of punishment away from commanding generals. Jackson thus had not violated the Constitution. Pro-Jackson forces further noted that the Arbuthnot/Ambrister trial proceedings were not subject to federal statutory requirements because they were neither courts martial nor civil court trials. Even though the court that tried the two men may have appeared to have been a court martial, it was in fact a special court of inquiry charged to investigate, record evidence, and advise the general, but not to reach a verdict and a sentence. Because it was not a statutorily defined court martial, it thus had no specifically mandated procedures, nor was it required to adhere to strict rules of evidence. The court’s jurisdiction, moreover, was not limited to U.S. soldiers and officers, its findings and recommendations were not binding on the commanding general, and there was no obligation to delay sentences of execution pending presidential review. Jackson’s advocates claimed that a general’s authority over prisoners like Arbuthnot and Ambrister was not regulated by U.S. legislation, but instead was governed by the law of nations.18

Jackson’s defenders then moved on to the second stage of their argument: that the pertinent component of the law of nations—the laws of war—did not actually provide any procedural guarantees to these two British men. Their illegal actions had removed them from the protections of the laws of war, so they were not entitled to be treated as prisoners of war. Normally, Europeans could rely on the safeguards offered by the law of nations, but, as Jackson himself contended, Arbuthnot and Ambrister were “outlaws.” He felt justified in altering Ambrister’s punishment because, as he stated in his execution order of April 29: “It is an established principle of the laws of nations that any individual of a nation making war against the citizens of another nation, they being at peace, forfeits his allegiance, and becomes an outlaw and pirate. This is the case of Robert C. Ambrister.” Two years later, Jackson’s “Memorial” to the Senate labeled both men outlaws and asserted that they were “principals in an unlawful war” that was carried on “in open violation of the laws of

18. *Annals of Congress*, 845–46 (George F. Strother), 685–96 (Alexander Smyth), 734–36 (James Tallmadge, Jr.), 904 (Richard C. Anderson), 1047–51 (Henry Baldwin), 663–64 and 669 (Richard M. Johnson), 707 (Francis Jones), 775–79 (James Barbour), 981 (George Poindexter), and 1096–97 (Joseph Desha).
war and of nations.” The “Memorial” concluded that “[a]s associates of savages, who respected none of the laws of civilized warfare,” Arbuthnot and Ambrister “could not claim the benefit or protection of those laws, for they were not parties. They were as much outlaws to all its provisions, as a pirate on the ocean.” President Monroe and Secretary of State Adams—who played a major role in crafting the administration’s official response to Jackson’s actions—made a similar argument in their letters and speeches: As allies of Indians, Arbuthnot and Ambrister were not entitled to the usual protections afforded to prisoners of war.19

Many newspapers and congressmen agreed that Arbuthnot and Ambrister had placed themselves outside of the shield of law and had become “enemies of the human race, without a country.” When foreigners allied themselves with Indians, Jackson’s defenders argued, they effectively surrendered their national identity and became “out-laws.” Commenting on the executions, the newspapers and congressmen back-

19. General Orders of Major General Andrew Jackson, Apr. 29, 1818, printed in American State Papers: Military Affairs, 1: 734; and Memorial of Andrew Jackson to the United States Senate [presumed to have been written by John Overton], presented Feb. 23, 1820, printed in American State Papers: Military Affairs, 1: 754–60 (see especially 757); President James Monroe, Second Annual Message to Congress, Nov. 16, 1818, in The Writings of James Monroe, ed. Stanislaus Murray Hamilton (7 vols., New York, 1898–1903), 6: 75–83, esp. 77; Secretary of State John Quincy Adams to Minister Plenipotentiary to Spain, George W. Erving, Nov. 28, 1818, American State Papers: Foreign Relations, 4: 539–45. In his second annual message to Congress, delivered in November 1818, Monroe lamented the presence of “lawless” British adventurers in Florida, blaming them for the Seminole War. “Men who . . . connect themselves with savage communities and stimulate them to war,” he said, “would certainly have no claim to an immunity from the punishment which, according to the rules of warfare practiced by the savages, might justly be inflicted on the savages themselves.” Adams also assertively defended the administration’s position, arguing that “as accomplices of the savages,” Arbuthnot and Ambrister could have been executed without any trial at all under the “lawful and ordinary usages of war.”

Although this article focuses on the public debate about the executions, it should be noted that many politicians also expressed their views privately. Heidler and Heidler have thoroughly studied the private correspondence of the major figures involved in the Seminole War. Included in that correspondence are some references to Arbuthnot and Ambrister. The opinions expressed in the letters replicate the arguments made publicly in the newspapers and congressional debate. Heidler and Heidler, Old Hickory’s War.
ing Jackson expressed similar sentiments: By allying with “savages” the two men “forfeited the rights of civilized men” and put themselves “beyond the pale of civilized warfare” and “civilized society.” Their actions had moved them “out of the protection of the law of civilized warfare,” “of the law of nations,” even “of all laws and institutions of civilized man.” Arbuthnot and Ambrister had become “men whom no laws could restrain, and therefore men whom no law will protect.” If captured, therefore, they were not entitled to the rights of prisoners of war, had no right to trial, were subject to the death penalty, and could be executed as soon as they were captured.20

