



**Past Wrongs
Future Choices**

PWFC Working Paper Series

Invoking Memories of Nikkei Oppression to Address the “War on Terror”: Constitutionalism, Authoritarianism, and the Mnemonics of Rights

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1. Introduction: 9/11 and Multi-Directional Memories of Internment

I was teaching the day after the September 11, 2001 terrorist attacks on the US Pentagon and World Trade Center. Very inexperienced, but aware that diving straight into lecture would be discordant, I asked the 150-or-so students if they wanted to discuss the horrifying events. One responded by saying something along the lines of, “My Mom is worried they’re going to do to the Muslims what they did to the Japanese.” My memory has cemented the intervention since as a kind of personal footnote to historian Timothy Snyder’s injunction that “political decency [requires] history[ies] of horror.”¹ It prompted me to share with the students that day what I knew of what Canada “did to the Japanese” after Japan’s December 1941 assault on Pearl Harbor: forcibly removed the some 24,000-strong Nikkei community from Canada’s Pacific Coast, incarcerated most in internment camps, dispossessed all of their property and basic rights, and destroyed dozens of vibrant communities in the process.² Upon hearing my anecdote last year, Michael Kenji Abe, the Project Manager of Past Wrongs, Future Choices—the research collective from which this working paper emerges—shared with me his morning-of-9/11 memory. Working at Tourism Victoria, Mike was called into an emergency staff meeting: “I remember standing up and saying that I hope that what happened to my parents and grandparents doesn’t happen to Muslims or other groups. [...] I had an eerily ominous

¹ Timothy Snyder, *The Road to Unfreedom*, New York: Tim Duggan, 2018, p. 2 (paraphrasing Tony Judt).

² As the [Japanese American Citizens’ League](#), among others, has pointed out, “internment” is a misnomer given that the policies of incarceration and removal were directed not primarily at enemy aliens, the category of person to which the term “internment” is usually understood to apply. Thus, many US experts speak of “incarceration” or “concentration” camps instead. In Canada, “internment” remains the label most commonly employed by Nikkei experts and institutions. I hope that, in continuing to use “internment” while pointing out the term’s deliberate denial of the Canadian roots and histories of the victims, I am able in this way to convey the racist effacement of citizenship that was at the very heart of the injustices.

feeling that morning.”³ These recalls of a Canadian history of horror were deeply personal in Mike’s case and a by-product of knowing about the successful Japanese-Canadian fight for redress in mine (and perhaps in my student’s Mom’s as well). I like to imagine that they had untold counterparts in the days, weeks, and years after 9/11: personal and social memories of Nikkei persecution and persistence prompting diverse micro-interventions against Islamophobic paranoia and hate more than five decades later.

Multi-directional memory is humanities scholar Michael Rothberg’s lens for approaching the widespread transpositions and borrowings that occur in a hyper-mediated world of information collage that facilitates all manner of mnemonic comparisons across time and space. Addressing the Nazi genocide specifically, Rothberg argues that these transpositions and borrowings need not and indeed do not lead to the zero-sum dystopia bemoaned by critics of redress and memory politics, who depict the field as a morass of competitive victimhood rife with angry complaints that attention to some group’s suffering is coming at the expense of concern for some other’s. The invocations of Nikkei internment memory discussed above seem multi-directional in Rothberg’s sense; the following pages share Rothberg’s hope that social memories of atrocity can be used to promote solidarity, protect rights, and prevent new wrongs.

In what follows, I analyze US, Canadian, and Australian media invocations of the wartime oppression of Nikkei in relation to the post-9/11 War on Terror. All three countries visited extreme oppression on persons of Japanese ancestry during the Second World War, and all have been involved in the coercive, Islamophobic, and rights-abusive post-9/11 War on

³ Shared with Mike’s kind permission.

Terror. The analysis shows that, particularly in the US in the immediate aftermath of the attacks, memories of the earlier assault on Nikkei were used in the rights-protective, multi-dimensional sense discussed above. However, invocations began to change in nature as the debate moved beyond the period of generalized post-attack public discussion to address the specific policy proposals associated with the US Patriot Act. With this shift in focus, some policy elites began to repurpose memories of the Second World War oppression, using those memories to legitimate repressive, racist measures that they presented as surgically tailored improvements designed to heed the lessons learned from excesses of the past. I argue that this repurposing of Nikkei injustice memory represented an early stage in a larger shift in public memory, engendered by a new authoritarianism that seeks to free powerful states and dominant groups from the inhibitions and introspection associated with the best aspirations of the liberalizing global constitutionalism associated with the postwar human rights ideal of “never again.”

2. On the Constitutional Significance of Multidirectional Memory

I am particularly interested in the possible impact of multidirectional internment memory on matters of rights and constitutionalism. As my Past Wrongs, Future Choices colleague, the historian Masumi Izumi demonstrates, Nikkei injustice memories have a long and constitutionally significant history in the United States.⁴ From the 1944 *Korematsu* case and other legal challenges sparked by the concentration camp policy, to congressional debates in

⁴ Masumi Izumi, *The Rise and Fall of America's Concentration Camp Law: Civil Liberties Debates from the Internment to McCarthyism and the Radical 1960s*. Philadelphia: Temple University Press, 2019.

the late 1960s and early 70s about surveilling Black and Red Power activists, and on to the redress package known as the Civil Liberties Act of 1988 and beyond, Nikkei and other Americans have recalled the Second World War injustices to help protect the rights of other vulnerable communities. Although this history of multidirectional Nikkei injustice memory clearly involves “capital C” constitutional matters of rights adjudication and jurisprudence, my analysis focuses on “small-c” constitutionalism in the so-called War on Terror: public interventions about the nature of citizenship and belonging, the boundaries of political community, and the difference between legitimate and illegitimate uses of political authority.

If histories of horror are necessary for better futures, then a minimally decent constitutionalism requires learning from the political community’s historical injustices. The assumption underlying this point is that appropriately supervising and constraining political authority involves taking lessons from notable past inadequacies in supervising and constraining that authority. Practices of transitional justice leverage this instructive spirit, as seen most famously, for example, in the public education role of South Africa’s Truth and Reconciliation Commission in forging support for a democratic and rights-focused post-apartheid constitutional order.⁵ Germany’s Basic Law is perhaps the paradigmatic example of historically informed constitutional constraint among liberal democracies, a “normative structure [...] vigilant not only to the excesses of state power but also to those of popular sovereignty.”⁶ Sociologists Daniel Levy and Natan Sznaider find a similar though more diffuse

⁵ Robert I. Rotberg and Dennis Thompson eds., *Truth v. Justice: The Morality of Truth Commissions*, Princeton: Princeton University Press, 2000.

