HISTORY OF BANKING LAWS IN THE UNITED STATES AND EUROPE AND BANKING REGULATIONS IN RESPONSE TO THE GREAT RECESSION OF 2008

I. Introduction

In 2007, banks and lending organizations began offering low interest rates on mortgages that led to many American homeowners taking out loans they couldn't afford. This was the beginning of what is often referred to as the "The Great Recession." This significant and disappointing event in our history struck even deeper than most realize. Viewed as strictly a recession that only affected America and is thoroughly discussed in American universities as only an event that our country dealt with. This is a false perception.

As Americans, we often have a difficult time wrapping our head around the fact that there are other countries that are affected by our decisions. Most believe that our success, or our suffering, as Americans is confined to our borders only. We believe, confidently and selfishly, that we are the only ones that matter. In a way, this is true. America's role in this world is the last standing global superpower. A superpower, like the United States, is in a dominant position characterized by its extensive ability to influence other countries through politics, military technology, and economic policies. What we mean by all of this is that an enormous number of other countries rely on us for various things. This is indeed a heroic and selfish way to view things, but in the end it is true.

The Great Recession affected many countries, so many that most students and Americans may not even be able to grasp. The Great Recession occurred officially from December 2007 until June 2009. According to the Financial Crisis Inquiry Commission in 2011, a committee of six Democrats and four Republicans, there were multiple reasons for the U.S. housing market failing. Simply put, there was a poor showing of government regulation on the financial industry. This led

to predatory mortgage lending by firms. Additionally, financial firms were taking on too much of a risk in the housing market. Consumers and corporations contributed to this havoc by excessive borrowing from banks. When the Great Recession began, the hole that was dug was too big to climb out of. This led to the United States and European Commission stepping in and creating more regulations for banks that would deter this problem in the future.

This paper will discuss how the United States financial decisions affect the global economy, specifically European countries. Part II of this paper will analyze the history banking laws from the Great Depression up until the Great Recession, and the way the Great Recession effected consumers in the United States and Europe. In Part III, we will discuss the United States and European banking laws that have been implemented due to the Great Recession. Specifically, we will look at how banking laws have changed since The Great Recession in Europe and the United States. Lastly, part IV will compare and contrast the banking laws that have been set in place due to the Great Recession in Europe and United States, and will form a solution as to what the countries can do to deter inter-connectedness between the global economy.

II. History of banking laws and modern regulations after 2008.

A. History of banking laws in the United States and the Great Recession.

Banking laws are a result of circumstances in a county's economy. Most of the time, these regulations are put in place because of a depression or recession. This has made the banking industry into one of the most regulated industries in the United States. However, before 1927, there were no laws that regulated banking activities in the United States.[1] In 1927, the McFadden Act

[1] Jennifer Manvell Jeannot, NOTE AND COMMENT: *An International Prospective on Domestic Banking Reform: Could the European Union's Second Banking Directive Revolutionize the Way the United States Regulates its Own Financial services Industry?,* 14 Am. U. Int'l L. Rev. 1715, 1722-1723 (1999).

was passed by the government to allow banks to partake in conducting security activities.[2] This was until the Great Depression struck America in 1929. The Great Depression was caused by unrealistic trust in investing, consumers perceptions that economic growth would always continue, the construction of homes rapidly growing, and uncanny consumer consumption in alignment with consumer debt.[3] However, wages did not keep up with production.[4] Additionally, only a small population of Americans were investing in the stock market leading up to the Great Depression.[5] Many Americans were just spending money and placing purchases on credit.[6] Once the Great Depression finally struck Americans, the Government intervened by passing banking regulations to conciliate the fall of the economy.

As discussed, the United States reacted to the circumstances of the Great Depression by passing the Banking Act of 1933. [7] The main goal of the Banking Act was to clearly separate commercial banking and investment banking with the Glass Steagall Act.[8] The Glass Steagall Act was a small part of the Banking Act of 1933 that prohibited commercial banks from being involved with securities (i.e., stocks or bonds).[9] Essentially, this act separated American banks from being involved with investments that would put them at risk of becoming insolvent.

