

**Likely Lessons in Unlikely Places:
Comparative Review of Legal Education Policy
between the United States and East Germany**

April M. Hathcock

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ABSTRACT

Legal education in the United States is in a period of crisis. Everyone involved, from legal educators to law students to current practitioners, has engaged in intense discussion about the various forms this reform could take, but little has been actually implemented. There has, however, been a general leaning toward creating a legal education policy that possesses a more comprehensive and balanced practical focus. In this vein, legal education policy makers have been looking to other countries and even other disciplines for ideas on how to build a better legal education system in the U.S. With this in mind, being open to finding lessons in the unlikeliest of places, this article looks to the legal education policy in East Germany and the lessons that today's American legal education policymakers can learn from it with a particular emphasis on post-curricular focus and the balance between theory and practice.

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I. INTRODUCTION

Legal education in the United States is in a period of crisis. For the longest time, more and more graduates have been leaving American law schools in pursuit of fewer and fewer jobs.¹ In recent years, law schools have seen a drastic reduction in the number of law school applicants, as potential students and employers look to law schools to reform in keeping with the rough economic times.² Everyone involved, from legal educators to law students to current practitioners, has engaged in intense discussion about the various forms this reform could take, but little has been actually implemented. There has, however, been a general leaning toward creating a legal education policy that possesses a more comprehensive and balanced practical focus.³ In this vein, legal education policy makers have been looking to other countries and even other disciplines for ideas on how to build a better legal education system in the U.S.⁴

This being the case, it is sometimes surprising where the most effective lessons for reform can be found. Most people, when they think of the former nation-state commonly known as East Germany—if they think of East Germany—think of a decrepit communist territory that was doomed to pass away into the historical ether from the very start. Whatever lessons we could learn from the German Democratic Republic are cautionary tales the ephemeral nature of political structures built on faulty ideals. Yet, what many do not realize is that not all of East Germany's policymaking attempts were inherently faulty. Particularly, in the area of legal education, East German leaders produced a written

¹ Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J. (Jun. 25, 2012, 10:18 AM), <http://online.wsj.com/news/articles/SB10001424052702304458604577486623469958142>.

² Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs and Jobs Are Cut*, N.Y. TIMES (Jan. 30, 2013), <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html>.

³ See generally WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS (2007) (recommending a more profession-focused approach to legal education).

⁴ See, e.g., Jennifer S. Bard, "Practicing Medicine and Studying Law": *How Medical Schools Used to Have the Same Problems We Do and What We Can Learn from Their Efforts to Solve Them*, 10 SEATTLE J. SOC. JUST. 135 (2011); John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 424–29 (2007) (discussing innovations in legal education in Canada and the United Kingdom).

standard that combined a comprehensive and balanced post-curricular and practical focus. They essentially succeeded, in writing at least,⁵ to create the kind of legal education policy that we have been struggling for in the U.S. for the last decade or so.

With this in mind, being open to finding lessons in the unlikelyst of places, this article looks to the legal education policy in East Germany and the lessons that today's American legal education policymakers can learn from it. The article begins with a brief description of the two major documents that represented East German legal education policy, followed by a summary of the political history of the area. The article then proceeds through an analysis of the lessons that can be learned from the East German legal education policy, with particular emphasis on the clarity and consistency of its post-curricular focus and the balance between theory and practice created by the use of required *practica* and faculty practitioners. The article ends with a discussion of the fundamental changes in framework that need to occur in order for American legal education reform to truly take place.

II. STUDY PLAN AND POLICY STATEMENT

The two main documents representing East German legal education policy that serve as the focus for this article are the *Study Plan for the Primary Directions in Educations for Law*⁶ ("Study Plan") and the *Conception for the Structure of Training and Further Education of Jurists in the German Democratic Republic*⁷ ("Policy Statement"). Both documents detail the pedagogical and theoretical framework for legal education in East Germany as determined by its leaders during the 1980s. While the main focus of the two documents is the same, there are some differences that make an examination of both documents necessary.⁸ They are essentially best viewed in tandem.

A. Study Plan

⁵ This article does not attempt to examine the implementation of this policy, in part because it did not exist long enough to be fully implemented, in part because the lessons to be learned from this policy lie primarily in the written ideals.

