

Balancing Human Rights and National Security: A Comparative Analysis of Counter-Terrorism Legislation and Civil Liberties in Post-9/11 Democracies

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Abstract

Background: Since the September 11, 2001 attacks, liberal democracies have expanded counter-terrorism powers to address evolving security threats. These developments have generated persistent concerns regarding their impact on civil liberties and the effectiveness of existing mechanisms for constraining executive authority. **Objective:** This study examined how counter-terrorism frameworks in the United States, Canada, the United Kingdom, and France balance national security and civil liberties, and identified the legal and institutional arrangements most effective in limiting governmental overreach. **Methods:** An interpretivist research philosophy guided a qualitative comparative design based on systematic documentary analysis. Data were drawn from legislation, judicial decisions, oversight reports, and peer-reviewed scholarship published between 2001 and 2025, with pre-2001 material retrieved separately to establish a baseline. A corpus of 142 sources was retained from a systematic four-stage search, and a hybrid deductive-inductive thematic analysis was conducted across four domains: surveillance and privacy, detention and due process, expression and association, and oversight and review. **Results:** Three principal findings emerged. First, exceptional counter-terrorism powers were normalised in all four jurisdictions, but to differing degrees once the continued legal availability of a power is distinguished from its reauthorization and its documented operational use. Normalisation was most complete in France, where emergency powers were transferred directly into ordinary law by the **SILT Law 2017**, and least complete in Canada, where the **National Security Act 2017** partially reversed the earlier expansion. Second, formal constitutional protections were not reliable predictors of rights outcomes. The United States, despite possessing a strongly en-

trenched constitutional rights framework, recorded the most significant deficits in surveillance, detention, and due process, whereas the United Kingdom developed the most effective oversight architecture despite lacking a codified constitution. Third, stronger rights protection was consistently associated with oversight systems characterised by operational independence, transparency, broad mandates, and the capacity to influence policy and legal reform. **Conclusion:** Effective protection of civil liberties depends less on constitutional text than on the strength of accountability institutions. Oversight mechanisms that are independent, transparent, and capable of generating meaningful reform provide the most credible safeguard against executive overreach in contemporary counter-terrorism governance.

Keywords

Counter-Terrorism, Civil Liberties, Surveillance, Due Process, Oversight, Comparative Law

1. Introduction

Counter-terrorism law has been the subject of sustained academic and political debate since the September 11, 2001 attacks, with the central point of contention concerning whether, and to what extent, civil liberties and human rights must be curtailed to combat international terrorism. Some commentators hold that counter-measures are justified because liberal democracy itself is the target of terrorist violence (Tobechukwu, Nonyelum, & Ayres, 2019); on this view, rights would be rendered ineffective if easily revoked during crises (Michaelsen, 2006). Others argue that the liberal democratic state must hold to its defining values even during crisis, and that depriving citizens of their rights and liberties in the name of security is morally equivalent to the logic terrorists use to justify their own actions (Golder & Williams, 2006; Michaelsen, 2006). Sacrificing liberal ideals such as the rule of law, civil liberties, and human rights would amount to losing the war on terrorism without a single shot being fired (Rashidiani, 2025).

Earlier political theorists held that the legitimacy of government derives from its protection of individual rights rather than from the exercise of arbitrary power (Locke, 1690; Montesquieu, 1748; Rousseau, 1762). These scholars' views formed the foundation upon which constitutional democracies based the rule of law, limits of executive power, and the separation of powers. Later, international human rights were developed, which provide assurance for recognition of liberty, privacy, freedom of expression, and due process. The 9/11 attacks altered this relationship. For national security and to prevent future attacks, liberal democracies implemented strong anti-terrorism laws. The USA PATRIOT Act, Canada's Anti-Terrorism Act, the UK's *Anti-Terrorism, Crime, and Security Act 2001*, and France's *Law No. 2001-1062* improved monitoring and administration (Roach, 2011; Forcese

& Roach, 2015; Denney, 2023). These tactics improved terrorism detection and reaction but increased executive authority and generated questions about monitoring, incarceration, due process, and democratic accountability. Therefore, post-9/11 is a key time to evaluate how democratic regimes balance national security and civil liberties.

What has made the post-9/11 period distinctive is not simply the breadth of the initial legislative response but its durability. Scholars across multiple disciplines have documented the process through which powers enacted as temporary and exceptional have progressively become normalised features of permanent law (Roach, 2011; Forcese & Roach, 2015; Head, 2002). The concept of normalisation, as developed in the counterterrorism literature, refers to the absorption of emergency measures into the ordinary legal order without systematic review of whether the conditions that justified them continue to obtain (Blackbourn, 2008; Awan, 2011). This process has taken different institutional forms in the four jurisdictions studied in this article.

Despite the substantial scholarship that has accumulated on post-9/11 counterterrorism, a central analytical problem remains insufficiently addressed. The dominant strand of research has concentrated on documenting the expansion of security powers and mapping their formal legal dimensions within single jurisdictions or single legal traditions (Golder & Williams, 2006; Roach, 2011; Forcese & Roach, 2015; Awan, 2011). This work has established that counter-terrorism legislation has systematically prioritised executive efficiency over procedural fairness (Tobechukwu, Nonyelum, & Ayres, 2019), that proportionality has been treated as an obstacle rather than a constitutional standard (Golder & Williams, 2006; Thyroff-Kohl, 2020), and that racialised communities have borne disproportionate enforcement burdens (Meier, 2022; Bentley, 2018). Research has paid far less attention to which institutional arrangements actually restrain executive overreach in practice, across different legal traditions, when institutional incentives, national security privilege, and secrecy favour the expansion of executive authority. To fill the knowledge gap, this study compares counterterrorism governance in the US, Canada, the UK, and France and looks at how different oversight and constitutional frameworks affect civil rights outcomes from before 9/11 to 2025.