⁶ Ruti G. Teitel, *Transitional Justice*, Oxford: Oxford University Press, 2000, p. 203.

counterpart dynamic at the international level, with the slow postwar development of Holocaust memory helping to sketch the outlines of a liberalizing global constitutionalism organized around discourses of “never again” and corresponding international law norms against genocide, torture, and wars of belligerence.⁷

Without explicitly using Rothberg’s multidirectional memory lens, Levy and Sznajder stress that this globalizing, constitutionally focused Holocaust memory has been multivalent. It has involved not only elite-driven norm diffusion from above, but norm localization and vernacularization from below, in diverse national settings and in activist confrontation with distinctively local problems and wrongs. Indeed, this paper identifies these multidirectional dynamics as a crucial but underacknowledged element of postwar Canadian constitutionalism. As I will soon explain, Japanese-Canadian activism intersected with Holocaust-informed discourses of “never again” to give resonant meaning to the 1982 entrenchment and early development of the Canadian Charter of Rights and Freedoms. This pre-9/11 history of Canadian constitutionalism provides a baseline exemplar of multidirectional Nikkei injustice memory being used in service of better futures; the example will help us in turn to better understand the character and complexity of Second World War incarceration and internment invocations in the War on Terror. Before turning to these empirics, the following section introduces my key concept for analyzing the distinctive arena of discursive practice through which histories of horror, multidirectional memories, and constitutionalism intersect. I call this arena of practice the mnemonics of rights.

⁷ Daniel Levy and Natan Sznajder, *Human Rights and Memory*, Philadelphia: Pennsylvania University Press, 2010.

3. The Mnemonics of Rights

A mnemonic is a memory-jogging technique: English-speaking French-language learners might think of “Dr. and Mrs. Vandertrampp,” while music students probably know “Father Charles Goes Down and Ends Battle.” By mnemonics of rights, then, I mean shorthand invocations of past injustice pressed into service for making memorably resonant claims about rights. I developed the concept from an unlikely source, namely, the Trump- and torture-defending law scholar Alan Dershowitz’s *Rights from Wrongs*.⁸ Written in the shadow of 9/11, the book aims practically to respond to that security context and theoretically to propose an alternative to natural law and legal positivist ways of understanding the origins and nature of rights. Against these views, and conjuring 9/11 itself as his exigent example of a wrong that would have to reshape American thinking about rights, Dershowitz insists, first, that rights do not emerge from God or nature (*a la* natural law theory) and, second, that their elevated role does not derive merely from their status as constitutionally entrenched overriding legal commands (as the legal positivists would have it). Instead, Dershowitz imagines rights as contingent outcomes of particular human communities engaging with particular grave injustices to prevent or mitigate particular kinds of wrongs. His major examples of rights-giving wrongs are religious oppression, slavery, the Nazi genocide, the persecution of American Nikkei in WWII, and “religiously inspired global terrorism.”⁹

⁸ Alan Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights*, New York: Basic Books, 2004.

⁹ *Ibid.*, p. 9.

Just prior to publishing *Rights from Wrongs*, Dershowitz had called for so-called “torture warrants,” which were to legalize the practice in order to subject it to tight preconditions, approvals, and rules.¹⁰ Dershowitz’s case was that, because the US was going to engage in torture anyway, the wisest path would be oversight and constraint. Seen in this light, the upshot of *Rights from Wrongs* is that the wrong of religiously motivated global terrorism required the US to rethink the idea of a fundamental right not to be tortured, lest some future terrorist attack serve to unleash more utterly rights-destroying forms and levels of American torture. In summary, Dershowitz’s 9/11 memory project was, at least ostensibly, about learning from harm, attenuating part of the American rights edifice in response, and thereby preserving the overall whole.

Readers may wonder whether a grotesque terrorist attack constitutes an historical wrong comparable to the other injustices named by Dershowitz (religious oppression, slavery, Nikkei persecution, and the Nazi genocide), which emerged from projects of systemic domination against oppressed and minoritized groups. We might also doubt the wisdom of urging a powerful political community to determine rights on the basis of its own remembered victimization, as opposed to grappling introspectively with injustices it has caused. Nevertheless, I find two particularly useful contributions in *Rights from Wrongs*. First, it illustrates, even if unwittingly, the role of 9/11 as an epochal catalyst for regressively bellicose forms of remembrance at odds with the rights-expanding character of the international postwar emphasis on “never again.” Second, it calls valuable attention to rights mnemonics as

¹⁰ Alan Dershowitz, “When torture is the least evil of terrible options.” *The Times Educational Supplement*, June 11, 2004, 20-21.

an object of potential study: socially cognizable memories of historical injustice that actors deploy to buttress or contest public understandings and interpretations of rights. The following section, which focuses on Canadian debates about constitutional rights, civil liberties, and redress, will illustrate the pre-9/11 development and impact of Nikkei rights mnemonics in that country.

4. Charter Rights, Redress, and the Emergencies Act in the Multidirectional Mnemonics of Japanese-Canadian Internment

In 1947-48 and again in 1949-50, Canada held special parliamentary hearings sparked by the newly created United Nations Universal Declaration of Human Rights.¹¹ The hearings responded to the UN's request that member states entrench the UDHR principles in their domestic constitutions to help prevent future recurrences of the Nazi policies of ethnic cleansing and racial purity that had helped cause the Second World War. Thus it was that, less than a year after Canada's revocation of the internment order, the newly formed National Japanese-Canadian Citizens' Association (NJCCA) appeared before the 1950 Senate Special Committee on Human Rights.¹² NJCCA Executive Secretary George Tanaka presented the internment as a clear violation of the very norms that Canada had suddenly begun to espouse. As Tanaka put it, the recent denial of "moral and juridical equality" in the Japanese-Canadian case demonstrated that Canada needed a domestic charter, a "constant teacher [of]

¹¹ Walter Tarnopolsky, *The Canadian Bill of Rights*, 2d ed. Toronto: McClelland and Stewart, 1975.

¹² The following discussion of Japanese-Canadian constitutional participation draws on Chapters 4 and 5 of Matt James, *Misrecognized Materialists: Social Movements in Canadian Constitutional Politics*, Vancouver: University of British Columbia Press, 2006.

fundamental rights and liberties [...] for all.”¹³ But Tanaka’s nascent internment mnemonics did not resonate with their parliamentary audience. The Chair reprimanded him for dwelling on “the past,” while others added that the internment was warranted because “the Japanese always had two loyalties.”¹⁴

Throughout these debates, the federal government professed to support the UDHR while claiming that provincial opposition precluded domestic entrenchment. We now know that this was in part a cover for the cabinet’s own reservations, which included worries about the scope of the UDHR’s social and economic rights, concerns that free speech and assembly rights would assist communists, and fears that antidiscrimination rights would, *inter alia*, enfranchise Indigenous people.¹⁵ The regressive tenor of Canadian rights thinking at the time was reflected perfectly when an avowed defender of the UDHR reassured critics in a 1948 parliamentary debate that entrenchment would not require Canada to change its internment policies (they would remain in place for another year), given that the “subversive attitudes” of Japanese Canadians were well known.¹⁶

The context for internment rights mnemonics was different in the debates surrounding the 1982 entrenchment of the Charter of Rights and Freedoms. A signature initiative of Pierre Elliott Trudeau throughout his career, the Charter became that prime minister’s consuming occupation during much of his final term in office following Quebec’s failed but still momentous

¹³ Canada, *21st Parliament, 2nd Session: Special Committee on Human Rights and Fundamental Freedoms*, Vol. 8, May 10, 1950 (National Japanese-Canadian Citizens’ Association), pp. 269-270.