Then, in the 1960s, Congress tried to expand banks powers to have them involved with the securities industry again thinking they would be able to handle this, but these talks ultimately failed. The Glass Steagall Act was designed to divide commercial banking from investments. The

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[2] *Id.*
[3] Shelley Smith, *Reforming the Law of Adhesion Contracts: A Judicial Response to the Subprime Mortgage Crisis,* 14 Lewis & Clark L. Rev. 1035, 1046 (2010).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] Jennifer Manvell Jeannot, NOTE AND COMMENT: *An International Prospective on Domestic Banking Reform: Could the European Union's Second Banking Directive Revolutionize the Way the United States Regulates its Own Financial services Industry?,* 14 Am. U. Int'l L. Rev. 1715 (1999).
[8] *Id.*
[9] *Id.*

Supreme Court in 1971 in *Investment Company Institute v. Camp,* found that commercial banks may not operate a managing-agent investment fund.[10] When Congress enacted the Glass Steagall Act, their intent was to restore public confidence in commercial banking because of the damage The Great Depression had done.[11] For example, if commercial banks were involved in investments, the public could have a perception that banks had a financial incentive to promote a particular investment that could be contrary to the best interest of a client. [12]

However, the Glass Steagall Act was later repealed in 1999 by the Clinton Administration. The Gramm-Leach-Bliley Act ("GLBA") removed insurance restrictions on banks and allowed for commercial banks to provide services in investment banking, which was the main concern of the Glass Steagall Act.[13] This changed the financial sector in many ways. For example, Citicorp Inc. merged with Travelers Group, a large insurance carrier, to form Citigroup. At the time, banks were not allowed to own insurance underwriting programs, but Citicorp tested the waters.[14] The result of this merger, and the repeal of the Glass Steagall Act, was Citigroup becoming the largest underwriter of stocks and bonds.[15] The GLBA allowed banks to take off the restrictions of the Glass Steagall Act and start crossing over the investment line of the financial industry. [16]

When the Clinton administration went through with repealing the Glass Steagall Act, few were unaware that the Great Recession was less than ten years away. The main cause of the Great Recession was the insane lending of subprime mortgages. Banks who had recently taken advantage of the GLBA started seeing major losses because the subprime mortgages started to lose value.

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[10] *Investment Co. Inst. v. Camp,* 401 U.S. 617 (1971).
[11] *Id.*
[12] *Id.*
[13] Jerry W. Markham, *ARTICLE: The Subprime Crisis: A Test Match for the Bankers: Glass-Steagall vs. Gramm-Leach-Bliley,* 12 U. Pa. J. Bus. L. 1081, 1103 (2010).
[14] *Id.*
[15] *Id.*
[16] *Id.*

The reason for this was the Federal Reserve Board deciding to raise interest rates, which caused companies like Citigroup, Lehman Brothers, and AIG to sustain extreme losses that led to government intervention.[17] Specifically, in October 2008, Congress passed the Troubled Asset Recovery Program ("TARP").[18] TARP incorporated capital in the amount of $700 billion into these failing banks to bail them out.[19]

What came next was even more drastic. Mortgagors started defaulting on these subprime loans they had received from these banks. This was due to adjustable-rate mortgages, which is simply a home loan with an interest rate that adjusts with the financial market, becoming infeasible for consumers to pay back.[20] This led to foreclosures in the housing market. An additional mistake that mortgage companies committed was the promotion of liar loans.[21] These are formally called "no-doc" or "low-doc" loans because they did not require the regulated information of a borrower's income and credit score.[22] Loans were then placed into a collateralized debt obligation ("CDO"), which meant the loans were secured and resold to investors.[23] CDOs were directly linked to investment banks in the sense that banks would loan money to mortgage companies that handled subprime mortgages.[24] The CDOs were extremely difficult to pay back, and were often insured by insurance companies as credit default swaps ("CDS").[25] The result of this extremely complex process was triple-A credit ratings.[26] This led to rating agencies marketing the subprime mortgages as a responsible and smart financial decision, when in reality it was extremely risky. Looking back

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[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*

at the situation now, it comes across as investment banks deciding to trick the consumer into purchasing a ticking time bomb.