20. The quotations are from the following: Resolution Approving the Conduct of Major General Andrew Jackson by the House of Representatives and Senate of Mississippi, printed in Alabama Courier (Claiborne, AL), Mar. 19, 1819; “Arbuthnot and Ambrister,” Eastern Argus (Portland, ME), Dec. 22, 1818; Mississippi State Gazette (Natchez, MS), June 6, 1818, subsequently reprinted in the Savannah (GA) Republican, July 16, 1818 and then in The Times (London), Sept. 3, 1818; Annals of Congress, 1041 (Baldwin); Junius Brutus, “General Jackson,” National Advocate (New York), Jan. 16, 1819; “Foreign Emissaries,” Baltimore (MD) Patriot, June 11, 1818, reprinted in The Times, July 17, 1818; Annals of Congress, 860 (John Rhea); and “Arbuthnot and Ambrister,” Eastern Argus (Portland, ME), Dec. 22, 1818. Accepting that Arbuthnot and Ambrister had no right to treatment as civilized soldiers or prisoners of war under the rules of war, pro-Jackson commentators consigned the two men to various alternative categories—not only “outlaws” but also “pirates,” “ruffians,” “Indians,” “savages,” or “wild beasts”—all of which came with undefined, but certainly limited, rights under law. Some argued that they were worse than savages, because they had grown up in a civilized environment. Annals of Congress, 707 (Jones), 1041 (Baldwin), 846–47 (Strother), 685, 690, and 694–95 (Smyth), 613 (John Holmes), 667 (R. Johnson), and 732 (Tallmadge); “Jackson’s Justification,” Albany Argus, Jan. 5, 1819; “Indians,” National Advocate, July 3, 1818; Wyoming, “Arbuthnot and Ambrister,” New York Columbian, reprinted in Hampden Patriot (Springfield, MA), Jan. 7, 1819; Themistocles, “To the Honorable Henry Clay, Speaker of the House of Representatives,” National Register, reprinted in Hampden Patriot (Springfield, MA), Mar. 11, 1819; “Arbuthnot and Ambrister,” Maryland Censor (Baltimore), reprinted in National Advocate, Dec. 19, 1818. Other state legislatures debating Jackson’s conduct in the Seminole War included Pennsylvania, Alabama, and Louisiana. Like Mississippi, the Pennsylvania House of Representatives adopted a resolution approving of Jackson’s actions and of Congress’s decision not to censure him; the Pennsylvania resolution did not specifically mention the executions. Soon after Alabama was admitted as a state in December of 1819, its legislature endorsed Jackson’s conduct in the war. In Louisiana, the state House of Represen-
Jackson’s allies did not venture beyond generalized statements by offering a systematic legal argument for excluding Arbuthnot and Ambrister from the protections of law. Some implied that the men could be executed simply because their allies, the Seminoles, could also, because the law of nations allowed Americans to treat enemies as they treated Americans. Because Indians put prisoners to death, they claimed (aggregating all “Indians” into a single category), Americans were entitled to put Seminole prisoners and their allies to death in retaliation. But more often such commentators were content to aver that no law at all protected the two men because they themselves had acted illegally, without being explicit about what made them outlaws.

Alexander Smyth was, however, an exception. During the House debate, the Virginia congressman offered the most detailed explanation of how the basic principles of the rules of war pertained to Arbuthnot and Ambrister, using treatises written by jurists Vattel and Martens. The laws of war, Smyth asserted, allowed a commanding general to execute prisoners who had violated the usages of war, by committing “crimes” such as making unlawful war, making war without authority, and “using means contrary to the laws of war.” Unlawful war, Smyth explained, included any war commenced by individuals who were not a sovereign power. Indians could not constitute a power that could lawfully make war against the United States because they were not a foreign, sovereign nation; rather they were subjects of the United States. Thus any war waged by Indians was unlawful under the law of nations, and anyone who fought with such Indians was committing a war crime. As for making war without authority, Smyth noted that only a national government could authorize war against another nation, and it was lawful for a man to fight for a foreign power only if that power was a real nation. If someone from one nation waged war against another nation without authority from his own sovereign, and not in the service of another nation, he was
making war without authority. Moreover, Arbuthnot and Ambrister were “using means contrary to the laws of war,” according to the congressman, by “exciting savages to war,” and he supported his contention by quoting the U.S. commissioners to the Treaty of Ghent, who stated that “the employment of savages, whose known rule of warfare is the indiscriminate torture and butchery of women, children, and prisoners, is, itself, a departure from the principles of humanity observed between all civilized Christian nations, even in war.” Inciting such activities violated the rules of war. These three criminal acts, Smyth said, removed the two Britons from the protections of the rules of war and justified their execution: They had engaged in an unlawful war because it was not being waged by a sovereign power and had no just cause; they had fought as rogue individuals without authorization from (and contrary to the alliances of) their own government in the service of the Seminoles, a group of “banditti” who were not a sovereign nation and could not lawfully declare war on the United States; and because they conducted the war by inciting “savage” people to fight they contradicted the rules of war. Having committed war crimes, the men were outlaws and were lawfully executed.21

