**Federalizing for Security: the EU and the US in Comparative Perspective[[1]](#footnote-1)**

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Terrorist attacks in Europe over the past few years raise a number of politically charged questions. Although most attacks were perpetrated by European citizens rather than migrants, the migration flow provided cover for some of those that carried out the 2015 Bataclan massacre to return to Europe after training in Syria (France 24, 2015). German intelligence officials also warn of, “substantial reports” that Islamic State terrorists have infiltrated Germany through the refugee flow (Posaner, 2016). What powers should security and investigative services have to reduce the risk of attacks and at what level of governance should those powers be concentrated? How can the member states of the European Union mitigate the risk that the free movement of people within the Schengen area will facilitate terrorist activity?

These questions raise doubts as to whether or not the EU can endure at its current level of integration. Put simply, a situation in which terrorists can cross borders that national intelligence and security agencies cannot is one that will likely produce political pressure to either reestablish national borders and step back from one of the most significant aspects of European integration, or move forward to a new level of integration that pulls some of the powers of the national intelligence services in Europe into an EU institutional arrangement with transnational authority. The gravity of the issue for the future of the EU is recognized by those calling for a “security union,” but is this likely given the sensitivity of the question and its implications for one of the most guarded areas of national authority (European Commission, 2016)? The purpose of this paper is to examine a somewhat similar historical case and determine if it provides any guidance as to the likely direction of the EU in this regard.

Although the above questions focus on the contemporary European situation, they are familiar to students of American history because the United States faced many similar issues at the turn of the 20th Century. The eventual outcome for the US was to centralize domestic intelligence and security functions in the Federal Bureau of Investigation as well as the creation of a federal Immigration and Naturalization Service. Although any historical analogy is necessarily limited, the American experience may provide some clues as to how the EU may evolve institutionally to better cope with the current security challenges. It may also provide some insight into how and why systems of governance acquire a more federal character. From a theoretical perspective, federalization generally occurs to better guard against common external threats. The Federalist papers authored by some of the leading intellectuals of the American revolution based much of their case for a stronger federal system on the need to united the states to prevent the more powerful European empires from interfering in North America (Publius, 1788). Federalism can also be a means to accommodate disparate populations within one national territory and manage domestic political conflict (Elezar, 1987). In the current case of the EU, the impetus for greater federalization is somewhat different. Rather than guard against an external threat, greater federalization is driven by a need for improved internal security.

At the same time, the threat of terrorist action across member state boundaries raises the question of how long the open borders of the Schengen area can endure without significant policy changes. France reinstated some temporary border controls as part of its emergency legislation as permitted under the border agreement. But such temporary controls could become more of a permanent feature as national governments seek to constrain the risk of cross-border terrorism. If that occurs, one of the key aspects of the European Union, free movement of people and goods across national borders, will be in jeopardy. Thus the EU may be faced with a situation in which the preservation of the current level of integration is dependent on the centralization of internal security functions currently held by national governments. From a theoretical perspective, this turns the logic of functionalism on its head. The traditional conception of functionalism is that greater integration on “low politics” eventually leads to greater integration on the “high politics” issues of security, defense and foreign policy (Haas, 1958; Schmitter, 2005). It now appears that further integration on the high politics of security is critical to maintaining the current degree of integration on the low politics of economic policy.

This paper begins with a brief examination of current terrorist action in Europe in comparison with Europe’s post-war experience with terrorism. It then looks at the existing level of internal security coordination within the EU. Finally, it considers the American experience at the turn of the 20th Century that led to greater federalization, and how this might apply to contemporary Europe.

**The Shifting Nature of Terrorism and its Implications in Europe**

The idea that changes are necessary in the way Europe mitigates the terrorist threat is based on the premise that something has changed in the nature of terrorism. After all, European member states, particularly the UK and Spain, confronted a serious terrorist problem in the 1970s and 1980s from the IRA and ETA. Germany and Italy also had experienced numerous attacks by far-left groups such as the Red Brigades and the Bader-Meinhof gang. In fact, a simple accounting of terrorism’s casualties shows that the 1970s and 1980s were far more violent than the current time frame. [[2]](#footnote-2) This poses the question of why any further measures are needed to cope with the current level of terrorist activity in Europe. Two major factors should be considered. First, the current wave of terrorism is fundamentally different in the means it employs and the reasons behind its violence compared to previous waves in the post-war era. Secondly, the lack of internal borders in Europe and the more general anti-western agenda of the current terrorist groups rather than specific nationally-oriented agenda of the IRA or ETA puts the entirety of the EU more at risk in comparison to the previous era.