¹⁴ Ross and Kinley, quoted in *Ibid.*, pp. 272, 275.

¹⁵ William A. Schabas, “Canada and the Adoption of the Universal Declaration of Human Rights,” *McGill University Law Journal* 43, No. 3 (1998), pp. 403-441.

¹⁶ *Ibid.*, p. 414.

1980 “sovereignty association” referendum.¹⁷ In a bid to shame the Charter’s “Gang of Eight” provincial government opponents into reversing their opposition, and in a broader ideational context shaped by the dramatic rise of Holocaust awareness in the latter half of the 1970s, Trudeau’s Liberals used the televised 1980-81 parliamentary hearings to showcase popular support for the Charter idea.¹⁸ Japanese Canadians responded by vernacularizing the “never again” discourse in light of their own experiences of racist Canadian oppression. After reading extensively from a moving internment memoir penned for the occasion by Hida Shimizu, Past President Roger Obata of the National Association of Japanese Canadians concluded his presentation by declaring, “A [Charter] of Rights entrenched in the constitution to prevent what we have gone through is the least that Canada can do ... to ensure that such injustices will never be repeated.”¹⁹ Parliamentarians of all parties praised the NAJC brief; Bryce Mackasey of the Liberals promised to circulate it among high schools in his riding, while John Fraser of the Conservative party, which actually opposed the Charter initiative, suggested that the NAJC be shown subsequent drafts, “to consider whether in fact it has met your objections.”²⁰ The televised hearings were the crucial turning point in overcoming provincial opposition to the Charter idea.²¹ And no presentation attracted a more enthusiastic reception than that of the NAJC, whose “never again” rallying cry Justice Minister Jean Chrétien adopted in the final

¹⁷ Alan C. Cairns, “An Overview of the Trudeau Constitutional Proposals,” in *Disruptions: Constitutional Struggles from the Charter to Meech Lake*, ed. Douglas E. Williams (Toronto: McClelland and Stewart, 1991), pp. 58-65.

¹⁸ Daniel Levy and Natan Sznaider, “Memory Unbound: The Holocaust and the Formation of Cosmopolitan Memory,” *European Journal of Social Theory* 5, No. 1 (2002), pp. 87-106.

¹⁹ Canada, *Joint Committees, 32nd Parliament, 1st Session: Special Joint Committee on the Constitution of Canada*, Vol. 2, November 26, 1980 (National Association of Japanese Canadians), pp. 5, 9.

²⁰ Quoted in *Ibid.*, pp. 13, 17.

²¹ Cairns, “An Overview of the Trudeau Constitutional Proposals,” pp. 60-61.

months of his government's campaign for entrenchment: "our task is to recognize the injustice of the past, to say 'never again shall rights be trampled upon.'"²²

The NAJC deployed similar framings in its subsequent struggle for the 1988 Japanese Canadian Redress Agreement. Just as it presented entrenchment as a way for Canada to cement the "never again to internment" commitment, so it framed redress as a precedent focused on rights protection for the future. In the words of the redress campaign's main publication, a short book called *Democracy Betrayed*, "it is as an act of citizenship and because we refuse to see democracy betrayed that we seek an honourable resolution to the injustices of the war years."²³

Nikkei rights mnemonics also played a significant role in shaping Canada's 1988 Emergencies Act the successor legislation to the War Measures Act, which had allowed Ottawa to intern and dispossess Japanese Canadians without oversight, parliamentary approval, or recourse.²⁴ Japanese Canadians spoke from recognized experience in what turned out to be a highly successful lobby for a number of significant civil libertarian modifications to Canadian emergencies law. The resultant Emergencies Act is fully subject to the Charter, requires a public inquiry into the circumstances following any instance of its use, and allows critics to seek judicial review as to the legality of its invocation. As one parliamentarian explained at the time: "‘Never again!’ Japanese Canadians told us. The government listened to them. The War

²²Canada, *House of Commons Debates*, February 17, 1981 (The Right Honourable Jean Chrétien) https://parl.canadiana.ca/view/oop.debates_HOC3201_07/, p. 7374.

²³National Association for Japanese Canadians, *Democracy Betrayed: The Case for Redress*, Vancouver: National Association of Japanese Canadians, 1984, p. 1.

²⁴Masumi Izumi, "Lessons from History: Japanese Canadians and Civil Liberties in Canada," *Journal of American and Canadian Studies* 17, No. 1 (1999): pp. 1-24.

Measures Act will be repealed and the Emergencies Act will contain guarantees making a recurrence of the persecution they suffered impossible.”²⁵ At the mandatory inquiry following the Act’s first-ever invocation and use, in the case of the February 2022 “freedom convoy” occupation of Ottawa, the presiding judge noted that the Act’s safeguards were unparalleled in the world; even a normally tough critic of government overreach called them a “cause for some national pride.”²⁶

Thus, Nikkei rights mnemonics have a distinguished constitutional history in Canada as well as the United States. They helped to build support and provide crucial public historical explanations and meanings in the battles over entrenching the Charter. They helped to justify and shape the Emergencies Act revisions. They helped also to establish what became the country’s signal precedent for subsequent acts of reparation and apology: the 1988 Japanese Canadian Redress Agreement.²⁷ To borrow law scholar and PWFC member Eric Adams’s phrase, they provided Canada’s most memorable “constitutional story” for discussing rights and citizenship through the first decade of the Charter.²⁸

Although their place in the long and complex history of US rights debates is perhaps less singularly prominent, Nikkei rights mnemonics certainly produced concrete civil rights victories in that country. As Izumi explains, for example, Nikkei activists and legislators strongly influenced Congress’s 1971 repeal of the Emergency Detention Act.²⁹ Modeled on the wartime

²⁵ Quoted in Masumi Izumi, *Lessons from History*, p. 15.

²⁶ Andrew Coyne, “The Emergencies Act Proved Its Mettle,” *Globe and Mail*, February 22, 2023, Opinion Section.

²⁷ Audrey Kobayashi, “The Japanese-Canadian Redress Settlement and its Implications for ‘Race Relations’,” *Canadian Ethnic Studies* 24, No. 1 (1992), pp. 1-19.

²⁸ Eric M. Adams, “Constitutional Stories: Japanese Canadians and the Constitution of Canada,” *Journal of Australasian Canadian Studies* 35, No. 1 (2018), p. 5-36.

