

# **United States Bank Migrations and Deposit Dollar Concentrations**

**by**

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## **Abstract**

This thesis incorporates four studies of the geography of bank offices and deposits in the United States (US). The research examines changes in retail bank branch proximity in neighborhoods, state banking law's role in motivating banks to relocate home offices, and the significance of tax avoidance driving deposits' relocations.

Chapter 1 introduces the framework and research questions that emerged from visually exploring geo-spatial banking data. Chapter 2 considers retail bank proximity changes in neighborhoods, classified by income, in urban Florida. It compares three pre- and post-financial crisis bank branch distributions: those merged with government assistance, those that merged unassisted, and those that did not merge. Did the branching decisions made by any of these bank groups disproportionately affect neighborhoods' proximity to banks? Kruskal–Wallis and post hoc tests suggest that merged banks, which reduced total branches, did not disproportionately impact any neighborhood group. Statistically significant evidence suggests that unmerged banks, which increased total branches, disproportionately improved proximity to high-income areas, filling a spatial void created by closed offices of merged banks. The results suggest that banking regulators indirectly financed the rearrangement of banking offices, conflicting with federal policies aimed at maintaining bank offices near low-income neighborhoods.

Chapter 3 examines the forces that drove a massive accumulation of deposits in Delaware and South Dakota, illuminating changes in banking regulation that lured banks from faraway places. Delaware and South Dakota broke longstanding public policy norms by creating bank-friendly regulation of three banking businesses: credit, insurance, and trusts, becoming a preferred legal “home office” for banks seeking regulatory relief. Chapter 4 traces the laws that helped induce Wall Street banks and other commercial firms to migrate to Utah. Utah expanded the scope of a historical anomaly in US banking regulation, the Industrial Loan Bank, which is exempt from longstanding regulatory norms separating banking from a non-banking business.

The final chapter considers the lopsided share of deposits in Delaware, Nevada, South Dakota, and Utah after the flight of deposits from high-tax states. This research contributes to and suggests research possibilities on the oft-neglected subject of fiscal geography.

**Keywords:** Legal Geography; Banking Regulation; Regulatory Arbitrage;  
Interjurisdictional Competition; Spatial Analysis

## **Dedication**

I dedicate this thesis to all business owners who depend upon bank credit for their survival.

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## List of Acronyms

ACS	American Community Survey
ANOVA	Analysis of Variance
BEA	Bureau of Economic Affairs
BHC	Bank Holding Company
BHCA	Bank Holding Company Act of 1956
CEBA	Competitive Equality Banking Act of 1987
CRA	Community Reinvestment Act of 1977
DFI	Utah's Department of Financial Institutions
EDA	Exploratory Data Analysis
ESDA	Exploratory Spatial Data Analysis
FCDA	Financial Center Development Act of 1981
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FRA	Federal Reserve Act of 1917
FSB	Financial Stability Board
G-SIFI	Global Systemically Important Financial Institution
GIS	Geographic Information System
GLBA	Gramm–Leach–Bliley Act of 1999
ILB	Industrial Loan Bank
ILC	Industrial Loan Company
OCC	Office of the Comptroller of the Currency
OECD	Organization for Economic Co-operation and Development
QDTA	Qualified Dispositions in Trust Act of 1997
RAP	Rule Against Perpetuities
ROSC	Reports of Structure Changes
SME	Small- and Medium-Sized Enterprises
SOD	Summary of Deposits
SODS	Summary of Deposits Survey
TARP	Troubled Asset Relief Program
US	United States

# Chapter 1

## Introduction

This thesis presents research concerning the shifting distribution of banks and money in the United States (US) over the last few decades.<sup>1</sup> Determining past and present bank locations is straightforward since government agencies collect this data at regular intervals. Understanding why banks are located in certain places and not others, and why they moved or rearranged their branch locations, are formidable challenges. Each of the following chapters shows that the spatial distribution of banks and money are, to a large extent, the result of struggles between interested groups. Not merely economic, but socio-political forces shape the banking and money landscape. Reworking geography is a key tactic in winning power.

### 1.1 Is a Geography of Banking Important?

Banks serve as essential financial intermediaries in modern markets, handling the settlement of trade by exchanging money.<sup>2</sup> At its most basic, the geography of banking describes the number and location of banks facilitating market exchange. But this is only the surface. Bank distribution across space changes over time. For example, if we look at the location of bank branches (the focus of chapter 2), the forces shaping consumers' and banks' decisions vary. Some customers desire a nearby bank to make deposits, process payments, and access other banking services. For others, distance is no longer a barrier because many banking services are available without visiting a bank in person. In the US, smartphones and the web make remote banking instantly available from almost anywhere. Using up-to-the-minute information provided by credit bureaus,

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<sup>1</sup> The terms “deposits” and “money” are used interchangeably. The former is one of several forms of money. All bank deposits are money but not all money are bank deposits. In the US, the total of all bank deposits is less than the total of all money, but bank deposits make up nearly the total US money stock.

<sup>2</sup> A small portion of all trade is settled with money in the form of currency, or cash. Cash is frequently used for small transactions. Exchanges using cash may remove the bank from instances of market exchange. Most payments are made by checks, debit cards, and other electronic media connecting payors and payees with banks (Kim et al., 2020). Cash money and bank deposit money are interchangeable at a bank.

banks make instant lending decisions about faraway borrowers. A contemporary geography of banking must explore how these and other changes impact the spatial arrangement of banks and banking services. Some banking institutions serve customers in selected local markets through retail branch office storefronts. Others spread their retail branches across regional and/or national markets or serve a national market from only one location. A geography of banking explores factors that influence the choices banks make to locate their offices and their businesses, and the ways those choices shape the places and people that make up the broader financial landscape. In other words, economics, politics, and culture all help us understand why banks are where they are and how and why they have ended up there.

Some argue that an accessible retail bank office and personal contact with banking staff remain important to the economic wellbeing of local communities (Dymski, 1999; Ergungor, 2010; Hegerty, 2020; Nguyen, 2014). In this context, accessibility implies being nearby—within a short distance—and reachable via low transportation cost and travel time. In addition, small- and medium-sized enterprises (SMEs) are dependent on banks for credit. Local banks are the hub of a neighborhood's capital market, serving local small businesses. Local banks have an advantage gathering local information that is not easily available when banking decisions are made at centralized locations. Studies have found that the cost of credit for SMEs increases with the distance between lender and borrower (Brevoort & Wolken, 2009; Cerqueiro et al., 2009; Knyazeva & Knyazeva, 2012). The cost of credit for SMEs is also impacted by the quantity of banks in a local market (Cerqueiro et al., 2009). As credit decisions shift from local bankers to distant financial centers, economic power is drained from the local community. Geographers' work on banks and community finance explain much about the economic possibilities, or lack thereof, for neighborhoods.

Location is a central concern in banking. Among a range of considerations, revenue potential, competition, regulation, and other costs of doing business all determine bank location decisions. Since earnings are banks' measure of business success, location is perhaps the most important determinant of regulating and supervising banks and the various businesses in which they are involved. Regulation and law are geographic in scope: By definition, they hold within a territorial jurisdiction. Banking laws at the national level obviously have national geographic scope, but laws at the local or state level are usually limited to local or state jurisdictional boundaries.

Sometimes, however, laws at subnational scales can, inadvertently or intentionally, pierce jurisdictional boundaries and have an impact on the national legal–regulatory landscape. Regional and national banks must consider the multitude of intersecting laws, regulations, and jurisdictions in the markets they serve.

Banks are in many ways the “vaults” containing a nation’s money. That money is held in a variety of forms and instruments which together are called “deposits.” For the most part, the geographic distribution of bank deposits matches the distribution of banks; i.e. where there are more banks, there are more deposits. But there are exceptions to this spatial alignment. A geography of bank deposits provides an understanding of the push and pull factors affecting bank deposits’ spatial arrangements.

Generally, bank deposits in a given location are related to the level of economic activity, rather than a measure of local capital accumulation. Geographically, bank money cannot be equated with a location’s wealth. Neighborhoods hosting bank offices with large bank deposits are not necessarily wealthier than neighborhoods whose banks have low total deposits. It is best to think of bank deposits in any particular place as markers of economic events. Within limits, banks have discretion concerning how, across their network, they choose to spatially distribute deposits. Certain locations are more desirable than others to hold and locate bank deposits. My work reveals some less well-known influences on these locational decisions.

In this thesis I present three chapters under the rubric of the geography of US banking. Each improves our understanding of where banks locate, and why they move across the landscape. An additional chapter provides results of a study focused on the spatial rearrangements of money in the form of deposits. The spatial distribution and redistribution of banks and money tell us much about our own relationships with money, and the struggle for capital accumulation and power.

### **1.1.1 Spatial Banking Data**

Publicly available, spatially explicit data describing US banks’ locations and money holdings is available in the Federal Financial Institutions Examination Council’s (FFIEC) annual *Summary of Deposits Survey* (SODS). Every federally insured commercial bank and savings bank must submit their responses to SODS to their

federal banking regulator. Roughly 90,000 records are contained in each annual SODS dataset. Each SODS data record contains, among other attributes, total deposit amount as of June 30<sup>th</sup> and street address for every responding institution and all its branches. SODS data permits the distribution of banks and their money to be analyzed at neighborhood levels. Studies can thus also easily be performed at state, regional, and national scales by aggregating SODS data into larger areal units. SODS data locates banks and their deposits at fixed annual intervals. For the purposes of this thesis, those observations allowed me to identify where banks place their retail branch offices, their home offices, and how banks distribute deposits within their bank office networks. My goal was to understand the motivations behind these decisions over time.

### **1.1.2 Exploring Spatial Banking Data**

The first thing I did after downloading SODS spatial data is what geographers often do—I mapped it. Mapping initiated an exercise in exploratory spatial data analysis (ESDA). Using ESRI's Geographic Information System (GIS) software allowed me to engage interactively with bank office and deposit data to formulate hypotheses subject to validation through further analysis. Using SODS data, I compared bank branch positions between different years, visually attempting to identify change patterns. I repeated the same mapping steps to compare change patterns of deposits between years.

The next section presents a glimpse of some visual observations of SODS data, the hypotheses I developed, and some main findings from additional research. The essays that follow contain the research details. There is a clear departure between ESDA and my detailed analysis because ESDA is limited to providing generalized information. It generates more questions than answers. Mapping bank office and deposit data reveals spatial-temporal patterns requiring further study to understand the forces determining those patterns. Sometimes I focused on unusual spatial patterns. For instance, the spatial pattern of deposits almost always follows the spatial pattern of populations. When places known to have small populaces hold large quantities of bank deposits rivaling the most populated cities in the US, it makes sense to uncover any extraordinary conditions associated with bringing deposits to these locations. ESDA disclosed unusual conditions at locations. My research seeks to expose the forces that explain these geographically specific conditions.

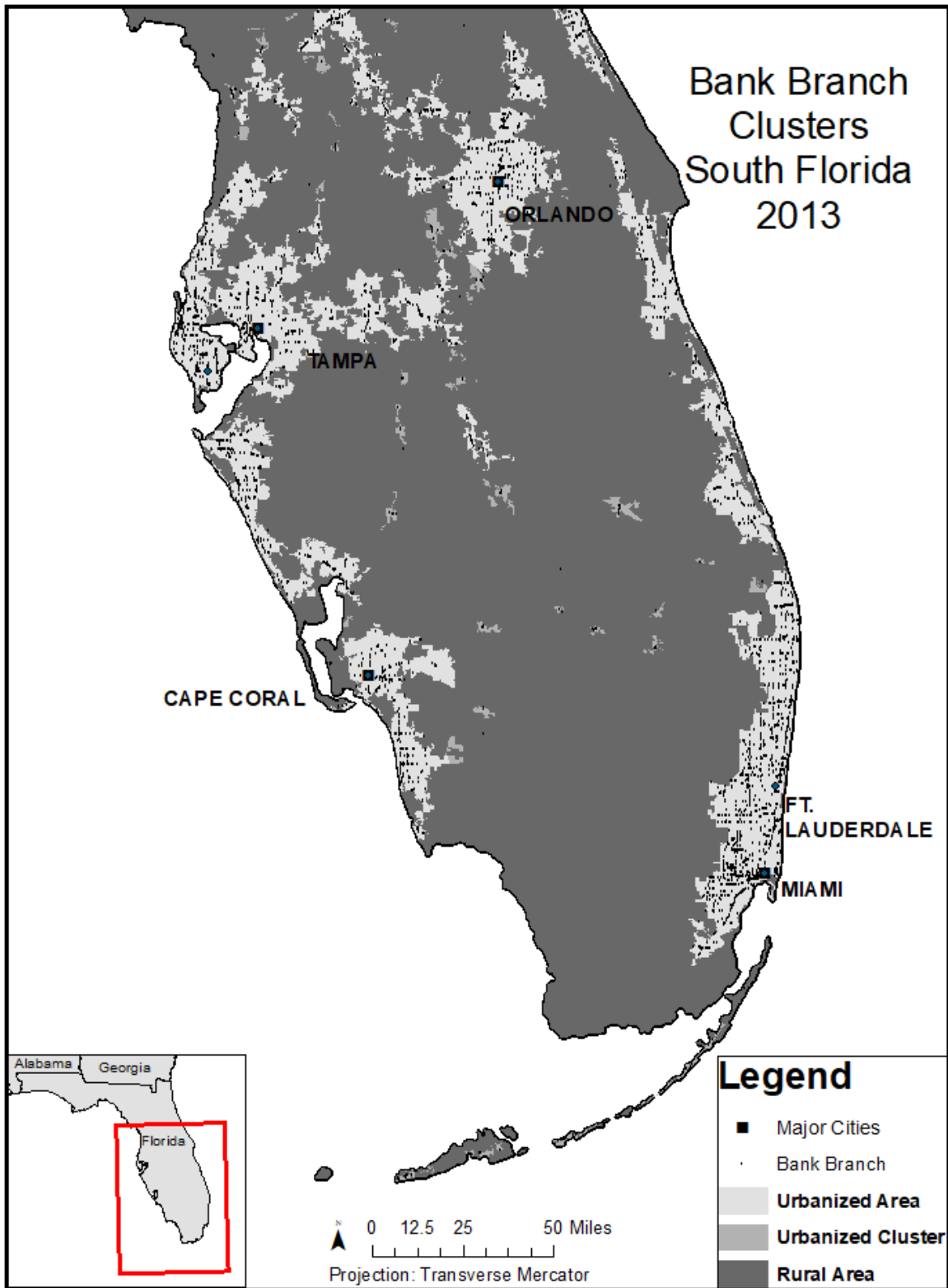
### 1.1.3 Exploring Bank Office Migrations

Exploring the spatial distribution of bank offices across the landscape reveals clustering in and near cities. As the distance from central cities increases, the concentration of bank offices decreases. This pattern is illustrated in Figure 1.1, which maps bank branch offices in South Florida as extracted from 2013 SODS data. The urbanized areas, mainly found along the coasts, have the highest bank densities. The small towns appear on the map as urbanized clusters.<sup>3</sup> Generally, banks will open new branches in the vicinity of competitors' bank branches (Dymski, 1999). Even small towns frequently have two or more banks near each other. Bank office presence in surrounding rural areas is sparse. Banking companies tend to place their retail offices in business centers and at sites where they are likely to attract desirable quantities of depositors' money and sell financial products. Methods banks use to compete for consumers' business include office locations, prices, and quality service. A neighborhood's lack of two or more nearby banks denies local customers the benefits of competitive choice. Sometimes, there are no banks near a neighborhood. Customers from these neighborhoods must absorb higher transportation costs to reach a bank or, in worst cases, are unbanked. Of course, what "near" means depends on regional land use patterns. In urban areas, "near" may describe distances measured in feet, while in small towns and rural areas, "near" might be measured in miles.

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<sup>3</sup> The US Census Bureau classifies urban geographical areas as densely developed territory encompassing residential, commercial, and other non-residential urban land use. Urban territories having 50,000 or more people are categorized as "Urbanized Areas"; urban territories having at least 2,500 and less than 50,000 people are categorized as "Urbanized Clusters"; and all other territory is categorized as "Rural" (United States Census Bureau, n.d.).





**Figure 1.1. Clusters of bank branches, South Florida, 2013.**  
 Sources: United States Census Bureau (n.d.), FDIC (Annual).

Throughout the 1990s and every subsequent year until 2008, the total number of bank offices in the US increased; 2008 was a high point for the number of US bank offices. Each year since the 2008 financial crisis, the number has declined. Therefore, some communities must be experiencing increases in distances to their local banks and reduced choice of nearby banking service providers. According to SODS data, Florida lost roughly 3.5% of its bank branches between 2008 and 2013, slightly higher than the 3.0% rate of decline in the US. Even though the net number of offices declined through closures, banks added new branch offices and relocated existing offices. Those bank office changes would result in slight rearrangements of the point patterns in Figure 1.1. Identifying neighborhoods' changes of nearby banks using visual observations was not feasible. I needed to measure distance changes between neighborhoods and banks.

The yearly decline of bank offices following the 2008 financial crisis coincided with numerous bank mergers. Some of those mergers combined the largest banks having the largest branch networks in the US. Consolidations of multiple banking firms often come with branch office closures (Dymski, 1999). Two previous studies (Avery et al., 1997, 1999) confirmed this relationship between bank branch closures and banking firm mergers. As a result of those studies I anticipated that post-financial crisis bank mergers are related to Florida's reduced bank branch numbers. Sure enough, SODS data exploration confirmed this. Banks that merged in the wake of the financial crisis reduced their branch presence in Florida, while the number of branches for banks that did not go through a merger increased. Key questions are: Where did banks choose to keep, add, or close branches? Was neighborhood income a force influencing these decisions? These are important public policy questions. The changing proximity of banks to communities can have important effects on financial inclusion and exclusion. Extensive research points to the adverse impacts on community economic wellbeing resulting from bank office closures (French et al., 2008; Hegerty, 2020; Leyshon & Thrift, 1995; Marshall, 2004; Pollard, 1996).

Wide areas across Florida had bank branches belonging to banks that merged during the financial crisis. Chapter 2 discusses how financial crisis events provided an opportunity to measure the changed number of nearby banks in neighborhoods categorized by income for banks grouped by their recent merger status. The research considers whether branching decisions made by firms receiving merger assistance from the government—including federal safety net funds from banking regulators—played a

role in moving banks farther away from economically marginalized neighborhoods. If this is indeed the case, it will counteract federal banking policies intended to enhance or maintain low- and moderate-income neighborhoods' access to nearby banking services.

The abilities of GIS software to measure distances between bank offices, represented as points, and neighborhoods, expressed as areal units, allowed me to compare the effects of branching decisions of banks grouped by their post-crisis merger status. I measured and compared neighborhood to office proximity changes between banks that merged with regulator assistance, banks that merged without government financial help, and unmerged banks. I hypothesized that the reduction in branch numbers among banks that merged (either with or without banking regulator assistance) would adversely affect access in lower income neighborhoods. I predicted that higher income communities, which already had superior access to banks, would maintain their nearby access to banks. In the years following 2008, Florida's high-income areas retained their nearby retail banks, while lower income neighborhoods experienced a statistically significant decline of nearby bank branches. To my surprise, however, I did not find any statistically significant evidence that the merged banks (either regulator assisted or unassisted) resulted in any disproportionate distribution of bank branch reduction across neighborhoods classified by income. The unmerged group of banks added more branches in and near high-income areas, offsetting lost branches of merged banks.

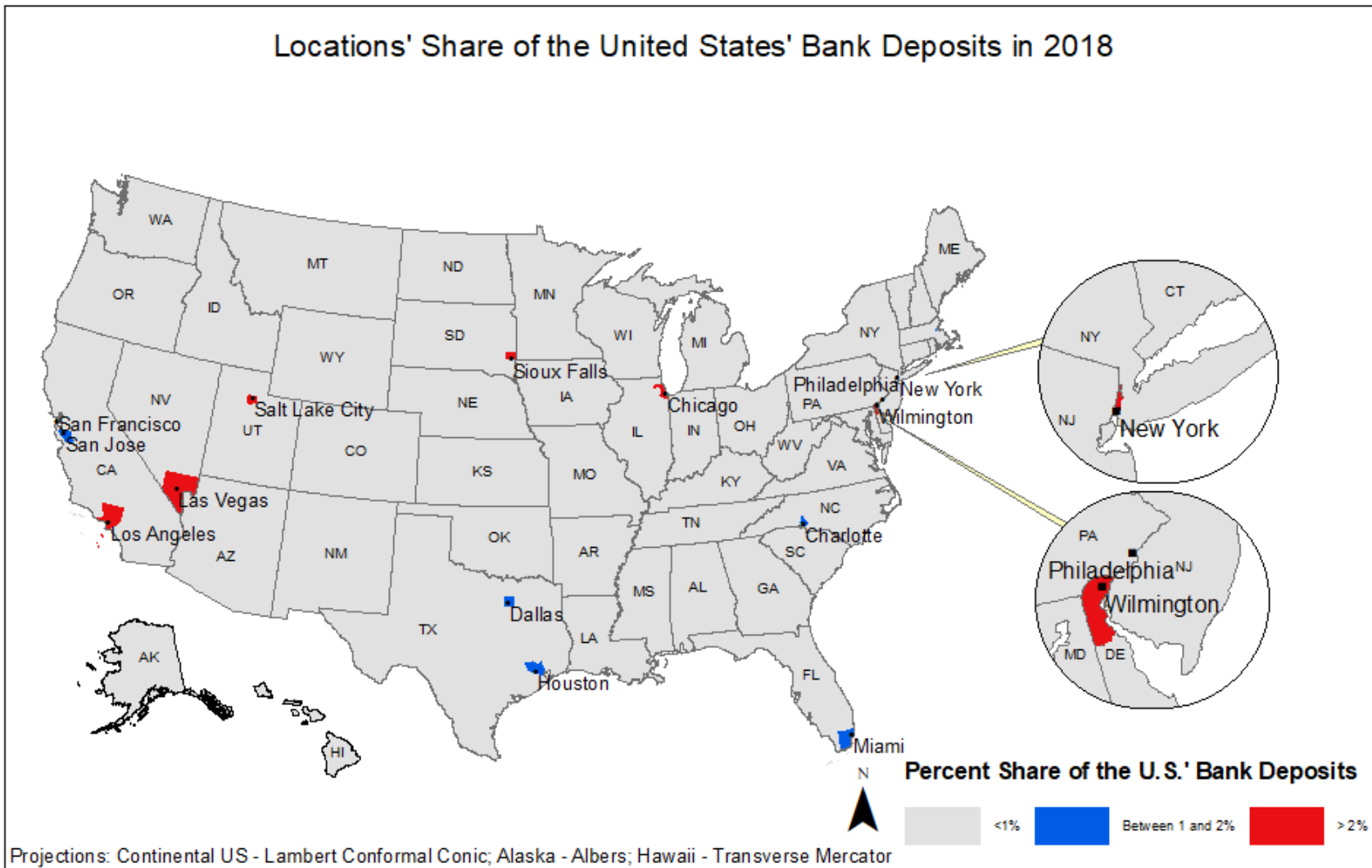
#### **1.1.4 Exploring Banks' Deposits**

The spatial pattern of US bank deposits aligns with the spatial pattern of population. In every annual SODS dataset, New York County (Manhattan) in New York City reports the most deposits when summed by county. New York City is unique: It has the largest population of all US cities, and its status as a global financial center boosts its banks and their accumulations of deposits. During data exploration, what caught my attention were some outlier locations—places where total deposits appeared out of sync with the population. Figure 1.2, a choropleth map classified to emphasize the outliers, illustrates this using 2018 SODS data. The most prominent outliers are in and near Las Vegas, Nevada; Salt Lake City, Utah; Sioux Falls, South Dakota; and Wilmington, Delaware. These small cities have populations ranging from 70,000 to 650,000. Surprisingly, however, these four cities hold more bank deposits than Chicago

(population 2.7 million) and Los Angeles (population 4.0 million). Ranked by deposits per capita, Sioux Falls and Wilmington are often first among US cities—above New York City.