There is no question that the peak years of terrorist violence in Europe occurred 30-40 years ago. But the fatalities were generally in a restricted geographic area and generally targeted particular individuals as representatives of state authority or rival factions. An overwhelming portion of casualties were caused by either the IRA operating in Northern Ireland or major cities in England, or ETA operating in Spain. Most of their victims were members of the security forces, government officials, or in the case of the IRA, Protestant militia members. Violence was targeted and used as means to the ultimate end of securing territory on which to build an ethnically-defined state. This is important because it inherently restrained the use of violence in pursuit of these goals. Indiscriminant killing would raise the possibility that the population they claimed to represent would turn on them in disgust over their actions (Laqueur, 2003; Hoffman, 2006). Both the IRA and ETA killed far more individuals than jihadists have in the past few years, but these tended to be assassinations of a few individuals at any one time, not mass casualty events. A random individual citizen was unlikely to be a victim of such terrorism, and when they were it was generally not the intended action.

The contrasts with contemporary Europe should be fairly obvious. The attacks in Paris in November 2015, Brussels in March 2016 and Nice in July 2016 were terrifying because of their random nature. The intended targets were average citizens in public places and, with the exception of the Brussels airport, all could be considered “soft targets” that are impossible to secure from committed terrorists. Violence is not constrained in these cases by political considerations as it was in the 1970s or 1980s. The IRA, for example, lost an enormous amount of popular support after a bomb placed in the town center of Omagh in 1998 exploded at the wrong time, killing 29. Groups that must appeal to a political constituency and aspire to becoming legitimate governing authorities are constrained. Groups with an apocalyptic world-view are not so constrained.

This combined with the open borders between many EU member states leads to an unsustainable situation: terrorists can move easily between member states, but national intelligence agencies cannot. The obvious solution is coordination and cooperation between national security and intelligence agencies, and the member states have moved in this direction. Europol exists to facilitate the exchange of analysis on crime and terrorism. Within the European External Action Service, the EU Intelligence Center (INTCEN) coordinates information from member states for the purposes of the Common Foreign and Security Policy as well as counter-terrorism. The Counter Terrorism Group (CTG) stands outside the EU institutional structures and includes non-EU members, but it does provide counter-terrorism analysis to the EU institutions. FRONTEX has some operational capacity, but its main role is in coordination rather than active border control.

All of this is helpful, but none of these agencies have an independent ability to investigate, gather intelligence or do more than collate what the national governments choose to share. Discussions with individuals involved in intelligence coordination reveal that this is generally information that is already known, or available through open sources. That which is deemed sensitive or classified under national systems is not typically shared in such venues.

The reasons for this lack of coordination and cooperation are varied, but several stand out as particularly significant challenges. The most important of these is the high degree of care taken by national agencies to protect sources and methods. Actionable intelligence on terrorist cells often comes from informants and surveillance. Protecting those sources and the technical means by which intelligence is gathered is a priority consideration of any national intelligence agency. Thus, each national agency must trust that information gathered through such sensitive channels will be guarded with the same degree of care by other agencies. That level of confidence is often difficult to achieve even between similar agencies within one national government; doing so across national lines is far more problematic.[[3]](#footnote-3)

Sources and methods concerns generally constrain the more sophisticated intelligence services from sharing information with their less-developed counterparts. National intelligence agencies tend to share information on a quid pro quo basis, which means that states with well-developed intelligence networks such as France and the UK are not always forthcoming with the smaller member states such as Belgium. But the reasons are often more about protection of sources and methods than unequal exchange. Hypothetically speaking, France could have well-placed informants in a terrorist cell with links in Belgium. Informing the Belgian intelligence services would seem to be the logical next step, but that requires that France have complete confidence in the operational security of the notoriously fragmented Belgian security services. It also means that France must be confident that such a service would not engage in less-sophisticated surveillance that might alert those under surveillance. This could lead to the closing down of that cell in Belgium, or worse, the identification, isolation or elimination of the informant that French intelligence had cultivated.

