

Brooklyn Law Review

Volume 64

Issue 3

Symposium:

Getting Ready for Individually Managed Pensions:

A Global Perspective

Article 17

3-1-1998

Comparative Investor Education

James A. Fanto

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/blr>

Recommended Citation

James A. Fanto, *Comparative Investor Education*, 64 Brook. L. Rev. 1083 (1998).

Available at: <https://brooklynworks.brooklaw.edu/blr/vol64/iss3/17>

This Article is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Brooklyn Law Review by an authorized editor of BrooklynWorks.

COMPARATIVE INVESTOR EDUCATION*

James A. Fanto[†]

INTRODUCTION

Investor education is of worldwide concern simply because of demographics. In the developed world, the ratio of retirees to active workers is expected to increase beginning in approximately 2010, particularly on account of the impending retirement of the "baby boom" generation.¹ A continued decline in fertility and increase in longevity further exacerbate this ratio.² Retirement systems are primarily "pay-as-you-go" ("PAYG"), which means that governments tax the earnings of current workers to support retirees.³ If the ratio of retirees to workers is too great, a PAYG system becomes unsustainable because it places a heavy burden on employees through payroll taxes and damages the competitiveness of a country's businesses, which must bear a part of the high labor costs partially attributable to generous pension benefits.⁴ In some countries, therefore, a shift has occurred, or is occurring, from PAYG to "funded" pensions whereby employers and employees set aside retirement funds for the employees during the latter's working

* © 1998 James A. Fanto. All Rights Reserved.

[†] Associate Professor and Associate Director, Center for the Study of International Business Law, Brooklyn Law School. This Author thanks Dean Joan Wexler and Brooklyn Law School for a summer stipend enabling me to complete this Article. This Author would also like to thank all of the participants and commentators at the Brooklyn Law School Conference on "Getting Ready for Individually Managed Pensions," particularly the main organizer of the conference, my colleague Roberta Karmel, and Professor Gregory Alexander of Cornell Law School, who specifically commented on an earlier version of this paper.

¹ See generally GROUP OF TEN, THE MACROECONOMIC AND FINANCIAL IMPLICATIONS OF AGEING POPULATIONS 5-7 (1998).

² See *id.*

³ See AXEL BÖRSCH-SUPAN, RETIREMENT INCOME: LEVEL, RISK, AND SUBSTITUTION AMONG INCOME COMPONENTS 6 (OECD DEELSA/ILO (97) 3, 1997).

⁴ See *id.* at 4 ("Due to international competition, however, economic forces will not permit tax and contribution increases to accommodate current replacement levels, given the magnitude of the demographic changes to come.").

lives.⁵ This funded pension can take the form of an individual retirement account in which retirement funds are "earmarked" for a specific employee who retains some decision-making authority regarding the investment of funds in that account. The shift in the kind of pension plans offered, particularly the growth of the individual retirement account, places more responsibility on the individual for his or her retirement future because he or she must in some cases elect to participate in a pension program and obtain an optimal performance in his or her investing.

If this new "funded" way of producing retirement income is to succeed—and there is no certainty in this regard⁶—individuals will clearly require assistance in order to meet their saving and investing responsibilities, which naturally leads to the issue of investor education or training for ordinary people. Investor education raises, in turn, many subsidiary matters, such as the nature of the education, the identity of the proper party or parties to conduct it, the manner of its delivery, its capacity actually to assist individual investors and, significantly, the role of government in this education.⁷ In another Article, this Author examines investor education in the United States and suggests that U.S. culture makes it *a*, but by no means *the only*, "natural" solution to the responsibility of educating ordinary people for saving and investing for their retire-

⁵ See U.S. GEN. ACCOUNTING OFFICE, PRIVATE PENSIONS: MOST EMPLOYERS THAT OFFER PENSIONS USE DEFINED CONTRIBUTION PLANS 4-9 (GAO/GGD-97-1, Oct. 1996) (presenting statistics of growth in "defined contribution" plans in the United States); Olivia S. Mitchell et al., *Introduction: Assessing the Challenges to the Pension System*, in POSITIONING PENSIONS FOR THE TWENTY-FIRST CENTURY 1, 2-5 (Michael S. Gordon et al., eds., 1997) (explaining U.S. shift to defined contribution plans).

⁶ See STEVEN A. SASS, THE PROMISE OF PRIVATE PENSIONS: THE FIRST HUNDRED YEARS 253 (1997) ("The success of the new initiative would thus seem to depend on an economy far more tranquil, and households far more prescient, than any seen in the past."); BÖRSCH-SUPAN, *supra* note 3, at 11 ("Managing the return risk of funded pensions on an individual level requires in most OECD countries more experience; exceptions are the Anglo-Saxon countries. Households have to 'experience' the force of compound interest to learn that starting too late with saving is very expensive and increases risk exposure.").

⁷ The shift from PAYG to funded plans has a libertarian and anti-government flavor because so many PAYG pension schemes are governmental and because governmental provision of pensions comes at a cost. See BÖRSCH-SUPAN, *supra* note 3, at 7, 13 (observing that governmental provision of pensions adds costs to intergenerational transfers).

ment here.⁸ Specifically, for a long time there have been large, active capital markets in the United States; investing in them is a part of ordinary life for many Americans. With individual retirement plans (particularly those known as "defined contribution plans"), the tremendous growth in the mutual fund industry, and the increasing technological ease of securities trading for ordinary individuals, investing is now becoming even more commonplace.⁹ Individuals thus need and, given the "self-help" ideology prevalent in the United States, expect education to assist them in their investing.

Yet, investor education could be even more important abroad than it is here. Demographic pressures on PAYG pensions exist outside the United States, and, in many developed countries, the situation is much worse than in this country because of the increase in the number of elderly in relation to the working part of the population and the significant government involvement in the provision of pensions.¹⁰ Policymakers abroad are, therefore, increasingly interested in funded systems and even in individual pension accounts.¹¹ Any allocation of responsibility for retirement planning to non-U.S. individuals would, of course, have to be accompanied by investor education. In this country, there have been at least twenty years of experimentation with individual pensions in a culture and economy that favor capital market investing. In other countries, not only will funded pensions be relatively new, but they will also appear in situations where capital markets have not been strong and capital market investing uncommon. Thus,

⁸ See James A. Fanto, *We're All Capitalists Now: The Importance, Nature, Provision and Regulation of Investor Education*, 49 CASE W. RES. L. REV. 104, 126-35 (forthcoming 1998) [hereinafter *We're All Capitalists Now*].

⁹ See *id.* at 113-17.

¹⁰ See GROUP OF TEN, *supra* note 1, at 5-7 (presenting statistics about longevity and increasing ratio of retirees to workers in developed countries).

¹¹ See Glenn Cooper & Peter Scherer, *Can We Afford to Grow Old?*, OECD OBSERVER June-July 1998, at 20, 22 ("Such alternatives [considered by OECD countries] include encouraging privately-funded pensions, promoting increased personal savings and expecting individuals to plan for their own retirement."). There is much anecdotal evidence on this point. See, e.g., Ellen E. Schultz, *U.S. Asset Managers Want Piece of Fattening 401(k)s Overseas*, WALL ST. J., Nov. 20, 1997, at C1 (describing growth in non-U.S. defined contribution plans).

investor education in such countries has the dual purpose of both helping ordinary people in their investment decision-making and introducing them to capital markets.¹²

It is, therefore, important to consider investor education in an international perspective as part of a conference that studies worldwide transformations in Social Security and pensions. Part I of this Article examines in greater detail the background to investor education, particularly the reasons for the shift from PAYG pensions to funded and defined contribution plans, which include demographic pressures, the costs of government provision of pensions and efforts to promote capital market investing. It also discusses the educational implications of the particular need that ordinary people outside the United States have for investor education because of their unfamiliarity with market capitalism. Part II highlights issues raised by the introduction of investor education in cultures different from that in the United States. This Part identifies the central purpose of such education as creating simple rules or "norms" of saving and investing. Because norms, including those related to education, are culturally sensitive, investor education should be flexible, developing at different speeds and in various ways, often depending upon established cultural attitudes toward saving, investing and even market capitalism. Part III discusses the possibility of a worldwide movement towards one model of investor education and makes a modest argument for a limited kind of "model" convergence. This Article concludes by emphasizing that investor education will likely become an important focus in financial market regulation throughout the modern world.