⁶ DANIEL JOHN MEADOR, IMPRESSIONS OF LAW IN EAST GERMANY 213–37 (1986).

⁷ Daniel John Meador, *Legal Education in East Germany: The 1988 Policy Statement*, 16 REV. SOCIALIST L. 81 (1990).

⁸ *Id.* at 81–82.

The Study Plan was issued in 1982 by the Council of Ministers in the Ministry of Higher Education.⁹ In particular, it was “authorized as an obligatory study plan for instruction at GDR

Nevertheless, as has been stated before, there are aspects of this Study Plan and the accompanying Policy Statement that are well worth examining in light of modern American capitalist legal education.

B. The Policy Statement

The Policy Statement for legal education in East Germany was released in 1988 as the brainchild of the East German Communist Party and the Council of Ministers.¹⁷ The main focus of the Policy Statement is similar to that of the Study Plan but with an increased focus on the social and political changes that necessitate a renewed focus on standardizing legal education.¹⁸ It begins with a section detailing the “Societal Demands on the Development and Tasks of Law” and continues with policies that focus primarily on improved training for new lawyers.¹⁹ Together with the Study Plan, the Policy Statement provides a detailed schema for the theoretical and practical formulation of legal education in East Germany.

III. BRIEF HISTORY OF EAST GERMANY

To fully understand the philosophy behind the legal education policy of East Germany, it is essential to understand its history. The German Democratic Republic (“GDR”), popularly known as “East Germany,” arose in the aftermath of World War II.²⁰ Immediately following the defeat of the Nazi forces in early 1945, the Allied forces met during the famed Yalta and Potsdam Conferences to determine how the territory of the Third Reich should be divided.²¹ The western portion of the country fell under

Inseparably bound up with the universal strengthening of the socialist state are the systematic improvement of the socialist judicial system and guarantee of socialist legality

Accordingly, high and constantly improving standards have to be set for the political and ideological education and for the theoretical and practical training of the students who enroll in the GDR university courses of political science and law.

Id. at 214–15.

¹⁷ Meador, *supra* note 7.

¹⁸ *See id.* at 81–83.

¹⁹ *Id.* at 83–96.

²⁰ PETER E. QUINT, *THE IMPERFECT UNION: CONSTITUTIONAL STRUCTURES OF GERMAN UNIFICATION* 11 (1997).

²¹ *Id.* at 10.

the control of the Western world, to be divided equally between the United States and Great Britain, and later France.²² The eastern portion of the country fell under the purview of the then-Soviet Union.²³ In addition to the overarching geo-political division of the German territory, the capital city of Berlin was also divided into four sectors, belonging to the four respective Allied nations.²⁴ Nonetheless, at the time, all of the Allied nations held a unified goal to see the German territory reunified and fully reconstructed in the near future.²⁵

Unfortunately, the rise of the Cold War put a considerable damper on these plans. Hostilities between the West and the Soviet Union, particularly between the United States and the Soviet Union, created an ever-deepening rift between the eastern and western German territories.²⁶ By 1949, the two sectors had completely split to become two entirely independent nation-states.²⁷ The three sectors falling under British, French, and American control combined to create the Federal Republic of Germany, commonly known as “West Germany,” a constitutional republic existing under a Basic Law.²⁸ The Federal Republic underwent a widespread currency reform and swiftly began rebuilding, with the help of its Allied sponsors, from the devastations of WWII.²⁹ The Soviet sector developed into the GDR, a separate constitutional republic, otherwise known as East Germany.³⁰

While East Germany was officially created and nationalized in 1949, it did not fully gain its own independence of personality until well into the late 1960s.³¹ In the midst of the Cold War, hostilities between East and West Germany escalated tremendously.³² The two nations, once was one country, refused to acknowledge the diplomatic and sovereign existence of the oth-

²² *Id.*

²³ *Id.*

²⁴ *See id.* at 15.

²⁵ *Id.* at 10.

²⁶ *Id.* at 10–11.

²⁷ *Id.* at 11.

²⁸ *Id.*

²⁹ *See id.* at 11–12.

³⁰ *Id.* at 11.

³¹ *Id.* at 13.