²⁹ Izumi, *The Rise and Fall of America’s Concentration Camp Law*.

incarceration and dubbed by critics “America’s concentration camp” law, the Act’s provisions for so-called preventive detention alarmed civil libertarians and equality activists, who feared that the Nixon administration might use them against the era’s Black and Red Power movements. In Izumi’s analysis, “the shared memory of the wartime incarceration of Japanese Americans was crucial to the consensus building for repeal. [...] The historical memory of mass incarceration [...] made opposition [to repeal] virtually impossible.”³⁰ Further, and much like in the Canadian case, the precedent set by the apology and redress measures in Congress’s 1988 Civil Rights Act further elevated this rights-protecting role, turning Nikkei experiences into an officially sanctioned memory for the whole country.

Consider the case to which we now turn, President George Bush, Jr.’s immediate 9/11 response. On the day following the attacks, federal Transport Secretary Norman Mineta—himself a former wartime incarcerated and redress activist—urged Bush to support Muslims and denounce Islamophobia. The president responded with a high-profile visit to the Islamic Center of Washington, where he called Muslims “friends” and “taxpaying citizens,” proclaiming, “These acts of violence against innocents violate the fundamental tenets of the Islamic faith. And it’s important for my fellow Americans to understand that. ... The face of terror is not the true faith of Islam. [...] Islam is peace.”³¹

Yet we also know that in the succeeding days, months, and years, Muslims were racially and religiously profiled, tortured, and imprisoned or deported without due process or charge,

³⁰ Ibid., p. 8.

³¹ Quoted in Samuel G. Freedman, “Six Days After 9/11, Another Date Worth Honoring,” *New York Times*, September 8, 2012, A15.

often under the explicit sanction of the bundle of post-9/11 anti-terror measures known as the Patriot Act.³² We cannot know whether worse might have happened without Mineta's and other similar interventions. But we can study the nature and role of Nikkei rights mnemonics in the War on Terror in order to draw conclusions from this, arguably the biggest single episodic test of "never again" historical learning in the years following the 1988 US Civil Liberties Act and Japanese Canadian Redress Agreement.

5. The Mnemonics of Nikkei Internment in the *New York Times*: Immediate 9/11 Aftermath and Bush I

Focusing primarily on the US but also including the Canadian and Australian cases, the following analysis examines those print media invocations of the Second World War oppression of Nikkei populations that somehow addressed the War on Terror. The invocations come from news items and opinion pieces in the *New York Times*, *Globe and Mail*, and *Sydney Morning Herald* from 11 September 2001 to 8 November 2022.³³ I searched broadly, looking for all items containing both "Japanese" and "terror." This procedure yielded many moot results. For example, although the *Times* search produced 901 hits, it yielded only fifty-two invocations of the prior assault on Nikkei in relation to the 9/11 response. Many of the moot results said nothing about the wartime oppression but simply drew parallels between the 9/11 and Pearl Harbor events themselves, while others discussed the possible impact of 9/11 on Japanese policies, companies, and stock markets.

³² Amnesty International, *Security and Human Rights*, London: Amnesty International Publications, 2008.

³³ Although the search extended to 8 Nov. 2022, the last item found was from 17 Apr. 2018, so our analysis concludes about halfway through the Trump presidency. For the *Times* and *Globe*, we used the ProQuest Historical Newspapers database; the *Morning Herald* results come from NewsBank Access World News.

In order to better understand the progression and dynamics of internment rights mnemonics in the War on Terror, I separated the search results by the following time periods: 1) the three months immediately after the attacks (11 September to 31 December 2001); 2) the remainder of Bush's first presidential term (2002-2004); 3) Bush's second term (2004-2008); 4) Barack Obama's first term (2008-2012); 5) Obama's second term (2012-2016); and, finally, 6) Donald J. Trump's presidency (2016-2020). What follows is not a critical discourse analysis that closely examines syntactical relationships and word choices in order to explore the use of language in reinforcing or contesting relations of power.³⁴ Instead, I am interested more straightforwardly in identifying and analyzing basic meaning frames, in this case by asking what considerations, approaches, or actions in the War on Terror the quoted source, columnist, or opinion writer in question seemed to hope to advance by recalling the earlier assaults on Nikkei freedom, equality, and dignity.

In the immediate post-9/11 period, stretching to 31 December 2001, the largest number of *New York Times* invocations (eight of eleven) were *non-repetition warnings*, much like the day-of and day-after 9/11 appeals with which this paper began: pleas or admonitions for the US not to visit upon Muslims forms of treatment reminiscent of Washington's victimization of Nikkei following the 7 December 1941 Japanese attack on Pearl Harbor.³⁵ This was the period that the Australian feminist and pacifist scholar Kathleen Gleeson calls the "discursive abyss," a

³⁴ Norman Fairclough, *Analyzing Discourse: Textual Analysis for Social Research*, London: Routledge, 2003.

³⁵ Following the bibliography, this paper includes a separate list of each new item that had an invocation or invocations of the wartime injustices if that invocation was somehow used to discuss the 9/11 response of the country from which the media outlet hailed. Each item is assigned a numeric code, explained in the legend at the start of the list. All items cited in this paper are referenced in brackets using their numeric code. Because each item's code includes a number indicating the type or types of invocation in it, the reader can match the individual types of invocation to their corresponding media item.

time of confusion, policy vacuum, and general disorganization of political forces.³⁶ Invocations in the time of discursive abyss tended to be highly general rather than policy-focused. Even the 26 October signing by President Bush of the Patriot Act, the package of legislation that continues to authorize dramatically expanded police and security agency powers, indefinite detention, and a host of punitive measures targeting aliens and migrants, did not immediately change this picture.

From the beginning of 2002, however, incarceration mnemonics in the *Times* began to shift; as the Patriot Act became the focal point, items tended to exhibit a more specific emphasis on policy advocacy or policy critique than had characterized the generalized *non-repetition warnings* that preceded them. The speakers also changed. Whereas many of the immediate post-attack invocations came from the proverbial person-in-the-street, the Patriot Act debate centred different voices: op-ed-writing academics, political representatives quoted in news stories, and professional columnists offering analysis.³⁷ There were still generalized *non-repetition warnings* (four of sixteen invocations, from fifteen items),³⁸ but these were now less numerous than specific *policy critiques*, either of the Patriot Act or of particular War on Terror measures (six invocations).³⁹ Perhaps most notably, with the new policy focus came also a striking new development. Whereas all of the invocations in the immediate post-9/11 period came from speakers concerned to protect vulnerable individuals and communities from state and security agency over-reach, proponents of aggressive War on Terror tactics now began to

³⁶ Kathleen Gleeson, *Australia's 'War on Terror' Discourse*. London: Routledge, 2014, p. 25.

³⁷ Indeed, there were no invocations from persons-in-the-street in the post-immediate, Bush I period.

³⁸ Appendix, items 2.1.2.1; 2.1.2.3; 2.1.2.6; and 2.1.2/1.8. Occasionally, an item contains more than one invocation, which means that some sections in the list have different numbers of invocations and items.