2. Methodology

2.1. Research Philosophy and Design

The study used an interpretivist research philosophy. This paradigm encouraged secondary data analysis and allowed the researcher to examine how legislators, courts, and oversight bodies interpreted counter-terrorism powers. A qualitative comparative design was used to examine civil rights and counter-terrorism legal, judicial, and policy sources from four jurisdictions. The post-9/11 legislative era (2001-2014) and the period of increased threats and power growth (2015-2025) shaped the study. This historical divide allowed tracking legal frameworks and rights safeguards across constitutional systems.

2.2. Case Selection and Comparative Rationale

The four jurisdictions were purposively selected to maximize comparative variation across three dimensions: legal and constitutional tradition, institutional oversight design, and historical experience with terrorism and counter-terrorism legislation. The United States, Canada, and the United Kingdom represent distinct common-law constitutional arrangements, while France provides a civil-law and administrative-law comparator. They also differ substantially in their pre-9/11 counter-terrorism experience and in the institutional mechanisms through which security powers are authorized and reviewed. The cases are therefore treated as analytically contrasting jurisdictions rather than as a representative sample of liberal democracies, and conclusions are limited accordingly.

2.3. Data Sources and Search Strategy

The study relied on publicly available secondary sources, including legislation, judicial decisions, oversight reports, and peer-reviewed scholarship identified through a systematic four-stage search process. Sources were collected from major legal, governmental, and academic databases and analysed thematically across four domains: surveillance and privacy, detention and due process, expression and association, and oversight and review. The protocol used for data collection is presented in Table 1.

Table 1. Systematic data collection protocol.

Stage	Activity	Databases / Sources	Selection Criteria
1. Primary legal sources	Compilation of statutes, statutory instruments, and international legal instruments for each jurisdiction across both temporal phases	Westlaw UK; HeinOnline; Legifrance; Justice Laws Canada; UK Legislation; US Congress	Relevance to one or more thematic domains; temporal coverage of pre-9/11, 2001-2014, or 2015-2025 phases; official government source
2. Judicial sources	Collection of domestic court decisions and regional human rights court judgments addressing counter-terrorism powers	Westlaw UK; HeinOnline; BAILII; HUDOC (ECtHR); Supreme Court of Canada; US Supreme Court	Direct relevance to a thematic domain; decided within temporal scope; cited in peer-reviewed literature or official oversight reports
3. Official reports and inquiries	Search for independent oversight reports, parliamentary inquiries, and inter-governmental assessments	HeinOnline; ProQuest; PCLOB; UK Independent Reviewer; NSIRA/NSICOP; CNCTR; UN treaty body database; EU FRA	Issued by an institutionally independent body; publicly available; relevant to a thematic domain; published within temporal scope
4. Peer-reviewed scholarship	Database search for journal articles, monographs, and book chapters on counter-terrorism law and civil liberties	Scopus; ProQuest; Wiley Online Library; Google Scholar; Westlaw UK academic content; HeinOnline law journal library	Peer-reviewed; directly relevant to a thematic domain; published 2001-2025; English language; cross-jurisdictional dimension preferred

Note: protocol applied consistently across all four source categories and across both jurisdictional and temporal dimensions of the comparison.

Searches were executed between 2 February and 16 June 2026 across the databases listed in Table 1. The core Boolean string, adapted to the syntax of each

database, was: (“counter-terrorism” OR “counterterrorism” OR “anti-terrorism” OR terrorism) AND (“civil liberties” OR “human rights” OR “fundamental rights” OR “constitutional rights”) AND (surveillance OR privacy OR detention OR “due process” OR expression OR association OR oversight OR review OR proportionality). This string was combined with jurisdictional limiters (“United States” OR USA OR Canada OR “United Kingdom” OR Britain OR France OR French) and a publication-date limiter of 2001 to 2025; pre-2001 material was retrieved separately to construct the baseline reported in **Table 2**. Primary legal and judicial sources were additionally retrieved by targeted citation searching within Legifrance, Justice Laws Canada, UK Legislation, US Congress, BAILII, HUDOC, and the Supreme Court databases of Canada and the United States, and the reference lists of all retained items were hand-searched for further sources.

The search identified 1,247 records, of which 268 were removed as duplicates, leaving 979 records screened at title and abstract level. Of these, 765 were excluded as not addressing counter-terrorism law in one of the four jurisdictions or in one of the four thematic domains. The remaining 214 records were assessed in full text, of which 72 were excluded for the following reasons: no substantive engagement with a thematic domain ($n = 24$); outside the 2001 to 2025 temporal scope, or superseded by a later instrument ($n = 15$); no comparative or cross-jurisdictional relevance ($n = 13$); non-peer-reviewed commentary or reporting without primary sourcing ($n = 12$); and French-language material with no official translation and no English-language secondary treatment ($n = 8$). The final corpus comprised 142 sources: 38 primary legal instruments, 31 judicial decisions, 29 official oversight reports and inquiries, and 44 peer-reviewed publications. A full search log recording the database, date, string, and yield for every query is available as supplementary material.

All screening, retrieval, and coding were undertaken by the sole author. Because a single-coder design cannot rely on inter-coder agreement, two mitigations were adopted. First, a decision log recorded the inclusion or exclusion rationale for every full-text item, providing an auditable trail from search to coded extract. Second, a randomly selected 20 per cent of the retained corpus was re-coded four weeks after initial coding; intra-coder agreement was 91 per cent, and the discrepancies concerned the allocation of sources between the due process and oversight domains rather than inclusion decisions. Such sources were subsequently coded to both domains.

2.4. Analytical Framework

Four themes (surveillance and privacy, detention and due process, expression and association, and oversight and review) that frequently surfaced in the literature on post-9/11 counterterrorism governance served as the framework for the analysis (Rodiyah et al., 2023; Masyhar, Arifin, & Sabri, 2023; Golder & Williams, 2006). The study was able to track how certain rights were impacted over time and between jurisdictions by coding sources based on their relevance to these topics. Af-

ter identifying significant institutional and legislative changes in each nation, the investigation looked at their documented effects on civil rights using scholarly reviews, oversight reports, and court rulings. Lastly, the study evaluated the effectiveness of current oversight procedures in limiting executive power.