The results of the Great Recession were severe. Specifically, the United States did not see any economic growth until the summer of 2009. A study done by Sheldon Danziger in *Evaluating the Effects of the Great Recession* found that, the recession lasted 18 months, gross domestic product and employment decreased by about 6 percent, and family incomes decreased by 8 percent.[27] The national unemployment rate in July of 2013, five years after the recession started, was still 7.4 percent.[28] Unfortunately, the national unemployment numbers in the United States in October of 2009 actually reached 10 percent. [29]

B. History of European Banking Law and the Great Recession.

When we look at the history of banking laws in Europe, we must start at the Treaty of Rome in 1957. The main goal of this was to liberalize the financial industry with banks.[30] This Treaty of Rome allowed for the European Commission to pass regulations, make decisions, and recommendations for banking laws in Europe. In the years to come after the passing of the Treaty of Rome, the European Commission began its focus on unionizing regulations among European countries that were partaking in their financial system.[31] Thus, in 1977, the First Banking Directive was born. This regulation by the European commission consisted of provisions that reshaped commercial banks in Europe. The purposes of the First Banking Directive were: (1) eliminating rules for banking services along Member State borders; (2) promoting the free establishment of

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[27] Sheldon Danzinger, *Evaluating the Effects of the Great Recession,* Sage Journals, (September 25, 2013), https://journals.sagepub.com/doi/10.1177/0002716213500454.
[28] *Id.*
[29] *Id.*
[30] Jennifer Manvell Jeannot, NOTE AND COMMENT: *An International Prospective on Domestic Banking Reform: Could the European Union's Second Banking Directive Revolutionize the Way the United States Regulates its Own Financial services Industry?,* 14 Am. U. Int'l L. Rev. 1715, 1722-1723 (1999).
[31] *Id.*

branches by European commercial banks in other European countries; (3) authorization requirements for commercial banks; (4) supervisory standards; and (5) mandating equal treatment of non-European commercial banks.[32] The main purpose of the First Banking Directive was to free up banking laws for the European Union. However, it started to be viewed as a handcuff for some. An example of this is seen in a scenario where a country was trying to establish a bank in another Member State. The host country could impose restrictions on a bank trying to establish in its territory.[33] In 1989, the European Union implemented the Second Banking Directive to further eliminate restrictions on banks trying to establish in a neighboring territory. This is the current governing law in the European Union.[34] The Second Banking Directive followed the United States GLBA because it allowed for commercial banks to perform commercial and investment banking services for consumers.[35]

This Second Banking Directive attempts to create a single license for European banks to be able to provide banking services in Member States without a complex process that the First Banking Directive carried.[36] For example, a commercial bank in a Member State could now establish a bank in another European Union country without the host countries authorization. Essentially, if a country authorized banks to perform specific banking services in their home country, they would be allowed to perform that service, such as investment banking, in any other country in the European Union.[37] This could cause some uproar when you look at it from the outside looking in. Let's say one Member State authorized investment banking for commercial banks in their own country and they decided to now open a bank in another country, but the host

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[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