³⁹ Appendix, items 2.1.1.7; 2.1.2/1.8; 2.1.1.11; 2.1.1.12; 2.1.1.14; and 2.1.1.15

offer a distinctive internment/incarceration mnemonic of their own, which this analysis calls *maxing*. There were four instances of this novel mnemonic.⁴⁰

The term *maxing* derives from Izumi's assessment of the role of the Second World War injustices in the US Supreme Court's 2018 *Trump v. Hawaii* decision, which upheld the Republican president's so-called "Muslim ban."⁴¹ Trump had campaigned in the 2015 primaries on a "total shutdown" of Muslims entering the US but, as president, settled on a narrower but still Islamophobic and racist entry prohibition on foreign nationals from several Muslim-majority countries. Continuing their community's tradition of deploying injustice mnemonics to address future-facing questions of civil liberties and equality, Japanese-American intervenors told the Court that approving the Trump scheme would be tantamount to following the notorious 1944 *Korematsu* decision, which had upheld the constitutionality of the wartime incarceration. Siding with Trump, the Court majority countered that the modified Muslim ban neither replicated the earlier oppression nor followed *Korematsu*: the ban targeted foreign nationals, not citizens, and focused justifiably on source countries linked to terrorism rather than impermissibly on grounds of race or religion. Izumi assesses the Court's reasoning as follows: the "historical memory of Japanese Americans played the ironic role of justifying later civil liberties restrictions, even while what happened to Japanese Americans was perceived as unjust."⁴²

Upon encountering similar invocations in this paper's media search, I suggested to Masumi Izumi that we needed to name this mnemonic move. She responded with *maxing*, by

⁴⁰ Appendix, items 2.1.4.5; 2.1.4.9; 2.1.4.10; and 2.1.4.13.

⁴¹ Izumi, *The Rise and Fall of America's Concentration Camp Law*.

⁴² *Ibid.*, p. 176.

which she meant, and by which I mean in this paper, the tactic of framing some prior injustice as a kind of maximum example of wrongfulness, so as to legitimate some other action by comparison as less unjust and therefore as tolerable or even downright desirable. *Maxing*, then, is the internment/incarceration mnemonic that Patriot Act advocates pioneered in the debate following the period of discursive abyss. In ways reminiscent of the US military discourse of “surgical strikes” in the first Gulf War, experts and pundits differentiated the Patriot Act from the Second World War policies of incarceration and concentration by stressing the Act’s more limited and precisely targeted nature. These speakers sought, first, to show their historical awareness and sensitivity by acknowledging the unjust treatment of the Nikkei and, second, to leverage that purported awareness and sensitivity to legitimate the particular War on Terror measures they were advocating.

Quintessentially representative instances of *maxing* are found in the *New York Times* opinion-page interventions of the Canadian academic and future Canadian Liberal party leader, Michael Ignatieff. In a 2003 essay, writing as the director of Harvard’s Carr Centre for Human Rights, Ignatieff expressed distaste for detaining terror suspects without charge or access to counsel.⁴³ But beyond showing liberal sensitivity, his primary rhetorical purpose in doing so was to defend these and other War on Terror measures as a “long way short of Roosevelt’s internment of the Japanese.”⁴⁴ And much like Dershowitz in the case for torture warrants, Ignatieff believed that any illiberalism involved would pale in comparison to what might follow if “another large attack on United States citizens produce[d] mass casualties.”⁴⁵ By 2004,

⁴³ Appendix, 2.1.4.5.

⁴⁴ Ibid.

⁴⁵ Ibid.

although no such subsequent attack had taken place, Ignatieff was urging still harsher tactics. While continuing to denounce the “shameful” policy of Nikkei mass incarceration, Ignatieff now urged the US to consider additional “lesser evils”: “indefinite detention” and “coercive interrogation.”⁴⁶

This contrast between the dominance of *non-repetition warnings* in the immediate aftermath of the attacks and the rise of *maxing* in the Patriot Act debate may seem counter-intuitive. Folklore holds that blood lust and paranoia rush in when violence first strikes, while the passage of time allows cooler heads to prevail. While it is true that overt expressions of Islamophobic hate surged immediately after the attacks, it is also true that Transport Secretary Mineta’s deeply personal mnemonic prompting spurred Bush’s timely visit to Washington’s Islamic Center. Further, the *Times* intervenors who recalled the earlier wartime injustices during the uncertain period of discursive abyss generally did so to warn against scapegoating Arabs, Islam, or Muslims; it was during the subsequent Patriot Act debate that hawkish US policy elites began to redeploy Second World War injustice mnemonics for rights-abusive responses. Much like the Supreme Court in *Trump v. Hawaii*, they conscripted the collective memory of the wartime injustices into “the ironic role of justifying [new] civil liberties restrictions.”⁴⁷

5.1. *New York Times*: Bush II through Obama II

⁴⁶ Appendix, 2.1.4.10.

⁴⁷ *Ibid.*, p. 176.

We can deal briskly with War on Terror internment mnemonics from the *New York Times* in the second term of Bush's presidency and Obama's first; there are relatively few instances (four and five, respectively) to report.⁴⁸ Nevertheless, a new stage in the debate appeared to have begun. With the Patriot Act in full force, right-wingers had little need to invoke the wartime injustices to promote their favoured War on Terror measures, via *maxing* or otherwise, while for progressives the time for generalized *non-repetition warnings* had similarly passed. Instead, the largest single category of Nikkei rights mnemonics in Bush's second term consisted of relatively focused *policy critiques* (three out of four invocations)⁴⁹ of specific War on Terror measures, including, *inter alia*, the overbroad exercise of executive authority, the use of race and religion as grounds of discrimination, and the denial of due process rights. Finally, and perhaps in limited confirmation of the criticism that Obama's War on Terror largely escaped the leftist opprobrium visited on Bush's, the new president's first term saw only three critical invocations of the incarceration in relation to antiterrorism: two of these addressed the Patriot Act, while the other offered a general critique of US society.⁵⁰

However, matters changed significantly towards the end of Obama's second term, even though his administration had not introduced new anti-terror policies and there had been no new act of organized terror on US soil. The relevant development was instead Donald J. Trump's 2015 Republican presidential nomination campaign, which, among other things, called for a "total shutdown of Muslims entering the US."⁵¹ Because of Trump's intervention, the last

⁴⁸ See Appendix, Bush II and Obama I.

⁴⁹ *Ibid.*, Bush II.

⁵⁰ See Appendix, items 4.1.1.1, 4.1.1.4, and 4.1.8.3, respectively.

⁵¹ Jessica Taylor, 2015, "Trump Calls For 'Total and Complete Shutdown' of Muslims Entering US," *NPR*, December 7, 2015, <https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s>

year of Obama's second term featured almost as many (twelve as against sixteen) invocations as did the final three years of Bush's far more eventful first.⁵² At least equally remarkable is that, among the total twelve *Times* invocations from the final year of Obama's second term, six went beyond Bush-era *maxing* to cite the oppression of Japanese Americans as a *positive precedent*, for either the "Muslim ban" or for some sort of government registry of Muslims present in the US,⁵³ both of which were ideas mooted by Trump on the hustings.⁵⁴ Coming exclusively from Trump or surrogates, these invocations stressed that wars required extreme measures; that the US was engaged in a war on terror; that extreme measures had won the Second World War; and that the president who had used them, Franklin Delano Roosevelt, was remembered positively.⁵⁵ Thus, the relatively subtle *maxing* of the Bush era gave way to the brazen, *precedent*-invoking authoritarianism of the Trumpists, with no relevant precipitating factors save the race-baiting ambitions of the latter.