Three terms used throughout the analysis require definition. For comparative purposes, “rights outcomes” refer to the documented effects of counter-terrorism measures on privacy, liberty and detention, due process, expression, and association, assessed through legislation, judicial findings, oversight reports, and documented institutional practice. “Effective oversight” refers to the capacity of review institutions to constrain or correct executive action, and was assessed consistently according to operational independence, transparency, breadth of mandate, and capacity to generate meaningful legal or policy reform. “Formal constitutional protections” refer to legally entrenched or higher-order rights guarantees capable of constraining executive power through constitutional or equivalent judicial review, as distinct from ordinary statutory and institutional safeguards. These criteria were applied in the same form to all four jurisdictions.

A hybrid deductive-inductive thematic approach was used. The four overarching domains were specified a priori from the research questions and from recurring concerns identified in the counter-terrorism literature. Within these domains, subthemes, institutional patterns, and cross-jurisdictional similarities and differences were developed inductively through repeated engagement with the documentary evidence, informed by [Braun and Clarke’s \(2021\)](#) thematic analysis approach.

The analysis also adopts a specific standard for the concept of normalization. In this study, statutory persistence alone is not treated as sufficient evidence of operational normalization. The analysis distinguishes between the continued legal availability of a power, its repeated legislative renewal or reauthorization, and evidence of its continuing operational use. Normalization is therefore assessed as a matter of degree rather than as a uniform condition across jurisdictions.

2.5. Ethical Considerations and Limitations

There were no concerns with participant care, permission, or personal data because the study only used publicly accessible secondary sources. Ethics approval was received in February 2026. Although this was lessened by the use of a variety of legal, judicial, governmental, and academic sources, the use of secondary data restricted the direct evaluation of lived experiences and operational practice. The use of English-language materials, which might not adequately convey the subtleties of French administrative law, and variations in constitutional traditions among jurisdictions also limited comparative study. Two further limitations follow from the design. Screening and coding were carried out by a single researcher, mitigated but not eliminated by the decision log and intra-coder reliability check reported in Section 2.3. In addition, the rights protection index presented in [Figure 1](#) is an interpretive summary of the qualitative findings rather than a validated

measurement instrument, and its ratings should be read alongside the underlying evidence in **Tables 3-6**.

3. Findings

This section presents the comparative findings of the systematic documentary analysis across all four jurisdictions and both post-9/11 legislative phases. It is organised around the four thematic domains established in the analytical framework, preceded by an overview of the legislative landscape that provides structural context for each thematic analysis.

3.1. The Legislative Landscape: Pre- and Post-9/11

A detailed baseline description of what was in place prior to September 2001 is necessary for a comparative comprehension of the post-9/11 legislative reaction (**Table 2**). The scope and sophistication of pre-9/11 frameworks varied greatly, from the United Kingdom's well-developed statutory architecture shaped by decades of legislative response to the Irish Republican Army threat (**Blackbourn, 2008; Walker, 2011**) to Canada's reliance on general criminal law with no offenses specific to terrorism (**Jacoby, 2004**).

All four jurisdictions underwent substantial legislative expansion in the immediate post-9/11 period (2001 to 2006), with broadly analogous extensions in surveillance, detention, and proscription powers. This expansion was fastest in the United States and Canada, where pre-existing frameworks were most limited, and somewhat more measured in the United Kingdom and France, where established frameworks already provided considerable counter-terrorism capacity. Applying the standard set out in Section 2.4, the degree of normalisation nonetheless varied. France represents the most complete case, combining transfer into ordinary law with documented and continuing operational use. The United States shows repeated reauthorization of an actively used power in Section 702. The United Kingdom shows continued availability alongside declining operational use, with four TPIM notices in force in late 2024. Canada shows the weakest case, since the **National Security Act 2017** reversed part of the earlier expansion and no security certificate detention was active in 2025.

A second wave of legislative activity beginning around 2014 to 2015 produced a markedly different pattern across the four jurisdictions. In France, this wave culminated in the transfer of emergency regime powers directly into ordinary legislation through the **SILT Law 2017**, without independent review of whether those powers had been necessary or proportionate during the emergency period. In the United Kingdom, the **Investigatory Powers Act 2016** consolidated covert mass collection programmes and placed them on a transparent statutory footing while expanding their scope. In Canada, the second wave produced both an expansion (Bill C-51, 2015) and a major corrective (**National Security Act, 2017**), driven by a change of government and sustained civil society campaigning. The **USA FREE-DOM Act 2015** reformed telephone metadata collection but left Section 702 bulk

collection intact, representing a limited and contested change in the United States.

A third pattern concerns the relationship between legislative change and constitutional safeguards. Despite having the most extensive formal constitutional rights protection of the four jurisdictions, the United States produced the broadest and least judicially scrutinised counter-terrorism regime. Canada and the United Kingdom, despite lower formal constitutional protection, produced more rights-protective outcomes. The FISA Court's ex parte proceedings and the intermittent operation of the Privacy and Civil Liberties Oversight Board (PCLOB) hindered effective scrutiny of programmes that would likely have been found unconstitutional under ordinary adversarial review.

Table 2. Counter-terrorism legislative landscape: pre- and post-9/11 comparison.