¹² The same challenge for investor education exists in the United States when it targets people who are unfamiliar with capital market investing, such as lower income groups or certain ethnic groups.

I. WORLDWIDE NEED FOR INVESTOR EDUCATION

The new—one could almost say renewed¹³—emphasis on individual retirement planning and thus on investor education is due to a few simple facts and predictions about future trends.¹⁴ Most pension schemes throughout the world are PAYG, with the government often acting as the intermediary between generations of workers as it both taxes the earnings of current employees to pay for the income of current retirees and, in some cases, accumulates a fund for the later retirement of these employees.¹⁵ The financial soundness of such plans is based upon an adequate ratio of workers to retirees and even upon a limited retirement period for the latter.¹⁶ Demographics, however, has steadily undermined PAYG systems as both fertility and mortality rates have fallen.¹⁷ In most developed countries, there are simply fewer employed people available to pay for the elderly's retirement needs. Current workers thus face a bleak future in PAYG programs: For a given PAYG system to continue to exist, current employees must pay ever

¹³ Old age pensions are a relatively recent phenomenon, dating only since the second half of the 19th Century. Before their widespread use in the labor market, individuals looked to themselves and their families for old-age provision. See SASS, *supra* note 6, at 227-28 (summarizing early history of pensions that large businesses designed to attract and keep employees that they trained for specialized positions); Assar Lindbeck, *Incentives and Social Norms in Household Behavior*, 87 AM. ECON. REV. 370, 375-76 (1997) (discussing saving and consumption norms and observing that they helped people save on their own in order to survive before the appearance of the welfare state).

¹⁴ While predictions about demographics should be treated with caution, they should still guide policy discussion. See GROUP OF TEN, *supra* note 1, at 7.

¹⁵ See E. PHILIP DAVIS, PENSION FUNDS: RETIREMENT-INCOME SECURITY AND CAPITAL MARKETS: AN INTERNATIONAL PERSPECTIVE 233 (1994).

¹⁶ See GROUP OF TEN, *supra* note 1, at 7 (describing the "dependency rate": the number of people over 65 as compared to active workers (those between 15 and 65)).

¹⁷ See *id.* at 6-7 (presenting statistics concerning mortality and fertility in developed countries); U.S. GEN. ACCOUNTING OFFICE, RETIREMENT INCOME: IMPLICATIONS OF DEMOGRAPHIC TRENDS FOR SOCIAL SECURITY AND PENSION REFORM 17 (GAO/HEHS 97-81, July 1997) (chart showing steady longevity increase since 1940 in the United States and projected increase in the future). Another factor influencing the retirement situation is the declining labor participation of older persons at increasingly younger ages. See generally JONATHAN GRUBER & DAVID WISE, SOCIAL SECURITY PROGRAMS AND RETIREMENT AROUND THE WORLD 21 (National Bureau of Econ. Research Working Paper No. 6134, 1997) (presenting table showing the Social Security and tax incentives encouraging people to leave the work force in 11 developed countries).

increasing taxes or "generational transfers" to the elderly, without being certain, because of continued demographic trends, that they will receive much retirement benefits themselves.¹⁸ In simple finance terms, the return to such employees on their retirement contributions is low or, in some cases, negative.¹⁹

If members of society were to agree, PAYG pension systems could continue despite these demographic pressures, and, indeed, the present systems are by no means disappearing. Yet, worldwide product market competition may make it difficult for such systems to endure, despite general popular support. A PAYG pension system imposes significant labor costs on industries located in a country operating under such a system. Because markets are increasingly global, companies located in countries with such costs may be at a competitive disadvantage with those located in jurisdictions with lower pension costs (or with pensions tailored closely to employee productivity, which effectively reduces such costs).²⁰ Indeed, high labor costs (which include the pension burden on both employers and employees) may help explain unemployment in developed countries (e.g., France and Germany) as companies in those countries are reluctant to hire new employees and incur the resulting "social" expenses associated with them.²¹ Thus, generous pension benefits structured as PAYG systems applicable to all

¹⁸ See, e.g., Barry Bosworth, *What Economic Role for the Trust Funds?*, in *SOCIAL SECURITY IN THE 21ST CENTURY* 156 (Eric R. Kingson & James H. Schulz eds., 1997) (discussing funding problems in the United States and its implications for a typical U.S. worker).

¹⁹ See, e.g., GARY BURTLESS & BARRY BOSWORTH, *PRIVATIZING SOCIAL SECURITY: THE TROUBLING TRADE-OFFS* 10 (Brookings Policy Brief No. 14, 1997), <www.brook.edu> (referring to the low rate of return on contributions for current generations); see also Alan Murray, *Boomers May Not Like Social Security 'Return,'* WALL ST. J., Jan. 12, 1998, at A1 (referring to a Heritage Foundation study that identifies a rate of return for a single male born in 1960 with an average income as being 0.7%). See generally U.S. GEN. ACCOUNTING OFFICE, *SOCIAL SECURITY: DIFFERENT APPROACHES FOR ADDRESSING PROGRAM SOLVENCY* 12-23 (GAO/HEHS-98-33, June 1998) (discussing solvency issues related to U.S. Social Security program) [hereinafter GAO, *SOCIAL SECURITY*].

²⁰ See Michael C. Jensen, *The Modern Industrial Revolution, Exit, and the Failure of Internal Control Systems*, 48 J. FIN. 830, 835-47 (1993) (describing worldwide competition among world-class companies).

²¹ See BÖRSCH-SUPAN, *supra* note 3, at 4 (discussing economic pressures on PAYG systems); GROUP OF TEN, *supra* note 1, at 10-12 (same).

employees²² may not be sustainable if a country wants its companies to compete in world markets or keep them from relocating to other jurisdictions.²³

In addition to worldwide competitive business pressures, a government's major role in a PAYG system can undermine the system's continued viability. There are many reasons for the loss of confidence in government action during the past several decades, some of them general and others specific to pensions. It is, by now, commonly known that government officials do not serve as neutral arbiters on most policy issues, but are often "captured" by interest groups and/or are "interested" parties in their own right.²⁴ A PAYG system may represent a political solution to social disruption, one that is no longer needed in current circumstances but that remains because it benefits, at others' expense (e.g., the young and employees in non-unionized industries),²⁵ certain politically powerful groups (e.g., organized labor) or members of a government bureaucracy, who would find their regulatory purpose undercut if the pension system disappeared. In fact, in some social activities, the costs of government involvement may outweigh the benefits. The government may inefficiently run a PAYG system²⁶

²² Pensions are always costly to employers, but the employee productivity pensions induce may more than justify their costs. See RICHARD A. IPPOLITO, *PENSION PLANS AND EMPLOYEE PERFORMANCE: EVIDENCE, ANALYSIS, AND POLICY* 85-89 (1997) (arguing that Section 401(k) plans are popular because they enable companies to tailor retirement benefits to worker productivity).

²³ See DANI RODRIK, *HAS GLOBALIZATION GONE TOO FAR?* 24-25 (1997) (observing that, although social arrangements supporting generous pensions might endure, it is difficult to insist that employers and capitalists bear a heavy pension burden when it is becoming increasingly easier for them to move their operations and funds to other jurisdictions).

²⁴ See, e.g., FRED S. MCCHESENEY, *MONEY FOR NOTHING: POLITICIANS, RENT EXTRACTION, AND POLITICAL EXTORTION* 41 (1997) (suggesting that politicians, in effect, solicit "bribes" or "rents" from private firms, which pay so that politicians will not extract profits from them by legislation and regulation); Jonathan R. Macey, *Administrative Agency Obsolescence and Interest Group Formation: A Case Study of the SEC at Sixty*, 15 CARDOZO L. REV. 909, 913 (1994) (describing interest group involvement before the Securities and Exchange Commission and the Commission's own efforts to justify its continued existence).