5.2. *Globe and Mail*: Early Warning Signs

Canada's Anti-Terrorism Act, which parliament approved on 18 December 2001, allowed, and continues to allow, secret evidence, preventive detention, and expanded surveillance powers.⁵⁶

⁵² See Appendix, items 5.1.4/9.2 through 5.1.9/2.7 and items 2.1.2.1 through 2.1.1.15, respectively. The 13 invocations from Obama's final year emerged from 7 items; the larger-than-usual number of invocations per item reflected the tendency of items to include either multiple invocations from the Trump campaign or counter-invocations from Trump opponents.

⁵³ See Appendix: all items under Obama II with 9 as their third numeral or with 9 following the slash (i.e. /) designation.

⁵⁴ Kat Chow, "Renewed support for Muslim registry called 'abhorrent,'" *NPR*, November 17, 2016, <https://www.npr.org/sections/codeswitch/2016/11/17/502442853/renewed-support-for-muslim-registry-called-abhorrent>

⁵⁵ *Supra*, n. 51.

⁵⁶ Reem Bahdi, "No Exit: Racial Profiling and Canada's War Against Terrorism," *Osgoode Hall Law Journal* 41, No. 2 (2003), pp. 293-317.

For its part, the broader Canadian War on Terror has included racial and religious profiling, the outsourcing of torture, and the militarization of policing.⁵⁷ Despite these significant developments, and notwithstanding the high profile of the Japanese Canadian Redress Agreement and the general prominence of Nikkei rights mnemonics in the first decade of the Charter of Rights, the *Globe* saw only nine War on Terror-focused invocations of the Second World War injustices between the years 2001 and 2022, the majority of which addressed US rather than Canadian conduct and policy.⁵⁸ Only four cautionary references to Japanese-Canadian internment were found: a columnist praising British counterterrorism restraint,⁵⁹ a Muslim defendant in his 2006 terrorism trial,⁶⁰ an unsigned 2007 editorial citing Japanese-Canadian redress as precedent for compensating the wrongfully accused and illegally tortured Canadian, Maher Arar;⁶¹ and a 2010 opinion column criticizing preventive detention, in-camera trials, and expanded police and security powers.⁶²

Perhaps the most noteworthy finding of the *Globe* search is that it offers the first chronological instance in this study of a speaker invoking the internment as a *positive precedent* for the War on Terror. *Globe* columnist John Ibbitson sought to explain, “Why Racial Profiling is a Good Idea.”⁶³ Much like the far-right American author Michelle Malkin, whose *In Defence of Internment* denounced Japanese-American incarceration memory as a “fraud” preventing a more desirably muscular counter-terrorism policy, Ibbitson’s intervention was a broadside

⁵⁷ Amnesty International, *Security and Human Rights*.

⁵⁸ See Appendix, *Globe and Mail* entries.

⁵⁹ Appendix, 3.2.2.1.

⁶⁰ Appendix, 3.2.1.2.

⁶¹ Appendix, 3.2.12.3.

⁶² Appendix, 4.2.1.1.

⁶³ Appendix, 2.2.11/9.1.

against redress.⁶⁴ Foreshadowing the neo-fascist Proud Boys, in their White supremacist refusal “to apologize for creating the modern world,”⁶⁵ Ibbitson complained: “European North Americans have excoriated themselves for the evils committed against Japanese North Americans during the Second World War, against blacks since the days of the first slave boats, against native Americans since the days of the first white settlers. They have apologized and offered redress, and continue to debate whether they have done enough.”⁶⁶ Reworking a catchphrase of the 1964 far-right US presidential candidate, Barry Goldwater, Ibbitson concluded that such “political correctness” could no longer be countenanced: “Extremism in defence of public safety is no vice.”⁶⁷

5.3. *Sydney Morning Herald*: Nothing to See Here

Australia subjected its Japanese ancestry population to wartime policies of incarceration, dispossession, and deportation, it also embraced particularly harsh, post-9/11 measures that criminalized and oppressed migrants and refugees.⁶⁸ Yet the *Sydney Morning Herald* was devoid of instances of progressive Nikkei rights mnemonics. The search yielded 211 hits for “Japanese” + “terror” between the years 2001 and 2022, but only two linked Second World War injustices to the War on Terror, both of which came from US commentators discussing their own country’s past injustices and contemporary counter-terror measures. As in the cases of

⁶⁴ Michelle Malkin, *In Defense of Internment*, Washington: Regnery Publishing, 2004.

⁶⁵ Nick Smith, “Should Biden Apologize for Trump? National Remorse and the 2020 US Presidential Election,” *Society* 57, No. 6 (2020), pp. 698-703.

⁶⁶ Appendix, 2.2.11/9.1.

⁶⁷ Ibid.

⁶⁸ Margaret Bevege, *Behind Barbed Wire: Internment in Australia during World War II*, St. Lucia: University of Queensland Press, 1993; Gleeson, *Australia’s ‘War on Terror’ Discourse*.

the *Times* and *Globe* searches, most of the moot results dealt with Japanese antiterrorism policy or the impact of 9/11 on Japanese politics, markets, and businesses. However, some of the moot results—moot, that is, because they did not specifically invoke Australia’s wartime injustices to discuss its counterterrorism policy—yielded possible insight into the mnemonic context for that country’s War on Terror debates. These items revisited Japan’s attacks on Australia during the Second World War, recalled appreciatively the role of the US military in defending the Australian continent, and reasoned on this basis that Australia owed Washington reciprocal duties of loyalty and support in the post-9/11 context.⁶⁹

Gleeson’s analysis of resistance discourse in Australia’s War on Terror provides further indication of the country’s inhospitable climate for post-9/11 Nikkei mnemonics. Dissenters did not invoke previous Australian historical injustices, but argued rather that the policy turn violated civilizational norms and Australian traditions of equality and a “fair go.”⁷⁰ This general absence of critical rights mnemonics may reflect the more generally low profile of historical redress in Australia. For example, the only Australian entry found addressing racism in the Tilburg University global database of political apologies is the so-called Stolen Generations apology for Australia’s prior policy of forcibly adopting mixed-race Indigenous children into White families.⁷¹

⁶⁹ For illustrative instances, see Peter Hartcher, “Jumping at shadows no longer,” *Sydney Morning Herald*, March 18, 2005, 27, and *ibid.*, “Rudd offers a cheeky lesson in soft power,” *Sydney Morning Herald*, September 7, 2007, 31.