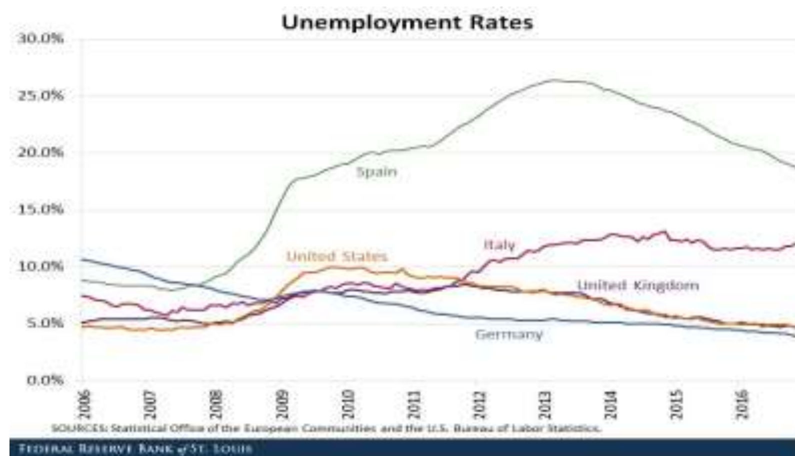
country they were planning to open banks in had not permitted banks to perform investment banking. The Second Banking Directive would allow for this latter country to perform investment banking even though the host country they were planning to move to had not yet permitted investment banking. Additionally, the host country that had not permitted investment banking would now be at a total disadvantage because consumers in their country would now want to take their money to these new investment banks that are from another country. This would call for the host country to amend their own banking regulations, so they are able provide these services to their own citizens. As you can see, the Second Banking Directive is wonderful for promoting banks to be liberal and provide for citizens in all of the European Union, however, they can be difficult for a host country because a host country that has not amended banking laws to provide for the consumers and current financial markets may be left behind.

When the Great Recession struck Europe finally after the United States, the European Banking Authority (EBA) came into play.[38] When Lehman Brothers went bankrupt, the European bank Fortis crumbled.[39] Ireland was one of the first countries to feel the effect of the great recession. Ireland is a great example of a country seeing incredible economic growth after the Second Banking Directive because of the country's economy booming in the 1990s.[40] When the early 2000s hit, Ireland saw the growth just maintain a neutral level, which pushed Irish law makers to focus on growing the countries economy. So, the result was to focus on the property market and lending within the property market.[41] Moreso, the European Commission also allowed Ireland to focus more on real estate lending, which provided employment and also provided banks with a

[38] Luca Martino Levi, *ARTICLE: The European Banking Authority: Legal Framework, Operations and Challenges Ahead,* 28 Tul. Eur. & Civ. L.F. 51 (2013).
[39] *Id.*
[40] Patriza Baudino, Diarmuid Murphy, and Jean-Phillipe Svornos, *The Banking Crisis in Ireland,* Financial Stability Institute, (October 2020), https://www.bis.org/fsi/fsicms2.pdf.
[41] *Id.*

profitable source of income.[42] However, Irish banks did not perform adequate procedures when collecting data on credit risk because they were more concerned with the growth of business rather than data that could have foreseen the risk on lending in the real estate market.[43] When the Great Recession finally struck Europe, Ireland's real estate market crumbled because of the dependence on housing.

However, Spain and Italy were two countries in Europe that might have suffered the most. Specifically, both had respectable unemployment numbers in 2006 and 2007. Once, the Great Recession hit, Spain's unemployment numbers dramatically increased.[44] Italy actually did not see drastic effects of the Great Recession in unemployment until 2012.[45] Surprisingly, unemployment in all of the European Union actually increased from 7.5% in 2007 to 10.5% in 2012.[46]



[42] *Id.*
[43] *Id.*
[44] [44] Paulina Restrepo Echavarria, Maria A. Arias, *U.S. European Economics and the Great Recession,* (February 27, 2017), https://www.stlouisfed.org/on-the-economy/2017/february/unemployment-rate-dynamics-us-europe.
[45] *Id.*
[46] Luca Martino Levi, *ARTICLE: The European Banking Authority: Legal Framework, Operations and Challenges Ahead,* 28 Tul. Eur. & Civ. L.F. 51 (2013).

III. **Comparison of Banking Regulations in Europe and the United States after the Great Recession.**

A. European Regulations after the Great Recession.

In discussing the disheartening effects of the Great Recession on the entire world, it is difficult to wrap one's head around how deep economic troubles went. As discussed, unemployment struggled and too many citizens lost their homes. All because banks didn't care about the average consumer, they didn't care about people's livelihoods, or how their reckless behavior would impact citizens. They cared about the growth of their own business. So, the question became, where do we go from here?