The EU faces something of a crossroads. Thus far, most coordination at the EU level has been on cooperation after the fact. Common definitions of terrorism, common arrest warrants and improved judicial cooperation all help to prosecute terrorists after they act. Yet, little is done to coordinate before the fact to prevent terrorist incidents. In large part this is because this involves cooperation between the elements of the state that are least prone to cooperation and information sharing: the domestic security services and intelligence agencies. There are serious issues of operational security to take into account as well as other legal and organizational factors involving different systems of classification and operational management across national intelligence agencies. Recent events generated some pressure to move past this set of roadblocks and construct a security union but the barriers to doing so are real and complex. Yet, so are the consequences of not moving forward. It may seem unlikely that the EU will take measures to become a security union with more centralized intelligence and domestic security functions, but the EU is not unique in facing this situation. The following section explores how and why the United States increased the power of the federal government to better secure the member states against the threat of terrorism in the early 20th Century. While no historical analogy is a perfect match, the pattern of federalization may be instructive.

**From “The United States are” to “the United States is”**

It is often assumed that the United States of the 20th and 21st century is simply an expanded version of what existed previously, but the strength of the federal government and the presidency is a relatively new phenomenon in the history of the nation (Bensel, 1990). Throughout most of the 19th century it was clear that the bulk of power rested in the individual states and their representatives in the Congress. The federal government was one with only, ‘a token administrative presence in most of the nation [. . .]whose sovereignty was interpreted by the central administration as contingent on the consent of the individual states’ (Bensel, 1990, p. ix). The Senate, which had a particularly powerful influence over foreign policy, was designed to give equal representation to the individual states. Until 1913 senators were elected by the individual state legislatures, which made them very much the representatives of their state’s interests. The Senate used its prerogatives to the full extent, leading Henry Adams to quip that the United States had a government, ‘of the people, by the people, for the Senate’ (Adams, quoted in Beisner, 1986, p. 6).

Throughout the 19th century the Congress was far more powerful than the executive branch, which lacked the staff, funding and administrative capacity to govern effectively. The individual states also had considerably more authority and autonomy in the 1870s and 1880s than they would have in the 20th century. States controlled much of the regulatory structure that existed and the federal government did not gain control over immigration until 1882 (Zakaria, 1998, p. 101). The Congress was dominant in most areas and the individual bureaucracies of the federal government were in practice responsible to the Congressional committees rather than the president.

The states through their representatives in the Senate were able to frustrate most plans of the executive to use the material power of the United States to play a larger role in international affairs in the 1870s and 1880s. Throughout the period immediately following the Civil War, the Senate simply refused to take under consideration treaties that would have expanded the reach and influence of the United States. Part of this was owed to the reluctance of the Congress to assume the expense of expansion, but much of it was tied to the ongoing battles between the states and the executive for authority over domestic affairs. Greater involvement in foreign affairs would necessarily increase the power of the federal government relative to that of the individual states. Becoming embroiled in world affairs was consistently opposed by many in the United States because it was feared that this would necessitate a large standing military and, in turn, increased taxes and demands on the citizens and individual states (Selden, 2004, p. 32; Kupchan, 2002). This concern, first articulated by Thomas Jefferson in the earliest days of the republic, was a constant in American political discourse and it was particularly salient in the aftermath of the Civil War and the subsequent military occupation of the south.

The balance of power, however, between the states and Congress on the one hand, and the federal government and the executive branch on the other, began to shift rapidly with a series of reforms that began in the 1880s (Zakaria, 1998, p. 92). Those changes occurred in response to the rapid industrialization of the country. In particular, the rapid growth of the railways created a continental market for goods that required national-level regulation (Angevine, 2004). At the same time, the rapid growth in cities required new forms of regulation over the new technologies providing public services over large areas such as gas, electricity and telecommunications (Zakaria, 1998, p. 95). Reformers of the time successfully campaigned to expand the power of the federal government to regulate an increasingly large number of issues such as health and safety standards that had previously been in the hands of the individual states or local authorities (Sproat, 1968). This led to the creation of new bureaucracies under the control of the federal government that gradually gained the expertise and competency to expand its powers at the expense of the sovereignty of the individual states. This power was centralized in the executive branch because most reformers at the time saw the Congress as too parochial to cope effectively with such challenges (Keller, 1977).

