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# Appearing Unbiased About Presidential War Powers

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## ARTICLE

# APPEARING UNBIASED ABOUT PRESIDENTIAL WAR POWERS

JIDE NZELIBE\*

### ABSTRACT

*In the United States, we assume that political actors will generally tend to be biased in favor of expanding the scope of their constitutional authority. Thus, if one witnesses public officials making declarations against constitutional self-interest, it seems reasonable to give those declarations extra weight as reflecting the true scope of that official's actual constitutional authority. For instance, if President Trump disavows that he has the constitutional authority to engage in certain kinds of immigration enforcement, we assume that it must be because he really lacks that authority. Or, when President Obama insisted in 2015 that Congress had to take a greater role in any military actions against Syria, one might reasonably conjecture that it must be because his own authority to act unilaterally was genuinely constrained. In this essay, I suggest that politicians may manipulate the appearance of being unbiased about their constitutional authority in order to achieve partisan objectives. For instance, when a president disavows that he has constitutional authority to accomplish certain goals, he or she may be simply laying the foundation to constrain the authority of future presidents who may have different policy preferences. Alternatively, the president may simply be seeking to constrain executive branch authority on those particular issues in which he or she believes the political opposition have an advantage. Thus, political actors may have significant wiggle room to manipulate the appearance of not being biased about their constitutional authority in order to further partisan goals. In sum, one ought to be cautious about taking constitutional declarations against self-interest at face value.*

*A true leader is willing to go against his own kind. FDR was rich. He dumped on Wall Street. Ike was a general. He attacked the*

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*military-industrial complex. LBJ was a southerner. He voted for the Voting Rights Act . . . . The first Woman President will oppose the ERA; the first Jewish President will recognize the PLO. I'm the first old president. Social Security must go. – Jules Feiffer<sup>1</sup>*

We tend to worry about the biases of politicians when the topic is their perceived constitutional authority. And such a cautious approach makes sense. If one had read a few years ago, for instance, that a prominent Republican senator claimed that President Obama engaged in a power grab of historic proportions, we might tend to discount such information.<sup>2</sup> Correspondingly, if a Democratic politician now claims that either President Trump's use of presidential orders to shape policy or his position on his war authority is unprecedented, we might be wary.<sup>3</sup> Both sides, we might assume, have incentives to exaggerate the relevant scope of their constitutional authority. And they might also have incentives to exaggerate the extent to which those on the other side might have overstepped the bounds of their authority.

In the United States, we have a ready template for assessing what positions we think the various political actors are likely to stake out regarding presidential power. We invariably expect the logic of “institutional flip flops” to kick in and for political players to reverse instrumentally their constitutional preferences at key electoral moments.<sup>4</sup> And this belief is hardly of recent vintage in American politics. About seventy years ago, a political commentator observed:

It might be argued that either party's support for the executive depends less upon ideology than upon the question of which party's leader occupies the White House. Democrats, in other words, will support executive power as long as a Democrat is in office, but will revert to the assertion of legislative supremacy when the President is a Republican.<sup>5</sup>

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1. From a cartoon satirizing President Reagan. Jules Feiffer, *A True Leader*, [http://adambaumgoldgallery.com/feiffer\\_jules/a\\_true\\_leaderWB.jpg](http://adambaumgoldgallery.com/feiffer_jules/a_true_leaderWB.jpg); see also Robert E. Goodin, *Voting Through the Looking Glass*, 77 AMER. POL. SCI. REV. 420 (1983). Ironically, there might have been more than meets the eye in the cartoon. Take, for instance, President Johnson's own words regarding his decision to sign the Civil Rights Act of 1964: “I knew if I didn't get out in front of this issue . . . they [the liberals] would get me. They'd throw my background against me, they'd use it to prove that I was incapable of bringing unity to the land I have loved so much . . . I couldn't let that happen. I had to produce a civil rights bill that was even stronger than the one they'd have gotten if Kennedy had lived. Without this, I'd be dead before I could even begin.” R. Kent Weaver, *The Politics of Blame Avoidance*, 6 J. PUB. POL'Y 371, 376 (1986).