²⁵ See, e.g., DAVIS, *supra* note 15, at 19 ("Certainly, studies of pension coverage show that workers with higher income and longer job tenure, as well as those in large and unionized firms, are most likely to be covered by private pensions.") (citation omitted).

²⁶ See BÖRSCH-SUPAN, *supra* note 3, at 13 (observing that, by providing generous pensions, the government makes intergenerational transfers costly because

and not obtain the best use of, or best return on, surplus pension funds that do not have to be expended on current retirees.²⁷

Another pressure on a PAYG system is a country's need to produce a securities market and, particularly, an equity "culture." Capital markets provide companies with the most extensive kinds and, in most cases, the cheapest possibilities of finance (e.g., by pricing better a company's risks, by widely disseminating information about the company, by offering financial products adjusted to its risks); provide investors with the best opportunities for investment (e.g., by offering numerous investment products tailored to an investor's particular investment and liquidity needs); and provide countries with a profitable domestic industry (e.g., financial services).²⁸ Capital market financing is, therefore, critical for the success of a country's industries that compete in world markets because, without it, such industries are at a disadvantage with their competitors from countries with capital market financing that offers cheaper capital. Yet, capital markets cannot exist without investors, whether institutions or retail investors, the latter investing either directly or through the institutions. Thus, PAYG systems not only use funds that would otherwise be available for capital market investing, but they also tend to invest funds outside capital markets in accordance with the often political decisions of those in charge of such funds, not

funds flow from the young to the old, and then back again to the young as bequests).

²⁷ This is a key issue behind Social Security reform in the United States. The Social Security Administration invests in U.S. government securities surplus funds (known as "trust" funds) from payroll taxes not needed to pay for the retirement income of existing retirees. One proposal for increasing the return on such funds is to permit their investment in non-government, particularly equity, securities. See generally U.S. GEN. ACCOUNTING OFFICE, SOCIAL SECURITY FINANCING: IMPLICATIONS OF GOVERNMENT STOCK INVESTING FOR THE TRUST FUND, THE FEDERAL BUDGET, AND THE ECONOMY 4-6 (GAO/AIMD/HEHS-98-74, Apr. 1998) (discussing implications of shifting Social Security trust funds from government securities to stocks).

²⁸ See generally Frank H. Easterbrook, *International Corporate Differences: Markets or Law?*, J. APPLIED CORP. FIN. 23, 27 (Winter 1997).

necessarily with economic rationality.²⁹ As a result, PAYG systems can impede the creation of fully functioning securities markets.³⁰

All of the above pressures encourage the creation of "funded," as opposed to PAYG, pensions and even to individually funded pensions. Funding pension plans removes intergenerational transfers, reduces the pension costs for companies (or allows them to tailor pensions more to employee performance), eliminates the government's role as an intermediary in the provision of pensions and boosts capital markets with an infusion of new funds and investors. Funded plans need not be individualized, for an employer could provide a collective retirement vehicle for employees in the traditional "defined benefit" plan.³¹ However, the worldwide trend, as in the United States, is likely to be to establish individual plans not only because they provide more flexibility to companies in terms of labor management but also because the traditional defined benefit plan suffers some of the same problems as government PAYG programs (e.g., they favor older employees at the expense of the younger). Moreover, the traditional defined benefit plan is costly to administer (e.g., demands actuarial expertise and insurance for the pension benefits) and may not be

²⁹ Cf. DAVIS, *supra* note 15, at 170-78 (discussing "allocating" effects of funded pensions).

³⁰ See GROUP OF TEN, *supra* note 1, at 29-30 (describing how funded pensions can increase capital market growth, with resulting benefits); Hans J. Blommestein, *Pension Funds and Financial Markets*, OECD OBSERVER June-July 1998, at 23-27 (describing benefits of the investment of pension funds in capital markets). But see HELMUT REISEN, *LIBERALISING FOREIGN INVESTMENTS BY PENSION FUNDS: POSITIVE AND NORMATIVE ASPECTS* 16-17 (OECD Dev. Ctr. Technical Paper No. 120, 1997) (arguing that evidence shows that funded pensions do not necessarily improve stock market growth, often because such pensions cannot invest in equity securities, but that they do improve the banking industry, which may lead to capital market development since banks provide credit to securities firms). The relationship between funded pensions and capital markets is highly complex and is not simply an issue of positive correlation. See, e.g., GROUP OF TEN, *supra* note 1, at 23-24 (pointing out how funded systems could drive down stock returns by increasing the supply of funds looking for returns).

³¹ Under the typical U.S. defined benefit plan, an employer provides an employee with a pension calculated in accordance with some set formula (e.g., based upon years of service and a percentage of pay). See generally EMPLOYEE BENEFIT RESEARCH INST., *FUNDAMENTALS OF EMPLOYEE BENEFIT PROGRAMS* 69-70 (5th ed. 1997). The employer sets aside, invests and controls the funds for the provision of the retirement income (in the U.S., under complex statutory guidelines).

well suited to a highly mobile workforce.³² Thus, the future is with the individualized retirement plan throughout the developed world, barring the possibility of a political "backlash" in times of capital market stress.³³

As referenced earlier, the above shift from a PAYG system to individualized pensions has occurred in the United States. In fact, the popularity of defined contribution plans has increased to such an extent in the United States that they have become the dominant form of pension plan.³⁴ Even current reform proposals for the federal government's PAYG system, Social Security (which does not provide the generous retirement coverage offered in the government-sponsored PAYG pensions of other countries),³⁵ advocate that employees should have a portion of their Social Security contributions placed in individual accounts that would be subject to their investment decision-making.³⁶ Such rising popularity may be attributed

³² See RICHARD DISNEY, CAN WE AFFORD TO GROW OLDER? A PERSPECTIVE ON THE ECONOMICS OF AGING 110-21 (1996) (explaining how, in defined benefit plans, older workers benefit at the expense of younger workers as they are given early retirement, which typically requires more contributions from the younger); SASS, *supra* note 6, at 240-41 (arguing that defined contribution plans might simply be more suitable in a labor environment where highly-educated employees "rent" their services to many different companies over their working lives, which means that they could not take full advantage of defined benefit plans that require several years for vesting); Robert M. Ball & Thomas N. Bethell, *Bridging the Centuries: The Case for Traditional Social Security*, in SOCIAL SECURITY IN THE 21ST CENTURY, *supra* note 18, at 259-60, 289 n.1 (attributing the decline of defined benefit plans to employer cost savings).

³³ Cf. Mark J. Roe, *Backlash*, 98 COLUM. L. REV. 217 (1998) (arguing that some degree of inefficiency may be built into economic systems to address the potential for political backlash: that is, although one system may be optimal from an economic point of view, it may lead to political instability, which results in the existence of a "second best" system that avoids such political problems). The above statement needs to be qualified; it is often difficult, both politically and practically, to abandon a PAYG system. See GAO, SOCIAL SECURITY, *supra* note 19, at 62-64 (pointing out the transition difficulties of moving to a funded Social Security system, particularly the need for current workers to pay *both* for present retirees *and* for their own future retirement).

³⁴ See *supra* note 5.

³⁵ See GROUP OF TEN, *supra* note 1, at 20 (presenting a table describing features of public pensions in major developed countries; in France, for example, a public pension replaces 70% of one's pre-retirement income, as opposed to 43% and 40%, respectively, in the U.S. and U.K. (figures referring to all income groups taken together)).