³² *Id.*

er.³³ Indeed, as law professor Peter Quint notes, the two countries “possessed no formal diplomatic relations and their informal relations were characterized by sharp public attacks and a certain amount of necessary quiet cooperation.”³⁴

In light of the rising hostilities, East Germany erected the Berlin Wall in 1961 and effectively ended the movement of people and goods between the two nations-states.³⁵ Berlin, while physically situated in East Germany, became a two-nation city.³⁶ To further cement the division between east and west, the GDR rewrote its constitution to reflect its independence from the Federal Republic and to emphasize its close relationship to the Soviet Union.³⁷

As East Germany grew into its independent personality as a nation-state, a corresponding gloss of independence took hold in its system and philosophy of legal education. During the 1970s, socio-political leaders moved forward with what was essentially a complete overhaul of the legal education system.³⁸ In the years leading up to the seemingly irrevocable split that occurred in the late 1960s, much of the East and West German systems of legal education remained similar.³⁹ However, during the 1970s, East German officials completely transformed the policy and practices behind legal education in the GDR to reflect better the communist agenda.⁴⁰ These changes were a natural outcropping of the concomitant changes that were taking place in the legal and political world.⁴¹ “During that unusually active decade in the legal sphere, most of the substantive and procedural law administered through the state court system was rewritten in a way that divested it of remaining traces of the ‘bourgeois system’ and infused it with the principles of Marxism-Leninism.”⁴² It was against this background of social and political upheaval that the Ministry for Higher Education issued its *Study Plan for the Primary Direc-*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See id.*

³⁷ *Id.* at 13.

³⁸ MEADOR, *supra* note 6, at 178.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

*tions in Educations for Law*⁴³ and the East German Communist Party and GDR Council of Ministers issued their subsequent *Conception for the Structure of Training and Further Education of Jurists in the German Democratic Republic*⁴⁴.

It is important to note that these policies, however lofty in goal, were not long-lived. Political opposition against the Communist Party of the GDR, always present to a certain degree, rose to new heights during the latter half of the 1980s.⁴⁵ West Germany watched with interest as the people of the GDR fought for better economic stability and possible reunification of the two nation-states.⁴⁶ In late 1989, after the election of a new prime minister in East Germany, one more favorably disposed toward cooperation between the two territories, the chancellor of West Germany proposed a ten-point plan for diplomatic collaboration between East and West Germany that would eventually lead to reunification of the nation as a whole.⁴⁷ By the following summer of 1990, reunification went from being a goal to a reality with the signing of the Unification Treaty on August 31.⁴⁸ The treaty called for the revocation of the East German constitution and the modification of the Federal Republic's Basic Law constitution to account for the addition of the GDR.⁴⁹ With that, East Germany, and its separate policies and philosophies, including that for legal education, ceased to exist.

IV. WHAT CAN WE LEARN FROM A DEFUNCT NATION?

Despite the short lifespan of East Germany's policy for legal education, and of East Germany itself, there is much that we can glean from their policies regarding legal education as we set out to rework and redevelop our own. Though our current economic woes are minor compared to the political and economic upheaval that characterized much of the life of the GDR, we, like

⁴³ *Id.* at 213–37.

⁴⁴ Meador, *supra* note 7, at 83.

⁴⁵ QUINT, *supra* note 20, at 16. It was perhaps in response to this threatened political upheaval that the Communist Party and the Council of Ministers felt the need to adopt a new policy statement on legal education, emphasizing Marxist-Leninist ideology. See Meador, *supra* note 7.

⁴⁶ QUINT, *supra* note 20, at 18–20.

⁴⁷ *Id.* at 18.

⁴⁸ *Id.* at 103.

⁴⁹ *Id.* at 104.

East Germany, find ourselves in the midst of unprecedented financial trouble that is vastly affecting the legal market and, subsequently, legal education. Reform is essential and inevitable. The ABA is doing what it can to keep abreast of the times,⁵⁰ but the profession continues to fall woefully behind in adjusting to the demands of a declining legal market.

With the need for legal education reform so high, it is worth looking to whatever sources possible to find and retool solutions to our own unique challenges. With this in mind, there are a number of characteristics of the East German policy for legal education that are worth considering as we move forward into a new era of American legal education. In particular, we should take a long look at the post-curricular focus, efforts on behalf of student buy-in, balance of theory and practice, and interdisciplinary nature of the policy as we seek to redevelop our own.