The institutions holding large deposits in these four small cities were mostly subsidiaries of large bank holding companies headquartered in distant financial centers including New York, Toronto, and Zurich: Citigroup, Goldman Sachs, JP Morgan Chase, Toronto Dominion, and UBS AG, for example. My research explains why the largest bank and financial holding companies in the world elected to plant their subsidiaries in these four small cities. In Delaware, South Dakota, and Utah, banking and finance laws motivated firms to move to these somewhat surprising locations.

### Locations' Share of the United States' Bank Deposits in 2018



**Figure 1.2. Thematic map showing locations' share of the United States' Bank Deposits in 2018.**  
 Source: FDIC (Annual).

Chapter 3, “Weaponizing *Lex Locī*: The Banking and Finance Laws of Delaware and South Dakota,” reports how two states used their legislative power to grant banks regulatory relief in credit pricing, insurance sales, and trusts. In an interjurisdictional competition (Barkan, 2011) to attract banking firms, Delaware and South Dakota implemented laws destroying regulatory barriers erected in other states. Lawmaking was the entrepreneurial governing strategy (Harvey, 1989) to build their local economies. From the bankers’ viewpoint, they engage in regulatory arbitrage to locate subsidiaries in places with friendly laws (Haberly & Wójcik, 2015; Palan et al., 2013, pp. 20–21; Potts, 2016). To other states, Delaware and South Dakota are predatory haven states that use the law as a weapon to undermine the autonomy states are supposed to enjoy according to the US federalist tradition.

The laws supporting Utah were designed differently from Delaware’s and South Dakota’s. Still, the laws had a related purpose: to serve a powerful class of non-banking firms eager to engage in the business of banking. Tradition and regulations limiting bank powers, dating back to the Bank of England Act of 1694, have long precluded banks from participating in commerce. The separation of banking from commerce is a mechanism to reduce potential conflicts of interest when banks issue credit. In the US, following thousands of bank failures during the Great Depression, Congress passed the Glass–Steagall Act, which legally separated investment banks from commercial banking. According to Glass–Steagall, investment banks, which specialize in underwriting and trading securities, are not eligible for government insurance on their deposits. Commercial banks, whose business is primarily accepting deposits and issuing loans, depend on federal insurance to cover their deposits. Chapter 4, “Locating Bank Deposits: Why Is There So Much Money in Utah?” examines a series of laws that reaffirmed the separation of banking from other businesses in the US over time. Ultimately, however, through an Industrial Loan Bank (ILB) charter issued by the state of Utah, investment banks and commercial firms found an exemption from federal banking laws precluding them from engaging in the business of banking. Several large commercial conglomerates and Wall Street firms established new ILBs or acquired existing ILBs in Utah. From Utah, these firms gathered billions of dollars in federally insured deposits.

### **1.1.5 Shifting Bank Deposits Across State Boundaries**

During the past two decades, Delaware, Nevada, South Dakota, and Utah observed, with some exceptions, annual increases in their share of total US deposits. In chapters 2 and 3, I concentrate on why banking firms—instead of deposits—moved into those states. Of course, the large banking firms that moved in and brought their deposit-gathering activity with them partly explain these states' outsized deposits. Some firms which moved in booked all of their deposits from a single location. Are there other explanations for the geographic transfer of deposits into Delaware, Nevada, South Dakota, and Utah? Are these state preferred locations for bank deposits?

Large banks which migrated to Delaware, Nevada, South Dakota, and Utah have deposit-gathering offices spread across many other states. The SODS data shows some multistate banks shifted large portions of their deposits into these four states from other states. Why did banks choose to migrate deposits? Chapter 5, "The Shifting Territory of US Bank Deposits: Opportunities for Additional Research," provides one answer to this question. I describe how New York taxed the deposits of multijurisdictional banks. Using SODS data, I illustrate a shifting bank deposit pattern from New York to Nevada and South Dakota. Using New York's multijurisdictional bank income apportionment formula, I show the enormous tax savings large banks accrue by minimizing deposits held in New York.

### **1.1.6 Linking the Studies Together**

All of the studies in this thesis hold several common attributes and themes: They use SODS data to capture US banks' and deposits' spatial migrations; they incorporate the role that history and law play in moving banks and money to new places; and they illustrate how capital accumulation motivates banking firms to reposition themselves and their money geographically.

The SODS data offers the opportunity to explore and analyze geospatial banking data to discover geographic changes of banks' offices and banks' deposits. All of the studies in this thesis relied on having a history of banks' and deposits' geographic locations. The SODS dataset provided that history. SODS data has supported many previous spatial repositioning studies of US banks (Avery et al., 1999; Chang et al.,

1997; Granja et al., 2015; Hegerty, 2020), and this data will undoubtedly play a prominent role in future banking studies.

Understanding banking regulation in the US requires knowledge of key historical events and the complicated legal choices made in response to those events. Each of the chapters that follow elaborates on a history of banking regulations and associated events related to the regulations' constructions: for example, anti-usury laws and their repeals; the Glass–Steagall Act, which separated investment banking from commercial banking; the business scopes of banks as defined in the Bank Holding Company Acts; the Community Reinvestment Act, which specifies that banks are assessed on their record of opening and closing branches in low-income neighborhoods; and state taxations of banks. Any rule produced by the state will help or hinder different interested groups. These studies show that banks are creative in finding ways around regulations that impede their business. Usually, banks' solutions to regulatory obstacles included transferring their legal status from one jurisdiction to a more accommodating jurisdiction by relocating.

Capitalism is central to understanding the repositioning of banks and money, and relocating banks and money, inevitably, are behaviors of capitalism. On top of all motivations, by necessity firms use their capital to generate more capital. Banks are in business to make money. Earnings are the measure of their success. In each of the studies that follow, regenerating capital was made possible by manipulating the rudiments of legal geography.

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## **Chapter 2**

# **Do Bank Mergers Shift Branches Away from Low-Income Neighborhoods? The Spatial Redistribution of Bank Branches in Urbanized Florida after the Financial Crisis**

## **2.1 Summary**

Public policy debates argue that consolidation of bank offices following mergers results in low-income areas or minority neighborhoods suffering a disproportionate loss of access to nearby banks. By analyzing bank location data for Florida, US, where roughly 40% of all branches were abruptly restructured through financial crisis bank mergers, this research tests if neighborhoods' bank branch proximity changes were uneven across neighborhoods classified by income and minority status. Trade areas encompassing a one-mile radius overlapping retail bank offices were used to measure communities' accessibility to nearby banks. The differences of bank office trade areas covering neighborhoods between the 2008 financial crisis and five years after provided the nearby bank change metrics. Separate nearby bank change measurements compared the branch location strategies of banks that merged with Federal Deposit Insurance Corporation (FDIC) assistance, merged unassisted, and unmerged banks. The Kruskal–Wallis H and post hoc statistical tests suggest high-income neighborhoods outperformed other neighborhood income groups in maintaining accessibility to nearby banks. The branching decisions of unmerged banks, as opposed to the merged banks, resulted in disproportionate improvements for high-income neighborhoods. The gap of nearby bank differences between neighborhoods having high concentrations of minorities and low concentration of minorities narrowed. This research finds that financial crisis-related mergers did not contribute to adverse changes of nearby banks to neighborhoods classified by income or minority status.

## **2.2 Introduction**

Bank mergers and the resulting consolidation of bank branch offices contribute to public policy debates regarding communities' accessibility to nearby banks. Some argue

that bank mergers and branch office consolidations are a result of more efficient financial services delivery (Al-Sharkas et al., 2008; Cornett et al., 2006; Walter, 2004). Others maintain that merger-induced bank office changes result in low-income areas and communities having high concentrations of minorities enduring reduced access to financial services or credit (Argent, 2002; Bowles, 2000; Dymski, 1999, p. 17). Due to these concerns, this research looks at the changing spatial patterns of retail banks which occurred in Florida between the beginning of the 2008 financial crisis and then five years later—when megamergers hastily transferred ownership of more than 40% of Florida’s 5,600 retail bank branches. Many of these mergers involved failed banks whose charters were revoked by their banking regulators. The Federal Deposit Insurance Corporation (FDIC), the agency responsible for resolving failed banks, promptly arranged acquisitions with healthier banks, often within days. FDIC’s merger assistance may include assumptions of a portion of a failed banks’ liabilities to protect depositors and to provide incentives for acquiring banks to assume the remaining assets of a failed bank. Many other mergers involved banks under extreme financial stress that were at probable risk of failure. Bank regulators used their emergency powers to approve those bank mergers, without the FDIC assisting the acquiring firms with deposit insurance funds. However, those unassisted mergers, approved at speeds measured in days or hours rather than months, waive use of standard guidelines such as anti-trust competition review, public notices for comments, and waiting periods. Here I examine the longer term bank branch proximity effects of crisis-induced mergers on neighborhoods in Florida and specifically account for neighborhood proximity changes associated with banks which merged with failed banks or merged unassisted.

I measure changes in the number of nearby bank branch offices for Florida neighborhoods after the financial crisis and determine if these changes were uneven across income and minority neighborhood groups. The nearby branch office changes are measured for the branch networks belonging to three bank groups: banks that merged with FDIC assistance, banks that merged unassisted, and unmerged banks (those which did not merge after the financial crisis). I seek to determine which of these groups of banks contributed to any changes of bank branch proximity observed by Florida’s neighborhoods classified by income and classified by minority status. During the financial crisis, financially healthy banks exploited opportunities to acquire weak and failing banks at low costs. The acquiring banking corporations instantly expanded their

geographic footprints within Florida. After bank mergers, did acquiring bank corporations readjust their branch office footprints at the expense of lower income or minority neighborhoods? While previous studies found spatial reconfigurations of bank branch offices moving away from low-income and minority neighborhoods (Hegerty, 2020; Marshall, 2004; Pollard, 1996), this study adds to the literature an assessment of neighborhood changes of nearby banks influenced by the opportunistic bank acquisitions associated with the FDIC's resolution of failed or failing banks and the unassisted emergency megabank mergers which occurred over the 2008 financial crisis period.

Access to nearby banks affects the costs, quality, and convenience of obtaining financial services such as deposits, saving, loans, etc. The service tests of the Community Reinvestment Act (CRA) of 1977 attempt to ensure all communities—particularly low- and moderate-income neighborhoods—have access to nearby banking services. CRA is specifically intended to counteract market forces by prodding banks toward maintaining or improving branch presence in low-income areas. Federal banking regulators consider a bank's record of opening and maintaining branches in low- and moderate-income areas when reviewing a bank's application for a merger or new branch office locations. For banks, an unsatisfactory CRA examination score can impact future regulatory approval of new branches, relocations, mergers, and eligibility to bid on and acquire failed banks (Granja et al., 2015). As a result, banks take notice of CRA factors when making branch location decisions (Avery et al., 1997, 1999; Marshall, 2004).

Banking regulators require banks to notify customers and the public 90 days in advance when closing bank branches. When closing branches in low- and moderate-income areas, citizens of those neighborhoods may request formal meetings for public comment and discussion of adverse impacts the closure may have on the community (Office of the Comptroller of the Currency [OCC], 2017). Following failed bank resolution, acquirers are relieved of notification requirements when closing branches of failed banks. Furthermore, the acquiring banks retain options to return branches of failed banks to the FDIC within several months of resolution. Unassisted merged banks normally close branches when the acquiring firm and the target firm share branches in the same market. Following the crisis, merged banks rearranged the spatial layout of their branches. Regulator decisions to assist or otherwise approve mergers may produce the unintended consequence of closing nearby bank branches in economically

marginalized neighborhoods that already have fewer accessible banks near their communities. A declining share of banks in low- and moderate-income neighborhoods would run afoul of CRA policies and regulations seeking to maintain nearby bank access for all communities.

I employ geographic information systems (GIS) and spatial analysis to identify and account for changes of nearby full-service bank branches within urbanized neighborhoods of Florida. One-mile radial bank branch trade areas overlapping census tracts captured neighborhoods' quantities of nearby banks. Kruskal–Wallis mean rank tests combined with Dunn's pairwise tests were used to measure spatial distribution differences of nearby banks between groups of neighborhoods classified by income and minority status.

Five years following the financial crisis, retail bank office presence persisted in and near high-income neighborhoods and contracted in and near middle-, moderate-, and low-income neighborhoods. The unmerged group of banks disproportionately increased their branch presence near high-income neighborhoods. Merged banks reduced branch office presence in all neighborhood types; however, I did not find statistically significant evidence that financial crisis mergers, whether assisted or unassisted, resulted in disproportionate redistributions of bank branches near neighborhoods classified by income in urbanized Florida.

The next section provides a review of relevant literatures covering studies on the distribution of banks based upon neighborhood economic and minority status. This section also discusses the influences that banks have on neighborhoods' wellbeing. Using a historical approach, the third section discusses how geographic bank branching restrictions, followed by deregulation, reshaped the banking structure in the US, and particularly in Florida, before and after the financial crisis. The fourth section describes the data and the strategy for measuring the changing number of nearby banks across Florida's neighborhoods and determining differences between groups of banks. The fifth section presents the empirical findings. The final section discusses these findings and relates the findings to public interest banking laws seeking to maintain branch presence in lower income areas.

## 2.3 Studies Linking Banks to Neighborhoods Based Upon Wealth and Minority Status

A rich collection of works within the discipline of human geography focuses on how access to a reasonably nearby bank might alleviate forces of financial exclusion, especially in lower income neighborhoods. Given the importance of financial intermediation to modern economic relations, unbanked and underbanked communities are thus effectively constrained in the exercise of their financial “citizenship” (Kear, 2013; Leyshon & Thrift, 1995). Unbanked and underbanked communities encourage entry of high-cost fringe financial services where payday lenders and check cashing service providers fill the spatial void (Smith et al., 2008). These concerns are found in public policy debates in modern economies outside the United States (Argent, 2002; Bowles, 2000; Brennan et al., 2011; French et al., 2008) as well as within. Neighborhood abandonment by banks in the US, and its consequences for underserved areas of Los Angeles, are the focus of work by Dymski and Mohanty (1999), Dymski and Veitch (1996), and Pollard (1996), who argue that the neighborhood presence of banks—or lack thereof—affects the distributions of urban growth. Nguyen (2014) measured the wealth effects associated with bank closures in low-income neighborhoods and found that losses were applicable after closures even when other banks remained nearby. The presence of Chicago’s “banking deserts”—communities lacking nearby banks—was found to be most prevalent in Black and Hispanic census blocks (Hegerty, 2020); the desert areas persisted with little variation over the 10 years following the financial crisis. Many studies reporting the disparities of bank branch presence, accounting for differences in neighborhood income and race, conform with Dymski’s depiction of an “upscale-retail” (1999, p. 14) banking strategy. “Upscale-retail” banks find and hold their preferred customer base by concentrating their branches in and near high-income neighborhoods.

Granja et al. (2015) summarized how failed banks shared markets with their acquiring banks after the 2008 financial crisis. Geographically many failed banks are acquired by banks having branches sharing markets at the county level and the zip code level. Avery et al. (1997, 1999) observed the highest propensity of post-merger branch declines when both the acquiring firm and the target firm had branch offices within the same zip code market. Avery et al.’s 1997 report found a relationship between mergers—either FDIC-assisted or unassisted—and per capita branch office declines, but

there was no merger-related decline differential across neighborhoods classified by income. Dymski (1999, pp. 92–93) asserts that fewer merger-related closures were found in low-income areas because these areas had fewer branches to begin with. Later Avery et al. (1999) suggested that in-market mergers at local neighborhood scales resulted in larger declines of branches in low-income areas compared with other neighborhoods.

Although antitrust guidelines require banking regulators to gather market concentration metrics and test merger applications for potential post-merger anti-trust violations, FDIC-assisted mergers of failed banks and banking regulator emergency merger approvals are not bound by the same metrics that would otherwise deny a merger application. Using the Herfindahl–Hirschman index—a measure of market concentration—Wheelock (2011a, 2011b) found that metropolitan area markets with in-market mergers of failed banks did not result in significant changes in market concentration for several years following mergers.

Banking industry consolidation is further stimulated by technologies that enable more financial services with fewer retail branch offices. Fintech or financial technologies enable banks to deliver most financial services remotely. The Internet and smart phones have diminished consumers' needs to access a brick-and-mortar bank office. King's (2012) industry analysis suggests that bank branches will swiftly decline throughout the developed world because they are used less often by consumers who prefer banking services online. Branch visits are often used for cash deposits, problem resolution, and advice with complex financial products whose demand may be lacking in low-income areas.

This research builds upon the literature of the geography of bank branch patterns associated with the stimuli of mergers. I first provide a case study of retail bank branch patterns specific to urbanized Florida. Second, I divide merged banks into two separate groups so that the neighborhood proximity effects of mergers with failed banks following the 2008 financial crisis are separately compared with the unassisted-merged and unmerged banks. If banks had a propensity to migrate toward higher income and White majority neighborhoods, then the surge of financial crisis-related bank mergers provides a fertile testing ground to enquire whether these measures exacerbated nearby bank deficits for low-income and minority neighborhoods.



## **2.4 Banking Laws and the Restructuring of the Florida Banking Market**

The banking structure in Florida, just before and after the 2008 financial crisis, can be understood through a historic series of laws which transformed banking throughout the United States and within Florida. Interstate bank branching restrictions limited the number of offices operated by bank corporations. Laws deregulating bank branching resulted in banks transitioning from single or a few offices to large institutions consisting of hundreds to thousands of branches sweeping across multiple state markets. Merging any of these large institutions rapidly reconfigured the geographic footprints of branches based upon the retail banking strategies of the surviving firm.

Branch banking—a system in which a banking company operates one or more offices separate from its main office (OCC, 2009)—has long been controversial in the United States. Opponents have argued that branching transmits decision making and capital from local communities to distant money centers, while banks headquartered locally have greater incentive to extend credit through local economic downturns (Pollard, 1996). The National Bank Act of 1864 gave the US Treasury the authority to charter and regulate national banks. State governments retained the power to charter state banks and regulate the location of national and state-chartered banks within their boundaries. Turf battles between state and national banks resulted in restrictions on branching (Jayaratne & Strahan, 1997; White, 1982). While the McFadden Act of 1927 and the Banking Act of 1933 permitted national banks to have the same rights to branch within a state as state banks, individual states had final authority on intrastate branching, and interstate bank branching was prohibited. These branch restrictions resulted in a banking structure of single office or “unit” banks operating in protected geographic markets across the US (Barth et al., 2009; Fullford, 2011; Kroszner & Strahan, 1999; Pollard, 1996). Today that unit bank legacy persists in the hundreds of unit banks across the US. Several of those unit banks are in Florida (FDIC, Annual).

In the 1920s, because of branching restrictions, the ancestors of JP Morgan Chase found it easier to establish branches outside the US as opposed to within (JP Morgan Chase and Co., 2008). In 1898 state law permitted New York City banks to branch within city limits. In 1909 California permitted and successfully developed statewide branch banking (Federal Reserve Board, n.d.). Today, the three leading US

banks—Bank of America, JP Morgan Chase, and Wells Fargo—originated in locations where branching was deregulated a century ago. Branching and mergers scaled up these banks' sizes, giving them competitive advantages in bank acquisitions by the 1980s when interstate branching became an option.

To “get big fast” and expand geographic scope, banks acquired new branches through mergers or branch acquisitions, rather than establish branches de novo. Both intrastate and interstate branching restrictions stood in the way until the 1980s, when deregulation enabled rapid branching. The Garn–St. Germain Depository Institutions Act of 1982 permitted interstate acquisition of failed savings banks. Barriers to interstate branching were loosened through quid pro quo branching agreements between states. By the early 1990s, a hodgepodge of separate reciprocal agreements existed allowing banks to acquire branches in each other's states (Barth et al., 2009; Kroszner & Strahan, 1999). Finally, the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 established uniform rules by which banks acquired other banks across state lines. During the 1980s and 1990s, roughly 7,400 bank mergers slashed the total number of bank companies by one half (Dymski, 1999, p. xv; Jones & Critchfield, 2005).

In 1985 Florida approved entry to the Southeastern Regional Banking Compact, an interstate branching reciprocal agreement among Southern states (Hills, 2007). Soon banks inside Florida were acquired by larger banks headquartered both in and out of state. In the years following the Southeastern Regional Banking Compact, Florida reverted from having in-state ownership of most bank offices to hosting thousands of branches of banks headquartered outside the state. Table 2.1 displays the leading banks operating retail branch offices in Florida just before the financial crisis along with the headquarters location, the number of branches, and the share of Florida branches. This configuration of banks, including some “too-big-to-fail” financial institutions saturating the Florida landscape with branch offices, would later act as a catalyst for the crisis-induced reformation.

**Table 2.1. Leading Banks with Retail Branches in Florida in 2008**

Rank	Bank Name and Headquarters Location	Number of Florida Branches	Share of Florida's Branches
1	Wachovia Bank, National Association, Charlotte, NC	657	11.71
2	Bank of America, National Association, Charlotte, NC	652	11.62
3	SunTrust Bank, Atlanta, GA	547	9.75
4	Regions Bank, Birmingham, AL	414	7.38
5	Washington Mutual Bank, Henderson, NV	263	4.69
6	Colonial Bank, Montgomery, AL	197	3.51
7	Fifth Third Bank, Grand Rapids, MI	158	2.82
8	Branch Banking and Trust Company, Winston Salem, NC	106	1.89
9	National City Bank, Cleveland, OH	102	1.82
10	BankAtlantic, Fort Lauderdale, FL	101	1.80
Other		2,413	43.01
Total		5,610	100.00

Note. FDIC (Annual).

Florida's banks were willing to allocate a large share of their assets to real estate lending (Fayman, 2014). Banks chasing higher yields enabled Florida to become among the states leading the nation in expanding subprime lending (Dell'Ariccia et al., 2012). By 2007, when the Florida real estate boom was over, the Mortgage Bankers Association's chief economist, Douglas Duncan, named Florida as one of four states experiencing record mortgage loan foreclosures and real estate price deflation (Roney, 2007). Within several months, the contagion of foreclosures and nonperforming loans had spread nationwide. The largest banks in the US, which held a large share of their assets in toxic real estate mortgage loans and their derivatives, were on the brink of failure and searching for a lifeline through government assistance or an acquirer. The government was unwilling to assist any financial institution bail out Lehman Brothers before it filed bankruptcy on 15 September 2008 (Engel & McCoy, 2011, pp. 103–105; Geithner, 2014, pp. 178–179). Following Lehman's failure, bank consolidation accelerated. Bank ownership transfers were conducted primarily through FDIC-assisted mergers of failed institutions (Dunn et al., 2015) and unassisted mergers under emergency provisions of bank merger statutes as opposed to conducting traditional mergers through the formal approval processes (Kress, 2020). Two large banks which were closed and then sold by the FDIC shook Florida's retail banking landscape. The FDIC accepted JP Morgan Chase's offer for the whole bank purchase and assumption of failed Washington Mutual

(Engel & McCoy, 2011, p. 178; Geithner, 2014, pp. 213–214) which instantly provided JP Morgan Chase over 260 retail branch offices in Florida. Months later Colonial Bank failed, transferring nearly 200 of Colonial's Florida branches to Branch Banking and Trust, tripling its branch office presence in Florida (FDIC, Annual; FDIC, Weekly).