2. See, e.g., Senator Ted Cruz, *The Obama Administration's Unprecedented Lawlessness*, 38 HARV. J.L. & PUB. POL'Y 63 (2015).

3. See Julian Zelizer, Opinion, *Democrats are Being Hypocritical About Trump's War Powers*, CNN (Apr. 16, 2017, 1:56 PM), <https://www.cnn.com/2017/04/16/opinions/democratic-hypocrisy-on-war-power-zelizer/index.html>.

4. Eric A. Posner & Cass R. Sunstein, *Institutional Flip-Flops*, 94 TEX. L. REV. 485 (2016).

5. FRANCES E. LEE, BEYOND IDEOLOGY: POLITICS, PRINCIPLES, AND PARTISANSHIP IN THE U.S. SENATE 10 (2009).

But what if the politicians we expect to have certain biases make choices or statements that cut against the grain of their perceived constitutional biases? What if, for instance, the Obama administration announced in 2015 that its constitutional authority to engage in certain military actions in Syria was constitutionally constrained by Congress? Or if then House Speaker Boehner declared that President Obama ought to have more flexibility to engage in military actions without congressional oversight? And what if the President's co-partisans largely think his power should be constrained, but the political opposition wants it to be expanded?

These questions are hardly rhetorical. Both historical and contemporary illustrations of such constitutional reversals abound. It was President Eisenhower's fellow Republicans in the Senate, for instance, who sought to curtail the executive branch's treaty power by spearheading the Bricker Amendment, while it was Democrats in the Senate who came to Eisenhower's defense. It was congressional Republicans who fought hard to expand President Clinton's fast track authority to enter trade agreements in the 1990s, and it was President Clinton's fellow Democrats that doomed it. Similarly, President Obama's power to enter into trade agreements in recent memory was defended by Republicans, while such power came under attack from the left flank of his own party.

In the examples illustrated above, we might reasonably infer that in going against the grain of one's institutional biases, the politicians are providing valuable epistemic information about their perceived constitutional authority. Indeed, there is a rich scholarly tradition that discusses the value to voters of exploiting "Nixon Goes to China Effects,"<sup>6</sup> where we can be expected to be confident in the "truth" of a politician's statement if such a statement goes against the politician's bias.<sup>7</sup>

We do not think that such "cut against the grain" information from biased politicians might necessarily be credible because of the goodwill or superior intellectual judgment of the politician. On the contrary, we are likely to be more confident in the veracity of such claims because we think the politician would only advance such views after having exhausted her/his options to interpret their authority in a biased way. In other words, we might assume that if there was any way that President Obama could claim an expansive view of his constitutional authority during wartime, he would. And if there is any way that President Trump could interpret his authority to be as wide as possible in immigration policy, he would. Thus, we might think that having explored all plausible avenues from the White House Le-

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6. "Nixon Goes to China" refers to circumstances where politicians pursue policies that go against their type: such as when left wing-parties pursue right leaning objectives, and vice versa. See Alex Cukierman & Mariano Tommasi, *When Does It Take a Nixon to Go to China?*, 88 AMER. ECON. REV. 180 (1998).

7. See Robert E. Goodin, *The Benefits of Multiple Biased Observers*, 3 EPISTEME 166 (2006).

gal Counsel's office that could enhance his authority, the president would only announce he is constrained because he has no available interpretive options left. Similarly, if we think that then Speaker Boehner could have marshalled any plausible constitutional interpretation that would limit President Obama's wartime authority, he would. Thus, we are likely to trust him when he says that President Obama may act without congressional authorization.