A. Post-curricular Focus

One of the most notable lessons present in the East German policy for legal education lies in its devoted post-curricular focus. This focus can best be viewed in terms of two “C”s: clarity and consistency.

1. Clarity

One of the hallmarks of the post-curricular focus of East German legal education was the clarity of that focus. There was no mistaking the intent of policymakers in setting up the system for legal education in the country. Political and educational leaders of the GDR were determined that law students would learn more than just the theoretical basics of the law. Students were meant to become fully engaged in the process of incorporating the law into the social and political life of their country, and this goal was articulated in distinct and explicit terms:

The student is to develop into a socialist lawyer working within the socialist apparatus of state and econo-

⁵⁰ See RANDALL T. SHEPARD, AMERICAN BAR ASS’N, THE ABA SOLICITS VIEWS ON LEGAL EDUCATION (2012), available at http://www.americanbar.org/content/dam/aba/admiistrive/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/december_2012_council_meeting/2012_task_force_future_legal_education.authcheckdam.pdf.

my. He must become a political functionary and public leader who is able and determined to protect the socialist order of state and society, to apply socialist law in the service of social progress, and to preserve the rights and interests of the people.⁵¹

The GDR recognized that its law students would play a crucial role in the development of the political, social, diplomatic, and economic landscape of the nation and planned the training of its law students accordingly.⁵² Legal education was not meant to exist for its own sake. It was not meant to be little more than an academic exercise. Legal professionals served very clear roles in shaping society, and law students were to be trained to take on those specific roles.

Certainly, the socialist nature of East German politics played a major part in the development of such a concentrated post-curricular focus for legal education; but that does not change the fact that American lawyers play very similar key roles in the development of politics, economics, and society, and American law students could vastly benefit from a clear policy of legal education that is explicitly committed to preparing them for those roles. There has been some movement to provide clearer missions for the goal of legal education in America, but that movement has been vague and disjointed, at best. For instance, the ABA, whose Section of Legal Education and Admissions to the Bar is charged with developing and enforcing legal education policy in the U.S.,⁵³ says relatively little regarding the purpose of law school

⁵¹ MEADOR, *supra* note 6, at 215.

⁵² *Id.*; Meador, *supra* note 7, at 83–86.

⁵³ A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, http://www.americanbar.org/groups/legal_education.html (last visited May 31, 2013); Bard, *supra* note 4, at 145–46. The ABA Section of Legal Education and Admissions to the Bar (“Section of Legal Education”) is responsible for the accreditation of law schools in the country. In fact, the Section of Legal Education was the first section created within the ABA, less than 20 years after the national organization’s inception. Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV.

education in relation to American society as a whole.⁵⁴ The first stated objective of legal education according to the ABA is simply to “prepare . . . students for admission to the bar; and effective and responsible participation in the legal profession.”⁵⁵ In the interpretations accompanying the objectives, the ABA goes on to require a law school to “maintain an educational program that prepares its students to address current and anticipated legal problems.”⁵⁶ However, the organization makes no effort to explain what constitutes the “legal problems” that law students may be asked to face. Unlike the East German policy, there is no mention of the integral role lawyers play in American politics, society, and the economy. Instead, the ABA allows that an institution of legal education “*may* offer an educational program designed to emphasize certain aspects of the law or the legal profession”⁵⁷ without ever delineating what those “aspects” could or should be. Essentially, American law schools *could* emphasize certain aspects of the profession for which it is preparing its students, but this is by no means required.

Another source of ambiguity in the focus of American legal education is the popular maxim that law schools are meant to teach students how to “think like a lawyer.”⁵⁸ Law schools have been working to teach law students what it means to “think like a lawyer” without ever fully defining what that process entails. Any attempts to capture empirically the meaning of the phrase are met with a slew of differing opinions that run the gamut of potential meanings.⁵⁹ What is more, these vast differences in definition

⁵⁴ See A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR [hereinafter A.B.A. SEC. OF LEGAL EDUC.] 2012–2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301 (dealing with the objectives of legal education).

⁵⁵ *Id.* § 301(a).

⁵⁶ *Id.* § 301-1.

⁵⁷ *Id.* § 301-2 (emphasis added).

