



Balancing National Security and Human Rights in Anti-Terror Legislation

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<http://www.jccls.org/> || Vol. 2 No. 3 (2026): July Issue

Date of Submission: 07-06-2026

Date of Acceptance: 18-06-2026

Date of Publication: 09-07-2026

Abstract — Since the early 2000s, states have enacted expansive counter-terrorism legislation that grants security agencies broad powers of surveillance, detention, and proscription. While these measures are typically justified by the imperative of protecting citizens from terrorist violence, a substantial body of scholarship documents their capacity to erode civil liberties, disproportionately burden minority communities, and weaken the rule of law. This paper presents a conceptual review of the literature on the tension between national security and human rights in counter-terrorism legislation, synthesizing legal, political-science, and sociological scholarship published mainly between 2006 and 2025. Studies are grouped into four thematic clusters: comparative legal analyses of post-9/11 legislative regimes, the proportionality doctrine as a balancing mechanism, the expansion of digital surveillance and its human-rights implications, and the discriminatory and racialized effects of counter-terrorism enforcement on minority populations.

The review finds that although the "balancing" metaphor remains dominant in legal discourse, empirical and doctrinal scholarship increasingly questions whether balancing is analytically coherent or whether it structurally privileges security claims over rights protections. A persistent gap exists in integrated frameworks that combine proportionality analysis with empirical evidence on the actual counter-terrorism effectiveness of rights-restricting measures. This paper proposes a conceptual framework—Evidence-Anchored Proportionality—that embeds an effectiveness-testing requirement within existing proportionality review, and outlines a methodology for its application. The paper does not report new empirical data; it synthesizes existing evidence and proposes a framework for future doctrinal and empirical research and policy design.



Keywords — counter-terrorism legislation; human rights; national security; proportionality; civil liberties; surveillance; securitization

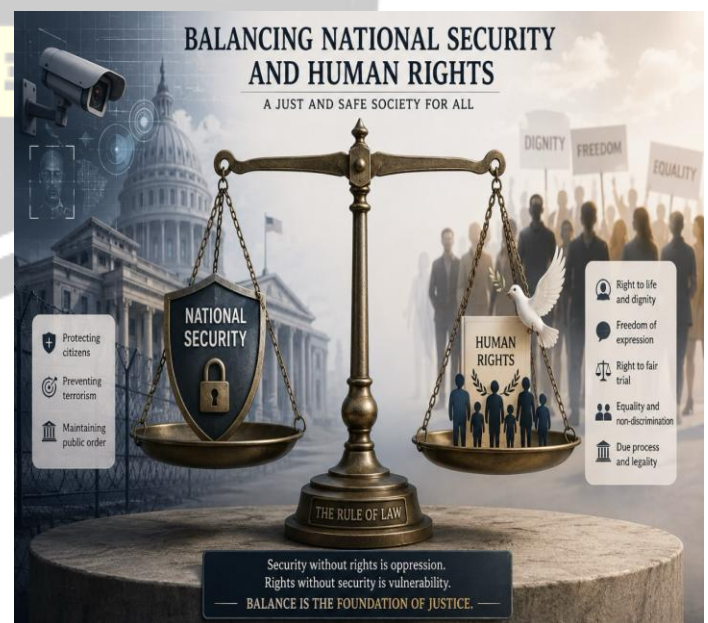
Introduction

The attacks of 11 September 2001 inaugurated an era of legislative innovation in which liberal democracies, and subsequently many non-democratic states, adopted sweeping counter-terrorism statutes. These laws expanded executive detention powers, created new surveillance authorities, broadened definitions of terrorism-related offences, and, in many jurisdictions, curtailed procedural protections historically guaranteed under criminal law (Haubrich, 2003; Golder & Williams, 2006). Two decades on, counter-terrorism legislation has become a permanent feature of the legal landscape rather than an emergency exception, prompting renewed scholarly attention to whether such laws achieve an appropriate balance between protecting the public from terrorist violence and safeguarding fundamental rights (Epifanio, 2011).