Europe grabbed the bull by the horns, so to say, by making the European Banking Authority it's savior. In November of 2008, a panel of financial experts brought together by the European Commission called the De Larosiere Group, performed the research to find out just how the Great Recession had occurred and a resolution to prevent it from happening in the future.[47] In February 2009, the group turned their report. Their suggestion was to establish a supervisor and three sub authorities with baking knowledge to regulate the banking, securities, and insurance side of the economy.[48] Ultimately, this supervisor and three sub authorities became the European Banking Authority. [49] The European Banking Authority has the power to create regulations and oversee the financial industry. [50] After the Great Recession, Europe did its best to create a single body of power to regulate the financial industry by creating the European Banking Authority.[51] Created on January 1, 2011, one of the significant jobs of the European Banking Authority is to protect

[47] Luca Martino Levi, *ARTICLE: The European Banking Authority: Legal Framework, Operations and Challenges Ahead,* 28 Tul. Eur. & Civ. L.F. 51 (2013).
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *The European Banking Authority At A Glance,* The European Banking Authority, https://www.eba.europa.eu/sites/default/documents/files/documents/10180/1401372/e8686db2-6390-4c52-ad06-bc8d24b7aeb5/EBA%20AT%20A%20GLANCE.pdf?retry=1.

consumers within the banking market and also to protect mortgage lenders.[52] The European Banking Authority was also tasked with creating rules within the sector. What was created by this banking authority was the “Single Rulebook.”[53]

The Single Rulebook is a set of rules and guidelines that are implemented across all of the European Union. The Single Rulebook includes regulations on investment firms, wire transfers, anti-money laundering, and even mortgage credit. Additionally, this set of regulations apply the principles of the Basel International Agreement, which all European Union Member States must follow. [54] One way that Europe kept the liberalizing of each European Union Member State going was to allow Member States to adopt different regulations where they saw fit. However, the process to amend the Member States banking laws would require consent from the other European Union Member States.[55] The way the European Banking Authority implements the standards set in place is to promote supervisors in each country that make sure the regulations are being followed.[56] The benefits of having this single uniformity among the European Union Member States is that the economy will be safer, and consumers will have more disclosure in the banking sector.[57] There were 28 national supervisors in each of the following: the European Banking Authority, which deals with supervision and regulation of the banking industry; the European Securities and Markets Authority, dealing with capital markets and credit rating agencies; and the European Insurance and Occupational Pensions Authority, dealing with the insurance industry.[58]

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[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] European Commission, *A comprehensive EU response to the financial crisis: substantial progress towards a strong financial framework for Europe and a banking union for eurozone,* European Commission Memo, (January 24, 2014). https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_57.

These supervisors were put into place so that countries could communicate with one another on new regulations that would be put into place and how to handle any push back on them.[59]

After the Great Recession, the implementation of the European Banking Authority, and the Single Rulebook, the European Commission decided to set more regulations in place to build the economy up again. In early 2014, the European Parliament and all Member States of the European Union reached an agreement to protect deposits. [60] This was all placed into the Single Rulebook for the hopes that any time an economic crisis like the Great Recession took place, the European Union's Member States would be better equipped to mitigate the damages.[61] The specific agreement referred to is an example of preventing another Great Recession taking place in banks. Specifically, this agreement set in place supervises that deposits into Member State banks will be guaranteed up to 100,000 Euros per depositor at each bank, if a bank was to fail.[62] This agreement was set in place, so depositors do not withdrawal ridiculous amounts and banks stay solvent.[63]

Another key agreement that the European Banking Authority has come up with is protecting consumers from banks actions. After the Great Recession, the European citizens were the ones who were hit financially and had to bail banks out through taxes. The new regulation referred to took affect at the beginning of 2015.[64] This new set of regulations allowed shareholders and creditors of banks to pay the share of the losses to bail out the banks.[65] They will be the first set of parties to bear losses of a bank's financial behavior or incur losses first because of a financial crisis.[66] If a bank needs additional funds to be bailed out after creditors and shareholders pay their

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[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*

dues, then a fund that is established by the Member State the bank resides in, will provide the money.[67] Additionally, the new set of regulations require that all banks have recovery and resolution plans to handle a financial crisis.[68] This new agreement set in place is directly aimed at the consumer. It shows that the European Union was concerned with the public having to bear the burden of banks reckless behavior prior to 2008. This new agreement set in place in 2015 allows for the *banks* to handle their own faults and behavior rather than having citizens pay higher taxes and bail out the European banks.