⁵⁸ SULLIVAN ET AL., *supra* note 3, at 47; Judith Welch Wegner, *Symposium 2009: A Legal Education Prospectus: Law Schools & Emerging Frontiers: Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867, 891 (2009).

⁵⁹ SULLIVAN, *supra* note 3. See generally Wegner, *supra* note 58, at 893–923 (reviewing the responses of American and Canadian faculty and students at sixteen different law schools to the question of what it means to “think like a lawyer”).

transcend the boundary between law professor and law student.⁶⁰ There appears to be a consensus in legal education that the purpose of law school is to teach students to “think like lawyers,” but no effort has been made to create a consistent explanation for that purpose. As Judith Welch Wegner, co-author of the 2007 Carnegie Report on legal education, notes, “Law schools have historically been weak in articulating their institutional goals”⁶¹ She goes on to challenge the universal acceptance of “thinking like a lawyer” as an adequately clear goal for legal education: “[L]egal educators who . . . claim[] that teaching students to ‘think like lawyers’ sufficiently ‘names’ the obligations of legal education are mistaken.”⁶²

It is time for American legal education policy to develop beyond vague notions of preparing students to confront undefined “legal problems” or guiding students into the amorphous terrain of “thinking like a lawyer.” Legal education in America, as it was in the GDR, should be based on a clear and concise focus that takes into account the realities of the lawyer’s role in society. Wegner poses the key question in these terms: “Might students learn to ‘think like lawyers’ more readily if they received clearer guidance about the relation between law study and the intellectual and social context in which lawyers operate . . . ?”⁶³ The answer must be a resounding “Yes.” As Wegner goes on to note, “Schools with *clear* and well-remembered missions tied to preparing students for practice . . . have a better chance than others in retaining their focus.”⁶⁴ It is time for the American legal education system to develop a clear mission and realign its focus with the realities of the legal field.

2. Consistency

The second hallmark of East Germany’s post-curricular focus was its consistency. Students attending any of the GDR’s law

⁶⁰ See Wegner, *supra* note 58 (variety of responses seen in both faculty and student definitions of what it means to “think like a lawyer”).

⁶¹ *Id.* at 941.

⁶² *Id.* at 923.

⁶³ *Id.* at 939.

⁶⁴ *Id.* at 957 (emphasis added).

schools would receive the same basic legal education.⁶⁵ Students on the Justice track at the university in Berlin received the same education as students graduating from the same program in Jena.⁶⁶ Coursework for each semester of the legal education program was carefully prescribed and applicable to all students pursuing the study of law.⁶⁷

One apparent downside to this system of course standardization would be a failure to allow for individual student academic interests, but even that is provided for in the East German policy on legal education: “In the final phase of law studies, elective subjects are offered as incentives to individual development and to the particular needs of a student’s special field of future activity.”⁶⁸ Students were permitted, even encouraged to take elective courses, all with a view to the post-curricular focus of preparing students for their work beyond law school.

Not only was the curriculum consistent among schools, the actual course content was standardized across institutions and even among faculty members within a single institution.⁶⁹ The Study Plan lists thirty different subject areas in which students were to attain a certain level of mastery upon graduation, and for each, there is a brief description of the educational and practical goals for instruction in that area.⁷⁰ For example, students were required to take “History of State and Law” in which they learned about “the development of state and legal systems” with a particular focus on the rise and functioning of the GDR.⁷¹ In “Land Law,” students studied government regulations relating to “land protection, land ownership, and real estate transaction.”⁷² There was even a course in intellectual property, in which students studied issues relating to domestic and international copyright.⁷³

⁶⁵ See MEADOR, *supra* note 6, at 213 (identifying the Study Plan as “obligatory” for all GDR universities).

⁶⁶ Meador, *supra* 7, at 81.

⁶⁷ *Id.* See also MEADOR, *supra* note 6, at 217–37 (outlining the course of study for all resident and nonresident students).

⁶⁸ *Id.* at 218.

⁶⁹ MEADOR, *supra* note 6, at 217–27.

⁷⁰ *Id.*

⁷¹ *Id.* at 220.

⁷² *Id.* at 223–24.

⁷³ *Id.* at 225.