Thus, he US was not always the strong federal system that exists today. The early years of the republic featured an extremely weak federal government, even after the ratification of the constitution and the creation of a central government. The main impetus for the creation of a federal republic was security, and many of the Federalist papers make the case for unity to protect against the intrigues of European powers. The Civil War ostensibly settled the issue of the rights of the individual states relative to the power of the federal government, but even in the later part of the 19th Century, the US federal government was still a weak entity.

More relevant to this discussion, however, there was almost no federal domestic security or law enforcement capacity until the early 20th century. The Secret Service was created as a branch of the Treasury Department to root out currency counterfeiters, although its role was expanded immediately after the Civil War to combat the remnants of the rebel army that refused to lay down their arms (Klu Klux Klan). But even this role was removed from the Secret Service with the end of Reconstruction in 1876. Once again, the states asserted their power through the Senate and had a reflexive antipathy to the exercise of this sort of power at the federal level.

It is not until 1902-1906 that there are even the beginnings of federal domestic intelligence and security service that becomes the Federal Bureau of Investigation. Why were the states willing to accept this expansion of federal power now when they fiercely resisted it over the prior decades? There are multiple reasons for this shift including the overall progressive agenda of the time that sought to root our corruption in government and fraud against government. But one overarching concern was the growing threat of terrorism. Anarchist movements that began in Germany and Russia in the mid-19th Century grew and metastasized into a full-blown terrorist network. As is the case today, many of the perpetrators were “lone wolves” inspired by the anarchist ideology but not directed by any centralized command. They struck at heads of state and other authority figures, but they also took the fight into society more broadly claiming that anyone profiting from the current social and political system was a legitimate target. They operated trans-nationally and experimented with the most advanced weapons of their time in an effort to maximize casualties. The parallels to the current environment are striking, and the anarchists were highly effective in instilling a broad sense of insecurity across Europe.

The purpose of this paper is not to trace the history of the anarchist movement, but a brief explanation of its origins and motivations is warranted. The 19th Century anarchist movement is generally viewed by historians as a reaction to “early globalization” that facilitated the movement of people, goods and ideas across national borders (Gage, 2011). In its earliest forms, the anarchist movement struck out against the repressive Russian state targeting its figureheads and authority figures. But the movement grew and spread across Europe, targeting a wider range of individuals that took part of the existing economic and social structure deemed by anarchists as exploitative and deadly to the working classes. As the influential anarchist Johann Most wrote, the objective was, “murder for murder” until the system collapsed (Laqueur, 2004).

Between 1894 and 1900, anarchist terrorists killed the President of France, the Prime Minister of Spain, the Empress of Austria, and the King of Italy. Bombs were exploded on the floor of the French Assemblée National, a Barcelona theatre, Parisian cafés, and the Paris stock exchange. More heads of state were killed in this period than in any other comparable time frame. Between 1880 and 1914, anarchists killed approximately 150 individuals and injured nearly another 500 (Jensen, 2001). Those figures pale by comparison to the contemporary environment, but this is due to the more destructive technologies available today; anarchists at the time used the most deadly means available to them. The violence caused by the anarchist movement was shocking and had no precedent in European history. But anarchists had struck in the US as well and were blamed for the Haymarket bombing in Chicago in 1886. Even so, anarchism was seen by American officials as a mainly European problem with the solution being to screen out potential anarchist immigrants.

The assassinations and bombings of the 1890s in Europe were certainly shocking to Americans, but the overall sentiment was to avoid entanglements with other European states, and prevent a European disease from infecting the US. Several European states did try to form organizational structures for sharing intelligence, coordinating police action and otherwise cooperating to mitigate the transnational threat. The United States was invited to join in these arrangements, but politely demurred. At one level, there was a strong distaste in Washington for close cooperation with an effort led by authoritarian Russia and a relatively repressive Austria. But at another level, the US could not have cooperated closely with its European counterparts even if it was willing to do so. Most significantly, the US lacked the ability to coordinate with European states because, “the lack of a national police force and central criminal identification service prior to the full development of the FBI in the mid-1920s restricted America’s freedom of action…” (Jensen, 2001; 16). In a letter to the State Department, the Chief of Police of Washington, DC explained that, “ It is quite evident that our foreign police friends are unacquainted with the system of policing which prevail in the United States. There (Europe) the head and front of the security service is directly under the general government; here we have distinct and separate state and municipal institutions, they being under the control of the municipalities in several states; and it would be impossible for the United States Government to enter into an interchange with the Austria-Hungarian Government in regard to the finger print or Bertillon [photograph] systems for that reason” (Jensen, 2001; 30).