B. United States Regulations after the Great Recession.

Due to foreclosures on homes and the unemployment rate skyrocketing, the Obama administration needed to find a way to prevent another recession. The Dodd-Frank Act was the administration's law of choice. However, this did not come without some push back from republicans and democrats.[69] Republicans felt as if this was another ploy of Big Government getting involved in American's lives because of the Obama administration previously promoting Obamacare.[70] Democrats on the other hand, felt as if this law was a way to give Wall Street a way out from the problems they created.[71] However, one of the main goals of the Dodd-Frank Act was to create transparency for the financial sector.

The Dodd-Frank has multiple missions for creating a safer financial market in its provisions. It creates higher standards for capital, risk management, and even mergers on banks

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[67] *Id.*
[68] *Id.*
[69] David Skeel, *The New Financial Deal, Understanding the Dodd-Frank Act and Its (Unintended) Consequences,* (November 1, 2010), https://www.google.com/books/edition/The_New_Financial_Deal/L8zTDwAAQBAJ?hl=en&gbpv=1&dq=The+Dodd-frank+act+after+2008&printsec=frontcover.
[70] *Id.*
[71] *Id.*

that are big enough to destroy the United States economy with their failure.[72] Nonbank companies, like private lenders, were now able to be regulated by the Federal Reserve.[73] Transparency in trading would now be a higher priority through the "Volcker Rule," which regulated banks from dealing in credit default swaps.[74] It also created the Financial Stability Oversight Council, that could oversee any particular financial crisis that might be looming in the future and to implement regulations to deter the event from happening.[75] Another responsibility of the Financial Stability Oversight Council is to keep banks from becoming too large.[76] The reason for this power was that banks were essentially the heart of the United States economy.[77]

A key provision that all Americans should be proud of the Obama administration for placing in the Dodd-Frank Act, was deterring American citizens from being the party to bail out banks.[78] This goal was placed into effect through the Orderly Liquidation Authority. This was a process and power by the United States to allow the government to bail out businesses that were on the cusp of failing so that the American citizens did not have to incur losses through paying higher taxes.[79] In response to the mortgage crisis, the Dodd-Frank Act forces lenders to analyze a mortgagor's ability to repay the loan rather than just handing out loans to anyone like before.[80]

As we have stated, banks before the Great Recession acted careless when giving out loans, and realistically, did not take responsibility for their actions. The Dodd-Frank Act specifically

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[72] Keith Goodwin, *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* Federal Reserve Bank of Richmond, (July 21, 2010), https://www.federalreservehistory.org/essays/dodd-frank-act.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] Kelly Anne Smith & Benjamin Curry, *How the Dodd-Frank Act Protects your Money,* Forbes Advisor, (July 25, 2022), https://www.forbes.com/advisor/investing/dodd-frank-act/.
[77] *Id.*
[78] Keith Goodwin, *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* Federal Reserve Bank of Richmond, (July 21, 2010), https://www.federalreservehistory.org/essays/dodd-frank-act.
[79] *Id.*
[80] *Id.*

targets the ideology that banks would be "too big to fail." Some banking experts have theorized that investors might still look past this "too big to fail" concept and still invest in larger banks, which would eventually push smaller banks to the side.[81] However, banks are now required, through the Dodd-Frank Act, to do a "stress test" that tests a bank with more than $50 billion in assets through hypothetical scenarios of financial crisis and economic scenarios to see if the bank's capital would survive in the financial market.[82] Think of this as taking a "non-graded pre-pop quiz" to see how you will stack up to other students if it was inevitable you will receive a "pop quiz" at some point in the semester. These "stress tests" are then posted by the Federal Reserve to show consumers which banks had the highest and lower scores so there is more transparency for United States citizens.[83] Another one of the governments biggest concerns, stated previously, when implementing the Dodd-Frank Act was that consumers wouldn't have to bite the bullet because of a bank's hiccups. So, the Federal Deposit Insurance Corporation (FDIC) was the government's response by not having consumers pay taxes on a bank's financial insolvency.[84] It is easy to see, or at least hope, that the United States government was concerned with the consumers in the United States because of the damage banks had caused. In the alternative, it could have been the thought process that consumers drive the economy, so the government needed to cater to them to make sure they are taken care of.