In the United States, this type of standardization in legal education curricula is far from a reality. U.S. law schools have not even fixed upon a single focus for legal education in the country. Each institution has adopted its own mission for the education of future lawyers and has developed its curriculum in light of that unique mission.⁷⁴ A student from one law school will receive a vastly different education than a student at another, and these differences extend far beyond the expected vagaries of individual ability.

For one thing, differing missions lead to differing core curricula. Even within the realm of first-year curricula, an area that enjoys a relatively higher instance of coherence across institutions,⁷⁵ there is variation between law schools as to the coursework that should be required. In a 2006 survey of the required 1L courses for sixty law schools, researchers found that only one subject—contracts—that was required in all sixty schools.⁷⁶ From the very beginning of their law school careers, students are receiving core instruction that lacks consistency across schools. Moreover, this discrepancy often extends beyond curriculum lists to the very substance of instruction within a particular subject area. All sixty of the schools studied in 2006 offered a contracts course, but it is doubtful that every one of those law schools covered the same basics within those contracts courses. Unlike the law schools in East Germany, there is no agreement in the U.S. regarding the make-up of core curricula, much less the content of individual subject areas.

In addition to affecting the curricula of law schools, differences in educational mission also affect the sense of academic and professional well-being of future lawyers being trained in law schools.⁷⁷ In a 2007 study, Kennon Sheldon, a psychology pro-

⁷⁴ See Sonsteng et al., *supra* note 4, at 310–14 n.3 (quoting the unique mission statements of sixty different law schools).

⁷⁵ For the most part, law schools continue to adhere to the first-year program prescribed by Christopher Columbus Langdell, an 1850 graduate from Harvard: contracts, torts, civil procedure, criminal law, and property. *Id.* at 400–02.

⁷⁶ *Id.* at 401 n.517.

⁷⁷ See generally Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, in 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007) (reporting on study of professional well-being of law students at two law schools

fessor,⁷⁸ and Lawrence Krieger, a law professor,⁷⁹ investigated the sense of professional well-being and academic engagement of law students at two law schools.⁸⁰ Law School 1 (LS1) “emphasize[d] previous and potential scholarly production, a fact attested to by substantially higher national rankings for reputation and scholarly production,” while Law School 2 (LS2) “place[d] relatively greater emphasis on law practice and public service experience.”⁸¹ After comparing grades and reported “career motivation” and “need satisfaction” of students from both schools, Sheldon and Krieger found that the students from LS2 demonstrated “greater need satisfaction . . . higher subjective well-being . . . , better graded performance . . . , and more self-determined motivation to pursue the upcoming legal career.”⁸² On the other hand, students from LS1 demonstrated “reduced well-being, poorer-than-expected grade performance, and less self-determined motivation to pursue the legal career.”⁸³ The differing missions of the two schools greatly affected the mindset with which students entered the legal field, essentially creating vastly different groups of new lawyers with varying acquired skill-sets and psychological approaches to the profession. Yet, these different groups of young lawyers would inevitably be competing for the same legal jobs upon graduation. They would be required to complete the same tasks, do the same work, but would have to approach the profession with differing levels of preparation, completely unrelated to their individual abilities.

Sadly, the ABA has remained silent on the issue of consistency in the mission of legal education. Aside from admonishing accredited institutions to “maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession,”⁸⁴ the ABA supplies no specific unifying mission for institutions that provide legal education in the United States. Schools are free to develop their own missions and implement those missions in their own

with differing underlying missions); Sonsteng et al., *supra* note 4, at 387 (summarizing the results of the Sheldon and Krieger study).

⁷⁸ Sonsteng et al., *supra* note 4, at 387 n.421.

⁷⁹ *Id.* at 387 n.422.

⁸⁰ Sheldon & Krieger, *supra* note 77, at 887–88.

⁸¹ *Id.* at 886.

⁸² *Id.* at 888, 893.

⁸³ *Id.* at 893.