⁷⁰ Gleeson, *Australia’s ‘War on Terror’ Discourse*, pp. 216-219.

⁷¹ Marieke Zoodsma and Juliette Schaafsma, “Examining the ‘Age of Apology’: Insights from the Political Apologies Database,” *Journal of Peace Research* 59, No. 3 (2022), pp. 436-448. Please see here https://www.politicalapologies.com/?page_id=1118, and search “Australia.”

However, it would appear that Canada, long seen as a world leader in the politics of apology and redress, if not in “land back” Indigenous reparation, fared little better in using domestic histories of horror to inform its post-9/11 response. If Canadians recalled the wartime internment and dispossession policies to do so, it was not in the pages of the *Globe and Mail*. The *Globe* search thus suggests the tentative possibility that the social memories that Japanese Canadians used to shape Canadian rights consciousness in the first decade of the Charter have lost some of their former prominence. Alternatively, or in addition, Canada’s self-image as a bastion of liberal progressivism may pose significant barriers to using critical rights mnemonics to debating the country’s own present-day injustices against Arabs and Muslims.⁷²

6. Conclusions

Items in the *New York Times* drew repeatedly on social memories of the Second World War oppression to advocate moderation, the presumption of innocence, and due process. In the immediate post-9/11 period, eight of the total eleven invocations were *non-repetition warnings*, while a further two were *policy critiques*; in the remaining three years of Bush I, six of sixteen invocations were *policy critiques* and four were *non-repetition warnings*. Thus, the great majority of relevant *Times* invocations in the four years following the 9/11 attacks focused on protecting innocents, not licensing Islamophobic vengeance. This picture complicates the commonplace assumption that danger looms largest when catastrophic experiences spark hot emotions. It also demonstrates the honourable role of Nikkei redress

⁷² Nelson Wiseman, *In Search of Canadian Political Culture*, Vancouver: University of British Columbia Press, 2007, p. 271.

struggles in furnishing successive generations with “never again” social memories that rights-protecting actors can use in subsequent dangerous contexts.

However, hawks also developed a response to Nikkei rights mnemonics, countering their protective role by finding a new use for the historical memory of the wartime injustices: *maxing*. Retooling the historical lessons of redress into both disguise and license for state cruelty, they conspicuously denounced the wartime incarceration in order to legitimate whatever abuse that could be plausibly shown to fall below the absurdly high threshold of mass, categorical incarceration.

It is important to recognize the limitations of the official US and Canadian narratives of the wartime injustices in the face of this right-wing mnemonic response. The 1988 US Nikkei apology blamed “prejudice, war hysteria, and failure of political leadership”; its Canadian counterpart spoke of “perceived military necessities” in the “crisis of wartime.”⁷³ The historical record is in fact more disturbing. The wartime measures of mass incarceration and rights deprivation in both countries were outcomes of decades-long policies of official racism that used law and public administration to isolate Nikkei as exploitable second-class citizens, deliberately and explicitly disadvantaged in labour markets, business opportunities, education, and the exercise of political voice.⁷⁴

Although Holocaust memory offers a ready template for recognizing the dangers of “administrative evil,” this focus on long-run official racism and the expertise and planning

⁷³ For a comparative discussion, see James et al., “Separate National Apologies, Transnational Injustices: Second World War Oppression, Anti-Japanese Persecution, and the Politics of Apology in Five Countries,” *Global Studies Quarterly* 2, No. 4 (2022), pp. 7-8.

⁷⁴ *Ibid.*

required to legitimate and sustain it is relatively absent from the official US and Canadian mnemonic repertoires. Both repertoires present the wartime internment/incarceration as a simple by-product of panicked bigotry in vulnerable times.⁷⁵ Further, the tendency to invoke the wartime injustices against Nikkei as *precedent* for new injustices would appear only to have increased in the years following the two Bush presidencies. From Trump's entry as Republican primary candidate to the conclusion of this paper's media search in November 2022, the majority of War on Terror-focused invocations of the wartime injustices focused on legitimating and licensing new wrongs, not on fighting Islamophobia or protesting state over-reach. Of a total of thirteen invocations in this period, seven invoked the internment/incarceration as *precedent* and two did so for purposes of *maxing*; the remaining six, rights-protecting invocations were from progressives simply trying to counter the regressive new Trumpist surge. Lastly, far from constituting some kind of at least theoretically understandable panicked response to new threat developments, both the advent of *maxing* under Bush and then the Trumpist turn to *precedent* occurred in the absence of any new, organized mass terror attack on US soil. These represented instead the calculated attempts of Bush-era policy elites to neutralize the rights-protecting role of Nikkei injustice mnemonics and then of Trump to actively foment racism and Islamophobia for transparently self-serving purposes.

This paper proposes that we understand these developments in the mnemonics of rights from the standpoint of constitutionalism. The turn to *maxing* and *precedent* has critical implications for how we understand and debate questions about the boundaries of national community and the dividing line between the legitimate and illegitimate use of public power. It

⁷⁵ Danny L. Balfour, Guy B. Adams, and Ashley E. Nickels, *Unmasking Administrative Evil*, London: Routledge, 2020.

is particularly important to understand this turn as part and parcel of what journalist David Renton calls the rise of “new authoritarianism” following the 9/11 attacks.⁷⁶ The mnemonic significance of the new authoritarian project lies in its concerted and long-run focus on lessening the taboos on state violence, racism, and cruelty that liberal constitutionalism, organized under the banner of “never again,” slowly built up—however fitfully and hypocritically—in the decades after the Second World War. Early voices in this mnemonic reconsideration of postwar taboos, such as Dershowitz and Ignatieff, presented themselves as saviours of liberal constitutionalism, reluctant revisionists adapting to dangerous times.⁷⁷ Conservatives took a harder line from the outset. As we have seen, Canada’s Ibbitson turned his fire on the dangerous propensity for historical apology among “European North Americans” in an article, “In Defence of Racial Profiling.”⁷⁸ For her part, Malkin followed with an entire book, *In Defence of Internment*, which similarly attacked the historical justification for Japanese-American redress to help clear the way for an authoritarian 9/11 response; its introductory chapter was titled, “A Time to Discriminate.”

Today, the campaign to revise postwar “never again” liberal constitutionalism has become a war on the idea of regretful public history itself. The neo-fascist Proud Boys have made refusing to apologize a banner of White-male self-respect, while right-wingers strut their bona fides as “unapologetic” conservatives.⁷⁹ At the time of writing, Malkin had progressed from her earlier attack on Nikkei injustice memory to calling George Soros a “Holocaust

⁷⁶ David Renton, *The New Authoritarians: Convergence on the Right*, London: Pluto Press, 2019.

⁷⁷ Dershowitz, *Rights from Wrongs*; Appendix, 2.1.4.5 and 2.1.4.10.

⁷⁸ Appendix, 2.2.11/9.1.