But here is the challenge. Because the Nixon Goes to China logic can be used to bolster the credibility of one's public arguments about constitutional authority, it might be subject to manipulation. In what follows, I will use the debates about President Obama's war powers in 2015 during the Syrian crisis to illustrate the plausible risks to which this logic could be manipulated for political effect.

### I. A DETAILED ILLUSTRATION: PRESIDENT OBAMA'S REQUEST FOR AUTHORIZATION IN FEBRUARY 2015 AGAINST THE ISLAMIC STATE

Observers of recent war powers debates might be forgiven for believing our normal political discourse has been turned on its head. A few years ago, we witnessed what appeared to be unusually pronounced and perhaps prolonged outbreak of the Nixon Goes to China Effect. Republicans, it would appear, had become solicitous of giving more foreign affairs authority to a president they disliked. And Democrats had become more wary of extending authority to an apparently well-liked co-partisan in White House.

Take, for instance, what happened in February 2015. In seeking congressional authorization to fight the Islamic State (ISIS) in Syria and Iraq, President Obama included language constraining his authority that was not demanded by Congress. More specifically, his proposal would limit operations to three years unless Congress extended them, and it would rule out "enduring offensive ground combat operations." Thus, going against the grain of what one would expect from wartime presidents, President Obama sought to have Congress play a concrete role in managing the use of force, and also sought to expressly limit the scope of engagement by disavowing a role for ground combat troops.<sup>8</sup>

But then events took on a more interesting twist once the proposal was put before Congress: Republican legislators roundly denounced President

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8. See *Letter from the President—Authorization for the Use of United States Armed Forces in connection with the Islamic State of Iraq and the Levant*, <https://obamawhitehouse.archives.gov/the-press-office/2015/02/11/letter-president-authorization-use-united-states-armed-forces-connection>; see also *Joint Resolution to authorize the limited use of the United States Armed Forces against the Islamic State of Iraq and the Levant*, [https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf\\_02112015.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/aumf_02112015.pdf).

Obama for seeking to constrain his authority,<sup>9</sup> while his fellow Democrats in Congress criticized the same proposal for giving him too much flexibility.<sup>10</sup> Unable to muster a majority coalition from Republicans who thought

9. Press Release, Speaker Ryan's Press Office, Speaker Boehner on the President's Request for an Authorization for the Use of Military Force (Feb. 11, 2015) <http://www.speaker.gov/press-release/speaker-boehner-president-s-request-authorization-use-military-force#sthash.KnciRMfh.dpuf> (quoting John A. Boehner, Republican of Ohio: "Any authorization for the use of military force must give our military commanders the flexibility and authorities they need to succeed and protect our people. While I believe an AUMF against ISIL is important, I have concerns that the president's request does not meet this standard."); Susan Davis, *Congress Prepares to Weigh in on Battle Against Islamic State*, USA TODAY (Feb. 11, 2015), <http://www.usatoday.com/story/news/politics/2015/02/11/obama-aumf-military-force-islamic-state/23224951/> (quoting Kevin McCarthy, Republican of California: "I will not support efforts that impose undue restrictions on the U.S. military and make it harder to win."); David Weigel, *What Are 'Enduring' Combat Operations Against ISIS? Congress Has No Idea*, BLOOMBERG (Feb. 11, 2015, 10:55 AM), <http://www.bloomberg.com/politics/articles/2015-02-11/what-are-enduring-combat-operations-against-isis-congress-has-no-idea> (quoting John McCain, Republican of Arizona: "In my view, it should not constrain the president of the United States, and it should not be specific to ISIS.").