³⁶ See, e.g., NATIONAL COMM'N ON RETIREMENT POLICY, THE 21ST CENTURY RETIREMENT SECURITY PLAN 2 (May 19, 1998) (summarizing its reform recommendations on Social Security, which include permitting individuals to direct a portion of

to the fertile environment of the U.S. capital markets. These markets have existed for some time, and individual investing, for better or for worse,³⁷ is part of U.S. culture. In recent years, the mutual fund industry, devoted to providing the individual investor with professional money management and numerous investment products, has greatly expanded.³⁸ From the educational perspective, Americans have always embraced an ideology of self-improvement and social advancement through education.³⁹ Therefore, although individual retirement plans, with the help of an investor education to help ordinary people create optimal portfolios, are not the panacea for all retirement issues,⁴⁰ they make sense in the

their retirement contributions to individual Social Security accounts); MARTIN FELDSTEIN & ANDREW SAMWICK, TWO PERCENT PERSONAL RETIREMENT ACCOUNTS: THEIR POTENTIAL EFFECTS ON SOCIAL SECURITY TAX RATES AND NATIONAL SAVING 1-2 (National Bureau of Econ. Research Working Paper No. 6540, 1998) (proposing plan to give people an income tax credit to deposit up to 2% of their income in individual retirement accounts for Social Security. When they withdrew the funds, such amounts would reduce their Social Security receipts by 75 cents for each \$1; yet the federal government would limit how such funds could be invested).

³⁷ Professor Lynn Stout is probably the foremost U.S. legal academic criticizing the participation of the individual investor in securities markets. See, e.g., Lynn A. Stout, *Are Stock Markets Costly Casinos? Disagreement, Market Failure, and Securities Regulation*, 81 VA. L. REV. 611, 668 (1995) (suggesting that investors are irrational optimists); Lynn A. Stout, *Technology, Transaction Costs, and Investor Welfare: Is A Motley Fool Born Every Minute?*, 75 WASH. U. L.Q. 791, 812 (1997) (suggesting that investors, confused about differing sources of securities information, will engage in excessive speculation).

³⁸ See INVESTMENT CO. INST., 1998 MUTUAL FUND FACT BOOK 1 (1998) (describing growth in total assets in mutual funds from \$1.07 trillion in 1990 to \$4.5 trillion in 1997); see *id.* at 16 (noting that the number of mutual funds has more than doubled since 1990); see *id.* at 44 (observing that approximately 16% of the \$6.6 trillion of total retirement assets are invested in mutual funds).

³⁹ See, e.g., MILTON FRIEDMAN & ROSE FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT 144 (1980) ("Mostly, [the establishment of the school system in the United States] simply reflected the importance that was attached by the community to the ideal of equality of opportunity.").

⁴⁰ For example, they do not address wealth inequalities resulting from differences in generosity of pension plans (or from the lack of such plans for much of the population), as well as problems that may surface in the future, such as the difficulty of making a high return in equity markets when pension funds are bidding up stock prices. See, e.g., Blommestein, *supra* note 30, at 25; see also GAO, SOCIAL SECURITY, *supra* note 19, at 56 ("Even if the market experienced no dramatic or long-lasting downturns, the normal market cycles will create 'winners' and 'losers,' depending on when and how workers invest their 'Social Security' assets in the market and when they liquidate their holdings. Individuals with similar work histories could receive substantially different benefits.").

United States where they can develop in a highly favorable environment.

If countries shift from PAYG pensions to individually funded systems, they must replicate the U.S. situation in many respects, particularly with regard to the attitudes towards, and capabilities of, investing of ordinary people. Academic literature has discussed the harmonization of worldwide financial elites, which include market regulators, institutional investment managers and even (if I may be so bold as to say) academics, who receive similar professional training and have the same values concerning international business and finance.⁴¹ Yet there has been little attention to the necessary harmonization of the "masses" in financial understanding. Ordinary investors, however, are as critical to the survival of capitalism as are the elites and, without their support and participation, institutional investors and capital markets would not exist.⁴² Moreover, any speculation about the importance, and perhaps even the inevitability, of the U.S. model of individualized pensions raises all of the issues and qualifications about the advantages or dominance of one culture (i.e., Anglo-Saxon) over others (i.e., Continental, Asian) that has recently characterized corporate governance debates.⁴³

Education must help prepare ordinary people in developed countries (and even in developing ones)⁴⁴ for the "new world" of individualized pension planning and self-directed pensions. Although investor education has significant and difficult tasks

⁴¹ See generally YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (1996).

⁴² See CONFERENCE BD., 1 INSTITUTIONAL INVESTMENT REPORT: PATTERNS OF INSTITUTIONAL INVESTMENT AND CONTROL IN THE UNITED STATES 7 (1997) (noting that, of the largest U.S. companies, only 47% of the equity capital is owned by institutions). The importance of individual investors has reappeared in the current stock market volatility, as policymakers worry that such investors will lose confidence in securities markets.

⁴³ See, e.g., Andrei Shleifer & Robert W. Vishny, *A Survey of Corporate Governance*, 52 J. FIN. 737, 769-73 (1997) (describing evolution of corporate governance systems).

⁴⁴ See HEMANT SHAH, *TOWARD BETTER REGULATION OF PRIVATE PENSION FUNDS* (World Bank Policy Research Working Paper No. 1791, 1997) (discussing individualized pensions in Latin America, particularly Chile); DIMITRI VITTAS, *THE ARGENTINE PENSION REFORM AND ITS RELEVANCE FOR EASTERN EUROPE* (World Bank Policy Research Working Paper No. 1819, 1997).

in this country, it has an even more onerous program in other countries where there has been little or no investment "culture," where the government has often dominated the economy in a highly paternalistic way, where wealth has been concentrated in the hands of elites and/or where banks or insurance companies provide the main financing to companies and the only investment products for ordinary investors. The shift to individualized pensions may be traumatic in such situations, not only because of the absence of familiarity with the investment world but also because of interest group and political resistance to individual investing, and even to capitalism itself, and because of fear and suspicion of capital markets by ordinary individuals. U.S. investor education aims to make an individual competent in a socially acceptable and desirable activity (itself not always an easy task);⁴⁵ in most other countries, investor education must change attitudes about investing and teach investment basics. It makes sense, therefore, to consider the implications of investor education programs in these more "educationally challenging" cultures.

II. THE CHALLENGES OF NON-U.S. INVESTOR EDUCATION

An assumption here is that culture shapes the format and delivery of investor education. Therefore, investor education should not be the same in all countries: there should be various forms of successful education. The main goal of investor education is to change "norms" of saving and investing of ordinary people. Because common behavioral norms are so much a part of everyday life and thus inseparably linked with a given culture, education creating or affecting them will have to "make sense" within a culture in order to be effective. To support such assertions, it is important to discuss the relationship between norms and investor education. It is then interesting to discuss potential differences in investor education programs occasioned by cultural differences and the strengths and weaknesses of such programs.⁴⁶

⁴⁵ See Fanto, *We're All Capitalists Now*, *supra* note 8, at 26-31.

⁴⁶ As is clear from the following, this Author accepts that culture likely affects saving and investing behavior. This is by no means an uncontested proposition. See, e.g., CHRISTOPHER D. CARROLL ET AL., DOES CULTURAL ORIGIN AFFECT SAVING BEHAVIOR? EVIDENCE FROM IMMIGRANTS (National Bureau of Econ. Research Work-

The central goals of investor education can be simply stated: to encourage people to save funds for retirement (i.e., to defer consumption during the working period of one's life in order to have resources available for retirement) and to invest such funds in accordance with the basic teachings of finance.⁴⁷ These teachings suggest that an individual follow a life-cycle approach to investing, which means adjusting the allocation of kinds of securities in his or her portfolio over the different stages of the life cycle.⁴⁸ There are many possible qualifications and additions to this basic training, such as teaching people to take advantage of tax-favored retirement vehicles and to be generally sensitive to fees in saving and investing. Investor education should also introduce those completely unfamiliar with the "investment world" not only to various kinds of investments and market professionals but also to the nature, structure and regulation of the securities markets. It is important to emphasize, however, that the goal of investor education is not to make ordinary people familiar with sophisticated finance and investment strategies but to give them an elementary background for understanding and *doing*, saving and investing (or for discussing their portfolio knowledgeably with an investment professional). Finance professionals debate amongst themselves the benefits of investment strategies. They all agree, however, on the importance of certain basics, such as asset allocation, and on the harm caused by an investor's neglect of such basics.⁴⁹

People need basic knowledge to save and invest well, but it must come to them in a particular form, which introduces the relevancy of norms. Behavioral studies show that people behave optimally in accordance with their knowledge if they can follow simple rules that allow them to put their knowledge into

ing Paper No. 6568, 1998) (presenting economic debate about the importance of culture in savings behavior and evidence that savings behavior of immigrants to the United States is unrelated to that in their country of origin).