The assassination of President McKinley in 1901 by the self-proclaimed anarchist Leon Czolgosz, however, added urgency to the issue even if it did not spark closer American cooperation with European states. More importantly, it sparked an awareness in the US that the dangers posed by anarchist terrorism could not be contained by walling off the United States from the perceived source of terrorism, Europe and particularly Germany. A federal agency with the power to investigate and prosecute across the country was needed.

Although the assassination of McKinley provided a strong impetus towards federalization of this aspect of security, the member states still fought to curtail the size and power of the new service. “Congress had very specifically, and repeatedly, prohibited the Treasury Department from spending its investigative appropriation on anything besides currency-related cases….so the Justice and Treasury Departments worked out a legal subterfuge , one that put Secret Service agents to work on Justice Department cases without, Roosevelt felt, being in technical violation of congressional prohibitions” (Powers, 2004: 46). Congressional committees lambasted the President’s attempts to use executive power to create what they characterized as his personal spy system (Powers, 2004: 51). The leader in Congress of this movement to restrict the President and the creation of a new investigative service was the Chair of the House Appropriations Committee, James Tawney of Minnesota. Tawney headed a large group within Congress that was highly suspicious of federal law enforcement, and he was aided in particular by western and southern members of congress that had their own reasons for seeking the restriction of federal power (Powers, 2004: 47).

Despite this potent opposition, the federal government moved steadily towards the creation of an agency that eventually became the Federal Bureau of Investigation in 1909. This began with the initial detailing of Treasury Department investigators to the Justice Department that became known as the Special Agent Force and was assigned the task of all official investigations with the exception of bank examinations and immigration matters on July 26, 1908, a date still marked as the birthday of the FBI even if it did not get that official designation until a year later. This small force was highly limited by a Congress that was suspicious of creating a secret police that might become an unaccountable force controlled by the president alone. As a result, FBI agents could not carry weapons or even make arrests; rather, they could detain a suspect under a “citizen’s arrest” until a local police officer could arrive (Kessler, 2002: 10). Over the following decade, however, the FBI became a powerful force taking control of a wide range of counter-intelligence functions during World War I. The FBI played a major role in American attempts to enforce its neutrality laws in the initial years of the war, and then became a critical part of the Wilson administration’s highly controversial (and unconstitutional) prosecutions to suppress anti-war activism once the US entered the war as a combatant. In 1917 Wilson authorized the Justice Department to detain enemy aliens and Congress passed the Espionage Act that allowed the investigation and arrest of anyone that aided foreign adversaries. This could include any statement that opposed involvement in the war effort, military conscription or material assistance.

The FBI gained a new General Intelligence Division to process information about suspected radicals and subversives, transforming the Bureau from a weak criminal investigative service to a powerful internal security bureaucracy with intelligence functions (Kessler, 2002). World War I provided the initial reasons for taking this step, but much of the FBI’s growth in this period was driven by a sense of increasing vulnerability to foreign-originated conspiratorial threats in the form of anarchism and communism. In fact the real growth of the Bureau as an intelligence agency can be traced to events immediately after WWI. In 1919, the Attorney General’s home as well as the homes and offices of many prominent business and political leaders were bombed by anarchist or communist radical organizations. The so-called Palmer Raids that followed were often over-broad and became a byword for government overreach and anti-communist paranoia. But there is no question that at the time the explosions created a wave of fear that demanded action at the federal level.