Near the peak of the financial crisis, healthy banks put their excess capital to work by exploiting opportunities to acquire weaker banks at substantial discounts before the FDIC stepped in to assume ownership. In late September 2008, Wachovia, the largest bank operating in Florida, was on the brink of FDIC seizure. Over the New York Fed's objections, the FDIC delayed seizure of Wachovia, allowing Wells Fargo time to complete an unassisted emergency acquisition for \$7.0 billion (Bair, 2013, p. 105; Geithner, 2014, pp. 217–219). Three months earlier Wachovia's market capitalization exceeded \$33 billion (Bloomberg, 2008). Wells Fargo's branch presence in Florida instantly went from nil to having the most branches in the state by absorbing 600 Florida branches from Wachovia. In another rush to avoid FDIC seizure, National City Bank accepted PNC Bank's acquisition offer in October 2008 (Engel & McCoy, 2011, p. 169), acquiring more than 100 branches in Florida. Combined with the purchase of Royal Bank of Canada's Florida branches, PNC quickly became visibly present across Florida with nearly 200 branch offices. The large numbers of Florida's branches transferred from failed and failing banks, added to the existing branch networks of the acquirers, placed the life of roughly half of all of Florida's bank offices under re-evaluation. The acquirers' new market strategies and efforts to minimize costs increased the likelihood that branches belonging to the merged groups of banks were subject to closures.

The financial crisis-related mergers, both assisted and unassisted, radically changed the retail banking corporate branch office structure in Florida. Table 2.2 lists the leading banks in Florida five years after the crisis. Wells Fargo maintained their lead in branch office presence following their acquisition of Wachovia. JP Morgan Chase added a net gain of roughly 90 branches since its acquisition of Washington Mutual. Banks opened several hundred de novo branches after September 2008; however, there was a net decrease of 195 branches in Florida by July 2013.

**Table 2.2. Leading Banks with Retail Branches in Florida in 2013**

Rank	Bank Name and Headquarters Location	Number of Florida Branches	Share of Florida's Branches
1	Wells Fargo Bank, National Association, Sioux Falls, SD	621	11.47
2	Bank of America, National Association, Charlotte, NC	613	11.32
3	SunTrust Bank, Atlanta, GA	508	9.38
4	Regions Bank, Birmingham, AL	369	6.81
5	JPMorgan Chase Bank, National Association, Columbus, OH	354	6.54
6	Branch Banking and Trust Company, Winston Salem, NC	323	5.96
7	PNC Bank, National Association, Wilmington, DE	197	3.64
8	Fifth Third Bank, Cincinnati, OH	171	3.16
9	TD Bank, National Association, Wilmington, DE	171	3.16
10	BankUnited, National Association, Miami Lakes, FL	98	1.81
Other		1,990	36.75
Total		5,415	100.00

Note. FDIC (Annual).

## 2.5 Bank Location Data and Methods to Measure Nearby Bank Change

The bank offices selected for this study included full-service main or branch bank offices in Florida from June 2008 and June 2013 found in the Summary of Deposits (SOD) Surveys (FDIC, Annual). Information documenting bank mergers—either FDIC-assisted or unassisted—were obtained from the FDIC’s Reports of Structure Changes (ROSC) dataset (FDIC, Weekly). Like Wheelock (2011b), I constructed the branch networks of acquired and absorbed banks as if the merger took place just before the financial crisis.<sup>1</sup> The SOD data contains the address location and geographic coordinates of every bank branch office. The geographic coordinates of bank offices in the SOD data contained high incidences of errors and often generalized location accuracy to zip code centroids. The bank branch’s geographic coordinates’ precision

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<sup>1</sup> In the dataset resulting from linking the SOD and the ROSC datasets together, the merger status of absorbed bank branches in Florida was set to the merger type value in the ROSC dataset and the merger status of the acquired branches was set equal to the absorbed bank’s merger status when the acquirer and the absorbed bank had branches within the same county. For example, with FDIC assistance SunTrust Bank, which had branches throughout Florida, absorbed First Priority Bank, which had branches only in Manatee and Sarasota Counties. In this case, I marked SunTrust’s and First Priority’s branches in Manatee and Sarasota counties as assisted-merged branches, and I marked SunTrust’s branches located outside of Manatee and Sarasota as unmerged.

and accuracy was improved by passing the SOD records through Google's geocoding services.

Census tracts were used to represent neighborhood units. These tracts are small areal units whose population has relatively homogeneous economic and racial characteristics at which geodemographic data are publicly released. The 2013 American Community Survey (ACS) (United States Census Bureau, 2009–2013) was used to obtain median family income at the census tract level. Census tracts were classified as high-, middle-, moderate-, or low-income based on the ratio of the tract's median family income to the tract's metropolitan area's family income. Tract-to-metro family income ratios above 1.2 were classified as high-income; ratios between 0.8 and 1.2 were classified as middle-income; ratios between 0.5 and 0.8 were classified as moderate-income; and ratios below 0.5 were classified as low-income. The small sample sizes used by the ACS at the tract level subject the income data to margins of error that may cause some tracts to be misclassified. Nevertheless, the use of the 2013 ACS data at the tract level is appropriate for this study for several reasons. Bank regulators use the same median family income classification criteria and ACS data sources to assign income classes to census tracts (Federal Financial Institutions Examination Council [FFIEC], 2016; Federal Reserve Board, 2014). Further, the 2013 ACS dataset captures the income of tracts covering the same five-year period of this study.

Census tracts were similarly classified as high-, middle-, moderate-, and low-minority based upon the proportion of the non-Hispanic White population to the entire tract population as reported in the 2010 census. There are no standard classification intervals for a tract's percentage of minorities. Different classification intervals will produce different results. Furthermore, this analysis does not have information on demographic transition effects where the percentage of minorities in a tract changes over the five-year period. Nevertheless, this chosen approach provided an indication of bank branch proximity changes related to neighborhood minority status. I used tract minority status classification matching a Federal Reserve Board of Governors' webinar addressing the role census data plays with CRA compliance (Canner, 2012). Tracts having more than 80% minorities were classified as high-minority; between 50% and 80% were classified as middle-minority; between 10% and 50% classified as moderate-minority; and tracts having less than 10% minorities were classified as low-minority.

Tract urbanized areas are continuous sets of densely populated census tracts having an urban core population of 50,000 or more persons. Using an overlay of urbanized area GIS data from the US Census, urbanized area census tracts were selected for analysis in this study. Non-urbanized tracts were excluded from the study because of their heterogeneous population densities and the high variability of their areal sizes. After removal of non-urban census tracts, I included 3,228 census tracts comprising 78% of the population in Florida in the study area. The urbanized area census tracts had a mean area of 2.04 miles and a standard deviation of 2.352 miles. The small areal sizes of urbanized area census tracts considered with the intersecting one-mile radii branch trade areas (described below) enabled detecting branch trade area movements over time across census tracts.

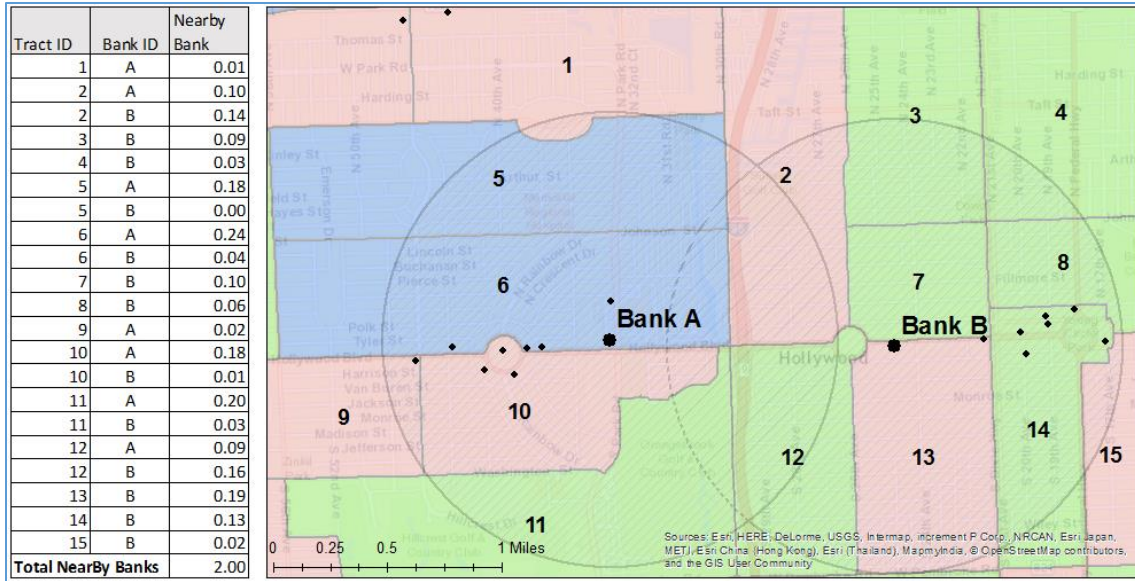
I evaluated several measurement techniques before selecting an optimal method to detect changes of nearby bank branches servicing neighborhoods. Previous studies either counted retail establishments within units such as census tracts or zip code areas (Avery et al., 1997, 1999; Chang et al., 1997; Nguyen, 2014; Pollard, 1996), measured nearest neighbor distances between consumers and retail establishments (Black et al., 2011; Lord & Wright, 1981), calculated densities of establishments (Guagliardo, 2004; Moore et al., 2008), or summarized a retail catchment area's coverage of neighborhoods using buffers (Black et al., 2011). Any of these methods is simple and effective in capturing bank office neighborhood changes. However, different measurement methods are vulnerable to special circumstances between the layouts of uneven census tract areal unit sizes and locations of bank branches. Counting bank branches located within census tract areas is influenced by the coincidence of arbitrary boundaries and ignores the proximity influence a branch provides on nearby communities (Larsen & Gilliland, 2008). Major roads containing commercial strips—where bank branches are frequently located—often form census tract boundaries within Florida, illustrating potential shortcomings of counting branches within tracts. Nearest neighbor distance methods use the closest branch and omit other nearby branches which provide neighborhoods greater consumer choice, convenience, and availability. Nearest neighbor distance can understate or overstate the benefit and costs of a bank branch moving near or away from a census tract when the next nearby bank branch is coincidentally many miles away. Methods such as kernel or point density overcome some shortcomings of counting branches inside tracts or nearest neighbor techniques by including all branches within or

near census tracts; however, these measurements use predefined dimensions to define trading areas. Capturing bank branches within fixed-size catchments or trade area buffers mimics many of the density approaches, giving measurements of banks per unit of area.

To detect neighborhoods' changes of nearby bank branches I relied on the fixed-size trade area approach used by Black et al. (2011) to measure neighborhoods' nearby food stores and by Guagliardo (2004) to measure neighborhoods' nearby health care providers. I generated a one-mile buffer representing the trade area around each bank branch location. Banking regulators use one mile as the distance branch offices in metropolitan areas can move to distinguish between relocations and office closures, suggesting that a one-mile radius represents a bank branch's trade area (FDIC, n.d.; Federal Reserve Board, 2014; OCC, 2017). I also measured nearby banks using one-half mile and 1.5-mile trade area buffers and obtained results similar to the one-mile buffer.

Figure 2.1 contains a schematic illustrating how nearby bank fixed-sized trade areas were calculated and distributed to census tracts. For simplicity, I show one-mile buffers for just two banks labeled "Bank A" and "Bank B." The bank trade area buffers overlay the tracts and intersect each other. The nearby bank value assigned to a tract is the proportion of the total bank trade area buffer covering a tract. The cumulative trade area buffers overlapping a census tract represent the number of nearby banks' value for the tract. In the schematic, 10% of "Bank A's" buffer area and 14% of bank "Bank B's" buffer area cover tract 2, giving the tract .24 nearby banks. One bank's buffer area may overlay portions of many census tracts, depending upon the location of the bank relative to the tract boundaries and the areal sizes of the tracts. The sum of the nearby bank values from any bank office cannot exceed one.





**Figure 2.1. Schematic showing measurements of nearby banks for census tracts.**

*Note.* Background map in this figure adapted from ArcGIS® 10.0 World Street Map by Esri, 2009 ([https://services.arcgisonline.com/ArcGIS/rest/services/World\\_Street\\_Map/MapServer](https://services.arcgisonline.com/ArcGIS/rest/services/World_Street_Map/MapServer)). ArcGIS® and ArcMap™ are the intellectual property of Esri and are used herein under license. Copyright © Esri. All rights reserved. For more information about Esri® software, please visit [www.esri.com](http://www.esri.com).

The differences in neighborhoods’ nearby banks failed the Shapiro–Wilk tests of normality, contained outliers, and transformations were not practical because of zero and negative values. Normality is an assumption for analysis of variance (ANOVA). Thus, I performed the nonparametric Kruskal–Wallis H test as an alternative to ANOVA to compare differences of bank proximity between four groups of neighborhoods. Unlike ANOVA, the Kruskal–Wallis H test does not assume normality, is less sensitive to outliers (Montgomery, 2013, p. 130), and uses mean ranks as opposed to mean values to compare differences between groups.

## 2.6 Findings

Summaries of the 2008 and 2013 numbers of full-service bank branches in Florida broken down by bank merger group are displayed in Table 2.3. The unmerged bank group increased branches, and the assisted- and unassisted-merged bank groups decreased branches during the study period. These changes were the results of bank branch closures, new branches, liquidations, consolidations, relocations, and changes in bank service. My concern was how the net changes of full-service bank branches were distributed across neighborhoods classified by income and classified by minority status.

**Table 2.3. Counts of Bank Branches by Merger Group 2008–2013**

Merger Group	Within Urbanized Areas			All of Florida		
	Year 2008	Year 2013	Net Change	Year 2008	Year 2013	Net Change
Unmerged	2,731	2,786	55	3061	3100	39
Assisted-merged	1,361	1,197	-164	1470	1271	-199
Unassisted-merged	990	961	-29	1079	1044	-35
Total	5082	4944	-138	5610	5415	-195

Note. FDIC (Annual); FDIC (Weekly).

The numbers of nearby banks across neighborhood groups classified by income between 2008 and 2013 and the net changes contributed by each group of banks appear in Table 2.4. The headline numbers of nearby banks per tract indicate that Florida’s urbanized areas were well banked before and after the financial crisis; however, high-income neighborhoods, having 1.79 banks per tract, started with an advantageous access of more nearby banks, giving their consumers greater choices of banking services. Over the study period, high-income neighborhoods observed average improvements of .01 nearby banks per tract while both middle- and moderate-income neighborhoods lost an average of .06, and low-income neighborhoods observed a loss of .02 nearby banks per tract. These changes clearly suggest a pull of nearby banks to the high-income neighborhoods.

**Table 2.4. Number of Nearby Bank Branch Offices in Florida (Accumulated 1-Mile Bank Branch Catchment Areas): Urbanized Area Tracts Classified by Income**

		2008		2013		Net Change	
Neighborhood Income Group	Bank Merger Group	Nearby Banks Sum	Nearby Banks Per Tract	Nearby Banks Sum	Nearby Banks Per Tract	Nearby Banks Change	Nearby Banks Per Tract Change
High (n=922)	Unmerged	869.64	0.94	919.36	1.00	49.71	0.06
	Assisted	459.24	0.50	422.46	0.46	-36.78	-0.04
	Unassisted	322.53	0.35	317.42	0.34	-5.11	-0.01
	Subtotal	1651.42	1.79	1659.24	1.80	7.82	0.01
Middle (n=1209)	Unmerged	887.23	0.73	894.22	0.74	7.00	0.01
	Assisted	462.93	0.38	398.03	0.33	-64.91	-0.05
	Unassisted	324.03	0.27	314.34	0.26	-9.68	-0.01
	Subtotal	1674.19	1.38	1606.60	1.33	-67.59	-0.06
Moderate(n=860)	Unmerged	553.91	0.64	555.68	0.65	1.78	0.01
	Assisted	264.40	0.31	226.17	0.26	-38.23	-0.05
	Unassisted	198.09	0.23	191.15	0.23	-6.94	-0.01
	Subtotal	1016.4	1.18	973.01	1.13	-43.39	-0.06
Low (n=237)	Unmerged	106.68	0.45	109.46	0.47	2.78	0.02
	Assisted	45.74	0.19	37.19	0.16	-8.55	-0.03
	Unassisted	40.48	0.17	39.88	0.17	-0.59	-0.01
	Subtotal	192.90	0.81	186.53	0.79	-6.36	-0.02

The Kruskal–Wallis H tests tell us whether changes of nearby banks across Florida between neighborhoods classified by income are statistically significant: 3,228 neighborhood tracts were ranked by changes in nearby banks between 2008 and 2013. Separate measurements were made based upon banks’ merger status. When statistically significant results from the Kruskal–Wallis H test were observed, pairwise comparisons of neighborhood groups were performed using Dunn’s procedure with Bonferroni adjustments (Dunn, 1964). Table 2.5 provides the results of the Kruskal–Wallis H tests, and pairwise comparisons.

The unmerged groups of banks increased branches across all neighborhood types with the largest share of increase going to high-income neighborhoods. The

Kruskal–Wallis H tests provide statistically significant evidence suggesting that these increases were unevenly distributed across neighborhood income groups. The pairwise comparisons found that high-income neighborhoods surpassed middle- and moderate-income neighborhoods in attracting additional nearby branches of banks belonging to the unmerged group. Statistically significant evidence of differences between any other pairs of neighborhood groups was not found.

The largest net loss of nearby bank offices was from banks belonging to the assisted-merge bank group. These losses applied to all neighborhood types. Statistically significant evidence that these declines were unevenly distributed across neighborhood types was not found. There were small declines of unassisted banks over the study period and statistical measurements of the changes failed to show evidence of uneven distributions across neighborhoods.

**Table 2.5. Differences of Nearby Unmerged, Assisted-Merged, and Unassisted-Merged Banks Across Neighborhood Income Groups**

Test Summary			Neighborhood Pair Comparisons		
Bank Merger Type	H(3)	Significance (2-sided test) (p)	Neighborhood Group 1 (mean rank)	Neighborhood Group 2 (mean rank)	Adjusted Significance (p)
Unmerged (n=922)	23.772	p<.001	High (1730)	Middle (1564)	p<.001
			High (1730)	Moderate (1574)	p<.001
			High (1730)	Low (1677)	p=1.00
			Middle (1564)	Moderate (1574)	p=1.00
			Middle (1564)	Low (1677)	p=.520
			Moderate (1677)	Low (1677)	p=.348
Assisted	4.55	p=.208			
Unassisted	0.737	p=.864			

Note. n = 3,228 urbanized area neighborhoods (tracts) in Florida; Kruskal–Wallis H tests with neighborhood pairwise comparisons.

### 2.6.1 Nearby Bank Changes in Neighborhoods Classified by Minority Status

There were 359 of 3,228 census tracts characterized as White non-Hispanic neighborhoods. At the other end of the minority share continuum 17% of the census tracts had minority populations exceeding 80%. Table 2.6 provides the 2008 and 2013

number of nearby banks, based on merger status, in neighborhoods classified by minority population share.

**Table 2.6. Number of Nearby Bank Branch Offices in Florida (Accumulated 1-Mile Bank Branch Catchment Areas): Urbanized Area Tracts Classified by Minority Status**

Neighborhood Minority Population Share	Bank Merger Group	2008		2013		Net change	
		Nearby Banks Sum	Nearby Banks Per Tract	Nearby Banks Sum	Nearby Banks Per Tract	Nearby Banks Change	Nearby Banks Per Tract Change
Low < 10% minority (n=359)	Unmerged	288.73	0.80	302.49	0.87	13.76	0.07
	Assisted	179.27	0.50	160.75	0.38	-18.51	-0.12
	Unassisted	131.30	0.37	116.92	0.31	-14.38	-0.06
	Subtotal	599.29	1.67	580.16	1.56	-19.13	-0.11
Moderate 10–49.99% (n=1648)	Unmerged	1416.84	0.86	1434.49	0.87	17.64	0.01
	Assisted	697.17	0.42	597.83	0.36	-99.34	-0.06
	Unassisted	519.90	0.32	500.63	0.30	-19.27	-0.02
	Subtotal	2633.91	1.60	2532.95	1.54	-100.97	-0.06
Middle 50–79.99% (n=657)	Unmerged	449.45	0.68	465.72	0.71	16.27	0.03
	Assisted	232.51	0.35	205.62	0.31	-26.89	-0.04
	Unassisted	162.99	0.25	166.00	0.25	3.02	0.00
	Subtotal	844.95	1.29	837.34	1.27	-7.61	-0.02
High >80% (n=564)	Unmerged	262.44	0.47	276.04	0.49	13.59	0.02
	Assisted	123.37	0.22	119.65	0.21	-3.72	-0.01
	Unassisted	70.93	0.13	79.24	0.14	8.31	0.01
	Subtotal	456.74	0.81	474.92	0.84	18.18	0.03

For each bank merger status, Kruskal–Wallis tests found statistically significant differences of nearby bank changes between groups of neighborhoods classified by minority status. Kruskal–Wallis H and Dunn’s pairwise test results are posted in Table 2.7. The neighborhood group having the higher mean rank values with an adjusted significance less than .05 tells which neighborhood group outperformed its pair. In general, the pairwise tests shown in Table 2.7 suggest that when a pairwise test found statistically significant evidence of differences of nearby bank changes between

neighborhood groups, the change benefited the neighborhoods having high minority populations more than the lower categories of minority population groups.

**Table 2.7. Differences of Nearby Unmerged, Assisted-Merged and Unassisted-Merged Banks Across Neighborhood Minority Share Groups**

Test Summary			Neighborhood Pair Comparisons		
Bank Merger Type	H(3)	Significance (p)	Neighborhood Group 1 (mean rank)	Neighborhood Group 2 (mean rank)	Adjusted Significance (p)
Unmerged (n=922)	10.35	p=.02	High (1703)	Middle (1573)	p=.42
			High (1703)	Moderate (1605)	p=.03
			High (1703)	Low (1682)	p=1.00
			Middle (1573)	Moderate (1605)	p=1.00
			Middle (1573)	Low (1682)	p=1.00
			Moderate (1605)	Low (1682)	p=.28
Assisted	31.597	p<.01	High (1787)	Middle (1615)	p<0.01
			High (1787)	Moderate (1545)	p<0.01
			High (1787)	Low (1662)	p=0.19
			Middle (1615)	Moderate (1545)	p=0.69
			Middle (1615)	Low (1662)	p=1.00
			Moderate (1545)	Low (1662)	p=.19
Unassisted	46.255	p<.01	High (1760)	Middle (1705)	p=1.00
			High (1760)	Moderate (1580)	p<0.01
			High (1760)	Low (1379)	p<0.01
			Middle (1705)	Moderate (1580)	p=0.02
			Middle (1705)	Low (1379)	p<0.01
			Moderate (1580)	Low (1379)	p<0.01

Note. Kruskal–Wallis H tests with neighborhood pairwise comparisons; n = 3,228 urbanized area neighborhoods (tracts) in Florida.

## 2.7 Bank Branch Redistributions and Conformance with Public Policy

Five years following the financial crisis Florida observed increases in retail bank offices near high-income neighborhoods and decreases near middle-, moderate-, and low-income neighborhoods. Between 2008 and 2013 merged banks—both FDIC

assisted or unassisted—contracted their branch footprints across all groups of neighborhoods. The Kruskal–Wallis tests did not provide any statistically significant evidence that the merged bank groups’ decreases of bank offices were disproportionately distributed across neighborhoods classified by income. The increases of bank offices near high-income neighborhoods were the result of the branching decisions made by unmerged banks. The Kruskal–Wallis test combined with post hoc statistical tests bolster the argument that the distributions were disproportionately favoring the high-income neighborhoods. Given these findings, the crisis-related regulator-assisted mergers and the regulator-approved mergers appear to have had an indirect adverse effect on public policies seeking to maintain nearby bank presence for low- and moderate-income communities.