The tension is not merely theoretical. Comparative research shows that counter-terrorism statutes vary considerably in the extent to which they curtail civil liberties, reflecting differences in constitutional culture, judicial oversight, and threat perception (Epifanio, 2011; Michaelsen, 2010). At the same time, international and regional human rights bodies have repeatedly warned that vaguely defined terrorism offences and expansive surveillance powers are being used to suppress political dissent, target journalists and human rights defenders, and disproportionately burden racial and religious minorities (Council of Europe, 2019; Amnesty International, 2021). The rapid diffusion of digital surveillance and artificial-intelligence-enabled counter-terrorism tools has intensified this concern, introducing new categories of rights at risk, including privacy,

non-discrimination, and freedom of expression (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2022; United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2025).

This paper addresses two questions. First, how does the existing scholarly and institutional literature characterize the relationship between national security imperatives and human rights protections in anti-terror legislation? Second, what conceptual and methodological gaps remain, and how might they be addressed? The paper proceeds by reviewing the literature thematically, identifying the principal research gap, articulating research objectives, proposing a conceptual methodology, discussing implications, and concluding with recommendations for future research and policy design. As a conceptual and doctrinal paper, it does not present new empirical data; rather, it synthesizes existing evidence and proposes an analytical framework intended to guide future empirical and doctrinal inquiry.



Literature Review

Comparative legal analyses of post-9/11 legislative regimes

A foundational strand of scholarship compares the counter-terrorism statutes adopted by different states following September 2001. Haubrich (2003) offered an early comparative account of Britain, France, and Germany, finding that despite shared security concerns, the three states diverged markedly in the extent to which new laws curtailed civil liberties, a divergence he attributed to differing constitutional traditions and levels of judicial deference. Golder and Williams (2006) extended this comparative approach across common law jurisdictions, concluding that post-9/11 legislative regimes "impinge significantly upon human rights" and arguing for an explicit balancing approach grounded in domestic, regional, and international human rights obligations. Building on this tradition, Epifanio (2011) introduced a systematic dataset (LeRIT) coding thirty distinct regulatory dimensions of counter-terrorism law across twenty Western democracies between 2001 and 2008, demonstrating empirically that most states reduced civil freedoms, restricted procedural rights, and tightened immigration controls, with the degree of restriction shaped by a combination of threat perception and domestic political factors.

This cluster of literature is valuable for establishing that the security-rights trade-off is not uniform but is mediated by institutional and political variables. Its principal limitation is a focus on Western liberal democracies in the immediate post-9/11 period; more recent legislative developments, particularly in non-Western and authoritarian-leaning contexts, and the long-term normalization of emergency powers into ordinary law, receive comparatively less systematic empirical treatment (Geneva Academy, 2023).

Proportionality as a balancing doctrine

A second cluster examines proportionality as the principal legal mechanism through which courts and legislatures attempt to reconcile security and rights claims. Michaelson (2010) compared the German and Australian approaches, showing that formal recognition of proportionality in German constitutional jurisprudence has provided a more structured check on counter-terrorism overreach than Australia's comparatively unstructured constitutional framework, which he argued permitted the adoption of civil-liberties-curtailing measures "to an unprecedented extent." Subsequent doctrinal work has refined the proportionality test, emphasizing that assessments of necessity and legitimate aim cannot be divorced from an examination of whether a given measure is actually effective at reducing terrorist threat (Geneva Academy, 2025). The International Commission of Jurists (2020) similarly stresses that courts bear ultimate responsibility for ensuring that counter-terrorism offences are defined with sufficient precision and applied in a manner consistent with the principle of legality, necessity, and non-discrimination.

This body of work provides a rigorous normative vocabulary for evaluating counter-terrorism measures. However, as the Geneva Academy (2025) working paper observes, proportionality review as practiced by courts—including the European Court of Human Rights—has often paid inadequate attention to whether rights-restricting measures actually achieve their declared security aims, reducing proportionality analysis to a largely procedural exercise rather than a substantively evidence-based one.