⁴⁷ For a more complete discussion of the nature of investor education, see Fanto, *We're All Capitalists Now*, *supra* note 8, at 125-35.

⁴⁸ See, e.g., BURTON G. MALKIEL, *A RANDOM WALK DOWN WALL STREET* 400-21 (6th ed. 1996) (presenting a basic explanation of life-cycle investing with differing asset allocations depending upon one's stage in life).

⁴⁹ See, e.g., Zvi Bodie & Dwight B. Crane, *Personal Investing: Advice, Theory, and Evidence from a Survey of TIAA-CREF Participants* 4-5 (May 28, 1997) (on file with author) (summarizing basic investing principles).

action.⁵⁰ The rules allow them to overcome the conceptual and willpower impediments to carrying out the desired action. With respect to saving and investing, these impediments typically arise because of an individual's excessive fear of risk, impulsive spending behavior and/or unwillingness to plan for the future.⁵¹ Effective investor education must change behavior by giving individuals guidelines that they can readily apply without much thought or reflection and that thus become habitual.⁵² Such guidelines are actually informal norms or rules whose prevalence in a given society owes much to their simplicity.⁵³ In fact, because a substantial amount of human be-

⁵⁰ See generally Richard H. Thaler & Hersh M. Shefrin, *An Economic Theory of Self-Control*, in RICHARD H. THALER, *QUASI-RATIONAL ECONOMICS* 77, 81 (1991) (observing how people often use learned "self-imposed rules of thumb" to reduce decision-making discretion); Hersh M. Shefrin & Richard H. Thaler, *The Behavioral Life-Cycle Hypothesis*, in THALER, *supra*, at 97 (describing usefulness of "habitual rules" in enabling individuals to resist impulses).

⁵¹ See Richard H. Thaler, *Psychology and Savings Policies*, in 84 AEA PAPERS & PROCEEDINGS 186 (1994) (arguing that psychological factors affect investors so that they do not perform optimal life-cycle investing); see also Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476 (1998) (discussing data calling into question rationality of economic actors); Cass R. Sunstein, *Behavioral Analysis of Law*, 64 U. CHI. L. REV. 1175, 1179-84 (1997) (describing psychological pressures as aversion to loss and to extremes of any kind, unrealistic optimism, overconfidence, etc.).

⁵² Of course, some people want, and can act upon, much knowledge, even though it is surprising how many people knowledgeable about investing do not follow some elementary investing principles. Cf. Brad M. Barber & Terrance Odean, *The Common Stock Investment Performance of Individual Investors* (July 1998) (on file with author) (discussing negative performance (in relation to a benchmark index) of individual investors due to excessive trading); Terrance Odean, *Are Investors Reluctant to Realize Their Losses?*, 53 J. FIN. 1775 (1998) (discussing tendency of investors to hold on to "losing" investments for too long). Yet, investor education means creating an educational framework that can be applied throughout all levels of society. This Author assumes that investor education, particularly if it addresses psychological issues, can be effective in producing optimal investor behavior. This is not an uncontested proposition. See, e.g., Matthew Rabin, *Psychology and Economics*, 36 J. ECON. LIT. 11, 31-32 (1998) (observing that learning sometimes reinforces biases and impressions).

⁵³ See generally Lindbeck, *supra* note 13, at 375-76 (discussing saving and consumption norms); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 351 (1997) (defining "norms" as obligations that the law does not impose but that can be prevalent in groups or even throughout society); Richard A. Posner, *Social Norms and the Law: An Economic Approach*, 87 AM. ECON. REV. 365, 365 (1997) ("By 'social norm' ('norm' for short) I shall mean a rule that is neither promulgated by an official source, such as a court or a legislature, nor enforced by the threat of legal sanctions, yet is regularly complied with (otherwise it wouldn't be a rule).") (footnote omitted).

havior in society is based upon such norms, current legal policy analyses study their importance and interaction with law.⁵⁴

The norms of saving and investing to be created by investor education must be built on, and interact with, the acceptable ways of behaving in a given culture. Indeed, to be effective, investor education must try to use, rather than ignore, existing related norms—unless they undermine optimal saving and investing. In any culture, one must understand not only the norms currently affecting (or likely to affect) these activities but also the interaction between such norms and formal or informal education in order to predict, as a policy matter, the kind of investor education appropriate for each particular setting. This analysis is difficult because it is not focusing on the behavior of a small, easily identifiable group or an “elite,” but on the norms of the entire population and thus on certain foundational features of a culture.

For example, the relevant U.S. cultural setting includes the following features (among others) that shape investor education. As noted earlier, in the United States there is a history of capital market financing and a general popular familiarity with (even a “fatal attraction” to)⁵⁵ the stock market. The number of people unfamiliar with investing is shrinking as this activity has become ordinary, not reserved by right or privilege to a small group.⁵⁶ Because there exists an ideology of social advancement in this country that is based on financial achievement, and because investing is a way of increasing, sometimes significantly, one’s income, the U.S. ideological grounds for saving and investing education are propitious.⁵⁷

⁵⁴ For citations to the legal and economic literature, see McAdams, *supra* note 53, at 343-50.

⁵⁵ See ROBERT J. SHILLER, MARKET VOLATILITY 59 (1989) (discussing how people are attracted to investing much in the same way that they are drawn to gambling).

⁵⁶ Indeed, an important focus of U.S. retirement education policymakers is on the groups (e.g., certain minority groups, women, the poor) who remain unfamiliar with investing. See generally CHRISTOPHER CONTE, THE NATIONAL SUMMIT ON RETIREMENT SAVINGS: AGENDA BACKGROUND MATERIALS 16-17 (1998); see also James S. Hirsch, *How Jesse Brown Gets Reluctant Customers To Dive Into Stocks*, WALL ST. J., Sept. 17, 1997, at A1 (describing effort of African-American broker to introduce others of his ethnic group to stock investing).

⁵⁷ Cf. YANKELOVICH PARTNERS INC., 1997 ANNUAL SIA INVESTOR SURVEY: INVESTORS’ ATTITUDES TOWARDS THE SECURITIES INDUSTRY 5 (1997) (in an investor survey prepared for the Securities Industry Association, 64% of investors surveyed

Many ordinary people simply want to share in a wealth-generating process and to learn how to engage in the activities themselves.⁵⁸ Moreover, U.S. investors can use rapidly-expanding, new communication technology, given its popularity and prevalence here.⁵⁹

Some additional features of the U.S. cultural situation support, and others undermine, the inculcation of saving and investing norms. Strong consumption norms run counter to saving behavior, and education cannot work unless it teaches that deferred consumption is preferable to present consumption (e.g., because current saving and investing allows greater consumption later).⁶⁰ U.S. norms and attitudes relating to education, which are relevant for investor education, reflect an ideology of self-improvement through education and an expectation of a right to education co-existing with a highly decentralized, even if standardized, educational system.⁶¹ Education is viewed not necessarily as a one-time experience but as a continuous process available in different contexts from many different kinds of education providers.⁶² In many respects,

had a favorable view of the securities industry) [hereinafter 1997 SIA SURVEY]; see also DANIEL FISCHER, *PAYBACK: THE CONSPIRACY TO DESTROY MICHAEL MILKEN AND HIS FINANCIAL REVOLUTION* 1-2 (1995) (citing Alexis de Tocqueville's observation that the pursuit of wealth is fundamental to American culture).