⁸⁴ A.B.A. SEC. OF LEGAL EDUC., *supra* note 54, § 301(a).

way, provided the schools meet the minimum requirements set out by the ABA—and that only if the school wishes to be accredited.⁸⁵ In addition, the ABA provides very little instruction regarding curricular requirements across law schools. Standard 302, which deals with curriculum for law school accreditation, simply demands that a law school provide “substantial instruction” in substantive law, legal reasoning, research, and analysis, legal writing, “other professional skills,” and the history and responsibilities of the legal profession.⁸⁶ Aside from the details on research, writing, and analysis, the ABA provides no guidance on what specifically should comprise an effective law school curriculum. There is no definition of “substantive law” or “other professional skills” other than a vague reference to what is “generally regarded as necessary to effective and responsible participation in the legal profession.”⁸⁷ Law schools are left to define these terms, and their curricula, as best they can in light of their unique missions.

Promoting consistency in the focus of legal education in America will not be without its challenges. Officials in East Germany had only four institutions to consider,⁸⁸ and there are more than 200 ABA-accredited law schools spread across 49 separate states in the U.S.⁸⁹ Nevertheless, studies have demonstrated the need for more consistency in American legal education. Recommendations from the 2007 Carnegie Report included a call

⁸⁵ See A.B.A. SEC. OF LEGAL EDUC. and MacCrate, *supra* note 53.

⁸⁶ A.B.A. SEC. OF LEGAL EDUC., *supra* note 54, § 302(a). The standard reads: A law school shall require that each student receive substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
- (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

⁸⁷ *Id.*

⁸⁸ MEADOR, *supra* note 11.

⁸⁹ A.B.A.-Approved law Schools, A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Aug. 9, 2013).

for law schools to “[r]ecognize a common purpose” and “[w]ork together within and across institutions.”⁹⁰ Before that, in his 1979 study for the ABA, Roger Cramton advised, “Law schools should seek to achieve greater coherence in their curriculum, even if it results in the loss of some teacher autonomy.”⁹¹ Researchers recognize the need for consistency in the mission and curricula of American law schools; it is now a matter of making concerted efforts to address this need.

B. Balance Between Theory and Practice

The other major lesson to be learned from the legal education in the GDR lies in its pedagogical balance between theory and practice. As one American professor noted at the time, “GDR education in general stresses the blending of the practical and the theoretical at every stage.”⁹² This balance grew directly from the post-curricular focus of East German legal education and served as a means of implementing the demands of that focus. The theory-practice balance evident in the policy took shape through the emphasis on including *practica* as part of the required curriculum and combining the roles of faculty and practitioners.

1. Inclusion of *Practica* in the Required Curriculum

One of the ways in which the East German legal education policy highlighted the balance between theory and practice was through the inclusion of *practica* as part of the required curriculum. As the Study Plan made clear:

Another important aspect of the education is practical training. It coordinates the student’s education and training at the university with practical socialist aspects, and it unites theory and practice. The students get a chance to use in actual practice their theoretical knowledge, to learn advanced practical methods, and to be active as propagators of socialist law even during their time of study.⁹³

⁹⁰ Sonsteng et al., *supra* note 4, at 333.

⁹¹ *Id.* at 332, 366 n.360.

⁹² MEADOR, *supra* note 6, at 187.

⁹³ *Id.* at 231–32.

Law students in the GDR were meant to graduate from law school with a clear understanding of how the theory of the classroom and the realities of day-to-day practice intersect. To that end, all law students, on both the Justice and Economics tracks, were required to complete a four-week externship in a government agency during their second year of law school and another twelve-week externship in a different setting during their third year of law school.⁹⁴ These externships were meant to be completed in addition to the one-year assistantship that every new legal practitioner had to complete following their last year of law school.⁹⁵ Students had the option of working in all manner of government offices, including in the court system, alongside prosecutors, with state notaries, or in local government organizations.⁹⁶ “This [required practical experience] has, as its goal, the intensification of the student’s practical training in state and administrative law, of work in government organization [sic], and learning from the experience accumulated in local organs of government.”⁹⁷ These widespread opportunities to interact with the legal system allowed students to gain real-world glimpses of their future careers.

Legal education in the U.S. does not require the same amount of practical experience for its students. In fact, there are no general externship or clerkship requirements for students of American law schools. In Standard 302(b)(1), the ABA Section for Legal Education and Admission to the Bar simply states:

A law school shall offer *substantial opportunities* for . . . live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence . . .⁹⁸

Practical experience is encouraged but in no way required, and the ABA provides no guidance as to what constitutes “substantial opportunities.” Instead, in two separate interpretations to

⁹⁴ *Id.* at 232; MEADOR, *supra* note 7, at 91, 93.