Digital surveillance and technological expansion

A rapidly growing third cluster addresses the human-rights implications of the technological turn in counter-terrorism, encompassing bulk communications surveillance, biometric identification, predictive policing, and artificial intelligence. Analyses of bulk surveillance argue that human rights law approaches to monitoring communications data have struggled to keep pace with technological capability, and that assessments of "necessity" require closer scrutiny of the actual investigative utility of bulk collection rather than its mere availability. International bodies have echoed these concerns: the OHCHR (2022) documented the proliferation of intrusive spyware tools that, although justified by counter-terrorism rationales, have frequently been redirected toward surveilling journalists, opposition figures, and human rights defenders, and called for a moratorium on the sale and use of such tools pending adequate safeguards. The UN Special Rapporteur on human rights while countering terrorism has similarly warned that biometric identification, drone technology, and artificial-intelligence-enabled profiling introduced under counter-terrorism justifications carry substantial risks of bias, opacity, and rights violation, including in contexts of mass detention (United Nations Special Rapporteur, 2023, 2025).

This literature is notable for its close attention to emerging technologies and its explicitly precautionary orientation. Its main limitation, from an academic-legal standpoint, is that much of it originates from international organizations and advocacy bodies rather than peer-reviewed empirical scholarship, meaning that systematic academic evaluation of the actual security benefit of these technologies relative to their rights costs remains comparatively underdeveloped.

Discriminatory and racialized effects of enforcement

A fourth and increasingly prominent cluster examines how counter-terrorism legislation and policy are experienced unevenly across population groups, particularly Muslim minority communities. Qualitative research on the United Kingdom's Prevent programme demonstrates that counter-radicalization measures have disproportionately targeted Muslim communities relative to far-right extremism, producing what scholars term a "suspect community" effect (Bruchhaus & Abbas, 2025). Drawing on interviews with British Muslims, Bruchhaus and Abbas (2025) find that Prevent contributes to the racialization and securitization of Muslim identity, though they caution against monolithic portrayals, documenting a diversity of responses ranging from rejection to ambivalent accommodation. Related scholarship examines the gendered dimensions of counter-terrorism discourse, showing how narratives around Muslim women oscillate between infantilization and demonization, shaping both policy design and lived experience (Ahdash, 2024). Abbas (2025) further argues that securitized counter-radicalization frameworks may be not merely ineffective but counterproductive, fostering the very alienation and structural exclusion that increases vulnerability to radicalization—a phenomenon he terms "racialized disposability." At the international level, the Geneva Academy (2023) documents how counter-terrorism and preventing/countering violent extremism (P/CVE) frameworks have been invoked in several states to criminalize minority political activity, ranging from LGBTQ+ advocacy to religious and ethnic minority organizing, under the guise of national security.

This cluster makes a distinctive contribution by shifting analytical focus from formal legal text to the lived and unequal social effects of counter-terrorism enforcement, and by linking rights violations to policy counter-productivity. Its main

limitation is a relative concentration on specific national contexts (particularly the United Kingdom) and a reliance on qualitative methods that, while rich in explanatory depth, are less suited to establishing generalizable causal claims about legislative design.

complementing earlier doctrinal and institutional analyses (Bruchhaus & Abbas, 2025; Abbas, 2025).