Regulations waive advance notice requirements when the banking services between two offices are consolidated to a single branch when a closed branch in a principal city of a metropolitan area is within 1,000 feet of a consolidated branch or within one mile when a closed branch is in a metropolitan area. Waivers of notice apply to closing any acquired branch from a failed bank within 180 days of mergers. In this dataset, the merged groups of banks reduced branches across all neighborhood groups. A plausible explanation why the unmerged banks gravitated toward high-income neighborhoods is the opportunity the merged group of banks provided. Branch office consolidations and closures resulted in a surge of vacant retail bank office premises spread across many neighborhoods. For banks seeking to expand their footprints, the expectation would be to site their new offices near high-income neighborhoods. The upscale-retail strategy suggests that high-income neighborhoods are banks’ most desired locations. Neighborhood income has a direct positive effect on the number of branches in a market (Hannan & Hanwick, 2008). Today’s banking products and the profits they generate are segmented by the income of their customers. Banks have augmented their financial services to include financial planning and trust services which are targeted toward high-income clientele (Pollard, 1996). The spatial void hypothesis (Smith et al., 2008), Hotelling’s (1929) linear city model, and notions of Dymski’s (1999) upscale-retail banking strategy explain why the unmerged bank group disproportionately allocated their added bank office presence near high-income neighborhoods. The spatial void hypothesis contends that fringe finance emerges at locations abandoned by transitional financial services. High-income neighborhoods are not the desired markets

of payday lenders and check cashing services. For the high-income neighborhoods, traditional finance replaces abandoned bank premises in lieu of fringe finance. Hotelling's model seeks to minimize the travel costs of these high-income customers to reach a retail location (Patri & Sacco, 2017) and a central location in and near high-income neighborhoods minimizes the travel costs for the banks' target market. The unmerged bank group implemented an upscale-retail strategy by exploiting the financial crisis-related abandonment of branches belonging to merged banks in their preferred high-income neighborhoods.

A bank's CRA performance evaluation does not consider branch office presence in and near neighborhoods based on minority population (OCC et al., 2014). This essay chose to measure crisis-related nearby bank changes in line with many scholarly works focusing on financial service access in minority neighborhoods (Dymski & Veitch, 1996; Friedline & Despard, 2016; Hegerty, 2020; Morgan et al., 2016). Neighborhoods having concentrations of non-Hispanic Whites have roughly twice the number of nearby banks as high minority share neighborhoods, but the gap narrowed slightly between 2008 and 2013. The distribution of nearby banks across neighborhoods correlates with income status and minority populations. This essay did find a small drift of nearby banks toward minority neighborhoods. The unmerged banks added branches near all types of neighborhoods with a small bias favoring the neighborhoods having the highest proportions of minorities. The unassisted-merged banks added branches in areas having higher proportions of minorities while decreasing branches in neighborhoods having lower proportions of minorities. Even with these bank office changes, neighborhoods having high concentrations of minorities have substantially fewer nearby banks after the crisis, as compared to high concentrations in non-Hispanic White neighborhoods.

How did the regulated institutions perform on maintaining nearby banks for all communities after the crisis? It is likely that each group of banks can argue that a satisfactory CRA service rating is appropriate. The unmerged group of banks increased branches near low- and moderate-income areas. Both the assisted- and unassisted-merged banks decreased branch presence near moderate- and low-income areas, but their branch office decreases were not disproportionate across any neighborhood group.

The measurements within this essay reveal something that CRA performance analysis does not capture but geographic analysis does: The crisis-related changes of



Florida's bank branch redistributions across neighborhood income groups contributed to a wider spread between high- and low-income areas. This widening gap mirrors the widening income and wealth inequalities existing among American households. Regulators might take notice of the paradoxical spillover effect crisis that their related merger decisions had on communities. Neighborhood changes of nearby banks were subtle, yet an upscale neighborhood relocation pattern accurately describes the banking industry's post-crisis treatment of urbanized Florida.

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## **Chapter 3**

# **Weaponizing Lex Loci: The Banking and Finance Laws of Delaware and South Dakota**

### **3.1 Summary**

In interjurisdictional contracts, the lex loci rule identifies which jurisdiction's law governs the contract. Laws at a place, like commodities in a market, are offered by states to industries seeking solutions to regulatory obstacles at other jurisdictions. Entrepreneurial states enact accommodative regulations expecting to capture the industries that benefit from their laws. This essay describes how the banking and finance laws of Delaware and South Dakota pierce subnational jurisdictional boundaries and reshape the national landscape by rescaling legal geography from the local to the national level. A chronology of changing regulation affecting the banking businesses of consumer credit, insurance, and trust services is presented. Using those three banking businesses, this research shows that Delaware and South Dakota succeeded in a multistate competition to attract banking and finance through their laws which simultaneously extinguished the sovereign regulatory powers of other states across the US.

### **3.2 Introduction**

This essay considers the legal geography of lex loci, or the laws of places that govern a multijurisdictional transaction. In the United States, a combination of federal laws, state laws, and court rulings have granted states powers to regulate interstate commerce for various financial products. In an interjurisdictional competition seeking to incentivize the financial services industry to "locate" within their borders, entrepreneurial states (Harvey, 1989) developed accommodative legal regimes regulating banks' businesses and products. Two exemplary states, Delaware and South Dakota, are the focus of this analysis. Large banks headquartered in New York, with only miniscule markets in Delaware and South Dakota, solicited these states to produce laws enabling banking businesses to circumnavigate regulatory barriers (Leyshon, 1992) in their "home" state. The combined populations of Delaware and South Dakota represent less

than 1% of the nation's population, yet the laws produced by these states now accommodate financial services on a scale unmatched by their own economies, an attribute consistent with the behavior of haven states (Aalbers, 2018).

Legal and economic geographers have demonstrated the ways in which law defines the spatial extents of markets (Christophers, 2014), restructures spaces within political boundaries (Ashton, 2014; Barkan, 2011; Poon et al., 2018), and shifts regulatory authority between local and national scales (Kear, 2014). This research builds on this literature, showing how Delaware and South Dakota reshaped the national financial landscape by carefully constructing strategic regulatory gaps between themselves and all other states. In federalist states like the US, the national government's law-making jurisdiction covers the nation as a whole while member states are granted self-determination rights to legislate matters of local importance. National laws typically bound the room for legal maneuvers at all lesser scales. However, the financial and banking laws of Delaware and South Dakota pierce subnational jurisdictional boundaries, reshaping the national landscape by rescaling legal geography from the bottom up.

These states operate as predatory haven states, a role made possible by processes associated with what Peck and Tickell famously call "rollback neoliberalization" (2002, p. 384)—in this case, the destruction of states' capacity to regulate the operation of the financial sector inside their own borders. By producing law according to bankers' specifications, Delaware and South Dakota generated privileged "choice of law" (Potts, 2016) conditions and marketed them on the interjurisdictional market, transforming their local economies into thriving financial centers.

The next section of this essay describes two intertwined processes associated with haven states—regulatory arbitrage and interjurisdictional competition—that feed on each other to shape important dimensions between state and financial firm relations. The third section, the essay's empirical core, outlines the regulatory history of US banking for three of its important businesses: lending, insurance, and trusts. As haven states, Delaware and South Dakota have both played a special role in this process. The fourth section develops metrics to measure the Delaware and South Dakota performance in the multistate competition to capture the banking industry. I conclude



with some discussion of the implications for interjurisdictional competition between states.

### **3.3 Regulation: A Commodity for Sale**

Banks are the primary financial intermediaries in the modern capitalist economy, linking lenders and borrowers, buyers and sellers, and producing the credit-money through which most large-scale commercial transactions are facilitated. Consequently, nation-states have long regulated the businesses of banks, their prices, and the risks banks take in investing the deposit money capital entrusted to them. Bank regulation aims, at least in principle, to protect the safety and soundness of individual banks and the entire financial system, because banks are the main institutions through which finance is allocated across the economy.

Regulation takes various forms: laws, rules, taxes, fees, fines, mandatory disclosures, and business procedures required by the state. All such state “intervention” in the market is of course controversial. The debate between advocates of the public interest, who argue that regulations are necessary to correct market failures (e.g. monopolies, asymmetric information, negative externalities), and “free-market” proponents who argue that markets correct failures more efficiently than government and deliver aggregate Pareto-optimal economic benefits to the public, is centuries old. All parties recognize that the state’s use of its regulatory authority helps or hinders specific interested parties, be they citizen groups, industries, or firms. The question is who will be helped or hindered. In other words, the means by which the state chooses to use its powers to tax, subsidize, outlaw, and compel is a constant focus of political struggle.

Whether cooperatively or grudgingly, most firms meet the state’s regulatory demands. In contrast, large firms like banks are adept at using their immense market power to disrupt regulatory regimes (Mann, 2013, pp. 50–51) to reduce the costs of compliance: lobbying lawmakers to block proposed regulations or pass laws to weaken or repeal existing regulations; testing the limits of existing regulations by using legal loopholes to circumvent rules; structuring business to take advantage of gaps between regulatory alternatives in different places (Aalbers, 2018; Fleischer, 2010; Leyshon, 1992); and encouraging the “revolving door” of executive employees between regulatory

agencies and regulated firms to enable preferential regulatory treatment (Lucca et al., 2014; Shive & Forster, 2017). These measures have proven powerful determinants of the regulatory terrain.

Theories of interjurisdictional competition focus on the “beggar-thy-neighbor” pursuit of economic development (Barkan, 2011) via “entrepreneurial governance” (Harvey, 1989), because all else being relatively equal, laws that reduce compliance cost more than the costs of moving provide powerful incentives to relocate (Revesz, 1992). A key form of entrepreneurial governance is a jurisdiction’s effort to market itself as the preferred “choice of law” governing interjurisdictional commerce (Potts, 2016). On these terms, regulation takes a commodity form, produced by the state for sale on a competitive interjurisdictional market, and consumed by those market actors who view the legislative commodity on offer as a solution to specific regulatory obstacles. The commodity provides what Pistor (2020) calls the “certainty of regulatory relief” to operate deregulated “fountains of wealth.”

It is well known that “offshore” sovereign states like the Cayman Islands operate as havens for global capital—financial capital in particular. In general, the characteristics of havens include a stable political system, small population, a relatively undiversified economy, and financial services on a scale out of proportion with their domestic economy (Aalbers, 2018; Palan et al., 2013, pp. 29–30). Havens produce and “export” legal commodities featuring low taxes, privacy, limited oversight, and unhindered freedom of contract (Aalbers, 2018; LoPucki, 2010, p. 63). A client “imports” law from a haven state to facilitate business activity deemed illegal at the client’s location, and transactions are structured in ways allowing contracts to be “booked” to enjoy the benefits of law in remote locations (Haberly & Wojcik, 2015; Palan et al., 2013, pp. 20–21).

If haven states’ entrepreneurial governance constitutes the “supply side” of the interjurisdictional market, firms’ “regulatory arbitrage” is the demand side, as banking firms seek to exploit the difference between the laws of the states in which they operate and the laws of haven states. Delaware and South Dakota operate as domestic or “onshore” havens for major US banks, and they share many characteristics of the offshore variety. But because neither enjoy the sovereign autonomy of an offshore financial centre—because they both operate within the same national-scale legal

regime—the regulatory mechanisms are different. In the US, the key to the haven dynamic is known as *lex loci contractus*, the legal sinews that connect commercial transactions to a domestic location.

In the US dual banking system, the federal government charters national banks and Congress grants national banks business powers. In addition, each of the 50 states is empowered to charter, regulate, and define the powers of state banks. Banks have leveraged their increasing intranational mobility to realize extraordinary power in the subnational market for regulation in the US. It is no exaggeration to say that in the development of the haven state—the result of virtually unprecedented levels of state–firm coordination—American banks have constructed for themselves a regulatory fortress from which to both assail regulatory obstacles in other domestic jurisdictions, and prey upon those jurisdictions’ relative regulatory “backwardness.”

For national banks, the *lex loci* connection to any of the 50 states is established by the home state named in its charter. Since states enjoy a great deal of autonomy in the structure of state bank charters, their banking industry clients’ legal attachments to a state can be organized to allow them to have very little infrastructure or employment in the state. The movement of capital—in the forms of charter fees, jobs, office rents, and taxes—is the cost of this transaction. The banking industry is pleased to pay because it is trivial relative to the benefits of their attachment to the haven states’ laws. The transaction costs paid by banking firms represent the monetization of the haven states’ legal commodities.

### **3.4 Three Businesses of Banking in the US: Credit, Insurance, and Trust Services**

*“We decide what business we want to be in, and then we get around the laws.” Stephen McLin, Senior Vice President for Strategic Planning, Bank of America (Dentzer, 1983)*

Three different businesses upon which US banks rely heavily—consumer lending, insurance, and trusts—show how banks have sought out new spaces on the interjurisdictional market for the regulations they wanted. Delaware and South Dakota entered that market to access economic development investment from out-of-state

business. These states offered regulatory commodities which met their out-of-state banking clients' specifications in all three of these businesses.

### **3.4.1 Lending: The Obstacle of Usury**

Usury law is in fact anti-usury law. Historically, it is one of the most common and longest standing forms of economic regulation (Christophers, 2013; Mercatane, 2008). The Bible describes as usury any demand for interest charged on a loan, and forbids it categorically. By the mercantilist period in early modern Europe, however, the term came to describe not interest per se, but interest deemed “excessive,” i.e. that which church authorities believed took advantage of a borrower’s misfortune (Le Goff, 1990; Rockoff, 2003). On this understanding of usury, regulation to prevent predatory lending has typically involved setting a morally acceptable maximum rate of interest rather than banning profits derived from lending. Adam Smith, idolized by champions of free markets, may have assumed that only “prodigals and projectors” would borrow money when costs were significantly greater than market rates (Smith, 1904), but even he endorsed usury laws, which he believed provided some protection to the nation’s wealth: “the legal rate...ought to be somewhat above, ought not to be much above the lowest market rate” (p. 338). By the beginning of the 19<sup>th</sup> century, some concept of usury was central to English banking law and was, consequently, just as deeply fundamental to the early US regulatory regime—including both the National Banking Acts of the 1860s (Rockoff, 2003) and states’ laws (McCoy & Renuart, 2007). Longstanding loan price constraints associated with usury remain in place in many states today.

The powers associated with the business of banking that Congress granted to national banks include lending money with interest. Modern usury law in the US takes the form of state-level loan pricing laws to which all banks located in the state are subject. Historically, these laws did not produce markets for regulation because banks were limited by “branching restrictions” from moving at will from state to state or sometimes even within a state. These longstanding limits were the subject of a prolonged and tortuous debate over the appropriate geographic scope of banking firms’ markets in the US. A legacy of intrastate and interstate branch restrictions, which in many states stood as late as the 1990s, limited the market space of the thousands of independent banking enterprises with one or a few retail offices, serving a single

community, or, in a few cases, a single state. In addition, states possessed the territorial authority to permit or deny the entry of any out-of-state bank or banking subsidiary.

The technology of credit cards in combination with sophisticated modern postal systems pierced through interstate branching regulations and eliminated many of the barriers of distance between consumer-borrowers and bank-lenders. During the 1970s, bank-issued MasterCard- and Visa-branded credit cards generated an explosion in consumer credit across millions of US households (Vanatta, 2016). Predictably, legal conflicts followed, especially over disparities between interest rate limits permitted by state-based usury laws. These conflicts came to a head before the United States Supreme Court in *Marquette v. First of Omaha* (439 US 299 (1978)). First of Omaha, a national bank located in Nebraska, solicited credit card accounts from consumers in Minnesota with account interest rates that exceeded Minnesota's usury rate ceilings. Referencing Section 85 of the National Bank Act, the Court affirmed that interest charged by national banks on interstate loans is governed by the state where a bank is located, not by the usury laws of the state in which the borrower is located.

The case made explicit a key question in domestic financial regulation: Where in the US is a bank legally "located"? In an age of credit cards and increasingly extensive credit markets, the answer is by no means obvious. In *Marquette v. First of Omaha*, the Court ruled that for regulatory purposes, a bank's location is the "home office" identified in the bank's charter. In other words, it determined that rather than where, say, its headquarters or its work force or clientele is based, a bank's location is fixed by contract in its charter: Location is "legal" rather than "physical." The ruling gave states the power to set the maximum rates "their" banks may charge for loans, without regard for rate caps existing in the states where those banks did business (McCoy & Renuart, 2007). "The 'lex loci' rule," said former South Dakota Governor Bill Janklow, "that's the place you can apply interest wherever you make the loan" ("Secret History of the Credit Card," 2004).

In the wake of the Marquette decision, states offered banks usury rate "relief" and exploited their regulatory prerogative to attract out-of-state banks from states whose regulators refused to compete. Banks pressured their home state regulators for rate increases while simultaneously playing the regulatory market with alternative home states willing to play ball. Arguably the most important development took place in

January 1980, when the South Dakota Bankers Association persuaded their legislature and governor not merely to lift allowable consumer lending rates, but to abolish usury law entirely (Vanatta, 2016). Citibank—the leading credit card-issuing bank in the US—immediately leaned on New York lawmakers to raise the state’s usury ceiling. Citibank threatened to take 2,500 credit card division jobs to another state after executives received a verbal welcome from officials in Missouri and South Dakota (“Citibank Intensifies,” 1980). New York finally yielded later that same year, abolishing usury limits on bank card loans. Delaware followed suit in February 1981, Illinois in June 1981. Many other states ended usury on bank credit after realizing that banks would move credit operations out of states that failed to comply.

Credit card lending banks’ options expanded enormously. In a competition to retain or attract banks from other jurisdictions, more states provided relief from the constraints on usury. The politics of saving existing jobs or importing new jobs provided political cover for state officials to produce the interest rate law specified by their banking clients. To attract out-of-state banks, a host state needed legislative authority as outlined in the Bank Holding Company Act of 1956. Immediately following the abolition of South Dakota’s usury laws in January 1980, Citibank ordered legislation that cleared the path for a new charter for an in-state subsidiary of an out-of-state national bank. The law was delivered within a month. The result: Operating out of South Dakota, a Citibank subsidiary with its own charter determining its “home” location could lend anywhere, regardless of jurisdiction, free from any domestic usury constraints. New York gave its banks regulatory relief from lending rate caps before federal banking regulators approved Citibank’s South Dakota charter application. It proved too late to keep Citibank’s credit card division in New York, but the legislature hoped to keep other New York banks from exiting.

South Dakota predicted their new laws would increase their client base and entice other banks to relocate. Simultaneously, large banks cultivated other states to replicate South Dakota’s new finance regulations. Chase Manhattan, a Citibank rival in consumer lending, approached Delaware for legislation along Citibank–South Dakota lines (Helyar & Salomon, 1981). JP Morgan, an investment bank serving corporate and government clients rather than consumers, joined Chase in the Delaware negotiations. Governor Du Pont appointed a task force to obtain buy-in from local banks and assigned Francis Biondi, a lobbyist for Chase and JP Morgan (Gerth, 1981), to draft Delaware’s

legislation. Attracting banking giants was an opportunity for Delaware to diversify its manufacturing-dependent economy. By February 1981, only a year after South Dakota had sealed the deal with Citibank, Governor Du Pont had signed Delaware's Financial Center Development Act (FCDA), which not only enabled out-of-state bank subsidiaries, but went further than South Dakota by permitting banks to charge any rates or fees they desired on credit, to implement retroactive changes to interest rates, and to foreclose on the (previously protected) homes of borrowers defaulting on consumer loans (Boyer & Ratledge, 2013; Gerth, 1981).

Legislators in both South Dakota and Delaware carefully engineered new regulations to serve the needs of out-of-state client banks specifically, including Citibank, Chase, and JP Morgan, relieving the regulatory pinch at home in New York. These redesigned banking laws required minimal physical and operational changes for out-of-state newcomers. Major bank corporations' command and control or headquarters remained in place, usually in New York. Some minimal level of local office occupation, taxation, and hiring was all the haven states demanded—all small enough to make the changes more than worthwhile.

It bears emphasis that these regulatory commodities were produced specifically for use by large banking firms. The new legislation did not benefit all participants in the banking or financial sector, nor was it intended to. South Dakota's and Delaware's local banks had neither the experience nor the capacity to operate national credit card businesses. They earned nowhere near the income necessary to benefit from Delaware's and South Dakota's new, steeply regressive bank tax schedules. Acknowledging the devastating impact the new arrangements would have on smaller, locally based banks across the US, the only reprieve existing Delaware and South Dakota banks received was protection from precisely the unhindered out-of-state profiteering the two states had just made possible throughout the rest of the country. Bank charters granted to out-of-state bank subsidiaries were restricted to a single office within the state, and to less accessible locations. The banking giants were prohibited from opening retail storefronts on Main Street, luring consumer deposits and loan applications (Erdevig, 1987; Vanatta, 2016). These retail banking restrictions on out-of-state subsidiaries partly explain why Citibank's special banking complex in Sioux Falls lies between corn fields, cow pastures, and an airport.

With the help of South Dakota and Delaware legislators, these banks succeeded in radically modifying the consumer credit regulatory regime in the US. Rather than serving the constituent banks inside state borders, these states bundled the abolition of usury legislation with laws allowing entry of out-of-state banking clients. Delaware's and South Dakota's banking clients consequently enjoyed significant national bank deregulation and reregulation not only in the target states, but even in recalcitrant, less finance-friendly states, via the protection provided by the newly minted legislation. Significantly, this experience taught the banking sector and haven states that their laws can be deployed as part of a neoliberalization process to destroy regulatory barriers standing in the way of other businesses of banking. The *lex loci* rule had become a deregulatory weapon, one redeployed to break down regulatory barriers that impinge upon banking business beyond consumer credit.

### **3.4.2 Banks and the Business of Insurance**

For most of the last two centuries in the US, the business of insurance was distinct from the business of banking (McGuire, 1996). As recently as the 1970s, banks' insurance operations were limited to products bundled with loans (credit life insurance, for example) to protect banks from borrower default (Heigel, 1994). By the late 1970s, however, banks were clamoring to enter the multibillion-dollar market in general insurance underwriting and sales. In this battle for regulatory change, however, the banking industry confronted not only 200 years of customary sectoral segmentation, but vigorous opposition from an insurance industry determined to maintain a status quo that excluded banks from the insurance business. In bankers' plans to engage in the insurance business, the already-occupied territories of Delaware and South Dakota proved central.

The regulatory tug-of-war between banks and insurance firms was a constant feature of the 19<sup>th</sup> and 20<sup>th</sup> centuries. Changing and sometimes contradictory state and federal legislation expanded and contracted banks' powers to sell insurance, leading to conflicting legal interpretation both in the courts and among federal and state regulators. Part of the problem is that national banks are regulated federally, but insurance has been regulated at the state level since the mid-19<sup>th</sup> century (although this separation was not recognized *de jure* until the end of World War II). Congress added section 92 to the National Bank Act of 1864, permitting national banks "located and doing business in any



place the population of which does not exceed five thousand inhabitants” (McGuire, 1996, p. 20) to sell general insurance products issued by state-approved insurance companies, but banks were explicitly prohibited from underwriting insurance themselves.

In *Paul v. Virginia* (78 U.S. (Wall) 168 (1869)), the Supreme Court determined that insurance was not commerce, placing insurance outside the regulatory domain of Congress via the commerce clause. For the following 75 years, insurance was regulated by states. Then, in *U.S. v. South-Eastern Underwriters* (322 U.S. 533 (1944)), the Supreme Court ruled that insurance was commerce when business crossed state lines, reasserting federal oversight of insurance. One year later, in response to states’ concerns regarding federal regulatory overreach and jurisdictional conflict, Congress passed the McCarran–Ferguson Act, formally recognizing states’ power to regulate the “business of insurance” by granting state insurance law precedence over federal law—including over most forms of antitrust law (McGuire, 1996, p. 21). After McCarran–Ferguson, most states passed legislation prohibiting banks from selling or underwriting insurance (Schweitzer & Halbrook, 1979, p. 475), a victory for insurance companies and independent insurance agents.