21. *Annals of Congress*, 684–89 (Smyth, citing Vattel, *Law of Nations*, 151–52, 282, 296–97, 321–22, 340, 365–67, 391, and Georg Friedrich von Martens, *Summary of the Law of Nations Founded on the Treaties and Customs of the Modern Nations of Europe* (Philadelphia, 1795; translation of *Precis du droit des gens modernes de l’Europe*, 1789), 238, 269, 272, 279–80, 283–85, 388). Although noting that both Arbuthnot and Ambrister were punished for their own war crimes, Smyth also described how the principle of retaliation could have justified their executions. He explained that, based on the right of self-preservation, a nation could use as much force and impose as severe punishment as was necessary to deter an enemy from robbing and massacring the nation’s citizens. Punishment of the enemy that has violated the rules of war could include execution of innocent enemy prisoners. “Whenever the enemy sets us the example of departing from the laws of war,” Smyth claimed, “we are at liberty to follow it.” A nation is not obligated to protect the lives of prisoners or otherwise to adhere to the rules of war if the enemy fails to follow those rules. More specifically, a nation need not abide by the usual rules of war when responding to “the unprovoked and atrocious hostilities of savages.” Finally, Smyth concluded, it is up to the commanding general (not the legislature or the courts) to decide when retaliation is warranted and to put it into effect. Therefore, the principle of retaliation could lawfully have justified Jackson in executing Arbuthnot and Ambrister, though in actuality both men were executed for their own crimes, not by way of retaliation for the crimes
Jackson’s allies derided their opponents’ arguments as narrowly legalistic, and despite their support for Smyth’s legal arguments, they generally adopted aggressive antilegalist positions. They scorned Jackson’s critics for their overreliance on law as the foundation of their arguments, challenged the relevance of law to frontier conflicts involving people who ignored legal restraints themselves, and suggested that only a weak nation would allow itself to be constrained by international legal customs. The lawyers’ arguments against Jackson they labeled deceptive and artificial. Several essays, for example, drew on antilawyer sentiment in disparaging the criticisms of “Algernon Sidney.” One asserted that in Sidney’s essay “[e]very offence is exaggerated with the keen malignity of an experienced lawyer,” while another ridiculed him as “wordy, law-quoting, wire-dancing, net-weaving.”

Defenders of Jackson’s conduct considered procedural nitpicking by lawyers as particularly unsuited to the military context. Military officers needed—and had always asserted—discretion in dealing with prisoners and should not be constrained by legal technicalities, because this would mean going “to war on unequal terms, with our hands tied.” Pro-Jackson voices offered examples of officers exercising their discretion in the past, relying especially on analogies between the Seminole War and the American Revolution, and in particular invoking parallels between George Washington and Jackson to show that military power was safe in the latter’s hands. A number of congressmen pointed to similarities between Jackson’s treatment of Arbuthnot and Ambrister and Washington’s handling of John André and Charles Asgill, as well as broader similarities between Jackson’s interpretation of the rules of war during hostilities with the Seminoles and Washington’s approach to dealing with the Iroquois. Jackson, they asserted, was following in Washington’s footsteps.
In the weeks leading up to the congressional debate, some newspaper commentators argued that Jackson’s actions should be judged by their outcome rather than their adherence to procedural rules. Defenders of the executions maintained that because the end result was correct, the details of the process were less important. A *National Advocate* essay by “Junius Brutus” rejected the notion that jurists’ treatises determined the

on the ground that there was no comparison between the United States and the Seminoles—because the United States was a nation acting lawfully—Jackson’s backers denied that there was any analogy between Ambrister and Arbuthnot and foreign fighters in the American Revolution. See, for example, “Communication,” Boston *Patriot and Daily Chronicle*, Feb. 11, 1819.


Historian John William Ward provides a good analysis of how Jackson’s friends dealt with accusations that he was a dangerous American Napoleon, a man governed by his own will rather than by law. Ward explains that comparing Jackson to Washington was a common way of countering such fears. Ward, *Andrew Jackson: Symbol for an Age* (New York, 1955), ch. 10. Historian Matthew Warshauer has also found many examples of Jackson and Jacksonians comparing the general to George Washington—as well as examples of Jackson’s opponents denying that Jackson was at all like Washington. Matthew Warshauer, “Andrew Jackson as a ‘Military Chieftain,’ in the 1824 and 1828 Presidential Elections: The Ramifications of Martial Law on American Republicanism,” *Tennessee Historical Quarterly* 57, no. 1 (1998), 4–23, 8–10 and 14; and Warshauer, *Andrew Jackson and the Politics of Martial Law: Nationalism, Civil Liberties, and Partisanship* (Knoxville, TN, 2006), 66.
legality of Jackson’s actions; the general should be judged by common sense and reason rather than abstract principles of legal philosophy. The Eastern Argus approved of Jackson’s determination that “[t]he forms of law . . . should not stand in the way of public justice and national policy,” and the New York Advocate thought that Arbuthnot and Ambrister “deserved their fate, whether they were legally executed or not.” Likewise, a widely published March 1819 essay, “Strictures on Mr. Lacock’s Report on the Seminole War,” which responded critically to the Senate Committee Report, dismissed legalistic criticisms of Jackson. If Arbuthnot and Ambrister were guilty of the crimes, and Jackson had the right to punish them, then “what object have we in cavilling at the mode of their trial?” the author asked, adding that even if there were procedural errors, it did not change the fact that the men were guilty and deserved to be put to death. Strict due process was unnecessary.24