The Dodd-Frank Act is really an interesting and surprising piece of legislation because it takes no consideration of the rest of the world into its provisions. This is because the Obama administration and Congress figured that the rest of the world would just grab onto the act and

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[81] Ryan Johnston, *Did Dodd-Frank End 'Too Big to Fail'?,* Banking Policy Review (Federal Reserve Bank of Philadelphia Research Department), https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/economic-insights/2016/q4/bpr-dodd-frank.pdf.
[82] *Id.*
[83] *Id.*
[84] *Id.*

implement it into their laws as they saw fit.[85] So, the United States essentially, caused a major global recession through lending in the housing market, and then turned their shoulder from the rest of the world.[86] The only time the United States helped with the problem they created were providing opinions on the Basel III Agreement.[87]

C. Basel Committee on Banking Supervision.

Another key regulation is the Basel III Agreement set in place by the Basel Committee on Banking Supervision. The committee, which the European Union and United States are members of, is a global regulation committee on the financial sector of the world.[88] The Basel III reforms were the international committee's response to the Great Recession. Basel III reforms put up by this committee are minimum requirements, but members of this committee must implement these requirements into their country within a particular timeframe.[89] The main task of the Basel III agreement was for members of the committee to find a way to regulate specific areas in banks that caused the Great Recession. Some of these reforms involve requiring higher capital levels for banks and placing an emphasis on lowering the financial risks that banks could be exposed to.[90]

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[85] Viral V. Acharya, Thomas F. Cooley, Matthew Richardson, *The Dodd-Frank Act and the New Architecture of Global Finance,* (October 4, 2011), https://www.google.com/books/edition/Regulating_Wall_Street/AUfC8ofmzMsC?hl=en&gbpv=1&bsq=The%20Dodd-frank%20act%20after%202008.
[86] *Id.*
[87] *Id.*
[88] BIS, Basel Committee Membership, https://www.bis.org/bcbs/membership.htm. The European Union is listed as one jurisdiction. There are 45 members on this committee from 28 jurisdictions.
[89] BIS, *Basel III: International regulatory framework for banks*, https://www.bis.org/bcbs/basel3.htm.
[90] *Id.*

IV. Similarities and Differences in United States and European Banking Laws and the analysis of inter-connectedness.

A. Similarities and Differences in the United States and European Banking laws.

With the Basel III agreement put into place, and the United States and Europe being members, it is easy to figure that the two would have some similarities in banking regulations, and part of this is true. For example, both countries are concerned with consumers, based on the Dodd-Frank Act and the European Banking Authority's legislation, making shareholders and creditors save insolvent banks. Additionally, the two have become more transparent with consumers since this was a major concern of the Great Recession. The consumers, especially in the United States, saw banks becoming predators with the loans they were handing out.

However, the differences in the two systems are also large. For starters, the European Union is dramatically focused on promoting the liberalization of Member States by allowing them to conduct business any way they want, even if it means stepping on another country's laws. The example provided earlier dealing with a host county having to amend their laws due to the fear that they could lose their own countries consumers is eye opening. It begs the question, are they really that focused on liberalization? This seems like such an encroachment on another country, all for the purpose of gaining more business.

On the other hand, the United States doesn't have this problem and probably never will. The United States enacts federal regulations in banking that apply to all fifty states, with the opportunity to amend those laws, but realistically banking laws do not encroach on one another in the United States like they do in Europe. Additionally, states can enact banking laws that apply only to state branch banks, but there is still a slim chance this would encroach on another state.