Country	Pre-9/11 Framework	First Phase (2001-2014)	Second Phase (2015-2025)	Key Constitutional Constraint
USA	FISA 1978; AEDPA 1996; institutional separation of intelligence and law enforcement ("the wall")	USA PATRIOT Act 2001 removed the wall; s.215 bulk metadata; FISA Amendments Act 2008 s.702 bulk content	USA FREEDOM Act 2015 reformed s.215; s.702 renewed 2018 and 2024; bulk phone metadata programme ended 2019	First and Fourth Amendments; Article III review; habeas corpus; FISA Court (ex parte, classified)
Canada	CSIS Act 1984; no terrorism-specific offences; general criminal law only	Anti-terrorism Act 2001: terrorism offences, preventive arrest; Anti-terrorism Act 2015 (Bill C-51): CSIS disruption powers	National Security Act 2017 established NSIRA and NSICOP; CSE Act 2019; Bill C-59 safeguards for CSIS	Charter ss.2, 7, 8, 10, 11; s.1 proportionality test; Federal Court warrant authorisation
UK	Terrorism Act 2000 (in force Feb 2001): proscription, stop and search, 48-hour detention, shaped by IRA-era legislation	ATCSA 2001 indefinite detention (struck down 2004); PTA 2005 Control Orders; TA 2006 glorification offences; CTA 2008	CTSA 2015 Prevent statutory duty; IPA 2016 bulk powers on statutory footing with double-lock; TPIM Act amendments 2019	Human Rights Act 1998 (ECHR); ECtHR jurisdiction; Independent Reviewer; Joint Committee on Human Rights
France	1986 terrorism law; centralised Paris Court of Appeal jurisdiction; examining magistrates with broad powers	Law No. 2001-1062 (LSQ) expanded search and interception; state of emergency declared 14 November 2015 following the Paris attacks (the Charlie Hebdo attacks having occurred in January 2015)	Intelligence Act 2015 created CNCTR and algorithmic surveillance; SILT Law 2017 transferred emergency powers permanently	Conseil constitutionnel abstract review; Conseil d'Etat review; CNCTR advisory only; ECHR as ratified treaty

3.2. Surveillance and Privacy

After 9/11, surveillance became the most advanced and widespread dimension of counter-terrorism in all four jurisdictions. Much of the legal authority, operational practice, and intelligence cooperation involved is classified, so comparison relies on court rulings, oversight reports, official disclosures, and, particularly in the United States, intelligence insider disclosures (Denney, 2023; Deflem &

McDonough, 2015). Under Section 215 of the PATRIOT Act, the FBI could require firms to produce “any tangible things” relevant to terrorism investigations without probable cause and under tight secrecy (Donohue, 2005; Deflem & McDonough, 2015). The 2013 disclosures by Edward Snowden demonstrated that the National Security Agency had interpreted Section 215 as authorising bulk collection of call-detail records for virtually all Americans, a programme whose scope bore no relationship to the legislative text or to what most members of Congress believed they had authorised (Denney, 2023; Deflem & McDonough, 2015). The PCLOB later found that the bulk telephone metadata programme had not prevented terrorist attacks and that the government had overinterpreted the law (PCLOB, 2014; Denney, 2023). Despite civil liberties concerns, Section 702 of the FISA Amendments Act 2008 continued to allow bulk collection of online communications, including incidental collection involving US persons (Saul, 2025; Rodiyah et al., 2023).

Of the four jurisdictions, the Investigatory Powers Act of 2016 generated the most comprehensive statutory reorganization, giving ministers and senior judges a “double-lock” authorization mechanism for data collection and bulk interception (Thyroff-Kohl, 2020; Parkes, 2007). In *Big Brother Watch and Others v. United Kingdom* (2021), the Grand Chamber of the European Court of Human Rights held that the pre-2016 regime had breached Articles 8 and 10 of the Convention because the safeguards governing examination of bulk-intercepted material were inadequate and because intelligence-sharing arrangements with the US National Security Agency had no statutory basis and fell outside the oversight framework. This judgment establishes a regional legal standard for surveillance practice in the UK and France and demonstrates that external human rights courts can bind even well-resourced legal systems with strong institutional resistance to reform.

Canada’s accession to the Five Eyes intelligence-sharing arrangement after 9/11 blurred the boundary between domestic intelligence collection and foreign signals intelligence, expanding the operational mandate of the Communications Security Establishment (Chenoweth & Dugan, 2016). These concerns were compounded by the expansion of inter-departmental information-sharing under the *Anti-terrorism Act 2015*, which Forcese and Roach (2015) warned created risks of “information laundering”, the use of intelligence obtained without judicial authorisation as the basis for subsequent, formally authorised investigation. The National Security and Intelligence Review Agency found that CSIS had shortcomings in meeting its duty of candour to the Federal Court in warrant proceedings, a finding with major implications for the integrity of the judicial authorisation process (NSIRA, 2022; Rodiyah et al., 2023).

In France, the algorithmic surveillance authority established by the *Intelligence Act 2015*, first justified by the threat environment following the Charlie Hebdo attacks, became a permanent feature of French intelligence law without systematic parliamentary review of its operational record (European Union Agency for

Fundamental Rights, 2023). The Intelligence Act 2015 introduced algorithmic surveillance of network metadata, authorised by the Commission nationale de contrôle des techniques de renseignement (CNCTR), whose opinions are advisory rather than binding (Rashidiani, 2025; European Union Agency for Fundamental Rights, 2023). The European Union Agency for Fundamental Rights (2023) concluded that France’s oversight arrangements for bulk intelligence collection fell short of compliance with Articles 7 and 8 of the EU Charter of Fundamental Rights, identifying in particular the CNCTR’s inadequate technical capacity relative to the complexity of the surveillance it is asked to assess. Table 3 summarises the comparative surveillance picture across the four jurisdictions as of 2025.

Table 3. Surveillance frameworks: comparative rights assessment (2025).