In response, national banks circumvented these barriers by establishing bank holding companies (BHCs) to acquire insurance company subsidiaries. Concerns about concentrations of bank resources through subsidiaries led to the Bank Holding Company Act of 1956 (BHCA, 12 U.S.C. § 1841), which prohibited BHCs and their subsidiaries from engaging in nonbank activities except those “of a financial, fiduciary, or insurance nature...which the [Federal Reserve] Board...has determined to be so closely related to the business of banking or of managing or controlling banks as to be a proper incident thereto” (Heigel, 1994, p. 933). The Federal Reserve interpreted the exception to apply to insurance products related to and bundled with loans (Heigel, 1994, pp. 933–934).

However, like banks under the National Bank Act, the BHCA allowed BHC subsidiaries located in towns of 5,000 or less to sell general insurance products. This exception—intended, presumably, to make insurance available in smaller or isolated markets—led to further regulatory struggle over banks’ participation in the “business of insurance.” The problem emerged through the complex division of financial regulation distributed across multiple federal and state agencies: National banks are subject to oversight by the Office of the Comptroller of the Currency (OCC), the Federal Reserve

(Fed) is responsible for BHCs, and states have regulatory authority over state-chartered banks. The Fed restricted small-town BHC subsidiaries to selling insurance products in their local markets, the OCC permitted small-town banks to sell insurance to customers anywhere, and states had discretion to determine the content of the “business of banking” for their state-chartered banks. The result was uneven and contentious.

The Garn–St. Germain Depository Institutions Act of 1982 (Pub. L. 97-320, H.R. 6267) attempted to reinscribe and clarify the distinctions between the businesses of banking and general insurance. Garn again limited banks’ insurance products to those associated with loans and prohibited all other insurance business. It also stopped the Fed from permitting any new BHC insurance activities (Corwin, 1990), except insurance companies acquired by BHCs before the BHCA, and small-town banks.

This nonuniform mashup of conflicting statutes provided fertile ground for collusion between entrepreneurial states and powerful banks seeking to engineer self-serving law. In early 1983, Citicorp, the BHC that owns Citibank, targeted state-chartered banks instead of small-town banks in its effort to evade restrictions on banks’ insurance business. “If Delaware doesn’t get it done, the banks will be going to South Dakota,” said Irving S. Shapiro, Citicorp lobbyist (as cited in Gilbride, 1983, p. G1). Journalists from the banking trade journal *The American Banker* chronicled banks’ efforts to lobby South Dakota and Delaware to permit state-chartered banks to engage in the business of insurance and to permit out-of-state BHCs to acquire or charter de novo these state banks (Ringer, 1983a). Once again, South Dakota hurried to be the first state to provide bankers with the requested regulatory commodity. The law, passed in March 1983 with emergency status allowing it to take effect immediately (Ringer, 1983b, p. 2), enabled South Dakota’s state-chartered banks “to engage in all facets of the insurance business,” and to do so throughout the US.

The law reversed more than a century of regulatory custom in American banking. South Dakota Governor Janklow gleefully predicted as many as 30 out-of-state BHCs would establish a South Dakota state bank charter in order to get into the insurance business (Ringer, 1983a). Citicorp and First Interstate applied to the Fed for permission to acquire state-chartered banks in South Dakota, and Bank of America requested a new state bank charter, all with the intent to provide insurance services nationwide.

In their race to enable out-of-state BHCs to sell insurance, however, Citicorp and South Dakota produced an inconsistent and discriminatory legal terrain. Prior to March 1981, with a regulatory map designed to meet the needs of major banks' credit card subsidiaries, South Dakota had prohibited banks that belonged to out-of-state BHCs from office expansion or branching after their initial entry in the state. The law is very explicit: Banks acquired or established in South Dakota by out-of-state BHCs are to conduct business in a manner that is "not likely to attract customers from the general public in the state to the general detriment of existing banks in the state" (S.D. Codified Laws Ann. §51-16-41 (1984)).

Citicorp announced plans to acquire American State Bank of Rapid City. American State Bank was small, but it competed with other banks soliciting deposits and loans, meaning Citicorp would run afoul of state law restricting out-of-state BHC subsidiary banks from competing with local banks. Citicorp offered \$3.2 million for majority control of American State Bank with the plan to sell insurance (a small price for a license to sell insurance nationwide). Consequently, South Dakota's laws permit an out-of-state BHC-owned bank to sell insurance while simultaneously barring it from the traditional business of banking, namely taking deposits and issuing loans in competition with other banks in the state (Ringer, 1983c). Along similar lines, South Dakota insurance law also stipulates that banks owning insurance companies can sell insurance in any state—except South Dakota (Ringer, 1983d). The restriction on out-of-state BHCs selling insurance in South Dakota was justified as consumer protection, since it prevented tying insurance sales to other banking services (Strommen, 1983, p. 179). The result was not only complicated, but illegal: In the words of Federal Reserve Governor Martha Seger,

the current proposal is not consistent with the dual banking system or with the Bank Holding Company Act because it represents an attempt by a state to use its state banking franchise to facilitate the conduct by out-of-state bank holding companies of nonbanking activities on a nationwide basis, while severely limiting their ability to conduct these same activities, as well as traditional banking services, within the state. (Board of Governors of the Federal Reserve System, 1985, p. 792)

Governor Seger's scathing assessment of South Dakota's new statute was echoed unanimously by the Fed Board of Governors in their 5-0 vote against Citicorp's application to acquire a South Dakota state-chartered bank. The Fed reaffirmed the

BHCA prohibition against subsidiaries' engagement in activities other than those closely related to the "business of banking," citing Garn to emphasize that these activities do not include selling insurance.

Following the debacle in South Dakota, Citicorp renewed its efforts in Delaware. A two-year legislative battle ensued. The proposed legislation permitted Delaware's state-chartered banks to underwrite and sell insurance in any state, to the extent that the target state's laws permit. To obtain support in the state Senate, State Senator Tobert negotiated a deal to drop his opposition if the legislation was paired with a companion bill that limited insurance sales within Delaware to lines of insurance sold before passage of the new insurance powers act (Abbott & Leslie, 1991, p. 1281), and precluded banks from selling insurance unless they used a Delaware-licensed insurance agent. This provision was both predatory and discriminatory because general insurance product sales could be sold outside Delaware but sales to Delaware citizens were prohibited. Furthermore, Citicorp pledged to base its insurance operation in Senator Tobert's home district in Kent County (Newman, 1990).

As soon as the Delaware bill passed in 1990, Family Guardian Life Insurance Co., a Citicorp Delaware subsidiary, entered the business of insurance. A coalition of insurance lobbyists promptly sought a Fed review of the new law and Citicorp's business activities. Citicorp argued that the Fed did not have the power to restrict the state-authorized business activities of state-chartered bank subsidiaries. Federal banking regulations permit state-chartered subsidiary banks to engage in any activities in which nonsubsidiary state-chartered banks engage (Corman, 1990). In September 1990 the Fed ordered Citicorp to close its insurance operations in Delaware on the grounds that they were in violation of the BHCA. In its decision, the Fed urged Congress to reexamine the structure of the US banking industry in light of the questions raised by the Delaware legislation (Abbott & Leslie, 1991, p. 1283).

Citicorp appealed the Fed's ruling before the federal courts, and in *Citicorp v. Board of Governors of the Federal Reserve System* (936 F 2d 66 (2d Cir.) 1991) the appeals court overturned the Fed order. The court cited an earlier Fed decision that allowed Merchants National Corporation, a BHC in Indiana, to continue the general insurance operations of two state-chartered banks it had acquired. In the Merchants National case, the Fed ruled that the BHCA's provisions restricting nonbanking activities

do not limit the ability of BHCs' state bank subsidiaries to engage in insurance activities otherwise permitted under state law (Abbott & Leslie, 1990, p. 1905). In line with its reading of the Merchants National precedent, the federal court permitted Citicorp to continue underwriting and selling insurance through its Delaware subsidiary. The US government considered an appeal to the Supreme Court, but by late 1991 had decided against it—a decision that appeared wise when the insurance industry's appeal was rejected by the Supreme Court only months later ("Bank Ruling Is Let Stand," 1992). The Delaware ruling marked a breakthrough in rolling back the regulatory barriers of banks in the business of insurance.

Congress eventually took the Fed's advice, and the Gramm–Leach–Bliley Act of 1999 (GLBA) authorized a new corporate structure, known as a financial holding company, with uniform authority to own banks and companies that sell and underwrite insurance nationwide. Just months prior to GLBA, The Travelers Group, a large insurance underwriter and investment bank, obtained Fed approval to become a BHC and acquire Citicorp. Section 4(a)(2) of the BHCA permits a company that becomes a BHC to retain shares of nonbank companies for two years that would otherwise be impermissible under the BHCA. The GLBA cleared legal contingencies allowing Travelers to permanently retain its insurance subsidiaries. The Travelers Group merger with Citicorp formed the massive banking and insurance conglomerate Citigroup. This represented a major leap forward along the neoliberalizing continuum. The state removed itself from precluding the business of banking from engaging in insurance. However, peripheral to their own markets, Delaware and South Dakota served to erode the regulatory obstacles that barred their out-of-state, largely Wall Street client banks from underwriting and selling insurance.

### **3.4.3 Banks and the Business of Trusts**

Trusts are one type of instrument used to transfer wealth between generations. A trust is a legal arrangement specifying the rights and duties among parties regarding the assets assigned to the trust (Ho, 2013). Typically, there are three such parties: the settlor, the trustee, and the beneficiary. The trust settlor establishes the trust, and transfers title to the assets from their estate to that of the trust. A trustee—typically a bank or trust company operating under a fiduciary arrangement—manages the trust estate on behalf of the beneficiaries as specified by the settlor in the trust document.

This arrangement means that beneficiaries are not themselves the legal owners of trust assets.

The National Bank Acts of the 1860s did not include any powers for national banks to administer trusts or act as fiduciaries. Trusts were the exclusive territory of state-chartered banks and independent trust companies, both regulated at the state level. It was not until the Federal Reserve Act (FRA) of 1917 that these restrictions were relaxed. Under the FRA, any national bank could apply to the federal banking regulator for a permit to act in the same capacity as state banks, trust companies, or other corporations exercising trust powers as determined by the law of the state in which the bank was located. However, the FRA did not disempower state jurisdiction with regard to trusts, and to this day states retain regulatory control of their trust law and institutions, including banks that arrange and manage trusts.

While specialized in their purposes, trusts are contracts with no necessary tie to the location of the parties, and are, therefore, highly mobile, at least within the US. With no legal obligation to situate the trust in their home state, trust settlors choose states whose trust laws best accommodate their plans for the trust. Unsurprisingly, in combination with pressure from the banking industry, states have long competed for trust business by continually reworking their trust laws to provide settlors with greater flexibility and protection. In recent decades, this process has led several states to enact legislation granting trusts wealth-enhancing advantages through tax avoidance and asset protection. Delaware was an early entrant in this jurisdictional competition, and South Dakota soon followed.

Estate taxes at both the federal and state levels are due upon transfer of a deceased person's accumulated wealth. The federal tax code was amended in 1986 to exempt \$1.5 million from estate transfer taxes. The transfer exemption has since been increased many times, exempting millions of dollars of wealth from estate taxes. Throughout the trust's legally designated "life," wealth transferred through a trust permits successive generations to benefit from the trust free from federal estate tax (Sitkoff & Schanzenbach, 2005). The so-called "rule against perpetuities" (RAP), with origins in English common law, has traditionally prevented long-term control of a dead person's trust-settled assets by placing a time constraint of 21 years beyond the lifetimes of beneficiaries alive when the trust was created. The time constraint requires that at some

point, vested title of trust assets will transfer to the beneficiaries, who will then be obligated to pay estate taxes.

Prior to the late 1980s, the RAP was built into most states' trust law. By 1983, however, South Dakota had abolished its RAP. In 1986, Delaware extended the lifespan of trusts beyond the standard RAP, and then in 1995 became the first state to entirely repeal the RAP after federal legislation permitted the \$1.5 million estate transfer exemption. Delaware's repeal allowed successive generations, unknown to the trust settlor, to enjoy the benefits of the trust free from estate transfer taxes. The states rewrote their trust laws after lobbying by bankers and financial planners, hoping to attract trust business and financial capital from other states. To date, more than 20 states have repealed their RAPs.

The effort to produce accommodative legislation did not end with perpetual trusts. In the race for trust business, Delaware and South Dakota went even further, in blatant abandonment of longstanding public policy: Both states legalized what are known as self-settled asset protection trusts. These trusts unite two of the parties to the conventional trust agreement, so that the settlor is also the beneficiary. Since a key feature of a trust's design is to ensure the beneficiaries are not the legal owner of the assets—which means a trust's assets are not available to a creditor should the beneficiary default on a personal debt—with a self-settled trust, the trust is the owner of the settlor's assets, and functions as a shield against creditors' claims on the settlor. Again, because there is no residency requirement in the determination of the "location" of a trust's establishment, all US residents can establish a self-settled asset protection trust in Delaware or South Dakota and designate one of those states as the choice of law governing the trust. These legal and jurisdictional maneuvers allow law firms and trust companies "located" in Delaware and South Dakota to offer "judgement-proof" trusts to clients across the US.

Of course, the accessibility of a trust's assets was a concern for creditors long before self-settled trusts were legal. Trusts have traditionally included spendthrift provisions which prohibit a trustee from paying certain beneficiaries' debts so as to prevent irresponsible heirs from squandering an inheritance, or to insulate beneficiaries judged unable to take care of themselves, or who require protection from unscrupulous asset attachments by third parties. Prior to 1997, public policy, state law, and the courts

dismissed the validity of trusts that shielded assets from creditors while simultaneously allowing the settlor to maintain control and enjoyment of the trust's assets (Waganfeld, 1999, p. 835). As a result, self-settled trusts with spendthrift provisions emerged in offshore financial centers like the Cayman Islands. US banks chasing a share of the perceived trillions of dollars in offshore trust assets sought to make use of state power in the realm of trusts to compete through onshore or domestic asset protection trusts (Eason, 2000, p. 42).

These plans were highly contentious, running as they did against more than a century of common legal practice. As Judge Bozman of New York put it in 1996, "it probably goes without saying that it would offend our policies to permit a debtor to shield from creditors all of his assets because ownership is technically held in a self-settled trust" (Re Portnoy, 201 B.R. 685 (Bankr. S.D.N.Y.) 1996). Nevertheless, in 1997 Delaware passed the Qualified Dispositions in Trust Act (QDTA), with the express aim "to maintain Delaware's role as the most favored domestic jurisdiction for the establishment of trusts" (Mann, 2014; Waganfeld, 1999). Delaware's lawmakers deemed the QDTA necessary to "maintain" that role because only months before, Alaska had entered the competition as the first US jurisdiction to allow self-settled asset protection trusts.

States that recognize self-settled asset protection trusts do list exceptions which eligible creditors might use to make claims against the trust's assets. Any transfer by a settlor to a trust attempting to defraud, hinder, or delay a creditor's claim is void, but the burden of proof is the creditor's. The statutes enable claims by tort plaintiffs suffering injury before trust establishment, and dependent spouses and children before and following trust establishment (King & McDowell, 2017). In Delaware, in addition to the spendthrift provisions that protect a beneficiary's interest in a trust from the reach of creditors' legal judgments, QDTA places a four-year limit on a creditor's claim of fraudulent past trust transfers.

Delaware's trust law requires the trustee to be a state resident or, more typically, an institution supervised by the Delaware Bank Commissioner. Trusts having out-of-state beneficiaries are not subject to the fiduciary income taxes that must be paid on trusts with in-state beneficiaries. The tax benefit to nonresident beneficiaries is another example of the process through which Delaware has structured its banking law in the



interest of its out-of-state clients, as a way of supplying a legislative commodity designed to meet banking industry demand.

State leaders argue that the inflows of trust capital to Delaware's domestic trust and fiduciary industry are the returns to this production process. Attorneys recommend that trust assets be held in the form of highly mobile financial capital deposited with the state's banks and trust companies to increase the validity of the state as the choice of law governing the trust. Trust capital deposited in the state generates fees and other rewards for in-state trustees and account custodians.

South Dakota worked to keep pace with Delaware's regulatory innovation by launching the Trust Administration and Review task force in 1997, but it did not legalize self-settled asset protection trusts until 2005, at which point the state vigorously tightened asset protections in favor of trust settlors. Once self-settled trusts were legal, South Dakota pushed past the limits of convention to outdo the growing number of states newly permitting self-settled asset protection trusts. For example, it eliminated protection exceptions for child or spousal support arising after the trust was established, and limited creditors' claims regarding fraudulent trust transfer to within a mere six months after a settlor's creditor was aware of fraudulent transfer, or two years from the establishment of the trust (King & McDowell, 2017). The new legislation has landed South Dakota in the top tier of *Trust and Estates Magazine's* states for asset protection trusts in every annual ranking from 2007 through 2019 (Goetzinger, 2016; Merric et al., 2018; Worthington & Merric, 2017).

At first glance, there would seem to be a contradiction at the core of these developments in banking regulation, and in particular, the increasingly intimate relation between the banking industry and particular state governments. On one hand, why would banks endorse asset protection trusts that prevent creditors from collecting debts? Banks are primarily lenders, and anything hindering debt collection would seem to run directly counter to their interests. On the other hand, trustee and fiduciary services are profitable businesses of banking, and the attractions of asset protection trusts boost demand for banking business services. Banks are adept at qualifying borrowers' loan collateral in the debtor's estate versus the trust estate and are less likely to suffer from loan defaults by creditors hiding assets behind trusts.

The larger public policy issue raised by asset protection trusts lies with debts owed to future involuntary creditors resulting from torts, child support, and divorce. Specialized law firms promote the trust laws of Delaware and South Dakota to protect settlor property against unforeseen future debts associated with court claims. The legal contradiction between states that recognize self-settled asset protection trusts and those that do not suggests the relation will have to be resolved by the courts. The objective of domestic asset protection trusts is to immunize a settlor from the consequences of accidents as well as risky or unscrupulous behavior. If a money judgement against a person is rendered unenforceable because of legal loopholes—the spendthrift provisions of self-settled trusts for example—then courts and their money judgements become impotent. It is also very likely that in a situation in which a creditor in a state without self-settled trusts makes claims on the assets of a party that has established such a trust in a state that allows them, the expense and trouble of litigation will provide debtors with further protection. Even when the claims on the settlor are inescapable, legal procedures and the extra burdens imposed on plaintiffs make them more likely to settle claims at reduced values to avoid the bother of litigation in another state. As more states pass laws recognizing self-settled asset protection trusts, the likelihood that a creditor might access trust assets decreases. All the while, banks, trust companies, and law firms generate hefty revenues from the growth of trusts and trust assets. To the degree that self-settled asset protection trusts contribute to these revenues, banks benefit from Delaware's and South Dakota's efforts to make a trust settlor's debt judgement proof.

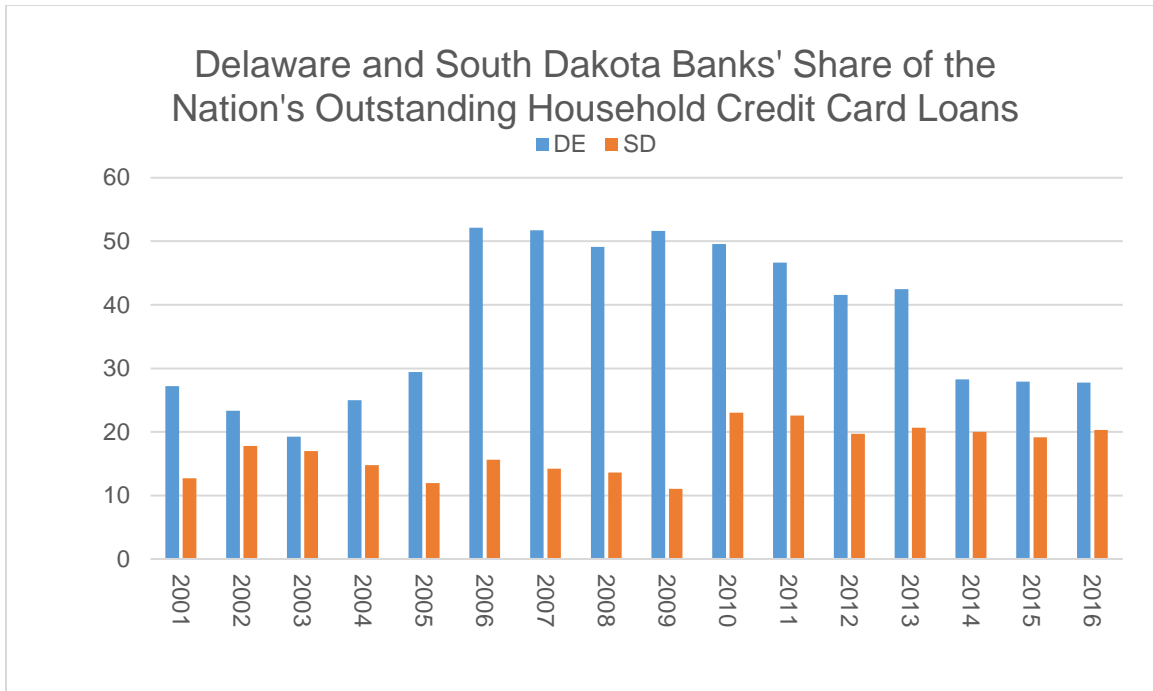
### **3.5 Victory in Interjurisdictional Competition**

In an era of entrepreneurial governance, one might say that Delaware and South Dakota won economic development victories when they repealed anti-usury legislation and welcomed out-of-state bank subsidiaries in 1980 and 1981. Legislators in the two states certainly seem to think so. More than 30 out-of-state banks have “relocated” to Delaware since the FCDA, and the state, once dominated by DuPont and the chemical industry, has diversified an economy in which banks now employ more than 37,000 people (Delaware Bankers Association, 2016). Even with the extraordinarily low taxes they enjoy, this has significant fiscal implications (Tapp & Kay, 2019). Banks contributed \$95 million in franchise taxes to Delaware in 2016—more than 5% of general revenue. State budgets have transitioned from multiyear deficits and the lowest bond rating of all

states in 1980 to a triple-A rating (Boyer & Ratledge, 2013; “Delaware’s Triple-A Bond Ratings Reaffirmed,” 2020).

Summarizing the state of South Dakota prior to allowing subsidiaries of out-of-state banks, Governor Janklow said, “I lived in a state where the economy was, at that time, dead. I was governor of South Dakota at the only time in this state’s history when the economy shrunk from one year to the next” (“Secret History of the Credit Card,” 2004). In 1980, South Dakota’s undiversified and largely rural economy produced zero population growth, partly a result of the flight of university graduates to other states (World Population Review, 2018). The new jobs and tax revenue increases resulting from out-of-state bank entry beginning in the early 1980s were lower in magnitude than those in Delaware, but they were large relative to the size of South Dakota’s economy. Originally promising 400 new in-state jobs, within 10 years Citibank employed 2,800. The bank and high-tech support industries helped stem the flight of educated workers seeking opportunities elsewhere. By 2000, Citibank alone contributed \$30 million in annual franchise tax revenues in a state that has no business income tax (Kafka, 2000). By 2005, just prior to the financial crisis, South Dakota’s financial sector led all other industries by hosting Citibank, Wells Fargo, HSBC, and First Premier—each employing over a thousand workers generating high-rate interest and fee income from debt-afflicted borrowers in the other 49 states (Harriman, 2007). Since 2011, South Dakota has achieved bragging rights to being ranked first in bank assets among all states based upon banks’ home states.