⁵⁸ Although one always hears stories that it is time to get out of the stock market when even a taxi driver discusses "hot tips" for securities trading, this is nonsense, despite the current stock market volatility. When even lower income individuals of a country care about investing, the country has a good basis upon which to build a solid investor education program.

⁵⁹ See 1997 SIA SURVEY, *supra* note 57, at 12 (referring to growing numbers of investors who use personal computers to obtain investment information). But see ARTHUR B. KENNICKELL & MYRON L. KWAIST, *WHO USES ELECTRONIC BANKING? RESULTS FROM THE 1995 SURVEY OF CONSUMER FINANCES* 18 (Federal Reserve Bd. Fin. and Econ. Discussion Series No. 1997-35, 1997) (on the basis of consumer research, arguing that consumer use of electronic means to make saving and investing decisions is very limited). See generally John C. Coffee, Jr., *Brave New World?: The Impact(s) of the Internet on Modern Securities Regulation*, 52 BUS. LAW. 1195 (1997) (discussing the effect of new technology—particularly the World Wide Web—on securities regulation).

⁶⁰ This is, in fact, how investor education for teenagers is sometimes presented. See, e.g., MERRILL LYNCH, *THE FURTHER ADVENTURES OF SAVIN' DAVE AND THE COMPOUNDERS* (1997) (comic book with a saving and investing message). On U.S. cultural norms that encourage consumption, see B. DOUGLAS BERNHEIM, *THE VANISHING NEST EGG: REFLECTIONS ON SAVING IN AMERICA* 66-92 (1991) (discussing how U.S. popular culture encourages present consumption).

⁶¹ See Fanto, *We're All Capitalists Now*, *supra* note 8, at 118-19.

⁶² Supporting evidence for this remark is the prevalence and popularity of

education providers compete with their services and products in a "market" for education. A further ideological view affecting the delivery of investor education is that neither the state nor federal government is seen as necessarily the most competent party to accomplish, in any centralized fashion, all social tasks, including education.⁶³

What implications does the above have for U.S. investor education? The U.S. educational system generally provides investor education to young people but not in a standardized way. Its provision varies from state to state, often appearing in a basic economic or finance class or in a revised home economics course.⁶⁴ The curriculum, crafted by educators, financial regulators and professionals in the financial services industry, is designed to convey skills that will enable ordinary people to participate in the U.S. investment world.⁶⁵ The most salient characteristic of U.S. investor education is that it has become a market commodity supplied by a bewildering number of providers, both profit-making, nonprofit and even governmental, who offer it to different kinds of people (e.g., children, adults, sophisticated, unsophisticated) in different ways.⁶⁶ In light of U.S. ideology, it is not surprising that much investor education involves essentially self-education that allows individuals to

continuing education programs.

⁶³ Cf. MARK J. ROE, *STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE* 29-31 (1994) (citing American experiences of resistance to centralized government). One has only to think of the school voucher movement as an example of this populist attitude as it affects education. See ANDREI SHLEIFER, *STATE VERSUS PRIVATE OWNERSHIP* 20-25 (National Bureau of Econ. Research Working Paper No. 6665, 1998).

⁶⁴ See generally B. DOUGLAS BERNHEIM ET AL., *EDUCATION AND SAVING: THE LONG-TERM EFFECTS OF HIGH SCHOOL FINANCIAL CURRICULUM MANDATES* 3 (National Bureau of Econ. Research Working Paper No. 6085, 1997) (presenting background, and empirical research on results, of high school financial education).

⁶⁵ See, e.g., NATIONAL INST. FOR CONSUMER EDUC., *THE BASICS OF INVESTING: A GUIDE FOR EDUCATORS* (1997) (providing model curriculum for school investor education course).

⁶⁶ See Fanto, *We're All Capitalists Now*, *supra* note 8, at 142-45 (discussing investor education products and services offered by profit-making and nonprofit firms). For example, nearly all consumer-oriented financial services firms provide investor education, see, e.g., <www.fidelity.com> (educating consumers about the importance of saving, elementary finance, kinds of investments, tax-reducing retirement options, kinds of mutual funds, investment basics, asset-allocation strategies, etc.), as do nonprofit organizations whose mandate is to help ordinary investors, see, e.g., <www.aarp.org/finwhat.html> (web site of American Association of Retired Persons ("AARP")).

teach themselves about saving and investing when managing their own portfolios.⁶⁷ This education makes considerable use of the new computer technology with many providers offering educational services on the World Wide Web or in CD-Rom form.⁶⁸

Investor education will be different (or, if it does not yet exist, it *should* be different) in a country that does not have the U.S. ideology of individualism and consumerism, familiarity with and attraction to investing, decentralized and continuous education and favorable view of technology. A global "one-size-fits-all" approach to investor education will probably not work. A few examples suggest the reasons supporting such assertion. If there is little social mobility (or a perception of such) in a particular country, if the mobility depends on personal characteristics other than wealth (e.g., ethnic group or family background) and/or if investing is seen to be an activity of only a certain "class," the investor education for ordinary people in such a country cannot be identical to that in the United States. It could hardly invite them to participate in a world from which they know they will be excluded for reasons other than money, despite their acquisition of investing norms. An education encouraging them to invest might also run counter to their own group or "class" identity by suggesting that they should become proficient in capital market investing. In another country, successful investor education might have to build upon social or familial solidarity, as opposed to the ideology of individual advancement common in the United States.⁶⁹

⁶⁷ See, e.g., <www.plan.ml.com/investor> ("Investor Learning Center" of full-service broker Merrill Lynch, which provides information and interactive forms to design investment goals and portfolios).

⁶⁸ See, e.g., Edward C. Baig, *For Investors of All Stripes, A Cornucopia on the Net*, BUS. WK., Dec. 22, 1997, at 104 (detailing investor informational and educational resources on the World Wide Web).

⁶⁹ One thinks, for example, of the recent situation in Korea where investors were encouraged (and apparently willing) to invest in securities of Korean companies in order to stabilize its economy. This Author does not mean to present a caricature of the "Old World" vs. the "New" or to deny that educators (and financial services firms) could use images of social and class advancement in their investor education materials.

Investor education would have to take a particular form in a country without any tradition of capital market investing or where such tradition had fallen into disuse for a lengthy period of time because of a disruption in the domestic capital markets.⁷⁰ Because of the general unfamiliarity with investing activities that exists in such a country, investor education must compensate for more than a mere lack of information about investing and securities markets, even among the elite. The absence of capital market investing creates other attitudes and norms that will not disappear easily and that education must also address (although education, alone, cannot create capital market financing). Small capital markets, for example, often go hand in hand with family ownership and/or bank financing of companies.⁷¹ Ordinary people in such environments might be accustomed to investing only in small family-run businesses or through banks or insurance companies where they develop relations with bank professionals.⁷² In these settings, individuals might either be suspicious of any investor education that leads them away from their traditional investments, or they might expect to deal with only known financial professionals as education providers and be reluctant to accept any others in this role. Providers of investor education would have a significant challenge to overcome the suspicion of capital market investing, and it is questionable whether education alone, without something else (e.g., tax incentives, changes in corporate and securities law to favor minority

⁷⁰ See generally William N. Goetzmann & Philippe Jorion, *A Century of Global Stock Markets* (Dec. 1996) (on file with the author) (describing the history of capital markets and observing that the continuity of the U.S. markets owes much to the fact that they have not been disrupted by war).

⁷¹ See, e.g., RAFAEL LA PORTA ET AL., *CORPORATE OWNERSHIP AROUND THE WORLD 19-20* (1998) (observing that of the largest corporations in the 27 richest countries, using 20% as a control benchmark, only 36% of these firms are widely held, and these come almost exclusively from the United States, United Kingdom, Japan (i.e., countries with large capital markets). The dominant form of control is family ownership for the rest of the firms).