Research Gap

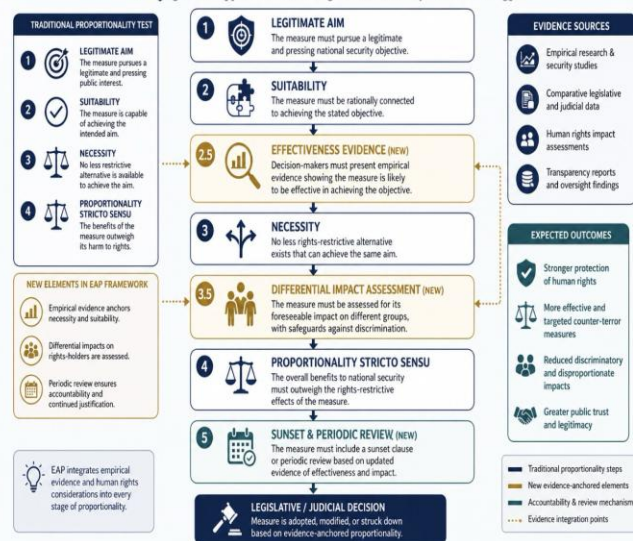
Despite these advances, the literature reveals a persistent gap: proportionality analysis—the dominant legal tool for balancing security and rights—continues to be applied without systematic integration of empirical evidence on whether specific counter-terrorism measures actually reduce terrorist risk. Doctrinal scholarship (Michaelsen, 2010; International Commission of Jurists, 2020) articulates the normative requirements of proportionality but rarely operationalizes an evidentiary threshold for the "necessity" and "effectiveness" prongs of the test. Conversely, empirical and sociological scholarship (Bruchhaus & Abbas, 2025; Abbas, 2025) documents the social costs of counter-terrorism measures in rich detail but is rarely integrated into the doctrinal proportionality framework used by courts and legislatures. The result is a structural asymmetry: security justifications are frequently accepted with limited evidentiary scrutiny, while rights costs, though increasingly well documented, remain doctrinally peripheral (Geneva Academy, 2025; Golder & Williams, 2006). No existing framework in the reviewed literature systematically combines (a) a structured proportionality methodology, (b) an explicit effectiveness-evidence requirement, and (c) sensitivity to differential and discriminatory impacts across population groups, within a single applicable model for legislative and judicial evaluation of anti-terror measures.

Research trends across the literature

Three trends are discernible across these four clusters. First, there is a clear shift over time from broad comparative description of post-9/11 statutes (Haubrich, 2003; Golder & Williams, 2006; Epifanio, 2011) toward more granular analysis of specific mechanisms—proportionality doctrine, surveillance technology, and discriminatory enforcement—that mediate the security-rights relationship. Second, recent scholarship increasingly interrogates the *effectiveness* of rights-restricting measures rather than assuming their security value, treating effectiveness as a necessary component of proportionality analysis (Geneva Academy, 2025). Third, there has been a marked "sociological turn," in which scholars examine how counter-terrorism law is experienced by affected communities,

EVIDENCE-ANCHORED PROPORTIONALITY FRAMEWORK (EAP)

A Strengthened Approach to Balancing National Security and Human Rights



1. To synthesize the scholarly and institutional literature on the relationship between national security and human rights in anti-terror legislation across legal, technological, and sociological dimensions.
2. To identify the conceptual and methodological gap concerning the integration of effectiveness evidence and differential-impact assessment into proportionality analysis.
3. To propose a conceptual framework—Evidence-Anchored Proportionality—together with a methodology for its future empirical and doctrinal application, capable of informing legislative design, judicial review, and policy evaluation.

Methodology

Given the conceptual and doctrinal nature of the inquiry, this paper adopts a qualitative, framework-development methodology rather than an empirical study design. Three methodological steps were undertaken.

First, a structured literature synthesis was conducted, drawing on peer-reviewed journal articles, law review scholarship, and authoritative institutional reports (including publications of the United Nations Office of the High Commissioner for Human Rights, the UN Special Rapporteur on counter-terrorism and human rights, the International Commission of Jurists, and the Geneva Academy of International Humanitarian Law and Human Rights) published primarily between 2003 and 2025, with earlier foundational works retained where they remain analytically central. Sources were grouped thematically rather than chronologically to surface cross-cutting patterns, following established practice in doctrinal legal review (Section 2).

Second, the identified thematic clusters were cross-analyzed to isolate points of convergence (for example, shared concern over vague statutory definitions of terrorism) and divergence (for example, differing emphases on doctrinal versus sociological evidence) across the literature.