Delaware and South Dakota continue to host banking and financial services vastly disproportionate to their local economies. Figure 3.1 shows the annual share of outstanding US credit card debt held by banks domiciled in Delaware and South Dakota and how long that dominance has held. Delaware’s share of banks’ credit debt dropped precipitously in 2014 (Federal Financial Institutions Examination Council [FFIEC], 2020). This drop was the result of Bank of America dissolving its FIA Card Services subsidiary and resetting the governing choice of law for their credit agreements from Delaware to North Carolina. In 2003 North Carolina joined the competition to accommodate banks with laws mimicking the consumer credit laws of Delaware that allow banks to charge any rate and fees on consumer credit (N.C. Gen. Stat. § 24-9 (d)). Despite Delaware’s 2014 share decline, both Delaware and South Dakota together had roughly 57% of the US’s outstanding credit card loans in 2016.



**Figure 3.1. Delaware and South Dakota banks' share of credit card loans.**  
Source: FFIEC (Annual).

Firms strategically choose citizenship of convenience for various types of legal actions among multiple jurisdictions (Barkan, 2011), both onshore and offshore (Aalbers, 2018). The success in selling Delaware and South Dakota banking law is illustrated by leading banks frequently choosing those states as their legal home. Table 3.1 lists the 10 largest BHCs in the US ranked by assets. For each of those BHCs, Table 3.1 identifies the state hosting the main office of their bank subsidiaries where deals are booked. Four of the 10 largest BHCs in the US chose Delaware or South Dakota to be the state whose law governs their largest bank subsidiary. JP Morgan Chase chose Delaware for the state law governing their credit card lending bank subsidiary. Six of the leading BHCs operate a bank subsidiary with trust powers having their home office in either Delaware or South Dakota or both. These connections illustrate that Delaware and South Dakota won large banking business development victories by generating banking and finance laws on their behalf.

**Table 3.1. Bank Charter and Headquarter Connections of the Top 10 Banks**

National Rank (Assets)	Bank or Bank Holding Company (BHC) Name	Largest Bank Subsidiary BHC Charter State	Additional Bank Subsidiary Charter State	Trust Company Subsidiary Charter State	Holding Company Headquarters' State
1	JP Morgan Chase	OH	DE	DE	NY
2	Wells Fargo	SD		DE	CA
3	Bank of America	NC			NC
4	Citibank	SD		DE, SD	NY
5	US Bank	MN		DE, SD	MN
6	PNC Bank	DE		DE	PA
7	Bank of New York	NY		DE	NY
8	Capital One	VA			VA
9	TD Bank	DE	DE		NJ
10	State Street B&T	MA			MA

Note. Rankings of banks by assets from Federal Deposit Insurance Corporation's (FDIC) 2017 *Summary of Deposits Survey* (FDIC, 2017); subsidiary bank charter locations and holding company headquarters from the National Information Center (n.d.).

### 3.6 Implications of Interjurisdictional Competition

Adapting Peck and Tickell's (2002) influential characterization of neoliberalism, Delaware's and South Dakota's banking and finance laws fit neatly into its deregulatory "rollback" phase. The neoliberal "rollout" process operates as a coercive force over states (Harvey, 1989) to engage in a competitive law-producing market in which success is measured by the size of firms that states capture. The capture of firms like Bank of America, Citibank, and Chase are monuments to Delaware's and South Dakota's entrepreneurial success. Laws produced in haven states like Delaware and South Dakota circulate within the wider US regulatory environment, driving other states to gradually fill in a pockmarked bank-friendly landscape until accommodative laws are nationally scaled—but from a "bottom-up" manner.

Entrepreneurial jurisdictions' powers to produce legal commodities for banking clients are predicated on states' rights. In a federalist government structure like the US's, states legislate on matters of local importance. Delaware's and South Dakota's deregulations were their exercise of states' rights. But in their laws lies a contradiction of the intent and purpose of federalism. The business opportunities these haven states

exploited through the laws of their places infringe on the self-determination rights of other places within the US to regulate banking business.

At first glance, Delaware's and South Dakota's lead in deregulation appeared to maximize their bargaining positions with banks and financial service providers. As more jurisdictions match these havens by legislating their own deregulations, increasing the supply of legal commodities on the regulatory market exchange, the options available to financial firms increase enormously. The abundant supply of legal commodities offered by an increasing number of jurisdictions lowers the prices that firms are willing to pay. This results in dwindling returns to all entrepreneurial states. Meanwhile Delaware's and South Dakota's economic dependencies on their captured clients increase. A greatly expanded deregulated landscape provides multistate BHCs more options to move their subsidiaries' banking charters away from a haven jurisdiction as easily as they move in. For example, Bank of America eliminated a bank charter in Delaware by consolidating its credit card subsidiary into its North Carolina bank subsidiary. Therefore, entrepreneurial states must continuously offer new incentives to dissuade hosted banking firms from moving away. Otherwise states will feel the sting to their local economies.

The passage of bank-friendly laws provided Delaware and South Dakota thriving mini-financial centers and substantial state tax revenue increases from the banking firms they "captured." Fiscal revenues from clients captured are key features states use to justify their business development laws. States often find that future revenue expectations do not materialize. Over time, both Delaware and South Dakota were coerced into forgoing a share of the fiscal awards they anticipated based upon the business arrangements made to bring their client banks to their states. In 2006, Delaware legislated bank franchise tax reductions (5 Del. C. § 1101A) specifically intended to keep the same BHC subsidiaries it brought to its state years earlier (Chase, 2006). That was followed with a \$1,250 tax credit per year for each new bank employee hired after 2011 (Del. Laws 72). In 1991, South Dakota reduced its bank franchise tax from a flat rate of 6% on income to regressive rates that decline to 1% on income over \$600 million (Woster, 1991). Even those low tax rates were not sufficient because South Dakota lowered its bank franchise tax again. In 2000, the 6% rate applied to the first \$400 million in income, dropped to 0.5% percent on income over \$600 million, and fell to 0.25% on income over \$1.2 billion (Kafka, 2000). That tax legislation was produced

exclusively for Citicorp, the only firm having earnings in which the top tax brackets apply. Perhaps it is the haven states, rather than the banking firms, who are “captured.”

Powerful firms demand states provide use of the public’s capital in the forms of tax abatements, assignments of public property, and taxpayer-subsidized infrastructure developments. Recently, dozens of jurisdictions competed to win the jobs and the expected tax revenues that Amazon’s relocation offered. Amazon’s selection of Arlington, Virginia as the site of their second headquarters comes at a cost, financed by the public, of nearly one billion dollars through tax subsidies and infrastructure developments (Casselman, 2018). Through jurisdictional competition for large firms, the resources of government provide more fuel for economic inequality by benefiting those firms having the greatest financial capacities to pay their own way; smaller firms and households are left to carry the fiscal burdens of governance.

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## Chapter 4

# Locating Bank Deposits: Why Is There So Much Money in Utah?

### 4.1 Summary

Taking up the geographer's task of following and defetishizing the commodity, I tapped into United States (US) federal banking data to locate the commodity "money." Relative to the size of its economy, Utah's banks report a lopsided share of US money. The research unmask important social relations embedded in the money commodities in Utah's banks by tracing the history of US banking law, which has played a leading role in the processes responsible for Utah's outsized share of the subnational monetary landscape. Banking law determined the scope and type of business in which banking firms and their corporate affiliates could engage, as well as the supervision of affiliates. Throughout the 20<sup>th</sup> century, investment banks and commercial firms struggled to claim legal rights to engage in business combinations once deemed illegal: combining non-banking business with a commercial bank. The state of Utah, in coordination with financial and commercial firms, has expanded the legal and financial space of Industrial Loan Banks (ILBs), historically idiosyncratic chartered banks exempt from regulations separating banking firms from non-banking business. Utah marketed their banking charters to global, systemically important financial institutions and large commercial conglomerates, which then established or acquired ILB subsidiaries within the state. From Utah, these firms accumulated deposits from locations worldwide.

### 4.2 Introduction

The commodity chain analysis has become a staple of the economic geography literature over the years. This analysis is motivated, ultimately, by the simple but all-important insight that the commodity that circulates through capitalist markets "conceals, instead of disclosing" (Marx, 1990, p. 168) the social relations of production, distribution and consumption along the commodity chain. Social relations are misidentified or confused with relations between things (Harvey, 1982 p. 17). Marx, famously, once called money the "god of commodities," but as Christophers (2011b) has pointed out,

money's paths through the world have very rarely been put under the commodity microscope. Instead, geographers have turned to so much else, from papayas to t-shirts. Marx himself suggested the task of defetishizing money should be no different than for other commodities—"the riddle of the money fetish is therefore the riddle of the commodity fetish" (Marx, 1990, p. 187)—but it has not proven so straightforward in practice.

Geographers (Cook, 2004; Cook et al., 2007; Gregson et al., 2010; Harvey, 1990; Hulme, 2017) have generated a rich literature that traces the hidden social and spatial relations in the life of commodities from origin to market shelf. Consumers in London are unaware of their connections to impoverished Jamaican papaya pickers whose labor stocked London's supermarket shelves. Likewise, investors earning interest, dividends, and capital gains in a brokerage account are unaware of their connections to an entire world of impoverished fruit pickers that generated the surplus money swept into an insured deposit account in Utah.

In the paragraphs that follow, I attempt to pick up where Christophers (2011b) left off, to go "behind and beyond," to connect money in banks to a wider world of socio-political relationships. Identifying where and why money travels is essential to the task of revealing how capital extracts and expands value from a world of commodity-producing labor. The challenge, however, as Christophers (2011b) notes, is that it is not easy to follow an intangible commodity like money, which not only simultaneously circulates in many directions and in perpetuity, but is difficult to identify with any specificity in the process of circulation: One money commodity looks a lot like all the others. It can feel like trying to follow a drop of water in a river. Indeed, Gilbert argues that the lack of a practicable methodology to follow money is fatal to Christophers' project and goes on to suggest that "to 'follow the thing' that is money is not only likely to be impossible but perhaps even inadvisable" (Gilbert, 2011, p. 1087).

Christophers (2011a, 2011b) acknowledges that "actually following" money from node to node during its life is an unrealistic goal, and to follow it and defetishize it in the same way as, for example, Cook (2004) did so meticulously with papayas, does seem a wild goose chase. But I am not ready to accept that it is entirely impossible to follow the thing "money." Consequently, at least for now, I have adjusted Christophers' goal from *following* money to *locating* money, in the form of bank deposits, and thus revealing the

social relations associated with money at one place along its long journey through space. That place is Utah.

The rest of the essay is organized as follows. The section “Locating Money” answers the question: “Where is money in the US?” I adapt the approach of Friedman and Schwartz (1963), who measure and chart the US money stock. But their analysis is at the national scale alone. I measure and locate money at the subnational scale using geospatial data from US federal banking regulators. At subnational scales, Friedman and Schwartz’s money stock measurements approximate Christophers’ concept of following money because they collect time series snapshots of places money accumulates (or does not accumulate).

Money is of course located everywhere. The question, rather, is where it moves and accumulates relative to other locations within the territorial US. A deep dive into bank deposit money data to answer this question revealed the surprising fact that Utah, relative to the size of its economy, holds a conspicuously lopsided share of US money relative to other states. I found that a US state’s share of the nation’s money almost always matched that state’s share of US Gross Domestic Product (GDP). It was rare to find any exception to this deposit money-to-GDP relationship, but one exception was found in Utah. Twenty years ago, both Utah’s share of the nation’s deposit money and its GDP share were 1%. By 2018, Utah’s deposit money share grew to 4% while, during the same period, its GDP share remained constant at about 1%.

In the section “Lifting the Veil Covering Utah’s Bank Deposit Money,” I explain this unusual development, and reveal some of the socio-political relations behind it by looking at the evolution of federal and state banking law. These legal changes are the visible surface of a long history of struggles between capitalist firms seeking unconstrained banking business and policymakers and others demanding limits to the business of banks. Throughout this history, banks have been relentlessly resourceful in their efforts to reach beyond banking. Every legal reform restricting banking firms’ attempts to engage in non-banking business (for example, the Bank Holding Company Act (BHCA) of 1956 (12 U.S.C. § 1841)) led banking firms to find an open window through which they could reconnect banking and non-banking investment and commercial enterprises. By the 1990s, global systemically important financial institutions (G-SIFIs), and some of the largest commercial conglomerates, were stampeding through

this open window into Utah. With Industrial Loan Bank (ILB) charters, Utah provided a “legal” spatial fix (Harvey, 2001) that enabled firms based in Utah to evade the regulatory requirements of the BHCA. This legal exemption is exceptionally useful because the federal government granted the right to charter and host ILBs to only a few states (Utah among them) but denied those rights to almost all other states. Utah used this legal unevenness to offer banks a “get out of jail card” while developing a thriving in-state financial center that made both the banks and Utah richer. From their Utah offices, banking firms can do what is illegal almost everywhere else in the country: gather insured deposits while engaging in non-banking business. The political struggle concerning the scopes of banks’ businesses remains central to bank regulation debate to the present day. In early 2020, the Federal Deposit Insurance Corporation, an important bank regulator, solicited public comment regarding consolidated supervision of ILBs and the firms that own them (FDIC, 2020). This special regulatory exception for ILBs remains controversial. Its future status will be hotly contested and will have an important impact on the US’s monetary and financial geographies.

The approach taken here provides a realistic way to answer Christophers’ appeal to “follow the money.” In doing so, it also builds on a wider set of literatures concerning the relation between law and finance. It shows how law (a) redirects capital to new places (Barkan, 2011; Poon et al., 2018); (b) shifts regulatory authority between local, state, and national scales (Kear, 2014; Lietner, 1990); (c) transforms financial firms’ legal status and standing via spatial/location choices (Haberly & Wójcik, 2015); and (d) influences the governing locations firms choose to regulate their trade (Christophers, 2013; Potts, 2016). In the case of ILBs, federal banking law shifted regulatory authority to subnational state institutions, which then enabled “local” actors to disproportionately shape the global and national distribution of deposit money.

The section “Relationships Between Law, Firms, the State and Money” draws some broader lessons from the development of ILBs in Utah, describing the process as the exceptionally powerful interplay between entrepreneurial governance and regulatory arbitrage, which attract each other like opposite magnetic poles. The state uses its lawmaking powers to reset regulatory regimes to favor certain industries, often in order to develop their local economies; meanwhile, firms use regulatory arbitrage to select locations with regulatory regimes amenable to their business strategies. The section also includes a discussion of the roles money and law play in cultivating and sustaining the



partnership between banking firms and the state. “A Methodology for ‘Following the Thing’: Money” provides supplementary comments on methods to “follow” money. Where there is a will there is a way.

## **4.3 Locating Money**

The principal adjustment that makes this attempt to “locate the money” workable is to specify the commodity as money in bank deposit form. In other words, this research excludes other forms the money stock takes: currency and coin in circulation; banks’ required reserves, deposited with the Federal Reserve; travelers’ checks; and deposits held by credit unions. Nonetheless, it does include most of all domestic money, since bank deposits make up the vast proportion of the US money supply. Of the M3 monetary aggregate, a standard measure of money supply, bank deposits make up roughly 87% of domestic money in the US (Organization for Economic Co-operation and Development (OECD), 2019).

### **4.3.1 Does Deposit Money have a Location?**

In a modern banking system, deposit money is immaterial. There are no piles of bills or gold bars in a vault labeled “Deposits.” New deposits are created when banks issue debt. Bank deposits are destroyed when a borrower repays loan principal. Existing deposits are transferred from one account to another account, like a paycheck that transfers deposits from an employer’s payroll account to a household account. Deposits are represented as accounting entries, mere electronic pulses on computer storage. Most trade involves moving money from a buyer’s bank account to a seller’s bank account, neither of whom ever touch something we call “money.” Clearly, in a digital age, money exchanged for goods or services need not be located where trade takes place, since debits and credits are cleared electronically between buyers’ and sellers’ bank accounts. How do we determine where on Earth deposits are located?

The location of bank deposits is dependent on legal title to the deposits. Once deposited, legal title to the money belongs to the bank rather than the depositor: The money in your bank account “is not your money” (Singh, 2012, p. 83; see also Persson, 2015). The account holder of the bank deposit has a claim, not legal title, to the money in their deposit account. Banks enjoy virtually complete discretion to determine where,

when, and to whom deposit money in the banker's possession is deployed as loan capital, and, to the extent that a bank may move its deposits across jurisdictions (always subject to some restrictions), it can choose where to locate its deposits as it sees fit. Exchanges of title to deposits, which result in exchanges of deposits' locations, are mostly interbank transfers. The Uniform Commercial Code provides details on legal title transfers of deposits during exchange (Sommer, 1998). In the US, federal and state laws assign locations to deposit money. The locations accepting deposits are banking firms' offices. All domestic bank deposits in the US are assigned to the branch office locations banks select. Consequently, we can use banks' office locations and the quantity of deposits at each location to map the geographic distribution of deposit money at subnational scales.

Individual bank corporations typically have many branch offices. The Federal Depositors Insurance Corporation (FDIC) requires all federally insured banks to report deposits held at each bank office, and this data is collected in the FDIC's annual *Summary of Deposits Survey* (SODS). The FDIC sets regulatory guidelines for branch banks to assign deposit accounts within their branch office networks. Those regulations allow branch banks limited leeway to assign deposit accounts to branch offices within their networks. For instance, banks may assign deposits to the branch office where the account holder does the most business or to the office where the deposit account was opened. Banks are to be consistent in the methods used to assign deposits to their branches. Overall, the SODS responses appropriately characterize the deposit-gathering activities of each domestic bank office. SODS regulations for banks assigning deposits to a branch office reasonably attach deposits at the geographic coordinates of the bank offices that hold them and where related economic activity took place that brought the deposits to each bank office as of the time of each annual survey.

There is further evidence that deposits have locations at particular banks in keeping with laws. The quantities of bank deposits that banks hold at various locations are used to enforce banking regulations and to apportion state and local taxes. For instance, the Riegle–Neal Interstate Bank Branching and Efficiency Act of 1994 uses locations of banks' branch deposits to regulate branching across state boundaries. Interstate bank merger applications are denied if a merged banking organization will exceed 30% of a state's total deposits. Interstate banks must also meet loan-to-deposit thresholds in the states in which they have branches. The Department of Justice

enforces antitrust legislation by measuring the concentration of banks' deposits at market locations (Christophers, 2014). Mergers and acquisitions may be denied if they result in a surviving bank obtaining excessive concentrations of deposits in market locations. In recent years, for example, Missouri, New York, and Virginia used the proportion of a bank's deposits located in-state relative to deposits held at all locations to determine the proportion of a multijurisdictional bank's franchise tax (Commonwealth of Virginia, 2018; Hall & Lusch, 2017; Missouri Department of Revenue, 2014; New York State Department of Taxation and Finance, 2014). Laws determine the spatial distribution of money—where it is held and/or taxed, for example—which locate intangible bank deposits in very tangible specific locations.

### **4.3.2 Measuring Deposit Money at Subnational Locations**

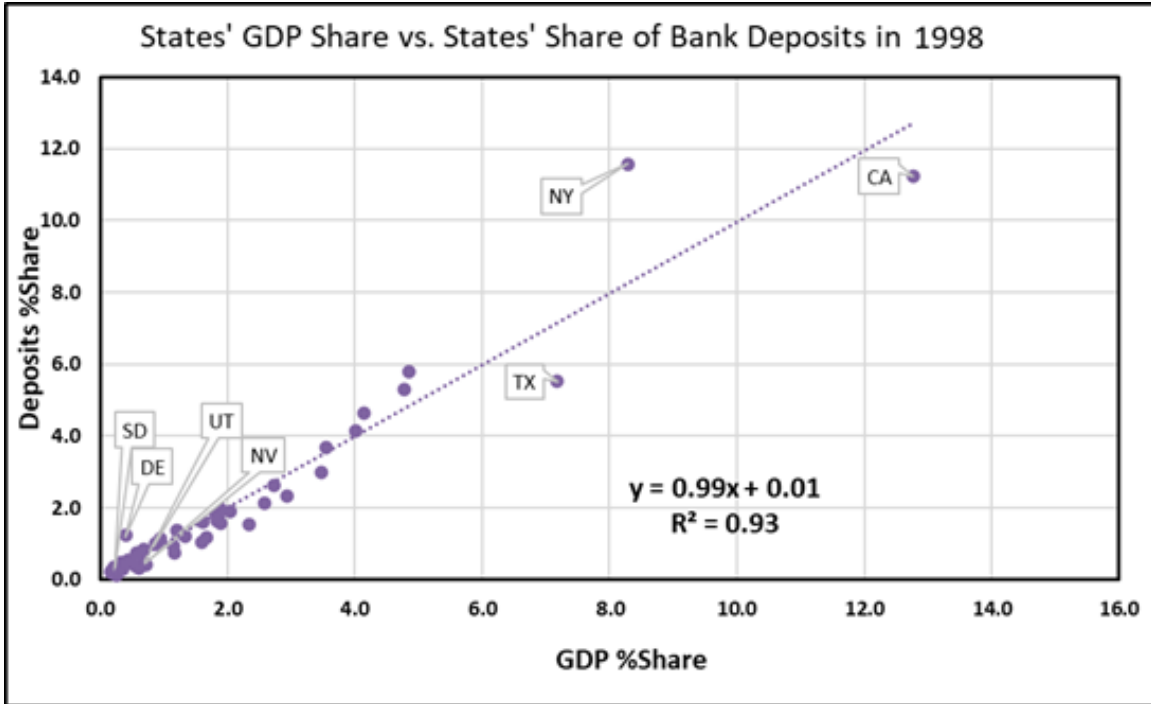
The SODS data offers geographers an opportunity to locate, measure, and (with limitations) track the movement of deposit money. For each bank office authorized to accept deposits, the SODS data provides, among other data, the total quantity of deposit dollars and the street address marking a location. Instructions for completing the survey specify that deposit accounts are to be assigned to offices in branch networks in a manner in keeping with each bank's internal recordkeeping. Bankers must not use methods which misstate or distort offices' deposit-gathering activity (FDIC, 2016). The SODS datasets contain roughly 90,000 bank office observations annually from 1998 through 2018, providing a yearly snapshot of deposit money held at all domestic US bank locations as of 30 June. Comparing deposit money values between consecutive surveys allows us roughly to track the aggregate movement of money into and out of bank locations.

I imported the SODS data and ancillary data into statistical software in order to facilitate exploratory data analysis (EDA). With rare exceptions, all states usually experience year-over-year increases in deposit money. Using a state's percent share of national deposits, as opposed to absolute dollar amounts, negates the effects of an expanding money supply, and provides a metric to measure and compare shifting proportions of money between states over time.