During the House debate, congressmen likewise condemned overly legalistic criticisms of Jackson. The general should be judged by the overall justice and practical benefits of his actions rather than on minor legal technicalities. Representative Henry Baldwin expressed this view vociferously, pointing out that sometimes a general is justified in disobeying the law. He referred admiringly to the War of 1812, where Jackson ensured the safety of New Orleans by proclaiming martial law and refusing to obey habeas corpus writs: “In the hour of danger,” Jackson had “dared to violate the laws.” Similarly, according to Baldwin, nobody should be second-guessing Jackson’s decisions by examining every little detail of the legal proceedings in the cases of Arbuthnot and Ambrister: “[T]his nation,” he asserted, “ought not to be agitated by an inquiry whether their execution was according to the strict and technical forms of law.” Richard M. Johnson, a Kentucky representative (and future vice president), responded similarly to the criticism that Jackson had categorized the men as outlaws and pirates: “[W]e are not here,” he proclaimed, “to inquire whether General Jackson used technical terms, but whether he did substantially and legally right.” He concluded that the

two British men were guilty, they deserved the death penalty, and Americans were better off for it. Representative John Holmes summed up the argument: Even if the trial by court martial was illegal, he said, the end result was right.25

Jackson’s critics, however, vigorously disputed the arguments in defense of the executions. Some questioned the claim that executing prisoners was warranted as retaliation, pointing out that the Florida Indians had been badly treated and might have had good cause to take up arms against Americans. If their actions were justified, then so were those of Arbuthnot and Ambrister. A month before the start of the congressional debate, the editors of the Massachusetts Spy pointed out that if “it appears, that, in consequence of our invasion of their territory, pillaging their castle, and murdering their inhabitants, they were driven to forcible measures in self-defence, however uncivilized may be their mode of warfare, it does not lie in our mouths to complain of it.” The article continued with an analogy: “It would be but a ridiculous complaint in a highwayman, who, failing in his nefarious design, should have his ears cut off, or his eyes torn out, by the person he attempted to rob, that the laws did not authorize this mode of punishment—the reply would be, do justice yourself before you require it at the hands of others.” In short, in taking up arms the Indians in Florida were simply responding to “atrocities and encroachments” by whites. Because the Seminoles and Creeks had a right to defend themselves, Arbuthnot and Ambrister were “clearly justified in assisting them to do it.” The two British men committed no

25. *Annals of Congress*, 1051 and 1044–46 (Baldwin), 664 (R. Johnson), and 613 (Holmes), quotations at 1051, 1044, 664, respectively. Although Baldwin applauded Jackson’s decisive conduct in New Orleans, others criticized Jackson for such actions as imprisoning men without charges and arresting people who disagreed with him. Among those in the latter category was Louisiana state senator Louis Louaillier, who was tried by a military tribunal despite the fact that he was a civilian; even after Louaillier was acquitted Jackson refused to release him from prison. Jackson even arrested Dominick Hall, the federal district judge who had issued a writ of habeas corpus in response to Louaillier’s petition. Additionally, some were appalled that Jackson had executed six soldiers for mutiny during the Creek war. However, delighted by Jackson’s dramatic military victories, many Americans, like Baldwin, brushed aside the past complaints of abuse of power and focused on his glorious accomplishments. On the reaction to Jackson’s declaring martial law in New Orleans a few years before the First Seminole War, see Matthew Warshauer, *Andrew Jackson and the Politics of Martial Law*. 
crimes in befriending the Indians. Rather, they were acting humanely and generously in helping ignorant, weak people to assert their rights under Article 9 of the Treaty of Ghent, rights which the British government had pledged to protect.  

Critics of the executions also rejected the idea that Arbuthnot and Ambrister were “outlaws.” They contested as a “dangerous doctrine” that was baseless, even preposterous, Jackson’s argument that a citizen of a neutral nation who participated in military action against the United States forfeited protections of law. If Jackson’s doctrine were true, the Massachusetts Spy asked, “how is it, that in every war which has happened for twenty years past, neutral subjects have been suffered with impunity to enlist in the cause of belligerents?” The Baltimore Telegraph could find no concept of an “outlaw” in American law. Even England had long ago abandoned the idea that someone who has been declared an outlaw could be entirely unprotected by law and “may be knocked on the head like a wolf by any one that should meet him.” Moreover, the House Committee Report noted, even where law did recognize outlaws, it only applied to the relationship of a person with his own government. Henry Clay and others argued that foreigners who joined forces with an enemy should be treated the same as the enemy’s own soldiers. As shown by their customary treatment in previous wars, such men were not outside the laws of war.

Finally, critics pointed out that Arbuthnot was a civilian simply trading normal goods with Indians and acting as a friend to his customers; when he was captured he was unarmed. Meanwhile, Ambrister was just helping the Indians defend themselves. Neither had violated the rules of war by participating in savage acts. Opponents of the executions compared Ambrister’s status to that of the Marquis de Lafayette and other foreigners who had fought for the United States during the American Revolution without endorsement by their sovereigns. As the Dedham

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Gazette pointed out, had any foreign supporter of the Revolution “been taken prisoner and ignominiously executed for having intermeddled with us, exciting us to hostilities, and leading us in battle, the whole civilized world would have cried Shame! at the outrage.” In short, neither Arbuthnot nor Ambrister’s actions took them outside the rule of law. Consequently, if the two Britons were combatants at all, they were lawful combatants allied to a nation at war with the United States and thereby entitled to be classified as prisoners of war, with all the protections normally afforded to them. Jackson’s opponents condemned the executions as gratuitously cruel, unconscionable, and unlawful.28