The United States, after the Great Recession, actually made it a goal to limit the exposure to another recession by implementing stress tests and restructuring laws that will provide more

support for banks that are too big to fail. Europe has the problem of worrying about 27 other Member States all across the continent. This may not seem like a significant problem because the European Union has been alive for so long, but you would most likely be able to find problems amongst countries just based on the different socio-economic issues that their citizens deal with. For example, Luxembourg is one of the wealthiest countries in the European Union. Hypothetically, if they were planning on opening a bank in Ukraine, which has historically been one of the poorest countries in the European Union, then there has to be a serious concern that the Luxembourg bank could implement better banking laws because of the structured and prospering economy they have.[91] This could lead to Ukrainian citizens taking their money to Luxembourg established bank because of safer regulations or better investment plans for citizens. Also, European banking laws are actually theorized to be weaker than the United States.[92] Richard Herring has criticized Europe as not having the back up of programs like TARP.[93] Which resulted in banks taking more time to be backed up by financial support and gain capital.[94]

B. Interconnectedness among European and United States banking laws and the solution to preventing a Global Crisis.

The United States enacting the Dodd-Frank Act was the correct response to the Great Recession. When we think of the Great Recession though, most think of it being something along the lines of the "Crash of the U.S. Housing Market." Many United States citizens don't think of it as being a global catastrophe. However, the United States had such an interconnectedness to

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[91] World Population Review, *Poorest Countries in Europe 2022, https://worldpopulationreview.com/country-rankings/poorest-countries-in-europe.*

[92] Itay Goldstein and Richard Herring, *A Decade After the Great Recession, Is the Global Financial System Safer?,* Knowledge at Wharton (A business journal from the Wharton School of the University of Pennsylvania), (September 11, 2018), https://knowledge.wharton.upenn.edu/article/ten-years-great-recession-global-financial-system-safer/.

[93] *Id.*

[94] *Id.*

Europe that the predatory loaning and loose regulations of banks after the GLBA resulted in the rest of the world feeling the effect after the housing market crashed.

An example of the interconnectedness we see today is a country like China. China has built up enough credit from many countries that the collapse of their economy would be extremely detrimental to the global economy, which could be even worse than the Great Recession.[95] The difference in this next financial crisis we could see is that China has an independent financial structure rather than a European Union that has multiple countries that could lend a hand in a catastrophe.[96] The interconnectedness we saw during the Great Recession was the product of Europe following the United States in regulations, such as banks being allowed to deal in investments. So, how can we prevent this?

A solution to all of these issues would be for the global economists to collaborate more. Especially with a dependence on China now, it would be beneficial for the United States and Europe to start implementing stress tests to plan for a collapse of the Chinese market. Additionally, Europe and United States are a part of the Basel Committee, and it could be a source of reason for all members to begin planning for this crisis. Obviously, it would be difficult for other countries to implement laws that the United States places into effect in their own banking sector because of the differences in socio-economic situations. However, it could be safe for banks in the United States and Europe to come up with legislation for the two that would regulate the banking industry similarly with requirements for loans and investing. Interconnectedness can be a beautiful yet frightening aspect. If Europe relies on the United States too much, or vice versa, then you have the possibility of a financial crisis because of interconnectedness of economies. On the other hand, maybe, it would be beneficial to separate these countries completely so there isn't another financial

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[95] *Id.*
[96] *Id.*

catastrophe that derives out of one country's collapse. If each country had independence in their financial industry, it could be safe for everyone so that the dominos don't fall rapidly. However, interconnectedness can be tricky because we all do depend on one another, and it would be difficult to stop instantly.

In conclusion, the financial industry was reformed to prevent another financial crisis. However, the United States just assumed that other countries would follow their lead. Maybe, in the future, the United States should collaborate with other countries to figure out what works for everyone if there is going to be another global catastrophe. This could be done by putting more emphasis on the Basel Committee. Another solution would be to have one set of structured banking laws, rather than just having minimum requirement that everyone must put in place over time.