⁷⁹ Smith, “Should Biden Apologize for Trump?”

facilitator” and consorting with known neo-Nazis.⁸⁰ Trump’s trajectory has been particularly illustrative. He keeps similarly odious company to Malkin and, as we have seen, engineered the shift in US rights mnemonics from *maxing* to the outright invocation of the wartime incarceration as positive *precedent* for all manner of Islamophobic abuse and incitement.⁸¹ A further extreme manifestation of the new authoritarian mnemonics is Vladimir Putin’s war on the very idea of historically informed public discussion, which, among other things, involves presenting the invasion of Ukraine as a de-Nazification operation. Snyder dubs the historical consciousness involved the “politics of eternity,” an orientation that seeks to demolish the possibility of cross-nationally shared historical referents in favour of a temporally invariant vision of the nation as constantly under attack and always on the brink of destruction, and in which there are no historical lessons save for the need for constant vigilance against a parade of omnipresent enemies.⁸²

From this surreal vantage point, the mnemonic touchstones of “never again” postwar liberal constitutionalism seem worth defending for the simple reason of fidelity to decency and sense-making. But there is more. Nikkei memory struggles developed within the mnemonic and interpretive context of this postwar global constitutionalism, and they deepened that constitutionalism by vernacularizing it in the US and Canadian contexts. These struggles advanced the causes of historical honesty, introspection, and recognition, and set signal precedents for redress for other wronged groups. They reshaped legal landscapes, helping to

⁸⁰ Anti-Defamation League. “Michelle Malkin is attempting to normalize White supremacy,” August 5, 2020, <https://www.adl.org/resources/blog/michelle-malkin-attempting-normalize-white-supremacy>.

⁸¹ Ibid., “Extremists react to Trump’s dinner with Ye and Nick Fuentes,” November 29, 2022, <https://www.adl.org/resources/blog/extremists-react-trump-dinner-ye-and-nick-fuentes>

⁸² Snyder, *The Road to Unfreedom*.

change civil liberties and emergencies legislation in both countries and indeed to set the 1982 Canadian constitution on an explicitly antiracist footing. And as we have also seen, they gave Americans an important meaning frame for combatting Islamophobia in the immediate wake of the 9/11 attacks, even if the Patriot Act debate highlighted key insufficiencies of the US and Canadian official apology narratives. The question is how to defend and build upon these mnemonic and constitutional achievements in adverse times.

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List of Media Items, Invocations, and Invocation Types in the Study

Legend

The following list includes all non-moot findings from the media search. The list is organized chronologically by periods (immediate post-9/11, Bush I, Bush II, Obama I, Obama II, and Trump) and media source.

Each item is coded as follows. The *first* number is the time period as noted above (with 1 corresponding to the immediate post-9/11 period and 6 to the Trump presidency); the *second* is the media source (1 = *New York Times*, 2 = *Globe and Mail*); the *third* is the type of invocation (see the list of invocation types below); and the *fourth* is the item's number within its relevant time period and media source.

Invocation Codes by Purpose

- | | |
|----|--|
| 1 | criticize policy |
| 2 | warn against repetition |
| 3 | express solidarity |
| 4 | maxing |
| 5 | warn that antiterror measures endanger country's reputation |
| 6 | observe that comparable policy dilemmas occurred prior to 9/11 |
| 7 | normalize War on Terror |
| 8 | criticize society generally |
| 9 | precedent |
| 10 | paling (not analyzed in this paper; "paling" refers to speaker invoking incarceration/internment to declare a War on Terror proponent "beyond the pale"—a kind of progressive counterpart to maxing) |
| 11 | precedent of redress endangers security |
| 12 | War on Terror measures require redress |

Immediate Post-9/11: *New York Times*

1.1.2.1

Goodstein, Laurie. "Relations: In US, Echoes of Rift of Muslims and Jews." *New York Times*, September 12, 2001, A12.

1.1.2.2

Mitchell, Alison and Richard L. Berke. "The Congress: Differences are Put Aside as Lawmakers Reconvene." *New York Times*, September 13, 2001, A16.

1.1.2.3

Toner, Robin. "Civil liberties: Some Foresee a Sea Change in Attitudes on Freedoms." *New York Times*, September 15, 2001, A16.

1.1.2.4

Glaberson, William. "War on Terrorism Stirs Memory of Internment." *New York Times*, September 24, 2001, A18.

1.1.2.5

Cole, David. "Liberties In a Time of Fear." *New York Times*, September 25, 2001, A29.

1.1.2.6

Hernandez, Raymond. "New Racial Profiling Debate Puts Legislators to the Test." *New York Times*, September 30, 2001, NJ2.

1.1.2.7

Pear, Robert and Neil A. Lewis. "House Panel Approves Bill Expanding Surveillance." *New York Times*, October 4, 2001, B7.

1.1.1.8

Toner, Robin, and Neil A. Lewis. "House Passes Terrorism Bill Much like Senate's But with Three-Year Limit." *New York Times*, October 13, 2001, B6.

1.1.1.9

Herbert, Bob. "The Witch Hunt." *New York Times*, December 3, 2001, A19.

1.1.2.10

Verhovek, Sam Howe. "In Liberal Enclave, Dose of Skepticism." *New York Times*, December 4, 2001, B7.

1.1.3.11

Hakim, Danny. "U.S. Arabs, Spurred on by Inquiry, Set Museum." *New York Times*, December 29, 2001, A8.

Bush I: *New York Times*

2.1.2.1

Sanger, David E. "There's a Small Matter of Checks and Balances." *New York Times*, January 27, 2002, C1.

2.1.5.2

Gingrich, Newt. "Reflections on an America Transformed." *New York Times*, September 8, 2002, C15.

2.1.2.3

Cohen, Adam. "Justice Rehnquist's Ominous History of Wartime Freedom." *New York Times*, September 22, 2002, C12.

2.1.6.4

Brzezinski, Matthew. "On Sept. 12, 2001, Without Being Charged, He Was Put Behind Bars for 73 Days." *New York Times*, October 27, 2002, E50.

2.1.4.5

Ignatieff, Michael, and Stephen Crowley. "The Burden: With a Military of Unrivaled Might, the United States Rules a New Kind of Empire." *New York Times*, January 5, 2003, SM22.

2.1.2.6

Lewis, Anthony. "Marbury v. Madison v. Ashcroft." *New York Times*, February 24, 2003, A17.

2.1.1.7

Lichtblau, Eric. "Ashcroft Defends Detentions as Immigrants Recount Toll." *New York Times*, June 5, 2003, A23.

2.1.2/1.8

Liptak, Adam. "The Pursuit of immigrants in America after Sept. 11." *New York Times*, June 8, 2003, WK14.

2.1.4.9

Rothstein, Edward. "Is Fear Itself the Enemy? Or Perhaps the Lack of It?" *New York Times*, February 14, 2004, B11.

2.1.4.10

Ignatieff, Michael. "Lesser evils: What It Will Cost Us to Succeed in the War on Terror." *New York Times*, May 2, 2004, 46.

2.1.1.11

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2.1.1.12

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