10. Carol E. Lee & Michael R. Crittenden, *Obama Asks Congress to Authorize Military Action Against Islamic State; Proposal Opens National Debate Over Scope of President's Wartime Powers*, WALL ST. J. (Feb. 11, 2015), <http://www.wsj.com/articles/obama-asks-congress-to-authorize-military-action-against-islamic-state-1423666095> (quoting Adam B. Schiff, Democrat of California: "A new authorization should place more specific limits on the use of ground troops to ensure we do not authorize another major ground war without the president coming to Congress to make the case for one."); George Zornick, *Key Democrats Worry Obama Proposal Might Lead to Open-Ended War*, NATION (Feb. 11, 2015), <http://www.thenation.com/article/democrats-push-back-obamas-vague-ineffectual-war-request/> (quoting Senator Chris Murphy: "I worry that the vague limitations on ground troops in today's draft may turn out to be no limitations at all."); Press Release, Senator Bernie Sanders's Office, Sanders Statement on War Powers Resolution (Feb. 11, 2015), <http://www.sanders.senate.gov/newsroom/press-releases/sanders-statement-on-war-powers-resolution> (quoting Bernie Sanders, Democrat of Vermont: "I oppose sending U.S. ground troops into combat in another bloody war in the Middle East. I therefore cannot support the resolution in its current form without clearer limitations on the role of U.S. combat troops."); Press Release, Senator Richard Blumenthal's Office, Blumenthal Statement on President's Proposed Resolution to Authorize Military Force Against ISIL (Feb. 11, 2015), <http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-statement-on-presidents-proposed-resolution-to-authorize-military-force-against-isil> (quoting Richard Blumenthal, Democrat of Connecticut: "There remain grave issues still to be resolved—such as clarifying restrictions against use of American combat ground troops, establishing the scope and scale of U.S. military operations, and sunseting obsolete authorities."); Scott Powers, *Local Congressmen Ready for ISIS Fight*, ORLANDO SENTINEL (Feb. 13, 2015), <http://www.orlandosentinel.com/news/politics/political-pulse/os-central-florida-lawmakers-ready-to-fight-isis-20150212-post.html> (quoting Alan Grayson, Democrat of Florida: "You just described a blank check, which I'm not willing to give the President, or anybody else."); Press Release, Representative Jim McGovern's Office, Statement of U.S. Rep. Jim McGovern (MA02) on the President's Draft AUMF (Feb. 11, 2015), <http://mcgovern.house.gov/media-center/press-releases/2015DraftAUMF>; Press Release, Senator Tammy Baldwin's Office, U.S. Senator Tammy Baldwin Statement on Administration's Proposed AUMF (Feb. 11, 2015), <http://www.baldwin.senate.gov/press-releases/baldwin-statement-on-administrations-proposed-aumf-> (quoting Tammy Baldwin, Democrat of Wisconsin: "I'm concerned that the vague language of the Administration's draft proposal may leave the door open to putting boots on the ground for combat operations and put the United States at risk of repeating the mistakes of the past and becoming bogged down in an open-ended conflict."); Barbara Boxer, *Confronting Terrorism Without Another American Ground War*, HUFFINGTON POST (Apr. 15, 2015), [http://www.huffingtonpost.com/sen-barbara-boxer/confronting-terrorism-with-ground-war\\_b\\_6680544.html](http://www.huffingtonpost.com/sen-barbara-boxer/confronting-terrorism-with-ground-war_b_6680544.html) (quoting Barbara Boxer, Democrat of California: "At best, this language is vague, overly broad

his requested authority to engage ISIS was too timid, or from Democrats who thought it was too broad, the request for authorization eventually collapsed.<sup>11</sup>

What is the reasonable bystander or voter supposed to do in this situation? What kind of inference is one supposed to draw when almost every relevant political actor seems to be staking out positions on their constitutional authority that run against the grain?

Sir James Steuart, the eighteenth-century Scottish political theorist, bemoaned the possibility of making informed policy judgments if everyone abandoned their self-interested biases. An outbreak of such high-minded behavior, he argued, could undermine the ability of leaders to govern effectively:

Were miracles wrought every day, the laws of nature would no longer be laws; and were everyone to act for the public, and neglect himself, the statesman would be bewildered . . . were a people to become quite disinterested: there would be no possibility of governing them. Everyone might consider the interest of his country in a different light, and many might join in the ruin of it, by endeavoring to promote its advantages.<sup>12</sup>

Fortunately, for Steuart and the norm of self-interest, there are good reasons to think that our political class has not been overtaken by a fit of altruism. As I shall suggest below, there are perfectly good explanations rooted in political bias and self-interest that might explain the positions staked out by the various actors in the war powers debate over the Islamic State.