Country	Primary Legal Authority and Bulk Collection	Oversight Model	Principal Rights Deficit Identified
USA	PATRIOT Act s.215 (reformed 2015); FISA Amendments Act s.702 (renewed 2024); EO 12333 for overseas collection. Bulk collection permitted under s.702 and EO 12333; telephone metadata programme ended 2019.	FISA Court: ex parte, classified proceedings, approves over 99% of applications; PCLOB suffers chronic vacancies and intermittent operation.	PCLOB (2014): s.215 programme unlawful and operationally unnecessary; Big Brother Watch (2021): intelligence-sharing unlawful, no binding domestic remedy to date.
Canada	CSE Act 2019 (foreign signals intelligence and cybersecurity); CSIS Act (domestic intelligence). Bulk metadata collection permitted under ministerial authorisation; CSIS targeted collection by Federal Court warrant.	Federal Court for CSIS warrants; ministerial authorisation for CSE bulk activities; NSIRA provides comprehensive post-hoc review; NSICOP parliamentary oversight.	NSIRA (2022): Identified shortcomings concerning CSIS’s duty of candour and disclosure of material information in Federal Court warrant proceedings, a finding with major implications for the integrity of the judicial authorisation process.
UK	Investigatory Powers Act 2016: bulk interception, bulk acquisition, bulk equipment interference, and bulk personal datasets, all on explicit statutory footing since 2016.	Double-lock: ministerial warrant plus Investigatory Powers Commissioner (judicial); Investigatory Powers Tribunal for individual complaints, with adversarial challenge available.	Big Brother Watch (2021): pre-IPA bulk interception violated Arts 8 and 10 ECHR; intelligence-sharing with the NSA had no statutory basis; IPCO conducts ongoing IPA compliance review.
France	Intelligence Act 2015: algorithmic surveillance of network metadata; SILT Law 2017: administrative surveillance; Decree 2017-1224: international surveillance. CNCTR prior opinion required but advisory only.	CNCTR prior authorisation, advisory and not binding on the Prime Minister; Conseil d’Etat ex post administrative review only; no adversarial judicial oversight mechanism.	EU Agency for Fundamental Rights (2022): CNCTR opinions not binding, fewer than 20 secretariat staff, inadequate technical capacity for algorithmic surveillance scrutiny.

3.3. Detention, Due Process, and Liberty

Detention powers became one of the most controversial features of post-9/11 counter-terrorism, occupying a space between ordinary criminal justice and executive detention (Table 4). The US Authorization for Use of Military Force 2001

permitted detention without trial or meaningful judicial review (Donohue, 2005; Rodiyah et al., 2023). Despite the rulings in *Rasul v. Bush* (2004), *Hamdi v. Rumsfeld* (2004), and *Boumediene v. Bush* (2008), Guantanamo Bay remained operational, highlighting the limited capacity of courts to constrain entrenched security practices.

Table 4. Detention powers and judicial responses: comparative analysis.

Country	Key Power and Legal Basis	Procedural Safeguards	Current Status (2025)
USA	Enemy combatant detention at Guantanamo Bay; material witness detention; administrative immigration detention, under AUMF 2001 and Homeland Security Act 2002.	Combatant Status Review Tribunals; habeas corpus before federal courts post-Boumediene; limited discovery of classified evidence; military commissions.	15 detainees remain at Guantanamo (January 2025); no civilian trials completed since 2008; no systematic closure plan enacted; material witness statute continues in use.
Canada	Security certificates (IRPA ss.77-85): indefinite detention of non-citizens pending removal; recognisance with conditions; investigative hearings reinstated 2013.	Special Advocate procedure (post-Charkaoui 2007): security-cleared independent lawyer reviews classified evidence; Federal Court review every six months.	No active security certificate detentions as of 2025; Special Advocate regime operational; adequacy of disclosure to Special Advocates remains contested.
UK	TPIMs (2011 Act): restrictions on movement, communication, residence, and association without conviction, amounting to de facto house arrest, renewable; port examination under Sched 7 TA 2000; pre-charge detention up to 14 days (TA 2000 s.41).	High Court review on individual application; annual renewal required; closed proceedings with Special Advocate; Home Secretary must apply for a notice.	4 active TPIM notices (late 2024); Independent Reviewer 2023 report recommended strengthened disclosure obligations; debate continues over evidential threshold and duration.
France	MICAS (<i>SILT Law</i> 2017, Arts 1-6): administrative house arrest, electronic bracelet, and travel bans imposed by the Ministry of Interior on any person presenting a serious security threat, without criminal charge, renewable.	Conseil d'Etat ex post judicial review only; no prior judicial authorisation required; subject may challenge measures but administrative review scope is limited.	Over 500 MICAS measures imposed 2017-2024 (<i>French Senate</i> , 2024); Council of Europe raised concerns about the absence of ex ante judicial oversight; ECtHR application pending.

The United Kingdom presents the richest judicial record of detention law reform of the four jurisdictions. The House of Lords' finding in *A v. Secretary of State for the Home Department* [2004] UKHL 56 that indefinite detention of foreign nationals under Part IV of the *Anti-Terrorism, Crime and Security Act* 2001 was incompatible with Articles 5 and 14 of the European Convention on Human Rights required repeal of that provision and prompted the introduction of Control Orders under the *Prevention of Terrorism Act* 2005 (Fenwick, 2002; Bachmann & Galvin, 2010). Control Orders were themselves challenged in *Secretary of State for the Home Department v. JJ* [2007] UKHL 45, where the House of Lords found that eighteen-hour curfews amounted to a deprivation of liberty in violation of Article 5, and in *Secretary of State for the Home Department v. AF (No. 3)* [2009] UKHL 28, where it held that even in closed proceedings using secret evidence,

individuals must receive sufficient disclosure of the allegations against them to mount an effective defence (Bachmann & Galvin, 2010; Awan, 2011).

In Canada, the Supreme Court in *R. v. Khawaja* [2012] 3 SCR 555 upheld the motive element of terrorism offences, which requires that offences be committed for a political, religious, or ideological purpose, while interpreting it narrowly to require that the motivation be directly connected to the facilitation of violence rather than to the mere holding of political or religious views associated with groups that engage in violence (Jacoby, 2004; Forcese & Roach, 2015).

In France, the Mesures individuelles de contrôle administratif et de surveillance (MICAS) introduced under the SILT Law 2017 allow the Ministry of Interior to impose restrictions, including administrative house arrest, electronic tagging, and travel bans, on any person presenting a serious security threat, without criminal charge or conviction, subject only to ex post review by the Conseil d'Etat. The Conseil constitutionnel, in Decision No. 2017-695 QPC (2018), upheld the MICAS subject to conditions including a maximum duration and periodic review requirement. More than 500 such measures were imposed between 2017 and 2024 (French Senate, 2024), and the Council of Europe has raised concerns about the absence of any ex ante judicial authorisation, with an application currently pending before the European Court of Human Rights.