In addition to disputing legal issues, commentators also disagreed about the likely impact of the executions. Jackson’s defenders argued that the Britons’ fate served as a blunt warning to Europeans not to meddle in U.S.–Indian relations, with Andrew Jackson himself expressing the hope that “the execution of these two unprincipled villains will prove an awful example to the world and convince the Government of Great Britain, as well as her subjects, that certain, though slow retribution awaits those unchristian wretches who, by false promises, delude and excite an Indian tribe to all the horrid deeds of savage war.” An essay in the Albany Register declared, “Let it be once understood that every man who is the aider or abettor of Indian warfare is to be punished with death, and we shall have fewer Indian wars.” Only by acting boldly could the United States deter European incendiaries, protect its borders, and earn respect from abroad, Jackson and his supporters argued. The general’s actions boosted the nation’s domestic image of military prowess, fortified nation-
alism and political solidarity, and strengthened the United States’ claim to full nationhood. What James Monroe expressed in the Monroe Doctrine in 1823, Jackson had already conveyed through his actions: Europeans should not intervene in the United States’ business in its own neighborhood.29

Jackson’s advocates also cautioned that condemning the executions as illegal or immoral would reinforce challenges to Indian dispossession and weaken the U.S. bargaining position with Spain, making the acquisition of Florida less likely. More broadly, passage of the resolutions would halt the spread of civilization and the progress of mankind by stifling and obstructing American expansion at a time when territorial acquisitions were important for furthering the “high destiny of this growing empire.”30

But critics worried that the events in Florida would damage the United States’ reputation for moral rectitude and humane treatment of prisoners. If the United States forfeited its “exalted character,” Henry Clay warned, the light of liberty would be dimmer around the world.31

Others expressed concern about the impact of Jackson’s doctrine on U.S. soldiers who had Indian allies by their side, as well as on Americans fighting abroad as private individuals. In late 1818, several newspapers warned that Spain could execute U.S. citizens captured while fighting in South America’s rebellions. After King Ferdinand VII ordered the death penalty for any foreigner aiding South American insurgents, the Kentucky


Reporter observed that the Monroe administration had forfeited the right to challenge future executions of Americans because it could not persuasively “object to an order founded on the very principles on which it has acted, and which it has defended to the Spanish government.”

Jackson’s critics also argued that the danger went beyond soldiers: The general’s failure to follow proper legal process made all Americans vulnerable to arbitrary proceedings. Henry Clay highlighted the threat of “military despotism” and referred to Jackson as a “military chieftain.” Excesses that started with unlimited discretion over prisoners might lead to unrestricted power over all citizens. The armed forces must be accountable to the public, Clay said, warning that if Congress praised and reinforced Jackson’s conduct, it would “be a triumph of the principle of subordination—a triumph of the military over the civil authority” and might also end up being “a triumph over the liberties of the people.” American newspapers likewise vigorously advised against acquiescing to Jackson’s dangerous abuse of power, calling on Congress to protect the nation from tyranny and to demonstrate that “the civil authority is paramount to the military.” The New-York Evening Post feared that “the military despotism of General Jackson should prove contagious, for, it was not perceived why, if he could thus triumphantly put to death, without the form of trial, prisoners of war, some other military chieftain might not consider himself justified, under particular, and what he might call, urgent circumstances, to make a similar experiment upon our own citizens.”


Yet Jackson’s supporters dismissed the critics’ warnings as insincere, self-serving, partisan rhetoric. The *Hampden Patriot* accused Henry Clay—“the great Machiavel of Kentucky”—of defending the “miscreant wretches” Arbuthnot and Ambrister solely to position himself for the 1820 presidential campaign. The article charged that Clay’s driving motivation, personal political ambition, was “veiled under the specious garb of ‘veneration for the constitution of his country, and anxiety for the unsullied honor of the nation.’” Jackson himself could be blithely dismissive about allegations that the army had excessive power. In 1818 he brushed off a state government official’s reference to “the liberty of the people prostrated at the feet of military despotism” as “cant expressions for political purposes.” But his detractors insisted they were motivated by ideology, not politics. The *Connecticut Mirror* countered allegations that Jackson’s opponents were just prompted by “party spirit,” claiming that such allegations were “disingenuous artifice” and distortions designed to squelch all criticism of Jackson. 34

The executions and the debate about them had significant consequences both internationally and domestically. Although many British people were irate about the treatment of their compatriots, government officials wanted cordial relations with the United States and knew it would be prudent to

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34. *Hampden Patriot*, July 8, 1819; “Copy of a Letter from General Jackson to Governor Rabun,” *Reflector* (Milledgeville, GA), Nov. 10, 1818; *Connecticut Journal*, Apr. 6, 1819; and “Democratic Opinions,” *Connecticut Mirror* (Hartford), Feb. 1, 1819. The context of the correspondence between Jackson and Rabun was the unauthorized destruction of a Chehaw village on Apr. 23, 1818 by Captain Obed Wright. In the text, the quoted phrase about the liberty of the people is as it was rendered by Jackson rather than as originally stated by Rabun.
dissociate themselves from Arbuthnot’s and Ambrister’s behavior. In 1818 the two countries were moving toward resolution of longstanding conflicts, and British officials were unwilling to let events in Florida hamper those discussions. Britain’s minister in Washington, Charles Bagot, refrained from any formal objection and told the American secretary of state that Arbuthnot and Ambrister were not government agents. The foreign minister, Robert Stewart (Viscount Castlereagh), also recognized that because the two men had no official status their deaths did not warrant an official protest from Britain. In January 1819, he informed Bagot that the men’s unauthorized activities in Florida “deprived them of any claim on their own Gov’t. for interfering on their behalf.” Prompted by recognition of the United States’ growing power and importance, abandonment of aspirations to hem in the U.S. geographically, a desire to protect economic ties to the United States, eagerness to foster trade with the Spanish American colonies seeking independence, and readiness for peace after years of the Napoleonic Wars, British acquiescence toward the deaths of Arbuthnot and Ambrister marked the end of their military influence with Florida’s Indians and blacks.35