The downside, however, is that politicians of all stripes might still have significant wiggle room to manipulate the appearance of not being biased to rich effect. A saving upside is that there may be ways of distinguishing those circumstances when the Nixon Goes to China Effect produces reliable epistemic information about constitutional authority from those when it does not.

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and confusing—and no one has defined the meaning of ‘enduring.’ At worst, it is a dangerous loophole that could lead to another large-scale conflict involving tens of thousands of American troops. I cannot and will not support such an AUMF.”); Jennifer Bendery, *Obama Sends Congress Draft War Authorization*, HUFFINGTON POST (Feb. 12, 2015), [http://www.huffingtonpost.com/2015/02/11/obama-aumf-congress-isis\\_n\\_6660208.html](http://www.huffingtonpost.com/2015/02/11/obama-aumf-congress-isis_n_6660208.html) (quoting Dick Durbin, Democrat of Illinois: “What does it mean? How long, how big, is ‘enduring’? ‘Offensive,’ what’s ‘offensive’? . . . We have some legitimate questions as to whether we open this up with a loophole that could lead to another major war.”).

11. Current status: The AUMF failed in June by a vote of 139–288. Athena Jones, *House Votes to Keep U.S. Troops Deployed Against ISIS*, CNN (June 17, 2015, 6:39 PM), <https://www.cnn.com/2015/06/17/politics/aumf-isis-house-vote-fails-us-troops/index.html>.

12. Albert I. Hirschman, *THE PASSIONS AND THE INTERESTS: POLITICAL ARGUMENTS FOR CAPITALISM BEFORE ITS TRIUMPH* 49–50 (2d prtg. 2013).

## II. HOW THE LOGIC OF NIXON GOES TO CHINA EFFECT CAN BE MANIPULATED

As suggested earlier, we ordinarily expect an argument from a politician about his or her constitutional authority to be credible if it cuts against his or her well-known biases.

This insight can be greatly complicated, however, when actors may be biased on more than one dimension and the other biases are not easily observable. For instance, what happens when the office holder has an institutional bias towards executive branch power that tugs them in one direction, and a policy bias by his or her core constituency that pulls them in the opposite direction? Without clear knowledge of which bias trumps the other, the perception of the Nixon Goes to China Effect can be richly exploited by the office holder and other politicians in problematic and counterintuitive ways. More specifically, they will likely seek to use their declaration against interest on one dimension as leverage to gain credibility that they can then exploit on the other dimension. In its most crude form, the political official may decide that if one has to sacrifice a policy goal to profit from the appearance of fair-mindedness, she may decide to sacrifice the least valuable policy option in her policy portfolio in order to look more credible on more valuable parts of the portfolio.

Recent American history is replete with efforts by politicians who tried to exploit this dynamic to maximum effect. Here, for instance, is Congressman Gingrich imploring his colleagues to expand President Clinton's war-time authority in 1995:

I rise for what some Members might find an unusual moment, an appeal to the House *to, at least on paper, increase the power of President Clinton*. . . . [T]he American nation needs to understand that as Speaker of the House and as the chief spokesman in the House for the Republican party, I want to strengthen the current Democratic president because he is the President of the United States.<sup>13</sup>

But Gingrich's seemingly noble gesture was rebuffed by the House Democrats. They denounced the proposal as a dangerous measure and voted overwhelmingly against it.<sup>14</sup> House Republicans, on the other hand, voted overwhelmingly in support—by a lop-sided margin of 178 to 44—to support the amendment.<sup>15</sup>

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13. 141 Cong. Rec. H5672–5673 (daily ed. June 7, 1995) (statement of Speaker Gingrich) (emphasis added).