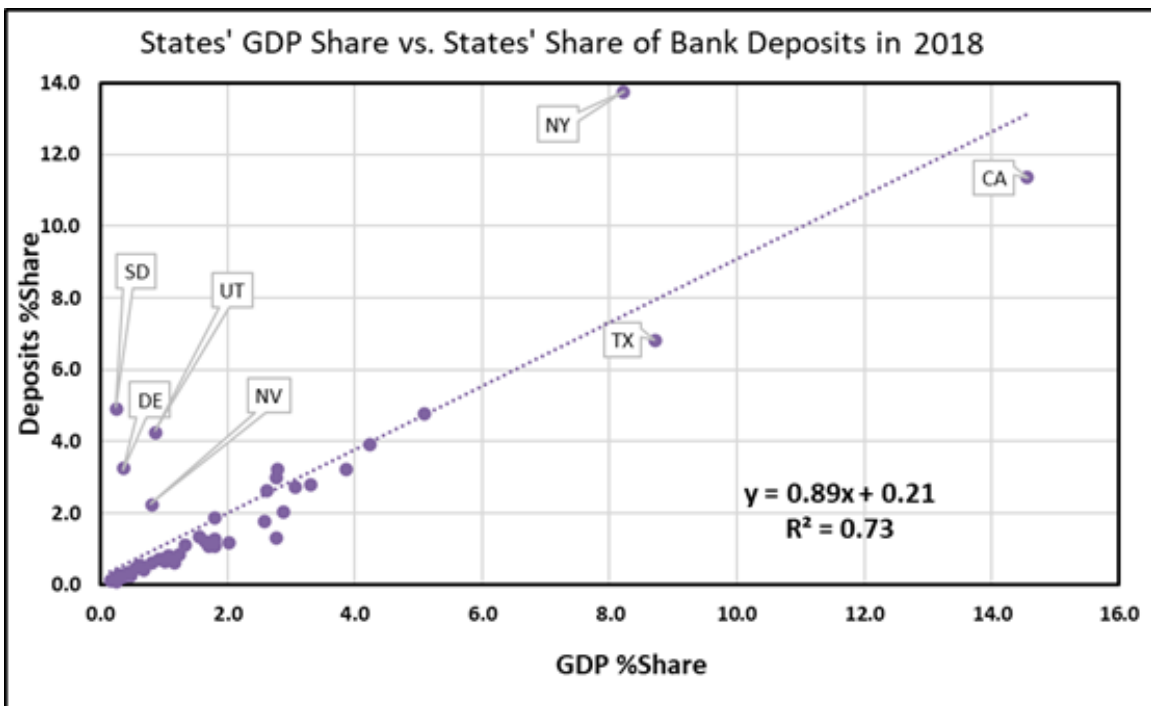
EDA confirmed the expectation that deposit money concentrates where people are concentrated, or where economic activity is abundant. There is a strong collinear

relationship between a state's total bank deposits, population, and GDP. The strongest collinear relationship exists between a state's deposits and GDP. Figure 4.1 shows the relationship between states' deposits and GDP in 1998 after converting the values to proportions. Almost all states lie near the regression line. Figure 4.2 pairs the same variables for 2018, when the relationship between deposits and GDP was slightly weaker than 1998. Nonetheless, the two charts reveal that the relationship between a state's share of the US's bank deposits and a state's share of the US's GDP remained strong for almost all states for two decades.

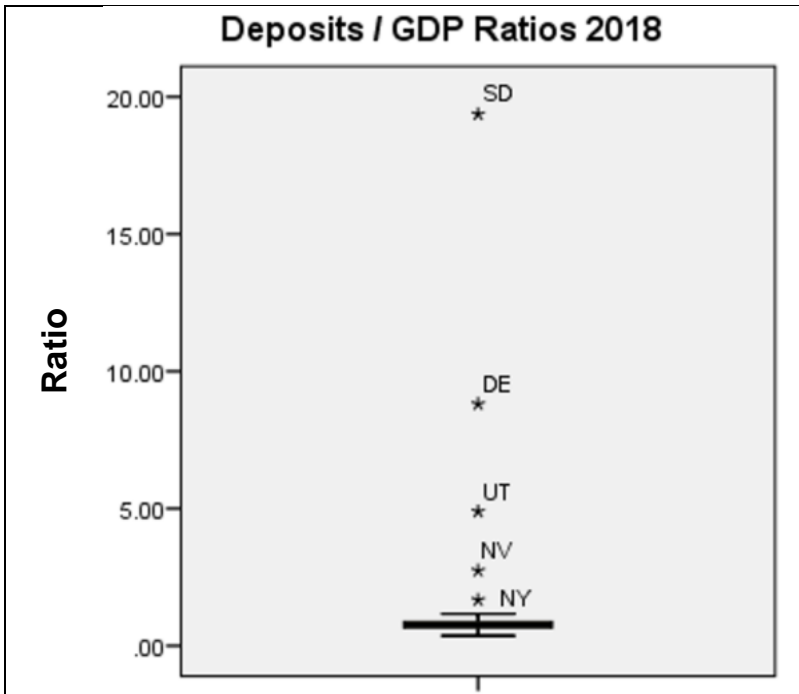
By 2018, however, a remarkable departure between deposits and GDP is observed in four small states: Delaware, South Dakota, Utah, and Nevada. New York, a large state in terms of GDP, also experienced a growth in deposit share. This change is visible by observing that the values of these five states shifted further above the regression line in Figure 4.2. The distribution of the ratio of 2018 deposits to GDP failed the Shapiro–Wilk test for normality, ( $W(51) = .293, p < 0.001$ ), suggesting that box and whisker charts are more appropriate than z-scores to identify outlier values. The box and whisker chart (Figure 4.3) marks values of deposits to GDP ratio outliers belonging to these same five states. The values of their deposits to GDP ratios exceed three times the interquartile range for all states.



**Figure 4.1. States' share of deposits vs. domestic product for 1998.**  
Source: Bureau of Economic Affairs (BEA) (2019); FFIEC (Annual).

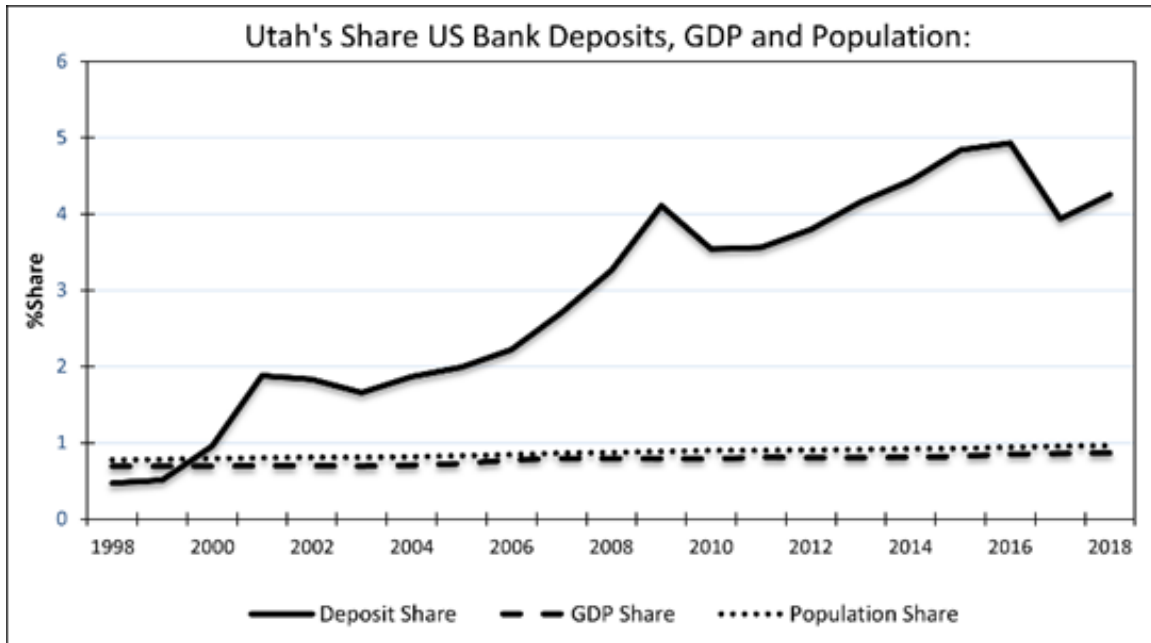


**Figure 4.2. States' share of deposits vs. domestic product for 2018.**  
Source: BEA (2019); FFIEC (Annual).



**Figure 4.3. Box whisker chart: Deposits/GDP ratios 2018.**  
Source: FFIEC (2019).

An increasing share of national deposits over time indicates the capacity of the state's banks to attract deposits, relative to banks in other states. The growth of Utah's deposit share is extraordinary. Figure 4.4 graphs the state's nominal stock of deposits and deposit share, along with ancillary economic data. Utah's deposit share increased from less than 1% in the late 1990s to more than 4% after 2013, while its share of national GDP and population remained roughly 1%.



**Figure 4.4. Time series of Utah’s share of the nation’s deposits, GDP, and population.**

## 4.4 Lifting the Veil Covering Utah’s Bank Deposit Money

Understanding Utah’s money accumulation machinery requires tedious but necessary data forensics. I began by examining the banking corporations taking deposits in the state. Table 4.1, derived from SODS data, lists the top 10 of 52 bank-owning corporations in Utah, based on 2018 in-state deposit market shares. The table includes the number of bank offices for each institution, both inside and outside Utah. Remarkably, Table 4.1 shows that each of the seven leading banking corporations operating in Utah gathers billions of dollar deposits at a single office in Utah. These offices generally occupy commercial space in less busy or accessible locations than typical storefront offices used by most retail banks. Google street view also shows a lack of signage indicating office locations, while other retail banks’ signage is prominent. Four of these top seven banks have their office in Utah serving as their only deposit-gathering location in the US. Even though Morgan Stanley and Ally have offices outside Utah, in 2018 they chose to book the preponderance of the deposits they collected at their single office in Utah. The same type of market report for any other state reveals a mixture of large- and medium-size banks having a substantial retail branch office footprint spread across the state to accept local depositors’ money. Zion, JP Morgan Chase, and Wells

Fargo illustrate the typical office attributes of retail banking: a lot of offices in a lot of places.

**Table 4.1. Bank Deposit Market Share for Utah in 2018**

Rank	Name (Highest Holding Company)	Utah Branches	United States Branches	Utah Deposits (\$M)	United States Deposits (\$M)	Utah % Share
1	Morgan Stanley, New York, NY	1	3	117,769	179,064	22.48
2	Ally Financial Inc., Detroit, MI (FKA GMAC)	1	1	100,256	100,256	19.14
3	American Express Company, New York, NY	1	1	67,246	67,246	12.84
4	Synchrony Financial, Stamford, CT (FKA G.E.)	1	4	61,685	61,685	11.77
5	UBS Group AG, Zurich, Switzerland	1	1	47,515	47,515	9.07
6	Goldman Sachs Group, Inc., The, New York, NY	1	4	23,166	127,685	4.42
7	Sallie Mae Bank, Salt Lake City, UT	1	1	17,181	17,181	3.28
8	Zions Bancorporation, Salt Lake City, UT	98	436	16,970	53,946	3.24
9	JP Morgan Chase & Co., New York, NY	51	5146	13,890	1,316,630	2.65
10	Wells Fargo & Company, San Francisco, CA	105	5875	12,466	1,280,008	2.38
	Other 42 Banks	262		45,758		8.73
	Total	523		478,189		100.00

Note. Table provides the bank holding company name. Source: FFIEC (Annual).

Morgan Stanley, UBS, and Goldman Sachs each own a bank subsidiary in Utah. These firms engage in the security broker-dealership business, i.e. “investment banks.” Each is a globally significant Wall Street firm considered “too big to fail” (Financial Stability Board (FSB), 2011). JP Morgan and Wells Fargo, who rank 9<sup>th</sup> and 10<sup>th</sup> in Utah based on deposits, also have investment bank affiliates, but their presence in Utah is less surprising, since both have a substantial retail branch office footprint in Utah. American Express is a credit card business which also specializes in travel services. Sallie Mae, originally a government-sponsored enterprise, makes student loans (and then packages those loans as securities for sale to investors). Ally is the successor to a bank owned by General Motors, an automotive manufacturer. Synchrony is a successor bank owned by General Electric, a company known for, among other things, manufacturing power generation equipment, durable goods, and light bulbs. Utah’s leading banking firms engage in many businesses beyond banking.



#### 4.4.1 The Business of Banking Debate

In the US, the practice of separating the business of banking from other sectors of the economy is longstanding. Of course, capitalist firms always oppose any state regulations limiting the activities in which they desire to engage. Citizen groups, labor unions, small businesses, and community banker associations argue that the business of banking must be separated from commerce in order to provide customers credit on an unbiased basis, unencumbered by commercial self-interest. Current debate regarding the scope of banking business came to a head before the Senate Banking Committee in 2007, when retail giant Walmart tried to enter the banking business in Utah (the application was ultimately withdrawn in the face of public resistance). At the Senate committee hearings, however, the American Enterprise Institute defended Walmart's application:

Not only are there no sound policy reasons for applying the separation in banking and commerce...but doing so would cause harm to consumers and working families. Companies that sell goods and services to the public, retailers, auto companies, others, can save significant cost by gaining access to the payment system through an affiliated depository institution. (United States Senate Hearing Before the Committee on Banking, 2007, Peter Wallison's testimony)

Other arguments for combining banks and commercial firms include increased profitability; delivery of new products; equity financing to augment lending; and enhancing internal financial oversight and discipline of commercial activity, since banks could encourage appropriate decision making from within a firm rather than from outside it (Krainer, 2000).

Proponents of maintaining the separation of banking and commerce are concerned about the concentration of economic power that combination might enable. Before the same Senate Committee hearings in 2007, for example, the United Food and Commercial Workers Union argued that "Working people are concerned about their money":

I mean, even though some of our members make minimum wage, they are concerned about where their money goes. But if you have a company that comes into a town, specifically a small town, and takes over the hardware store and the florist and the bakery and the grocery store, and then they have to be your bank, too, that is a problem for us, whether it is Walmart or

another large retailer (United States Senate Hearing Before the Committee on Banking, 2007, Briged Kelly's testimony).

An affiliation exists when two separate firms are related through common ownership. There are potential conflicts of interest between a bank and any affiliated non-banking firms. When making loans, banks collect proprietary information from borrowers. Banks also set prices and terms on loans. A company owning a bank may influence the business decisions of their affiliated firms based upon the proprietary information collected from an affiliate's competitor. A bank may be pressured to offer their affiliates favorable loan prices and terms and deny the same prices and terms to an unaffiliated competitor. If a bank feels an obligation to bail out a financially troubled affiliate, the safety and soundness of that banking firm is at risk. Furthermore, ownership affiliations between banks and commercial firms extend the federal safety net of deposit insurance to the commercial sector of the economy.

The tradition of separating banking from commerce in the US presumably mirrors the practice established in the Bank of England Act of 1694, which prohibits the bank from "buying or selling of any Goods Wares or Merchandizes whatsoever" (Bank of England, 2015). Similar restrictions were included in the 1791 charter of the First Bank of the United States (Federal Reserve Bank of Philadelphia, 2009). These early "best practices" led federal and state policy makers to strictly limit banking businesses' powers. The National Bank Acts of the 1860s used New York's legislative standards for chartering banking corporations, which included the business powers to receive deposits and issue debt, and excluded powers to "directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or commodities" (Shull, 1999, p. 15; see also Wilmarth, 2007, p. 1558). These laws demonstrate the longstanding US view that the business of banking is understood to be financial activities closely related to accepting deposits and issuing loans—and separate from other commercial activities.

In the US dual banking system, the federal government charters national banks and Congress determines their business powers, while each of the 50 states is empowered to charter, regulate, and define the powers of state banks. Over time, both the federal and state governments have used charters to expand and contract banks' business powers. For example, states such as Delaware and South Dakota permitted their banks to sell and underwrite insurance, while federal banking regulators denied those powers to bank holding companies owning banks in those states. For the most

part, however, banking and commerce remain separate businesses. Yet, one type of institutional charter, the Industrial Loan Bank (ILB), was exempt from federal regulation prohibiting non-banking activities. Utah's seven leading banks (Table 4.1) were chartered as ILBs. At the peak of the financial crisis, most of these leading banks urgently required eligibility for federal bailouts and access to the Federal Reserve discount window. That eligibility was conditioned on converting their ILB charters to national or state banking charters. But it is the legacy of the ILB charter that is the special feature that unites the top seven banks listed in Table 4.1.

#### **4.4.2 A Series of Laws Granting ILBs Special Powers**

The ILB charter is a financial innovation developed a century ago by Arthur J. Morris, an attorney serving banking clients in Norfolk, Virginia, who observed the difficulty working people experienced when seeking bank loans. Industrial workers, having no loan collateral, could not qualify for bank credit from commercial banks or savings banks. In Morris's business model, credit was extended to wage earners on the basis that the borrowers obtain loan guarantees from two reputable members of the community. In 1910, Morris obtained a special purpose state bank charter in Virginia to implement his model. Morris and other opportunistic copycats replicated this business model, creating state-chartered ILBs and licensed industrial loan companies (ILCs) across 40 states (Barth et al., 2012). Later, commercial banks began providing credit to wage earners, soon dominating the market. The size and scale of their operations, and their ability to gather low-cost deposits through FDIC insurance, allowed commercial banks to enjoy competitive advantages over ILBs and ILCs. These competitive advantages led to ILBs' obsolescence, stunted growth, and later contraction (Baradaran, 2013). However, a handful of ILBs persisted in a few states.

During the Great Depression, many suffered financial ruin with the destruction of deposits they entrusted to failed banks. The Banking Act of 1933 (Pub. L. 73–66), commonly known as the Glass–Steagall Act, established the FDIC as an independent agency of the US government to administer deposit insurance. FDIC insurance renewed depositors' trust in banks. For bankers, FDIC insurance allowed them to attract money capital at low cost. To minimize risks to the deposit insurance fund, Glass–Steagall required banking firms to operate as either a commercial banking firm or an investment banking firm. The former, engaged in business limited to accepting deposits and making

loans, were eligible for FDIC insurance. The latter, engaged in riskier business such as underwriting stock or trading securities, were ineligible for this federal safety net.

In response, large commercial and financial firms sought legal methods to work around laws prohibiting combining banking and non-banking business. The primary instrument of these efforts was the bank holding company, which is structured to skirt regulations limiting the business activities of banks. A bank holding company, which is not itself a bank, could control both a bank and non-banking firms engaged in activities not directly permitted by banks.

In an attempt to reassert the separation between banking and non-banking business, the 1956 federal Bank Holding Company Act (BHCA) (12 U.S.C. § 1841) barred the affiliation of banking and non-banking business and empowered the Federal Reserve to regulate the business activities of bank holding companies and their subsidiaries. But the BHCA only applied to holding companies owning two or more banks—leaving single-bank holding companies free to engage in non-banking activities. Perhaps because of their relative insignificance, ILBs were explicitly exempted from the BHCA (Johnson & Kaufman, 2007).

Unsurprisingly, commercial and financial firms rushed to form single-bank holding companies, which either acquired or formed a new bank and also owned other firms involved in non-banking businesses. The Bank Holding Company Act of 1970 (Public Law 91-607), Sect. 2(c) amended the earlier BHCA to equally apply to both multi- and single-bank holding companies. Nevertheless, this renewed effort to separate banking and non-banking business was quickly outmaneuvered. The amended BCHA changed the definition of a bank, which it deemed an institution that performed two functions: accepting demand deposits and making commercial loans. This revised definition gave rise to a new business creature not subject to the regulatory constraints of the BHCA: the “non-bank bank.” Banks of the non-bank bank type either accepted deposits or made commercial loans, but not both. Free from BHCA regulation, corporations like General Electric, Sears, and General Motors established non-bank banks to compete for bank deposits and originate non-commercial loans. The non-bank banks captured market share from banks of the traditional “bank” type. The unconstrained non-bank banks enjoyed the benefits of FDIC insurance while their traditional bank competitors were constrained in their business to accepting deposits and issuing loans. Even the bank

formally known as Chase Manhattan, a large money center bank that lent to governments, large corporations, and smaller banks, considered “debanking” to a non-bank charter (Proxmire, 1987). In a new attempt to readjust the business powers for non-bank banks and banks resulting from the BHCA amendments of 1970, the Competitive Equality Banking Act (CEBA) of 1987 (Pub. L. 100-86) redefined a bank once again. This time a bank was defined as any institution receiving FDIC insurance (Huber, 1988). Existing non-bank banks were grandfathered. However, CEBA limited existing non-bank banks’ growth, ultimately leading to their obsolescence, thus reinscribing the separation of banking and non-banking business.

US Senator Jake Garn of Utah used his power on the Senate Committee on Banking to shape banking law to strengthen his home state’s ILB constituents. The 1982 Depository Institutions Act (Pub. L. 97-320), also known as the Garn–St. Germain Depository Institutions Act, made ILBs eligible for FDIC insurance. In addition, Garn, as the ranking member of the Senate Committee on Banking, introduced an explicit exemption of ILBs from the definition of a bank during the final draft of the CEBA legislation (Johnson & Kaufman, 2007). The exemption enabled non-banking commercial firms and investment banks to own an FDIC insured non-bank bank in the form of an ILB. Furthermore, CEBA prohibited new ILB charters in states that did not already have a statute requiring ILBs to have FDIC insurance, thus protecting Utah from interjurisdictional competition, since only Utah and six other states had such a statute in place.

Within a year of CEBA’s passage, General Motors became the first commercial owner of an ILB, acquired in Utah. Merrill Lynch, which owned a non-bank bank, rushed to Utah to obtain an ILB charter. Utah’s members of congress also thwarted future efforts to limit ILBs’ special regulatory privileges. The 1999 Gramm–Leach Bliley Act (Pub. L. 106–102, 133 Stat. 1338) (GLBA) repealed parts of Glass–Steagall, enabling financial and banking firms to affiliate as subsidiaries of a financial holding company, which was granted business powers to simultaneously engage in commercial banking, investment banking, and insurance, subject to the regulatory oversight of the Federal Reserve. GLBA retained the longstanding prohibitions barring banks from owning commercial firms and commercial firms from owning banks, and closed the loophole allowing commercial firms to own a single savings bank.

But once again ILBs' special exemptions were included. The ILB became the only option for a commercial firm to own a bank, or for an investment bank to own a bank free from Federal Reserve oversight. The safety net of federal deposit insurance now extended beyond the banking sector into the wider financial and commercial sectors of the economy. Utah actively promoted its special privilege to charter ILBs with eligibility for FDIC insurance, and some of the largest commercial conglomerates and many of the largest investment banks in the US stampeded into Utah to establish ILB subsidiaries. Utah became the banking regulator of the largest banks offering financial services nationally and internationally.

Goldman Sachs, Morgan Stanley, UBS, Lehman, and other large Wall Street investment banks followed Merrill Lynch with ILBs in Utah. Together, the ILBs owned by the holding companies that also owned investment banks, and several ILBs owned by commercial firms, contributed the lion's share of Utah's deposit growth during the 2000s. Since the investment banks' holding companies chose ILB charters for banking subsidiaries rather than reorganizing as financial holding companies, it is fair to assume the choice was motivated in part to avoid Federal Reserve supervision. Utah's FDIC insured ILBs provided a warm resting place for deposits gathered worldwide to serve as interest-earning brokerage cash accounts linked to Wall Street firms' brokerage customers (Ergungor & Thomson, 2006; Spong & Robbins, 2007). These developments transformed Arthur Morris's small limited-purpose ILBs for the working class into deposit-gathering instruments for G-SIFIs serving a wealthy global clientele. UBS, for instance, used their Utah deposits to fund loans to high-net-worth individuals located around the world (Johnson & Kaufman, 2007). With the special privilege of avoiding BHCA regulations while licensed to accept federally insured deposits, ILBs in Utah quadrupled the state's share of US national bank deposits from 1% to more than 4%.

Utah's BHCA circumvention strategy fell apart abruptly with the financial crisis of 2008. Many institutions, particularly those with ILB subsidiaries in Utah, were on the brink of financial collapse. The Troubled Asset Relief Program (TARP) and access to the Federal Reserve discount window provided a lifeline but required G-SIFIs like Morgan Stanley and Goldman Sachs to expeditiously relinquish their ILB charters and reorganize as financial holding companies regulated by the Federal Reserve. Other firms with Utah-based ILBs such as Merrill Lynch elected to merge with existing bank holding companies (Luhby, 2008).