Spain was outraged at Jackson’s invasion of its Florida territory and demanded that the U.S. government return its forts and disavow the general’s actions. In response, Secretary of State Adams vigorously defended Jackson, blaming Spain for its failure to prevent Indian attacks from its territory and asserting the U.S. right of self-defense. The United States did return St. Marks and Pensacola, but the Spanish knew that their hold on Florida was tenuous, and negotiations for a formal cession of the territory resulted in a treaty by February 22, 1819.36


36. Don Luis de Onís to Secretary of State John Quincy Adams, June 17, June 24, and July 8, 1818; Adams to Onís, July 23 and Nov. 30, 1818; and Adams to Minister Plenipotentiary to Spain, George W. Erving, Nov. 28, 1818, American
In the United States, Jackson’s critics were unsuccessful in their efforts to obtain congressional censure of his conduct in Florida. After discussing his actions in the Seminole War for three weeks, the House of Representatives voted on February 8, 1819, not to condemn the trials or executions. Two weeks after the House vote—and two days after John Quincy Adams and Luis de Onís signed the treaty in which Spain ceded Florida to the United States and agreed to a western U.S. boundary that extended American territory to the Pacific Ocean at the 42nd parallel—the Senate committee issued a report critical of Jackson’s behavior, but because many Americans had credited him with creating an advantageous diplomatic environment, few senators wanted to discuss censuring him while ratification of the Adams–Onís Transcontinental Treaty was pending. The Senate never debated the committee’s report.37

State Papers: Foreign Relations, 4: 495–97, 497–99, 545–46, and 539–45. For a detailed analysis of Adams’s letter to Erving, see William Earl Weeks, “John Quincy Adams’s ‘Great Gun’ and the Rhetoric of American Empire,” Diplomatic History 14 (1990), 25–42; and Weeks, John Quincy Adams and the American Global Empire, 139–46 and 160. Weeks observes that by framing the defense of Jackson in terms of “basic American myths of virtue, mission, and destiny,” Adams made it difficult for anti-Jackson challenges to succeed. Weeks, John Quincy Adams, 160. Thus Adams’s defense genuinely aided Jackson—but of course Jackson’s actions in Florida also assisted Adams politically by giving him a stronger negotiating position with Spain and thus helping the United States acquire Florida. The Transcontinental Treaty that resulted from those negotiations was an important accomplishment for the secretary of state and helped strengthen his bid for the presidency.

37. Votes on the resolutions pertaining to Arbuthnot and Ambrister took place in the House of Representatives on Feb. 8, 1819. One resolution would have disapproved of the trial and execution of Arbuthnot (lost by a vote of 108 to 62), while a separate resolution would have condemned the trial and execution of Ambrister (lost by a vote of 107 to 63). Annals of Congress, 1135–36. Earlier in the debate, Representative Thomas W. Cobb had proposed another resolution, which called for a statute prohibiting the execution of prisoners of war without the approval of the president. The Committee of the Whole rejected that resolution on Feb. 8 by a vote of 98 to 57. Ibid., 588, 1132. Another proposed resolution—also rejected by the House—would have condemned Jackson’s seizure of Spanish posts in Florida as unconstitutional. Ibid., 588, 1137–38. Tellingly, the House resolutions did not mention the summary executions of two Red Stick prisoners, Hillis Hadjo and Homathlemico, during the same war. Though neither the House nor the Senate condemned the executions of Arbuthnot and Ambrister in February 1819, Heidler and Heidler note that the War Department issued orders prohibiting generals from conducting “drumhead courts-martial of white provocateurs” in
In a treaty signed a couple of years after Spain ceded Florida, the Seminoles agreed to relocate to a four-million-acre reservation in central Florida, to give up other land claims in the territory, and to apprehend and return fugitive slaves. Southern whites thought that Jackson’s actions had made them more secure by eliminating Florida’s role as a base for Indian raids and a refuge for runaway slaves. Indeed, many Americans saw Jackson’s conduct as bringing significant benefits without any negative effects.38

Critics and defenders of the treatment of Arbuthnot and Ambrister were both right in anticipating consequences for U.S. international relations. Both sides saw that the executions would reinforce a more muscular foreign and military policy with regard to Europeans and Indians, though they disputed whether that projected a desirable or an undesirable national image. Moreover, Jackson’s supporters correctly predicted that the general’s activities in Florida would not only suppress British involvement with Indians along U.S. borders and encourage Spain to cede the Florida territory but also boost American nationalism and pave the way for territorial expansion.