14. *See, e.g., id.* at H5657 (Congresswoman Pat Schroeder (D-Colo.), testifying in opposition to the amendment and warning, “I think the War Powers Act has had an effect, and I think with the demise of the cold war I do not see any reason that we cannot work out a better way to maybe make this better, to maybe make it more efficient, but I am not sure that we need to do it in a haste right now where we just withdraw as members of Congress . . .”).

15. *See id.* at H5673–5674.



The similarities between the posture of the two parties in 1995 and 2015 is not a coincidence. In both cases, the Democrats preferred to increase constraints on their co-partisan's war powers, while Republicans preferred a measure that would increase flexibility.

But why would such a strategy make sense for both parties? Here is the underlying logic: it is not unusual to see partisan coalitions seeking to expand presidential power on the policy dimension they are perceived to have an advantage even when the opposition occupies the White House. Thus, it might make sense for Republicans to seek to lower constraints on war powers when a Democrat is in the White House. The converse is also true. It is not unusual to have coalitions seeking to constrain presidential authority on an issue dimension in which they perceive the opposition has an advantage, even when their co-partisan is in the White House.

In any event, this particular dynamic allows politicians to manipulate the Nixon Goes to China Effect by acting as if they are acting against their institutional biases, as Gingrich's invocation in the quote above suggests. But in reality, he might have been acting in the direction of his stronger policy biases while pretending that he was sacrificing his institutional biases. Finally, it is also not clear that given the timing of the request that he was even sacrificing his institutional biases. He might have been simply paving the way to expand the institutional authority of a future Republican president.

### III. LESSONS FROM THE 2015 REQUEST FOR AUTHORIZATION AGAINST ISIS

President Obama's request for authorization against ISIS presents an opportunity to illustrate a few cautionary notes. Here are some reasons why one ought to be skeptical of politicians appearing to make choices that cut against their biases in order to bolster claims about their constitutional authority:

- When presidents seem open to accepting constitutional (or other institutional) constraints on their actions, they may not be trying to constrain themselves. Instead, they may more likely be trying to constrain future presidents, especially if key members of their coalition would like to constrain future presidents. In President Obama's Request for Authorization against ISIS, for instance, the three-year window in which the president would have to seek reauthorization from Congress would have long expired after President Obama left office. Also, if the president and his coalition have strong preferences not to deploy ground troops, the language limiting ground troops would have operated primarily to constrain a future president who might have different preferences about deploying ground troops.

- When opposition Members of Congress try to insist on more flexibility for the president, they are not likely trying to preserve flexibility for the current president, but to lock in flexibility for a future president from their party. This strategic logic is likely to be pronounced when the flexibility is on an issue in which they have an advantage, and if it comes towards what they believe to be the tail end of the current president's tenure.<sup>16</sup> The converse dynamic is true when the members of the president's party seem to prefer constraints on that president's authority towards the end of his tenure on an issue they may believe plays to the opposing party's base.

In order to correct for manipulations of the Nixon Goes to China effect, we should try to focus on circumstances where the institutional and policy biases of the relevant political actors are aligned. For instance, if House Democrats vote to expand the war powers authority of a Republican president, then the credibility of that information is very high because we think such a move will cut against both their institutional and policy biases. Similarly, a Republican Congress seeking to constrain the war powers authority of a Republican president provides particularly valuable information because it also cuts against their institutional and policy biases.

Similarly, if a prominent right-leaning Libertarian politician or scholar adopts a strong position on constraining presidential war powers during a Republican administration, such information may not be that credible because we may safely assume that the libertarian's policy preferences are likely to trump his/her office holding preferences. However, if a prominent Libertarian academic/politician announces that a Democratic president has the constitutional authority to overhaul and expand healthcare, we may listen closely because it cuts clearly against both the right-leaning libertarian's policy and office holding biases.