Wall Street firms' abandonment of the ILB charter may have redirected deposit flows away from Utah. Without an ILB charter, G-SIFIs surrendered the regulatory advantages associated with locating in Utah. Looking at the bank deposits market share report (Table 4.1), UBS and Sallie Mae Bank are the only top seven Utah banks holding an ILB charter as of 2018. SODS data confirm, however, that disproportionate deposit accumulation persists in Utah. This may be partly the result of state taxes. High tax locations like New York City—a typical command and control location for G-SIFIs—provide some incentive to maintain bank subsidiaries in low tax states like Utah even without an ILB charter. In a proactive maneuver to maintain the status quo, Utah exploited its own lawmaking powers through tax abatements to nudge G-SIFI firms to remain in-state and increase capital investment. Goldman Sachs and Morgan Stanley inked special tax abatement deals with the state in 2012 (LaCapra & Wachtel, 2012) and Goldman Sachs obtained additional tax rebates in 2014 in exchange for adding new in-state jobs (Utah Governor's Office of Economic Development, 2014). Even though Utah's leading banking firms eventually found it expedient to switch banking charters, the ILB charter was the critical force that stimulated institutions to establish deposit gathering in Utah.

## **4.5 Relationships Between Law, Firms, the State, and Money**

An examination of Utah's lopsided deposit money accumulation reveals an exchange relationship between firms and states in which money buys law to make more money. Banking firms deploy their immense market power to disrupt regulation obstructing their accumulation strategies (Mann, 2013, pp. 50–51). Since financial capital is highly mobile, the principal strategy is to shop the regulatory marketplace for new spaces offering accommodative law. The state produces law for that market as though it were a commodity to provide solutions to firms' regulatory obstacles. Firms reshape their spaces of operation and restructure their businesses to take advantage of gaps between the regulatory demands of their current locations and those of their new spaces (Aalbers, 2018; Fleischer, 2010; Leyshon, 1992).

In many ways, this process is a clear variation on the "spatial fix," Harvey's famous term for the spatial solution to a crisis of accumulation: "geographical expansion depended crucially upon...the search for markets, fresh labor powers, resources (raw

materials), or fresh opportunity to invest in new production facilities” (2001, p. 26). We can add to this the search for accommodative law. Capitalists seek locations for expansion where the choice of law governing their business best serves their expansion strategies (Potts, 2016).

From the firm’s perspective, identifying lawmaking jurisdictions that provide accommodative laws represents regulatory arbitrage. Bank-owning firms found their legal fix in Utah and when they moved in, they brought their highly mobile deposit-gathering machinery with them. For states, lawmaking is a key economic development strategy. Competitive entrepreneurial states (Harvey, 1989) use law to create regulatory gaps between themselves and other states. These gaps benefit the industries and firms for whom they are designed, while the state benefits from tax revenue, jobs, and other capital investment.

In other words, law has value that can be monetized (Pistor, 2020), and the uneven playing field is of special added value for firms engaged in both banking and non-banking. In the case of state-chartered banks, the opportunities are particularly attractive, because the benefits provided extend far beyond the state’s territory. State-chartered banks’ business powers have national and global reach. For instance, if a firm obtains a banking charter for a subsidiary in Utah, that bank can accept deposits from—and issue loans to—depositors and borrowers worldwide. The Utah Department of Financial Institutions (DFI) (2020) gleefully markets ILB charters and their BHCA exemptions to attract banking firms and their deposits into the state. In effect, the US government’s deposit insurance safety net subsidizes ILBs’ non-banking owners. The combination of banking business power, deposit insurance, and ILBs’ exemption from the BHCA produce an enormously profitable gap between ILB holding companies and other types of banking firms.

What explains capital’s persistent capacity to circumvent public policy separating banking and commerce? Why are G-SIFIs and large commercial conglomerates always able to find ways to engage in banking, regardless of the obstacle? One answer to these questions comes from the “instrumentalist” tradition of law. Instrumentalists argue that the constructions and interpretation of law are influenced by external forces (Tomlins, 2007). Powerful groups are adept at writing legislation and obtaining their desired judicial interpretations. Along similar lines, Marxist theories of law often begin from Marx and



Engels' (1967) claim that "your jurisprudence is but the will of your class made into a law for all, a will, whose essential character and direction are determined by the economic conditions of existence of your class." In Utah, the will of G-SIFIs and large commercial conglomerates certainly prevailed. With the help of lawmakers—including Senate Banking Committee members from Utah who worked on Garn in 1982, CEBA in 1987, and GLBA in 1999—an ILB is a very useful non-bank bank that can simultaneously conduct non-banking businesses and gather insured bank deposits.

More recent Marxist scholars of jurisprudence (Balbus, 1977; Miéville, 2004; Webb, 1985) suggest that law parallels the logic of the fetishized commodity. Just as the commodity obscures the human conditions behind its production, law hides the social and political interests upon which it is constructed. Like the commodity, the apparent "objective character" of the law hides the social reality of the law, why law holds in specific places, and whom the law serves. As legal subjects we come to fetishize law. In a "democracy," law is conceived as that social framework that preserves formal equality, liberty, and justice for all. On this conception of law, we relate to each other as social and political equals. But the "objective character" of "justice" disguises class domination. There is a class character to legal relations. The interests of the ruling class are installed as law. Labor does not have the financial means to match capital's ability to pursue regulatory arbitrage. Labor cannot easily relocate to more favorable jurisdictions like highly mobile capital. States are not using law to import new labor like they do for capital investments. Defetishizing the money commodity or defetishizing law lead to similar conclusions: Behind the veil of objective neutrality is a systematic domination via money capital and state-sponsored legal capital to extract greater surpluses. The riddle of the money fetish is therefore the riddle of the legal fetish.

A capital commodity like money is, as Marx famously said, deployed by capitalists for the purposes of self-expansion. Like capital, law is deployed by capitalists, in coordination with the state, to abet this process. The largest US securities firms, among the most powerful firms on the planet, own a Utah-chartered ILB. These firms found that insured deposits provided superior returns over uninsured money market mutual funds (Wilmarth, 2007). With banking deposits covered by federal insurance, the costs to bank-owning firms for new money capital decline, enabling the combined business firms to retain more surplus for themselves. In return for the law, Utah also makes more money. The new money paid to the state by bank subsidiaries includes

franchise taxes, charter fees, bank examination fees, jobs, and office rents. The law serves capitalists as a surplus capital-generating commodity.

Unmasking the lopsided share of Utah's money reveals important relations between bank-owning firms, governments, a worldwide set of investors, and a hidden underclass of worldwide labor. Investors' bank accounts located in Utah are credited by interest on debts, rents, and surplus values extracted from worldwide labor. Those same investors are also related to Wall Street firms, commercial conglomerates, and governments which traded for the laws that produced the advantageous environment for banking businesses, benefitting ILBs and their holding companies. Investors do not see their connection to the class of laborers they are related to, the government laws that gave their banks their powers, and in the cases of their sweep accounts held at brokerage firms, they may not know the bank that holds those deposits or where that bank is located. They only see their deposit accounts. Likewise, those investors do not see the lawmakers who made ILBs' exemptions possible.

#### **4.6 A Methodology for “Following the Thing”: Money**

I went behind and beyond to reveal the social relationships of the large bundles of the nation's money accumulating in Utah. My approximation of Christophers' (2011b) effort to “follow the money” involved two main tasks: identifying where money travels and determining why it travels to those locations. Geographers' attempts to follow consumable commodities like papayas use an approach that is something like walking alongside the commodity on its journey from production to final consumption. This approach is not practical with money. Money's journey has no endpoint. Each time money is consumed it lives on. Money travels in multiple directions. When an individual unit of money travels to a consumer or a bank, that unit of money cannot be distinguished from other monetary units. An alternative is to use “sensors” planted at various locations and record their contacts with money over time. While a sensor cannot tell where the money came from, or where it is going, a series of sensors at frequent intervals can capture the efflux and reflux of money across the study area, and sometimes the sequence of sensors can be derived. In my research, bank offices serve as sensors because they are the waypoints along money's spatial journey. The SODS annual data is collected by banks in real time, making it possible to map the deposit

money's paths. Perhaps Christophers (2011a, 2011b) can incorporate this methodology, and Gilbert (2011) might rescind the assertion that money is impossible to follow.

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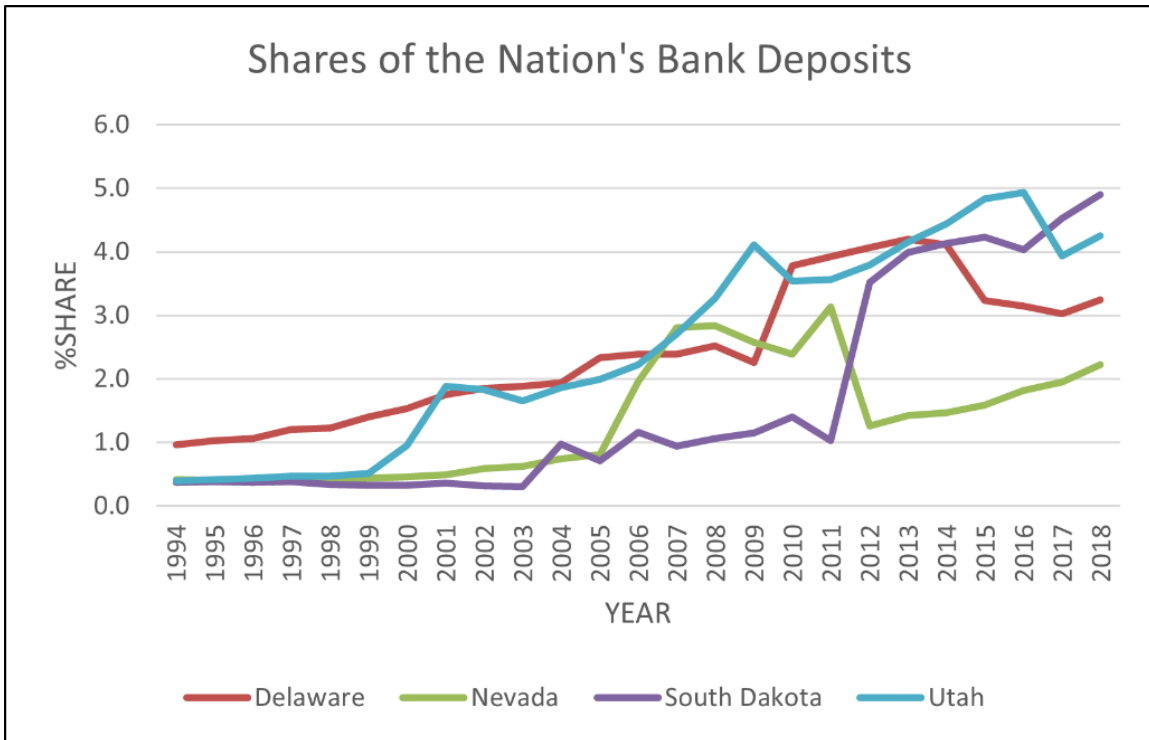
## **Chapter 5**

# **The Shifting Territory of US Bank Deposits: Opportunities for Further Research**

### **5.1 Fiscal Geography: An Opportunity for Further Research**

Are the locations banks choose to report their deposits strategic? The spatial redistributions of deposits offer insight into the choice of law strategies banks use to expand capital. Figure 5.1 shows an upward slope of shares of the US's bank deposits for Delaware, Nevada, South Dakota, and Utah from 1994 to 2018. These four states have accumulated shares of deposits that substantially exceed the growth of their economies, suggesting that some other forces contribute to the deposit growths at those locations. Delaware's, South Dakota's, Utah's, and Nevada's increasing shares of the US's bank deposits and the methods to transport those deposits offer some clues to understand the potential benefits or drawbacks to booking deposits at given locations. I argue that efforts to avoid taxes transferred highly mobile deposit capital to new locations. This case is an example for researchers to replicate to better understand how taxes reshape the spatial landscape of US banking firms and money.





**Figure 5.1. Annual bank deposit shares of four states.**

Source: FDIC (Annual).

Aalbers asserts, “Taxation in general and tax evasion are inherently geographic in nature, and only a limited number of geographers have focused on taxes” (2018, p. 916). I might add that tax avoidance is geographic in nature as well. Geographers have shown that law redirects capital to new places, transforming its legal status (Ashton, 2014; Barkan, 2011; Haberly & Wójcik, 2015; Poon et al., 2018). High tax costs are front and center stimuli redirecting capital to new places. Capital seeks preferential tax treatments which are achieved by finding a new home.

Since Congress granted states the powers to tax the income of banks doing business within their borders, states set their own rules on the forms of capital that are taxed, tax rates, assignments of taxable income, and multijurisdictional income apportionment formulas. Inconsistencies among state governments’ tax laws enabled multijurisdictional banks and Bank Holding Companies (BHCs) to strategically shift revenue and expenses to exploit differences in taxations (Berger et al., 1995; Fox & Black, 1994).

Considering hundreds of state and local taxing jurisdictions combined with thousands of banking firms employing separate business strategies, it is easy to see the

enormity of this topic. Struggles between governments asserting their needs for revenues and firms seeking to escape taxation never end. Loopholes enabling firms to avoid tax are matched with strengthened laws. Given these taxing complications I can only scratch the surface on the use of geography as a tax avoidance procedure. I use anecdotal examples of major banks shifting deposits to states such as Delaware, Nevada, South Dakota, and Utah as a tax dodge strategy. There is more work to do, including confirming my findings and replicating this work to uncover new uses of geography for taxation. I encourage geographers to continue to explore tax issues that influence the changing geographic landscape of banking firms, their office locations, and the redirected resting places of taxed and untaxed bank capital.

Back in 1981, South Dakota's bank franchise tax rate was 6% when Citibank set up its credit card banking subsidiary (Wiedrich, 1990). Delaware's bank franchise tax rates fell from 8.75% on all income to 2.7% on net income exceeding \$30 million when Chase Manhattan and JP Morgan moved in (Helyar & Salamon, 1981; Shaxson, 2010, p. 202). The regressive tax schedules in Delaware provided marginal tax benefits to medium-sized banks, but clearly large New York City-based banks like Citibank, Chase Manhattan, and JP Morgan, with incomes far in excess of \$30 million, enjoyed the greatest benefits. Delaware quickly became a favored state for banks seeking tax refuge. The gap between these new tax rates and what large banks had traditionally paid was massive. For example, while the largest banks in the US had long been located in New York City, between taxes due to the state and city governments, they were subject to taxes as high as 26% of income. While major New York banks set up shop in Delaware and South Dakota to provide nationwide credit card lending free from usury constraints, JP Morgan's subsidiary in Delaware concentrated on services to large domestic and overseas corporations and governments. JP Morgan Chairman Lewis Preston conceded in 1983 that tax avoidance of New York City and New York state was the major reason they established a Delaware subsidiary and he stated, "we're looking at a 2.6 percent tax in Delaware compared with almost 30 percent in New York" (as cited in Bennett, 1983). Citibank used South Dakota as both a tax and usury haven for its credit card business, and its BHC Citicorp established another bank subsidiary in Delaware to shift more income to the low-tax jurisdictions (Bennett, 1981).

Banks exploit jurisdictional gaps in tax rates by redirecting capital to the locations providing the most tax benefits. Hall and Lusch (2016) found BHCs shift expenses,

which reduces taxable income, to bank subsidiaries in high-tax states. For example, a BHC with a subsidiary in New York having many branch offices, and another subsidiary in other states with few offices, can assign high-overhead expenses, such as advertising, to the high-tax New York bank subsidiary, perhaps by distributing advertising costs across all subsidiaries in multiple jurisdictions based on the number of branch offices in a state. The low-tax state subsidiary's sales are not confined to in-state customers but reach the entire nation. The low-tax state subsidiary benefits from advertising. Since few branch offices are located in low-tax states, and most branches are located in New York, the expenses of advertising shifted almost entirely to the New York subsidiary where the advertising expenses provided the greatest tax benefits.

While multijurisdictional banks shift expenses to states having the highest taxes, revenues and taxable assets are directed in the opposite direction. Citicorp and JP Morgan, both located in New York, with subsidiaries in Delaware and South Dakota, and Wall Street firms having bank subsidiaries in Utah are arranged around this asset-shifting strategy. New York's multijurisdictional tax apportionment rules made this strategy worthwhile. From 1985 through 2015, New York state bank franchise tax law applied the following income apportionment formula for multijurisdictional banks:

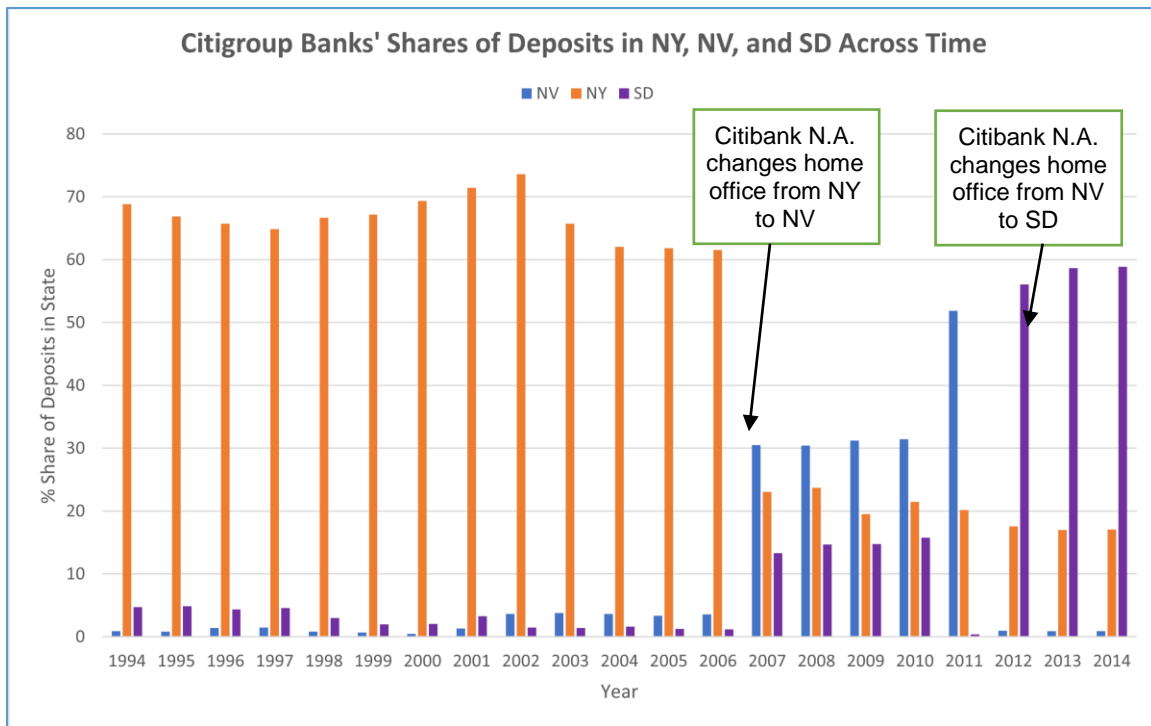
$$\text{Apportioned Income} = \frac{\left( \frac{\text{State Payroll}}{\text{Total Payroll}} \right) + 2 \left( \frac{\text{State Deposits}}{\text{Total Deposits}} \right) + 2 \left( \frac{\text{State Receipts}}{\text{Total Receipts}} \right)}{5}$$

That apportionment formula considers the ratio of the bank's payroll, deposits, and receipts in New York (i.e., held by branches in New York state) to its total payroll, deposits, and receipts at all locations. Deposit and receipt ratios are double weighted. When banks are taxed in New York City at 26% rates, shifting the payroll, deposits, and receipts out of state offers huge savings to large New York City banks.

Of course, banks cannot arbitrarily select the taxing jurisdictions for their branch offices' deposits. The Federal Financial Institutions Examination Council's *Summary of Deposits Survey* (SODS) regulations (Annual) require bankers to report deposits of each office in a consistent manner that does not distort the deposit-gathering activity of an office. There are, however, certain extraordinary events allowing banks to determine the location of deposits within their branch networks separate from retail office deposit-gathering activities. When banks merge with other firms or BHCs consolidate

subsidiaries, some classes of deposits between the acquiring firm and the target firm are placed in a bank office subject to the business strategies of the surviving firm. These might include money collected by deposit brokers, sweep accounts from affiliated broker dealers, cyber branches, custodial trust accounts, and deposits generally reported at a bank's home office. When exploring SODS data, the patterns of bank deposit migrations across states are visible when they coincide with mergers and consolidations. Often, deposits move away from the acquired firm to the surviving firm's home office.

Using the SODS data, Figure 5.2 shows Citigroup shifting the shares of their deposits away from New York and into South Dakota via Nevada. Those movements perfectly coincide with consolidations of Citigroup subsidiaries located in those state jurisdictions. In each consolidation event, the surviving subsidiary, Citibank N.A., changed its home office jurisdiction. Figure 5.2 shows the annual shares of all Citigroup's domestic bank deposits held in New York, Nevada, and South Dakota from 1994 through 2014. Citigroup's deposits in New York declined precipitously after 2006 when a corresponding spike of deposits occurred in Nevada. In late 2005, Citibank N.A., the largest bank subsidiary belonging to Citigroup, changed its home office from New York City to Las Vegas, Nevada, after consolidating with Citigroup's subsidiary domiciled in Nevada. Later, in 2011, another significant shift of deposits from Nevada to South Dakota occurred. At that time Citigroup consolidated Citibank, N.A. and Citibank, South Dakota. The surviving firm, Citibank, N.A. changed its home office from Las Vegas, Nevada, to Sioux Falls, South Dakota. Citibank's former home office in New York continues to operate as a branch, suggesting no real physical move ever took place—only a legal move to Nevada and then South Dakota along with a substantial change in the location in which Citigroup reported its deposits.



**Figure 5.2 Citigroup’s share of its domestic deposits in three states: New York, Nevada, and South Dakota.**

Source: FDIC (Annual).

Virtually all modern states (at all scales of government) are constantly developing new regulations to plug tax loopholes. In 2015, New York state changed its code so that banks are taxed like other corporations: Apportionment of multijurisdictional banks’ income is no longer based on deposits. Redistributing deposits to different tax jurisdictions will not impact the tax liability of banks doing business in New York. “Nexus” is a term used to describe the legal connections a business has to a state for tax purposes. New York replaced their physical presence nexus rules with “bright-line” nexus rules, meaning that banks which do not have any offices or personnel in New York are still required to file state franchise tax returns if they have customer business in the state exceeding certain thresholds. These include banks having credit card income from consumers and merchants located in New York.

The convenient designation of a banking home office located in a low-tax state was a ready cross-border state-tax dodge for New York’s BHCs. But that was hardly its only benefit. Just as importantly, the vast spreads between low- and high-tax states like New York gave banks significant lobbying leverage, and the threat to move business operations and jobs to low-tax states resulted in some degree of convergence in state

tax rates. Even the low-tax states were, and are, subject to pressure to further reduce taxes. Banks remind the low-tax states they could move out just as easily as they once moved in. Without tax reductions on demand, state legislatures feared losing their golden goose. In 1991, South Dakota reduced their bank franchise tax rates from a flat rate of 6% on income to regressive rates that decline to 1% on income over \$600 million (Woster, 1991). As if that deal were insufficient, the state legislature lowered the bank franchise tax again in 2000, so that the 6% rate applies only to the first \$400 million in income and drops to 0.5% percent on income over \$600 million, and falls to 0.25% on income over \$1.2 billion (Kafka, 2000). This legislation was produced exclusively for Citicorp, the only firm with earnings to which the top brackets apply (at least at present).

I briefly outlined a case in which banking firms used the legal status of bank deposits at different locations to minimize taxes. This led to increases of bank capital in low-tax states such as Delaware, Nevada, South Dakota, and Utah and the flight of capital from high-tax places like New York. To preserve their revenue requirements, New York responded by strengthening its own tax laws. The case study appears to confirm Tapp and Kay's (2019) assertion that low taxes are vital to luring in capital. Is this always true? There are of course exceptions. New York, despite high taxes, still leads the US as the home to the largest banking and financial firms. There are offsets to high taxes that bring in capital. Nevertheless, taxes are central to redirecting capital: Economic geographers are encouraged to study ways banks redirect capital between locations to minimize tax.

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