The executions had consequences in international conflicts that lasted well beyond the era of the early republic. Their precedent would validate treatment of prisoners in later wars, including the twenty-first-century “war on terror.” Even the far-reaching laws and treaties of the intervening two centuries—such as the Geneva Conventions—have not completely eliminated the notion of the treatment of Arbuthnot and Ambrister as establishing a legal precedent. Indeed, as recently as 2006, supporters of President George W. Bush’s proposal to use military commissions to try Guantánamo detainees cited the Arbuthnot/Ambrister court as precedent. Jackson’s execution of two Britons in Florida after a perfunctory hearing in 1818 thus helps justify to some the circumvention

the future. Heidler and Heidler, Old Hickory’s War, 226. Furthermore, it should be noted that shortly after the Seminole War debate Congress decided to reduce the size of the army—and to cut the position held by Jackson. Statutes at Large 3: 615, signed Mar. 2, 1821.

38. Treaty with the Florida Tribes of Indians, Statutes at Large 7: 224, signed Sept. 18, 1823. In fact, the treaty did not end the conflicts between Seminoles and whites—there were two more Seminole Wars later in the nineteenth century, 1835–1842 and 1855–1858.
of normal national and international legal mandates when dealing with accused terrorists today. 39

Jackson’s actions in the Seminole War also had a significant impact on contemporary domestic politics. Already regarded as a military hero after the Battle of New Orleans, Jackson gained further admiration with the Seminole War. The public discussion about Arbuthnot and Ambrister and other issues arising from the war brought heightened attention to the general and provided an occasion for debating core American values. Jackson’s popularity soared, eventually propelling him to the White House.40

39. Briefs to the U.S. Supreme Court and to the Circuit Court of Appeals cited the Arbuthnot/Ambrister tribunal to justify using a military commission to try Salim Ahmed Hamdan, a citizen of Yemen captured during the 2002 invasion of Afghanistan. Because Hamdan was a foreigner allegedly fighting with an irregular force rather than a recognized national army, he was branded an unlawful enemy combatant and denied rights as a prisoner of war. The United States accused Hamdan of conspiring to commit hostile acts and providing material support to terrorism and proposed to try him before a military tribunal that would not have offered the same procedural protections as an ordinary civil trial or a formal court martial. Of course, there are many important factual and legal differences between Hamdan’s situation and Arbuthnot and Ambrister’s, but that has not stopped people from citing the 1818 cases as precedent. See Amicus Curiae Brief of Citizens for the Common Defence (in support of the government’s position before the U.S. Supreme Court), Feb. 23, 2006, 8–10. Denying the precedential value of the trials of Arbuthnot and Ambrister was the Amicus Curiae Brief of Louis Fisher (in support of Hamdan), Jan. 6, 2006. Fisher notes that the government itself also used the Arbuthnot and Ambrister trials as precedent in their Brief for Appellants to the Court of Appeals for the District of Columbia Circuit. The Supreme Court’s ruling in the case on June 29, 2006, did not mention the Seminole War trials. *Hamdan v. Rumsfeld*, 548 U.S. 557, 126 S. Ct. 2749 (2006). On the history of military commissions, see Louis Fisher, *Military Tribunals and Presidential Power: American Revolution to the War on Terrorism* (Lawrence, KS, 2005).

40. Although the events and debates of 1818–1819 advanced Jackson’s political career, commentators’ assessments of the executions were not merely political postures of convenience. Underneath calculations of self-interest lay principled ideological divisions and genuine differences in outlook and mentality. In 1819, men also differed sharply on other issues. Challenges to the old ideas of Federalism were evident in the reaction against the Bank of the United States, which was blamed for the Panic of 1819, as well as in the reaction against Chief Justice John Marshall’s Supreme Court decisions that supported a strong national government with expansive powers (*McCulloch v. Maryland*) and respect for property rights...
The dispute about Arbuthnot and Ambrister can also be seen within the context of an emergent challenge to older American ideology, as new attitudes replaced Revolutionary-era values, Federalist principles, and Jeffersonian vision. Jackson cared less about protecting prisoners of war than his predecessors, and while early presidential administrations had respected tribal sovereignty and largely eschewed military expeditions against Native peoples, Jackson favored more aggressive tactics. Finally, Jackson scorned Federalist resistance to expansion and pushed the nation to a new vision of its territorial destiny. This shift, of course, correlates with changes in the relative power of the United States, Indian tribes, and European powers.41

The Jacksonian position on two other issues—military power and rule of law—reflected a more startling change in national values that did not just respond to altered external conditions. Matthew Warshauer describes this new rhetoric on power in studying the political reaction to Jackson’s conduct during the War of 1812. Although Jefferson and other leaders of the Revolutionary generation were deeply anxious that standing armies and abuse of power threatened liberty, Warshauer shows that many Americans no longer emphasized such concerns three decades after independence. He sees this shift in republican values as evidenced by Jackson’s enormous popularity in 1815 despite his repressive actions in New Orleans. Jacksonians not only rejected the Revolutionary-era idea that power was an inherent threat to liberty but argued “that power protected liberty and a military commander, the embodiment of power, was best suited to defend the nation’s liberties.” Likewise, during the

against state interference (the Dartmouth College case). Moreover, the future sectional divide over slavery was manifest in 1819–1820 debates about the admission of Missouri to the Union. Just as it would be a mistake to brand as “mere partisanship” the strong statements made on these political disputes about the authority of the federal government, states’ rights, and slavery, it would be wrong to presume that there were no principled differences underlying the discussion about the Arbuthnot/Ambrister executions.