In short, the FBI went from fledgling agency to powerful domestic intelligence service with significant capabilities over the span of a decade. The first moves of the executive to create such an agency began as part of a larger progressive initiative to fight corruption and fraud. The initial Congressional opposition to a federal investigative service was strong, but that appears to weaken in the face of perceived threats to national security that required a stronger federal capability to investigate and prosecute. This may indicate that the “securitization” of the issue allowed the FBI to develop in this manner. Securitization removes an issue from the realm of normal political debate and allows for extraordinary action in the face of significant, or perceived to be significant, security threats (Buzan et al, 1998). The FBI managed to achieve its initial status as a small investigative force, but it only becomes serious bureaucratic player when the threats to national security become perceived as unmanageable without a stronger federal investigative service.

**The Use and Misuse of Historical Analogies**

Historical analogies are often badly used to make comparisons between situations that bear superficial similarities but harbor important distinctions below the surface (Cohen, 2005). This is not to discard the utility of such comparisons, but rather to acknowledge that a useful analysis must consider the dissimilar as well as the similar aspects that triggered the comparison in the first place. Finally, it is important to consider which similarities and dissimilarities are relevant and which are epiphenomenal with relation to the question of how this might affect a pattern of federalization.

The similarities between the US at the turn of the last century and the EU now are clear. Both were threatened by a loose network of terrorists seeking to weaken the societies in which they operated. Both faced a situation in which the general public was threatened by random violence rather than specifically targeted attacks. Both were confronted by a transnational threat that had grievances with the West in general rather than specific governments.

The dissimilar aspects begin with the time period under consideration. One hundred years separates the two cases, and technology, travel and communications have probably made more progress in the past one hundred years than in the previous five centuries. The groups under consideration also vary. The anarchist movement was secular while the jihadist movement is fundamentally rooted in an interpretation of religion and religious obligation. The governmental entities are also dissimilar. Although the US was not as centralized a state in 1900 by comparison to what emerged after WWII, it was still a state. The EU has arguably taken on many of the characteristics of “stateness” but it is still an entity composed of sovereign states with distinct interests.

Of these dissimilarities, the final point is probably the most relevant and worthy of deeper investigation before establishing any further comparison. Even when the federal government and the presidency in the US was at its weakest point relative to the states, the federal government still retained the responsibility for external security. More significantly, there were no state level intelligence agencies, although many states had state-level law enforcement agencies. This contrasts with the current situation in Europe in which each member state has well-developed intelligence services. From a bureaucratic standpoint, this creates an important point of friction that could prevent federalization.

At the same time, these distinctions are mitigated by a number of considerations. While the individual states did not have intelligence services, the major metropolitan police departments did have significant undercover intelligence units that ran informant networks and engaged in surveillance. Thus, the bureaucratic resistance to federalizing this aspect of security in the US might well have existed, and that resistance would have been channeled from the major cities’ governments to the representatives of the state in the Senate. This is an area that demand further research to determine if this was the case or not, but it seems reasonable to assume that some friction entered the political process in this manner.

The above is a schematic consideration of the historical similarities, but on balance it appears to support the contention that there is enough relevant similarity to use as a means to predict how the future path of the EU might unfold. In the American case, the initial impetus for federalization was security against external threats, but the recognition of internal threats to its security drove a process of further federalization in the early 20th century. This was not the only factor, but it did push the individual states to cede some power to the federal government. The member states were wary but their initial skepticism was overcome by the recognition of the security threats to the country. Securitization of the issue of creating a domestic federal police force with intelligence capabilities shifted the discussion to a different level, one where the relatively small political disagreements between the legislative and executive branches needed to be settled for the mutual protection of the member states. In a similar manner, the EU is faced with a situation in which the issue of centralizing intelligence and internal security functions is becoming “securitized.” As that occurs, the existing roadblocks to the creation of an EU intelligence and security service may be reduced and allow progress on this level of integration. If that occurs, it would be a particularly interesting example of federalization that is driven by internal security concerns rather than threats from outside the EU.

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1. Draft working paper for the European Union Studies Association Conference May, 2017. Not for citation without author permission. [↑](#footnote-ref-1)
2. The Global Terrorism Database provides a comprehensive overview <http://www.start.umd.edu/gtd/> [↑](#footnote-ref-2)
3. One exception to this is “Five Eyes” informal arrangement between the US, UK, Australia, Canada and New Zealand. [↑](#footnote-ref-3)