3.4. Expression, Association, and Civic Space

Counter-terrorism laws have also affected freedom of expression and civic space, often in less visible but equally significant ways (Table 5). Under the United States' material support statute (18 USC 2339B), it is a crime to knowingly provide material support or resources to a designated foreign terrorist organisation. In *Holder v. Humanitarian Law Project* (2010), the Supreme Court held that the statute reached even peaceful political advocacy and legal advice carried out "in coordination with" a designated group, a holding that sharply narrowed First Amendment protection in the counter-terrorism context (Sidel, 2011; Meier, 2022). The resulting legal uncertainty has led civil society organisations to restrict legitimate engagement out of well-founded fear of criminal liability (Sidel, 2011; Meier, 2022), a dynamic anticipated at the outset of the post-9/11 period by Head (2002), who predicted that broadly drawn association and glorification offences would suppress legitimate political dissent, particularly among minority communities already subject to disproportionate state scrutiny, a prediction subsequently confirmed across all four jurisdictions (Bentley, 2018; Meier, 2022).

In the United Kingdom, the Terrorism Act 2006 created offences of encouragement and dissemination of terrorist publications, including the "glorification" of terrorist acts, which attracted controversy during parliamentary debate for their potential breadth. Bentley's (2018) analysis of the Prevent strategy identifies a more pervasive and less judicially scrutinised mechanism of civic space restriction, which she terms "normative invalidation": by framing criticism of Prevent itself as a potential indicator of extremist sympathies, the strategy, made a statutory

duty on schools, universities, healthcare providers, prisons, and local authorities by the [Counter-Terrorism and Security Act 2015](#), has insulated itself from the forms of democratic scrutiny that would ordinarily apply to a programme of this scope. Successive reports of the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism have found that Prevent disproportionately affects Muslim communities and generates documented chilling effects on political engagement across the institutions it covers ([Saul, 2025](#); [Awan, 2011](#)). The government's own Shawcross Review of Prevent in 2022 acknowledged some of these concerns while recommending an extension rather than a curtailment of the programme.

Table 5. Impact on expression, association, and civic space: comparative overview.

Country	Key Provision	Documented Impact	Assessment
USA	Material support law (18 USC §2339B)	Chilling effect on advocacy, diaspora engagement, and Muslim charities (Holder v. Humanitarian Law Project, 2010 ; Sidel, 2011 ; Meier, 2022)	Most restrictive; limited judicial constraint and evidence of disproportionate enforcement (Sidel, 2011 ; Meier, 2022)
Canada	Terrorism offences with motive element	Concerns over monitoring of Muslim, Indigenous, and environmental groups (NSIRA, 2022 ; Jacoby, 2004)	Least severe; moderated by Charter protections and the narrowing effect of <i>R. v. Khawaja</i> (Forcese & Roach, 2015)
UK	Glorification offences and Prevent duty	Chilling effects on students, academics, and Muslim communities (Bentley, 2018 ; Awan, 2011 ; Saul, 2025)	Most institutionalised civic-space restriction through the Prevent framework (Bentley, 2018)
France	SILT Law 2017 ; association dissolution powers	Dissolution of Muslim associations and restrictions on expression (Rashidiani, 2025)	Strongest administrative restrictions on association; executive action requires no prior judicial authorisation (Rashidiani, 2025)

France relied on its republican tradition and the principle of *laïcité* to justify restrictions on certain forms of religious and political expression. Under the [SILT Law 2017](#), more than twenty Muslim associations were dissolved between 2017 and 2022, with critics arguing that judicial review by the *Conseil d'État* remained overly deferential to executive assessments of risk ([Rashidiani, 2025](#)). In Canada, concerns that terrorism offences could chill legitimate political and religious activity were partly mitigated by the Supreme Court's narrow interpretation of the motive element in *R. v. Khawaja* ([Jacoby, 2004](#); [Forcese & Roach, 2015](#)). Across all four jurisdictions, restrictions on civic space produced similar chilling effects through different legal and institutional mechanisms, with Canada generally imposing the least severe constraints ([Meier, 2022](#); [Bentley, 2018](#); [Sidel, 2011](#); [Head, 2002](#)).

3.5. Oversight, Proportionality, and Review

Oversight and review mechanisms emerged as the principal factor distinguishing rights outcomes across the four jurisdictions ([Table 6](#)). Comparative scholarship suggests that effective oversight depends on four attributes: operational independence, transparency, breadth of mandate, and the capacity to generate meaningful

reform (Head, 2002; Parkes, 2007; Saul, 2025). The United Kingdom demonstrated the strongest performance across these dimensions through the Independent Reviewer of Terrorism Legislation, the Investigatory Powers Commissioner's Office, and the Investigatory Powers Tribunal, all of which have contributed directly to legislative and operational reform (Blackbourn, 2008; Parkes, 2007; *Big Brother Watch and Others v. United Kingdom*, 2021). Canada strengthened oversight substantially after 2017 through NSIRA and NSICOP, although concerns remain regarding intelligence disclosure practices (Forcese & Roach, 2015). In contrast, oversight in the United States has been weakened by secrecy, classified proceedings, and institutional limitations, while France's advisory model has struggled to provide effective scrutiny of expanding surveillance powers (Denney, 2023; European Union Agency for Fundamental Rights, 2023).

Table 6. Oversight and review architecture: effectiveness assessment (2025).