Third, building on this synthesis, a conceptual framework was constructed. The proposed Evidence-Anchored Proportionality (EAP) framework extends the conventional four-part proportionality test—legitimate aim, suitability, necessity, and proportionality *stricto sensu*—by requiring that, at the necessity and suitability stages, decision-makers document (a) available empirical evidence on the counter-terrorism effectiveness of the specific measure under review, (b) an assessment of foreseeable differential impact on protected groups, drawing on comparative and sociological evidence such as that reviewed in Section 2.4, and (c) a mandatory periodic review (sunset or renewal) mechanism tied to reassessment of both effectiveness and impact evidence. This framework is proposed as a conceptual contribution for future empirical testing—for example, through comparative case-study analysis of specific statutory provisions, or through structured coding of judicial reasoning—rather than as a validated model based on new data collected for this paper. No original quantitative or experimental data were generated or reported.

Discussion

The reviewed literature converges on the observation that the "balancing" metaphor, while doctrinally dominant, may obscure more than it clarifies. As Golder and Williams (2006) themselves anticipated, framing security and rights as commensurable values to be weighed against one another risks treating rights as inherently negotiable rather than as constraints on legitimate state action. This concern is reinforced by

empirical findings that counter-terrorism legislation has, across many democracies, systematically favored security-oriented restrictions over rights protections (Epifanio, 2011), suggesting that in practice the "balance" is rarely struck at a genuine midpoint.

The proposed Evidence-Anchored Proportionality framework responds to this asymmetry by requiring that the burden of empirical justification fall more evenly on both sides of the equation. Embedding an explicit effectiveness-evidence requirement addresses the concern, raised in doctrinal scholarship (Geneva Academy, 2025), that courts have historically deferred to executive assertions of security necessity without adequate scrutiny of whether the challenged measure demonstrably reduces terrorist risk. Simultaneously, incorporating differential-impact assessment directly responds to sociological findings that counter-terrorism enforcement, even where nominally neutral, produces disproportionate burdens on specific communities (Bruchhaus & Abbas, 2025; Abbas, 2025), and that such disproportionate burdens may themselves undermine security objectives by eroding community trust and cooperation—a dynamic documented in the Prevent literature.

The framework also has implications for legislative design beyond judicial review. Sunset and periodic-review clauses, already present in some jurisdictions' counter-terrorism statutes, could be strengthened by tying renewal explicitly to updated effectiveness and impact evidence rather than to routine legislative reauthorization. This would partially address the well-documented tendency for emergency counter-terrorism powers to become permanent features of ordinary law even after the exigency that prompted them has diminished (Haubrich, 2003; Golder & Williams, 2006).

Several limitations of this conceptual contribution should be acknowledged. First, because the paper is doctrinal and synthetic rather than empirical, the EAP framework's practical feasibility—particularly the availability and reliability of "effectiveness evidence" for classified or operationally sensitive security measures—requires further investigation, including engagement with security-sector practitioners. Second, the framework's applicability may vary across legal systems with differing constitutional traditions of judicial review, as the comparative literature on Germany and Australia illustrates (Michaelson, 2010). Third, this review, while spanning multiple jurisdictions and thematic areas, does not claim exhaustive coverage of the global counter-terrorism legislative landscape, particularly legislation in non-English-language and non-common-law jurisdictions, which remains comparatively underrepresented in the reviewed literature.

Conclusion

This paper has synthesized scholarly and institutional literature on the relationship between national security and human rights in anti-terror legislation across four thematic areas: comparative legislative analysis, proportionality doctrine, digital surveillance, and discriminatory enforcement effects. The review indicates that while the scholarly and institutional literature has grown increasingly sophisticated in documenting both the security rationale and the rights costs of counter-terrorism measures, existing legal frameworks—most notably proportionality review—have not systematically integrated empirical effectiveness evidence and differential-impact assessment into a coherent evaluative model. In response, this paper has proposed the Evidence-Anchored Proportionality framework as a conceptual contribution intended to guide future empirical and doctrinal research, judicial reasoning, and legislative design. Future research should empirically test the

framework's components through comparative case studies of specific counter-terrorism provisions, structured analysis of judicial reasoning in national and regional courts, and engagement with affected communities to refine differential-impact assessment methodologies. Only through such an evidence-anchored and rights-sensitive approach can counter-terrorism legislation credibly claim to protect both the security and the fundamental rights of the populations it is designed to serve.

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