⁷² See Jonathan R. Macey, *Italian Corporate Governance: One American's Perspective*, 1998 COLUM. BUS. L. REV. 121, 140-43 (1998) (observing that, given the dominance of Italian capital markets by wealthy families, ordinary people invest in small, family-run enterprises outside such markets). But see Robert Bonte-Friedheim, *Italians Flock To Funds*, WALL ST. J., Feb. 9, 1998, at C23 (observing that Italians increasingly invest in mutual funds, including those concentrating on Italian companies, because the companies "have realized that their cost of capital falls if they become more investor friendly.").

shareholders⁷³) could induce people to try this activity. The educational outcome, moreover, might not be optimal where investors are willing to listen to only certain financial professionals, because the latter might design the education to favor themselves and their investment products—a solution that may not promote proper capital market financing.⁷⁴

The kind of investor education suitable for this country, which comes from numerous providers in various forms, often delivered by sophisticated technology, for different age groups and educational levels, may not be appropriate for a country (e.g., France) where education is the product of a highly centralized, hierarchical government bureaucracy that attaches enormous social value to the educational outcome.⁷⁵ In such a country, it is difficult to imagine *credible* investor education coming from a source other than the government bureaucracy (otherwise, it would not count as education) and not following the standard educational model. It was long the boast of the educational establishment in France (to continue the example) that, at any time in the school day, the Minister of Education could look at his curriculum and identify what was being

⁷³ See LA PORTA ET AL., *supra* note 71, at 30 (discussing the legal reforms needed to promote capital market investing in countries where majority shareholders abuse minorities). See also RAFAEL LA PORTA ET AL., AGENCY PROBLEMS AND DIVIDEND POLICIES AROUND THE WORLD 20 (National Bureau of Econ. Research Working Paper No. 6594, 1998) (observing that in civil law countries with weak minority shareholder protection, growth companies have a higher dividend payout ratio than mature companies (the opposite of the case in common law countries) because, without a legal structure protecting these investors, such companies must demonstrate to them that they will return funds in order to raise the needed capital for growth).

⁷⁴ See, e.g., *Fund management: Opening Europe's Coffers*, ECONOMIST, June 27, 1998, at 76, 78 (observing that German banks direct their customers to their own investment funds and away from those of their Anglo-Saxon competitors). These relationships may be eroding with more European-wide competition in investment funds and may not foreclose other kinds of investor education. See, e.g., <www.dai.de> (web site of Deutsches Aktieninstitut [German Share Institute] that is devoted to educating ordinary Germans on investing). The Author thanks Bernd Singhof for directing him to this web site.

⁷⁵ See generally PIERRE BOURDIEU & JEAN-CLAUDE PASSERON, LA REPRODUCTION: ÉLÉMENTS POUR UNE THÉORIE DU SYSTÈME D'ENSEIGNEMENT (1970) (describing French educational system and its effect on future success); see also MICHEL BAUER & BÉNÉDICTE BERTIN-MOUROT, ADMINISTRATEURS ET DIRIGEANTS DU CAC 40: DES LOGIQUES SOCIALES D'AUTOCONTRÔLE AU COEUR DU GOUVERNEMENT D'ENTREPRISE 15-19 (1997) (discussing social background of French company executives from owning families, high state officials and elite schools).

taught in each class throughout the country.⁷⁶ Therefore, in French investor education, a French man or woman might be taught to follow routinely a set strategy for investing (e.g., these are the rules for investing; apply them!). Although this approach to education may not be the best for many activities, even in France, it may be useful for inculcating simple rules and norms of saving and investing and may be the most effective one in that particular country.

The above example suggests that investor education may succeed even if it does not have the social, normative and institutional background of the United States that is so favorable to capital market investing. Indeed, if certain structural reforms are undertaken in a particular country, such as improvements in the laws protecting small shareholders (e.g., lowering rate of taxation of capital gains), the normative foundation of the country may prove as propitious for such investing as the United States. In Japan or Italy, for example (or really in any developed country other than the United States),⁷⁷ there may exist a greater commitment to saving and stewardship of assets for later generations and thus less tendency to consume current assets and income. This social emphasis upon saving may make up for, or even outweigh, the lack of a tradition in, or hostility to, capital market investing, provided that individuals learn to invest in the capital markets.⁷⁸ Again, the central challenge for investor education will be to make use of existing norms so as to promote optimal saving and investing.

III. CONVERGENCE IN INVESTOR EDUCATION

An issue that surfaces in any comparative discussion of contemporary business behavior or financial services is convergence.⁷⁹ In investor education, the question is simply whether

⁷⁶ See ANTOINE PROST, *HISTOIRE DE L'ENSEIGNEMENT EN FRANCE 1800-1967* 338 (1968) (citing remark of a minister in the Second Empire, as repeated by Hippolyte Taine).

⁷⁷ See GROUP OF TEN, *supra* note 1, at 28 (presenting statistics on savings rates in major OECD countries); BERNHEIM, *supra* note 60, at 8 (same).

⁷⁸ Indeed, saving is not a problem in Japan, but productive investment of the saving is. See Jacob M. Schlesinger & David P. Hamilton, *Thrift Shift: The More the Japanese Save for a Rainy Day, The Gloomier It Gets*, WALL ST. J., July 21, 1998, at A1.

⁷⁹ See Shleifer & Vishny, *supra* note 43.

one form of education is "better" than any other and, as a policy matter, should be advocated in all developed countries. Convergence, however, is a sensitive topic in policy circles. If, on the one hand, one asserts that convergence is likely, the assertion can be attributed to a U.S. cultural imperialism, particularly on business or financial matters. If, on the other hand, one suggests that there will be no convergence but the persistence of cultural differences, the position can be seen as a politically-motivated unwillingness to accept economic reality.⁸⁰

Yet, convergence can be presented in a somewhat "neutral" way. There are existing or imaginable forms of investor education that have worked, or can work, in different cultures. The central convergence question is whether one form is the most suitable for present economic circumstances (which are the same in many countries throughout the developed, and even developing, world) because it produces the optimal saving and investing behavior of ordinary people.⁸¹ If this "ideal" investor education can be identified, one should promote it as a policy matter in most cultural settings. It may be difficult, however, to eliminate politics, or at least economic and cultural power, completely from this analysis. An aspect of a particular culture, like U.S. investor education, may be most suitable to current economic circumstances because this culture has been so instrumental in producing these circumstances in the first place.

The corporate governance analogy exemplifies these points about convergence. Convergence in corporate governance practices (if it exists) is arguably due to the decline of ownership structures (especially government, family and financial institution ownership) that made other forms of corporate governance possible.⁸² If and when these traditional owners disappear to

⁸⁰ In corporate governance debates, Judge Easterbrook and Professor Roe are representative of these positions. See Easterbrook, *supra* note 28 (position supportive of convergence); Mark J. Roe, *Chaos and Evolution in Law and Economics*, 109 HARV. L. REV. 641, 643-44 (1996) (suggesting that certain behavior and practices are "path dependent" or determined by historical and cultural circumstances).

⁸¹ See Ronald J. Gilson, *Corporate Governance and Economic Efficiency: When Do Institutions Matter?*, 74 WASH. U. L.Q. 327, 335 (1996) (arguing that whether a given system of corporate governance facilitates companies' adaptation to economic circumstances is the critical issue).