Seminole War debate Jackson’s supporters dismissed concerns about the threat of military power undermining civil authority. By 1819, a dramatic change in values had occurred where, unlike during the Revolutionary War, the majority of political leaders and voters no longer feared the army would crush civil government.\(^42\)

Most strikingly, the Arbuthnot/Ambrister debate revealed a growing divide among Americans about law. On one side were Americans who viewed rule of law and faithfulness to systematic, orderly procedures as paramount national commitments. On the other side were those who valued natural justice and popular national goals over legal technicalities and who favored what they considered Jackson’s uncorrupted wisdom and common sense over excessive rationalism and intellectualism. The two sides were driven by very different mentalities, not just expedient political rhetoric. Jackson’s critics used legalistic arguments because they were alarmed by his disregard for law, while his defenders took an antilegalist approach because they believed the general’s goals were too important to be restrained by rigid observance of law. The first group meticulously itemized each violation of procedural rights, while the second group largely ignored procedure and focused instead on the benefits of the executions. To the first group, which valued rule of law as essential to justice and the stability of society, Jackson was simply lawless and his actions during the Seminole War were deplorable. But the stories of Arbuthnot and Ambrister resonated positively with the second group, men who, like Jackson, favored the “action” end of the law-action spectrum. They praised him as a man of strong instinctive intelligence who acted decisively to America’s advantage rather than allowing himself to be arbitrarily limited by the letter of the law.\(^43\)

\(^{42}\) Warshauer, “Andrew Jackson as a ‘Military Chieftain,’” quotations at 19; and Warshauer, Andrew Jackson and the Politics of Martial Law, ch. 2. On the Revolutionary generation’s concern about liberty versus power and about standing armies, see Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, MA, 1967, 1992), ch. 3 (liberty versus power) and 61–63 and 112–116 (standing armies).

\(^{43}\) Disagreement over the right of rebellion (such as the Whiskey Rebellion) during the 1790s and disparate contemporary interpretations of the meaning of the election of 1800 exemplified earlier conflicts between law and action. Yet even Thomas Jefferson, who had expressed support for the right of rebellion, regarded Andrew Jackson as “a dangerous man” who was insufficiently restrained by legal principles and process. Historian Sean Wilentz notes that Jefferson considered
Jackson's position on these issues soon came to dominate in American society. In the presidential election of 1828, voters swept aside concerns about military despotism and embraced Jackson's boldness as a sign of strong executive leadership. By the 1830s and 1840s, Americans enthusiastically supported expansion as a matter of "manifest destiny." Meanwhile, respect for tribal sovereignty diminished, and forced removal of Indians became the norm, while efforts to develop formal protections for prisoners of war stagnated. After the Seminole War, a strong antilegalist strain emerged in American society. During the Jacksonian-era hostility to lawyers and formal legal process was particularly strong, and conflict over the role of law in society became one of the essential elements of the clash between Democrats and Whigs. While Whigs believed in the importance of rule of law for societal stability and supported the supremacy of abstract legal principles over individual will, Jacksonians saw many statutes as artificial limitations on freedom; they perceived some transgressions as warranted resistance to arbitrary constraints, asserted the superiority of natural or divine law over man-made rules, and regarded the legal profession as corrupt and monopolistic. Law reformers of the


That Americans of the early Republic were receptive to arguments in favor of natural justice is evidenced by the popularity of James Fenimore Cooper’s 1823 novel *The Pioneers*. The final chapters of the novel recount the trial of Natty Bumppo, a "simple, unlettered" frontiersman who allegedly killed a deer illegally, then forcibly resisted the execution of a search warrant in his home and assaulted the man who tried to carry out the search. During the trial, Judge Marmaduke Temple states that he "must be governed by the law," while Bumppo maintains that "there’s no guilt in doing what’s right." As scholars of law and literature have observed, Cooper highlights the difference between Bumppo—who stands for the principle that conflicts should be governed by common sense and basic moral values—and Temple—who insists that the jury follow the letter of the law. The novel effectively illustrates early Americans’ yearning for simple popular justice, those scholars have concluded. James Fenimore Cooper, *The Pioneers; Or, The Sources of the Susquehanna* (1823, rep., New York, 1964), 329, 346, 354. For an analysis of legal ideas in James Fenimore Cooper’s novels, see Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, MA, 1984), 297–304; and Grimsted, “Rioting,” 368.
Jacksonian era demanded that legal issues be resolved not by manipulation of procedural technicalities and complex legal abstractions but by reliance on everyday understandings of right and wrong based on community values and popular will.\footnote{44}

Thus the heated dispute about Arbuthnot and Ambrister had an impact on—and revealed a lot about—domestic politics. Although many historians have emphasized Jacksonianism’s roots in class struggle, the Seminole War debate evinces the role of divergent world views in determining political affiliation. The case of the two Britons revealed a cultural rift within U.S. society in the 1810s. The executions forced people to articulate underlying values in new ways, raising the profile of ideas that later became central tenets of Jacksonianism, well before the official birth of the Democratic and Whig parties.\footnote{45}


\footnote{45} A number of historians of the Jacksonian era have emphasized how men’s class status and position on expanded male suffrage influenced their party affiliation. Most notably, see Schlesinger, Age of Jackson; Charles Sellers, The Market Revolution: Jacksonian America, 1815–1846 (New York, 1991); Robert V. Remini, “Democracy,” in The Legacy of Andrew Jackson: Essays on Democracy, Indian Removal and Slavery (Baton Rouge, LA, 1990); and Wilentz, Rise of American Democracy.