#### IV. IMPLICATIONS FOR HOW OBAMA'S LEGACY ON WAR POWERS MIGHT SHAPE TRUMP'S PRESIDENCY

The claim here is not that valuable constitutional lessons cannot be gleaned from the announcement of the Obama and Trump administrations on war powers. Nor I am suggesting that President Obama's legacy will not help shape the future historical arc of war powers in a significant manner. Instead, the argument is that the Nixon Goes to China logic may allow future politicians to attempt to shape the legacy in instrumental ways.

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16. See, e.g., Justin Sink & Kristina Wong, *Obama's War Request Runs into Brick Wall*, HILL (Feb. 11, 2015, 06:54 PM), <http://thehill.com/policy/defense/232565-obama-war-request-runs-into-a-brick-wall-in-congress> (illustrating the Republican Members' reaction to Obama's ISIS proposal in 2015); see also Bob Dole, Opinion, *Who's an Isolationist?*, N.Y. TIMES, June 6, 1995, <https://www.nytimes.com/1995/06/06/opinion/who-s-an-isolationist.html> (demonstrating Republican Members' reactions to the 1995 proposal to expand President Clinton's war powers).

A. *How Republicans Under President Trump Are Likely to View President Obama's Legacy on War Powers*

If President Trump decides to adopt a more hawkish view of war powers than his predecessor, then he and his supporters would prefer that President Obama's legacy be framed in a particular way. Simply put, Trump supporters will prefer that one focuses on Obama's policy biases rather than his institutional biases.

They would prefer to frame the legacy in the following way: Obama was a president who was known to have strong dovish leanings with a visceral dislike for the foreign policy decisions of his predecessor in the White House. Moreover, his writings and speeches before he became president suggested a wariness over executive branch overreach in foreign affairs. So his willingness to act against his policy biases and use force unilaterally against Libya and Syria is a very credible signal about the true scope of presidential authority during wartime. If President Obama believed he had that much authority, the Hawks would argue, then it must be true that he had that much authority (and probably more). Otherwise, why would President Obama have asserted such authority given that his policy biases lie in the opposite direction? Indeed, given his dovish biases, he probably sold himself short, and thus we (the Hawks) might have leeway to expand further the scope of presidential authority during wartime.<sup>17</sup> Indeed, given that President Obama was willing to act unilaterally on these key disputes, President Trump's flexibility to fight the Islamic State or to attack North Korea should even be construed more broadly.

B. *How Democrats Under President Trump Are Likely to View President Obama's Legacy on War Powers*

On the other hand, a dovish political coalition during the Trump era would prefer to focus on President Obama's perceived institutional biases. As a President, they would argue, Obama had every incentive to expand the scope of war powers during his tenure because of the multiple engagements the United States was facing around the World. Indeed, one such engagement involved efforts to tackle the horrible and deplorable Islamic State. Nonetheless, despite these incentives, the president was reluctant to go against ISIS without any constraints on his authority. Therefore, the true legacy of President Obama, the doves would argue, is that presidents should accept that they have significant constraints on their wartime authority.

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17. This dynamic complicates how much we can infer from past presidential beliefs about their authority to what we think the scope of that authority should be. Curtis A. Bradley & Trevor W. Morrison, *Historical Gloss and the Separation of Powers*, 126 HARV. L. REV. 411 (2012); see also Jean Galbraith & Curtis Bradley, *Presidential War Powers as a Two-Level Dynamic: International Law, Domestic Law, and Practice-Based Legal Change*, 91 N.Y.U. L. REV. 689 (2016).

Given that both sides will have plenty of ammunition to confirm their Nixon Goes to China intuitions, it may be that President Obama's true war powers legacy for the Trump era is whatever an intrepid political entrepreneur would be willing to make of it.