Country	Key Oversight Bodies	Independence and Transparency	Overall Effectiveness
USA	PCLOB; FISA Court; Congressional Intelligence Committees	Moderate independence; low transparency due to classified proceedings (Donohue, 2005; PCLOB, 2014)	Weak: reforms limited and often triggered by disclosures rather than oversight
Canada	NSIRA; NSICOP; Privacy Commissioner; Federal Court	High independence; moderate-high transparency through public reporting (Forcese & Roach, 2015; NSIRA, 2022)	Improving: strengthened oversight architecture since 2017
UK	Independent Reviewer; IPCO; Investigatory Powers Tribunal; ISC	High independence and transparency, with extensive public reporting (Blackbourn, 2008; Parkes, 2007)	Strong: most transparent and reform-oriented oversight system
France	CNCTR; Conseil constitutionnel; Conseil d'État	Moderate independence; advisory powers and limited transparency (European Union Agency for Fundamental Rights, 2023; Rashidiani, 2025)	Limited: insufficient capacity and weak constraints on executive power

Taken together, the findings indicate that no jurisdiction consistently protected civil liberties across all dimensions of counter-terrorism governance (Rodiya et al., 2023; Masyhar, Arifin, & Sabri, 2023). The United States produced the most severe rights deficits, particularly in surveillance, detention, due process, and oversight, while Canada generally recorded more moderate outcomes and demonstrated notable improvement following reforms introduced after 2017 (Forcese & Roach, 2015). The United Kingdom maintained the strongest oversight architecture despite persistent concerns regarding expression and association under the Prevent framework (Bentley, 2018; Awan, 2011). France combined extensive surveillance and administrative powers with comparatively limited oversight, resulting in continuing concerns relating to due process and freedom of association (Rashidiani, 2025; European Union Agency for Fundamental Rights, 2023). To facilitate comparison across these domains, **Figure 1** presents an illustrative rights protection index derived from the qualitative assessments generated in the preceding analysis.

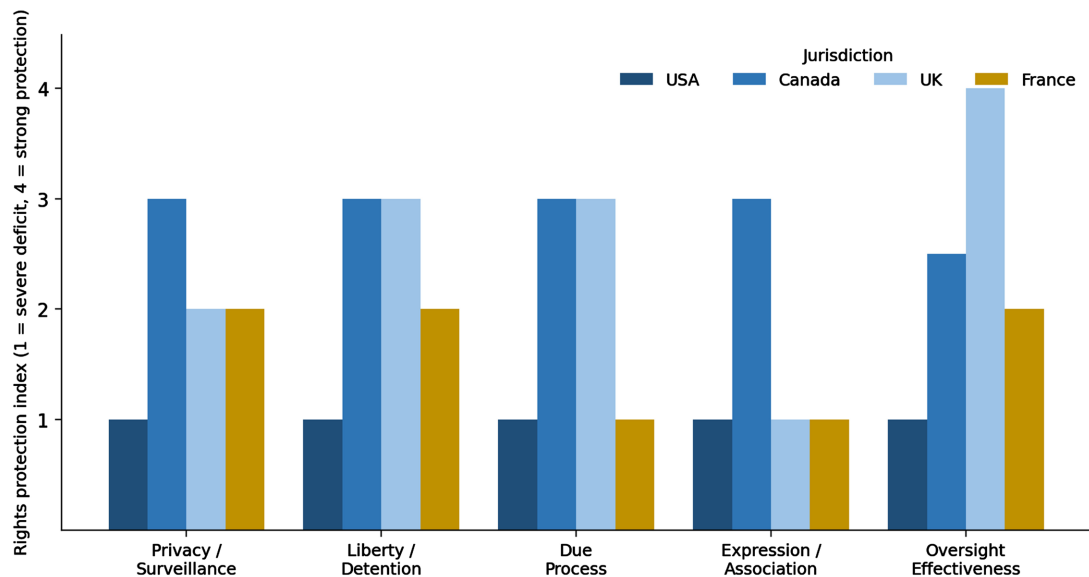


Figure 1. Comparative Rights Protection Index by Domain and Jurisdiction (2025). **Note:** The rights protection index is an illustrative summary of the qualitative findings of this study and is not a validated measurement instrument. Ratings were assigned on a four-point scale: **1 = severe rights deficit; 2 = moderate-severe deficit; 3 = moderate deficit; 4 = comparatively strong rights protection.** The five display dimensions disaggregate the four analytical domains, separating detention and liberty from due process because the evidence base for the two differed materially in the United Kingdom and Canada. Each cell was rated on two indicators drawn from the corresponding row of **Tables 3-6:** (i) the formal legal and institutional design of the relevant power or review mechanism, and (ii) its documented operation, as evidenced by judicial findings, oversight reports, and recorded practice. The cell score is the mean of the two indicator ratings, which yields whole-point values where the indicators converge and half-point values where they diverge; a half-point therefore denotes a position between the two adjacent whole-point descriptors. **Canada's oversight rating of 2.5 is the only such case in the figure:** the post-2017 architecture of NSIRA and NSICOP rates 3 on design, while the documented failure of CSIS to make full disclosure to the Federal Court in warrant applications (**NSIRA, 2022**) rates 2 on operation. The index is intended to facilitate visual comparison rather than to provide a quantitative measurement of rights performance.

4. Discussion

The findings demonstrate that counter-terrorism powers introduced in response to exceptional threats tend to become embedded within ordinary legal and administrative systems over time. Although the four jurisdictions followed different legal pathways, each displayed movement from temporary emergency measures toward permanent security governance. The extent of that movement varied, however, and the distinction drawn in Section 2.4 between legal availability, reauthorization, and documented operational use matters to the conclusion. Canada demonstrates that the process is reversible where political conditions permit, since the **National Security Act 2017** withdrew part of the disruption powers conferred in 2015. This pattern was particularly visible in France, where powers exercised under the state of emergency were incorporated into ordinary law through the **SILT Law 2017**, and in the United States, where surveillance authorities originally justified by the immediate aftermath of 9/11 remained central features of national security policy decades later (**Scheppele, 2004; Rashidiani, 2025**). Similar trends have been identified in comparative studies of counter-terrorism governance,

which argue that emergency measures rarely remain temporary once institutional actors become accustomed to their use (Roach, 2011; Head, 2002). The findings therefore support the argument that the principal challenge for liberal democracies is not the initial introduction of extraordinary powers, but the difficulty of preventing their long-term normalisation.