⁸² But see LA PORTA ET AL., *supra* note 71, at 20-21 (observing that the U.S.

be replaced by dispersed owners (albeit many of whom are increasingly coordinated institutional owners such as pension and mutual funds), corporate governance practices prevalent in the United States, such as the emphasis on the board of directors and their duties, may be adopted because they are suitable for the new situation: they help the new kind of owner monitor corporate agents.⁸³ Corporate governance convergence would thus show a rational acceptance of a U.S. system that was developed and works well for dispersed owners. A political view of this phenomenon would add that, because U.S. institutional investors are supplying much of the capital of non-U.S. firms, they actively insist that these companies adopt corporate governance practices with which they are familiar.⁸⁴

In corporate governance, therefore, a combination of inter-related foreign and domestic forces may be removing traditional corporate governance in many countries and replacing it with something that looks like the U.S. system.⁸⁵ In the pension area, similar pressures undermine state-provided pensions and lead to individually-funded pensions. The question is simply whether, as is the case with corporate governance, other cultures will adopt U.S. investor education practices because the latter are the best suited for current economic circumstances. Despite the country and cultural differences in investor education, will non-U.S. policymakers increasingly look to the U.S. model of investor education if they adopt the individual saving and investing decision-making in pensions that has become so prevalent here?

corporate governance system of dispersed ownership is relatively uncommon throughout the world).

⁸³ There are numerous examples of worldwide interest in, and acceptance of, U.S. corporate governance practices. See, e.g., BUSINESS SECTOR ADVISORY GROUP ON CORPORATE GOVERNANCE, *CORPORATE GOVERNANCE: IMPROVING COMPETITIVENESS AND ACCESS TO CAPITAL IN GLOBAL MARKETS: A REPORT TO THE OECD* (1998) (recommending many corporate practices that are common in the United States).

⁸⁴ See, e.g., James A. Fanto, *The Transformation of French Corporate Governance and United States Institutional Investors*, 21 *BROOK. J. INT'L L.* 1, 18-28 (1995) (describing activism of U.S. institutional investors abroad).

⁸⁵ See James A. Fanto, 1998 *COLUM. BUS. L. REV.* 97 (1997) (discussing such factors as the need for inexpensive financing by world-class companies, the pressure to reduce large government deficits, etc.).

In the short term, there will likely be no worldwide convergence toward U.S. investor education because of cultural dissimilarities. However, another, specifically U.S., reason exists. Despite the explosion of investor education products and services in the United States, investor education here is a recent phenomenon.⁸⁶ It is thus premature to assume that this education has a "classic" U.S. form similar in nature to the U.S. corporate governance practices that have a long and complex history and that have been in many cases codified in law.⁸⁷ Moreover, although there exist the common characteristics of U.S. investor education discussed above, different educational approaches appear in the United States. For example, general investing education presents the many investing possibilities, while pension investing education helps investors to decide among the restricted choices in a pension plan so as to create an optimal portfolio. Forms of education (like different corporate governance practices) can co-exist in one country; indeed, one characteristic of U.S. investor education is its variety.

Non-U.S. policymakers seeking to develop individualized pensions and capital markets may be justified in borrowing features of U.S. investor education. In the United States, investor education outside the school environment has become a commodity generally supplied by financial institutions or consumer organizations. This has not produced adverse consequences for ordinary people, because the educational product and services are standardized (and an investor can use one or the other and receive the same general training). Indeed, competition in educational products and services among mutual fund companies, banks and brokers (as well as nonprofit investor groups) has resulted in innovative educational formats that

⁸⁶ See Fanto, *We're All Capitalists Now*, *supra* note 8, at 142-45 (describing these efforts).

⁸⁷ But see 29 U.S.C. §§ 1146-47 (1997) (codified version of the Savings Are Vital to Everyone's Retirement Act of 1997, amending ERISA, among other things, "to initiate the development of a broad-based, public education program to encourage and enhance individual commitment to a personal retirement savings strategy.").

help consumers understand the strengths of financial institutions, the investments that these institutions offer and various investing strategies (e.g., costs involved in investments).⁸⁸

An active market in investor education promotes a country's securities markets and ultimately enhances investor well-being in a situation of self-directed pensions. The U.S. market offers investors many investment products and services that rarely belong—at least for any length of time—to a few financial institutions, that offer both domestic and foreign investments and that often compete on cost. Such a selection of products and investment approaches helps an investor better design his or her portfolio. As a policy matter, therefore, it makes sense for a country to encourage all its financial institutions, as well as interested nonprofit groups, to provide investor education because it not only enhances competition among these institutions in countries where this competition has often been absent but also because it can lead to the provision of educational products and services to ordinary people at low or no cost.⁸⁹ This approach to education could co-exist with a country's "official" government-supervised or sponsored investor education, whether inside or outside the educational system. In fact, market efforts can only benefit the official investor education, which can borrow the educational innovations and expertise of market professionals, as happens in the United States.⁹⁰ Indeed, if a country encourages competition in investor education among all kinds of financial intermediaries, the competition may better identify the optimal kind of education for the country and its cultural setting. A lesson on investor education from the United States does not, therefore, have to lead to more American dominance in world finance, may reaffirm cultural diversity and, even more importantly, may

⁸⁸ See Fanto, *We're All Capitalists Now*, *supra* note 8, at 144-45.

⁸⁹ See SHAH, *supra* note 44, at 34 (observing that, in general, all financial intermediaries should be allowed to compete to provide pensions). Hemant Shah rightly observes that such competition can have an important "bottom line" result: it can improve returns to investors as intermediaries compete to offer the best return.

⁹⁰ See *supra* note 65 (citing educational curriculum that is the product of a collaboration between educational specialists and financial professionals working for the National Association of Securities Dealers).

efficiently create the saving and investing competence that is so critical to the survival of everyone in a world of self-directed pensions.⁹¹

CONCLUSION

Investor education is becoming important in developed and even developing countries as, at this century's end, a shift from government-sponsored and company-directed pensions to individually funded and self-directed savings vehicles is underway. The transformation, which will move at varying speeds in different countries, is likely not to reverse itself, because demographics throughout the developed world is undermining the traditional PAYG pension system as the ratio of retirees to active workers significantly grows due to an increase in longevity and a decrease in fertility. Governments no longer have the freedom to provide generous pensions themselves or to mandate that companies competing in worldwide markets do the same for all their employees. The responsibility for retirement planning is thus falling upon individuals and, because they clearly need help to accomplish a task so critical to their future survival, education provides one form of this aid.

This Article argues that the goal of investor education is normative: it must convey to individuals basic, easily-applied rules about saving and investing that allow them to save and invest optimally, which also means enabling them to resist some common behavioral problems associated with these activities. Because norms implicate the fundamental behavior in a culture, investor education must generally build upon a country's existing normative structure in order to be successful. Investor education, therefore, will likely take different forms in different counties because existing norms, including norms related to education, vary across cultures and countries.

⁹¹ There is a pragmatic side to this argument. If, as is happening, U.S. financial institutions increasingly move throughout the world to offer their services in other countries, particularly for self-directed pensions, they are likely to bring with them their approaches to investor education. See, e.g., Anita Raghavan & Sara Calian, *Merrill's \$5.3 Billion Overseas Bet: Mercury Deal Expands Reach*, WALL ST. J., Nov. 20, 1997, at C1 (describing Merrill Lynch's acquisition of Mercury Asset Management and its plans to develop asset management outside the United States).

In short, investor education is likely to be culturally specific and unlikely to follow a "one-size-fits-all" U.S. model. If some convergence in educational products and approaches towards a U.S. model occurs, it may happen in the marketplace for financial services where financial firms providing standardized educational products or services in the United States expand their markets outside this country (or lead to imitation by foreign financial services firms). Such convergence is desirable insofar as it offers ordinary people more investor education, particularly through innovative technology, and may lead to the best kind of education in a country. The services and products of firms, however, will in the short run supplement, not replace, "official" forms of investor education (unless such forms do not exist).

The goals of investor education are important and far-reaching, more so outside the United States where in many countries there is no recent history of market capitalism or individual investing in securities. Not only will investor education (together with other policies) help a country's citizens obtain adequate retirement income, but it may enable the kind of popular participation in securities markets without which the capitalist system cannot be sustained. Even in developed countries, if individuals do not acquire an everyday familiarity with the basics of investing, capital market financing cannot rest on a solid foundation. In a crisis, it may be swept away or seriously curtailed, to be supplanted by other traditions of economic direction that, in some cases, have only recently receded.