A notable feature of this process is the asymmetry between the speed of power expansion and the pace of accountability. Major legislative responses to terrorism were enacted rapidly, often during periods of heightened public anxiety, whereas judicial review, legislative scrutiny, and institutional reform developed much more slowly. The USA PATRIOT Act was enacted within weeks of the September 2001 attacks, while significant judicial constraints on detention and surveillance emerged only after years of litigation (Donohue, 2005). Similar delays occurred in the United Kingdom, where powers introduced under the *Anti-Terrorism, Crime and Security Act 2001* remained operational long before courts established meaningful limits on their application (Blackbourn, 2008). By the time oversight mechanisms intervened, many practices had already become embedded within intelligence and security institutions. This temporal imbalance helps explain why legal safeguards frequently appear reactive rather than preventive and suggests that future counter-terrorism frameworks should incorporate stronger review requirements at the point of enactment rather than relying primarily on subsequent judicial correction.

The study also indicates that effective oversight depends less on formal legal authority than on institutional independence, transparency, and the capacity to influence policy outcomes. The United Kingdom consistently demonstrated the strongest oversight architecture through the interaction of the Independent Reviewer of Terrorism Legislation, the Investigatory Powers Commissioner's Office, parliamentary scrutiny, and judicial review mechanisms (Parkes, 2007). These institutions not only monitored security powers but also contributed directly to legislative reform, including the development of the *Investigatory Powers Act 2016*. Canada likewise strengthened accountability through the establishment of NSIRA and NSICOP, creating a more integrated review structure than existed during the immediate post-9/11 period (Forcese & Roach, 2015). In contrast, oversight in the United States was constrained by secrecy, limited transparency, and the classified nature of FISA Court proceedings, while France's reliance on advisory review limited the practical impact of oversight findings (Denney, 2023; European Union Agency for Fundamental Rights, 2023). The evidence therefore suggests that oversight institutions are most effective when they possess both operational independence and the practical ability to generate policy change.

The comparative findings further challenge the assumption that stronger constitutional protections necessarily produce stronger rights outcomes. Constitutional theory often assumes that formally entrenched rights provide a durable safeguard against executive overreach. The evidence presented here offers a more complex picture. Despite possessing the most extensive constitutional rights

framework among the four jurisdictions, the United States experienced some of the most severe restrictions on privacy, detention, and due process after 9/11 (Donohue, 2005). By contrast, the United Kingdom, which lacks a codified constitution, produced comparatively stronger accountability outcomes through a dense network of oversight institutions and external review mechanisms. Canada's post-2017 reforms similarly demonstrate that institutional adaptation can strengthen rights protection even without major constitutional change (Jacoby, 2004). These findings support arguments that constitutional text alone cannot guarantee rights protection; institutional willingness and capacity to enforce legal constraints are equally important determinants of outcomes (Golder & Williams, 2006; Roach, 2011).

The findings also highlight the continuing tension between security objectives and freedoms of expression, association, and political participation. Although the legal mechanisms differed, all four jurisdictions generated documented chilling effects on particular communities and forms of civic engagement. In the United States, broad material-support provisions created uncertainty regarding lawful advocacy and humanitarian engagement (Sidel, 2011; Meier, 2022). In the United Kingdom, the Prevent programme extended security monitoring into educational and community institutions, raising concerns about its impact on democratic participation and public debate (Bentley, 2018; Awan, 2011). France employed administrative dissolution powers and restrictions on associations that disproportionately affected Muslim organisations, while Canada generally imposed less severe constraints due to stronger judicial interpretation and Charter protections (Forcese & Roach, 2015; Rashidiani, 2025). The consistency of these patterns across different legal systems suggests that counter-terrorism governance frequently affects civic space in ways that extend beyond its immediate security objectives.

A final finding concerns the growing internationalisation of counter-terrorism governance and the accountability challenges it creates. Intelligence-sharing arrangements, international watchlists, and transnational surveillance networks increasingly operate across jurisdictions with different legal standards and oversight requirements. The judgment in *Big Brother Watch and Others v. United Kingdom* (2021) exposed weaknesses in the legal framework governing intelligence-sharing, yet similar arrangements remain central to contemporary security cooperation. International terrorist designation systems create additional challenges because domestic courts often lack access to the intelligence underlying foreign or multi-lateral listing decisions (Saul, 2025). As anticipated by earlier scholarship, the exercise of security power has become increasingly transnational while accountability mechanisms remain largely national in scope (Dworkin, 2002; Donohue, 2005). The result is a structural accountability gap that no single jurisdiction has adequately resolved. These findings reinforce the principle that civil liberties should not be treated as conditional upon the prior achievement of security, but rather as constitutional constraints intended to govern the exercise of public power during

precisely those periods when pressures to expand that power are greatest.

5. Conclusion

This study found that post-9/11 counter-terrorism powers have become increasingly embedded within ordinary legal systems across the United States, Canada, the United Kingdom, and France. Although all four jurisdictions expanded surveillance, detention, and preventive powers, they differed markedly in their ability to constrain executive authority. The evidence suggests that effective rights protection depends less on formal constitutional guarantees than on the strength of oversight institutions. The United Kingdom achieved the most effective overall balance through independent review, transparency, and accountability mechanisms, although not in relation to expression and association, where the statutory Prevent duty produced the most institutionalised restrictions on civic space of the four jurisdictions. The United States recorded the most significant deficits despite possessing a strongly entrenched constitutional rights framework. Canada strengthened protections through post-2017 reforms, whereas France continued to rely heavily on administrative powers with limited oversight. The findings indicate that rights are best protected where oversight bodies are independent, transparent, and capable of producing meaningful reform. Democratic security is strengthened, not weakened, when civil liberties remain an active constraint on the exercise of state power.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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