⁹⁵ MEADOR, *supra* note 7, at 91, 93.

⁹⁶ MEADOR, *supra* note 6, at 232.

⁹⁷ *Id.*

⁹⁸ A.B.A. SEC. OF LEGAL EDUC., *supra* note 54, § 302(b) (emphasis added).

this standard, the ABA emphasizes that practice experience is not required for law student education and that law schools are therefore not required to provide that experience for all students: “A law school need not accommodate every student requesting enrollment in a particular professional skills course . . . A law school need not offer [live-client or real-life] experiences to every student nor must a law school accommodate every student requesting enrollment in any particular live-client or other real-life experience.”⁹⁹

Despite the ABA’s reluctance to make real-life experience a required part of the legal education curriculum, law schools have been working to provide more practical experience for their students. Clinical education opportunities have developed exponentially since their inception in the 1970s, allowing American law students to gain real-life practice experience as early as their first year of law school.¹⁰⁰ Many law schools have expanded on the concept of clinical education to develop comprehensive *practica* that focus on particular areas of the law.¹⁰¹ One school describes the basis of its program as such: “The basic premise of the Law School’s program is that theory cannot be separated from practice, abstract knowledge of doctrine from practical skill, and understanding the professional role from professional experience.”¹⁰²

This increase in opportunities for practical legal experience during law school has been welcomed by future lawyers and their future employers alike. Law students, when asked to recount their most “memorable educational experiences,” overwhelmingly turn to “their actual experiences with lawyers and the law through practice-oriented courses, clinical experiences, summer jobs, or volunteer contributions.”¹⁰³ In particular, students point to the opportunities for personal interaction with clients and commitment to public service as hallmarks of gaining practice experience

⁹⁹ *Id.*, §§ 302–4, 302–5.

¹⁰⁰ See generally MacCrate, *supra* note 53.

¹⁰¹ See Sonsteng et al., *supra* note 4, at 417–24 (outlining the *practica* in law management, family law, public interest, law, and property developed at schools like Syracuse University College of Law, William Mitchell College of Law, and City University of New York (CUNY)).

¹⁰² *Id.* at 422 (quoting the mission of CUNY Law School).

¹⁰³ Wegner, *supra* note 58, at 906 (recounting student responses gathered during the course of the Carnegie Report).

while in law school.¹⁰⁴ In terms of legal employers, they welcome opportunities for future employees to gain practical experience in school as potential cost-saving measures, of particular importance given the current state of the economy.¹⁰⁵ More and more law firms are facing clients who are unwilling or unable to cover the training costs for new associates;¹⁰⁶ this being the case, firms have been looking and will continue to look to law schools to provide potential employees who have already gained some practical experience.¹⁰⁷ As one commentator has noted, “Law schools that continue to focus on training students in legal analysis and skills work will be in demand, because the schools will be performing a role that employers will likely find useful in the future.”¹⁰⁸ With both the students and future employers on board, American law schools would do well to make practical training a fully integrated part of the legal curriculum, as was done in East Germany.

2. Faculty as Practitioners

Another way in which East German legal education achieved such a clear balance between theory and practice was through an emphasis on combining the roles of faculty and practitioners. This emphasis worked in two ways: One, faculty were encouraged to continue working as legal practitioners in their respective fields; and two, legal practitioners were encouraged to be involved in teaching and interacting with law students.¹⁰⁹ The Policy Statement clearly laid out this method for achieving theory-practice balance:

The principle of the unity of theory and practice should be put into effect throughout the course of study. In order to do this, forms of cooperation between academia and practice . . . should be cultivated. The teaching faculty should be included in law-

¹⁰⁴ SULLIVAN ET AL., *supra* note 3, at 159.

¹¹⁰⁰³⁶ Bard, *supra* note 4, at 183; Richard W. Bourne, *Changes in Legal Education and Legal Ethics: Article: The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*

making and in bringing the law into effect, while practitioners should be included in academic life and teaching. On the basis of firm arrangements between universities and organs of practice, the faculty should be enabled to work uninterrupted periods of time in practice.¹¹⁰

Thus, East German law students were able to benefit from the practical expertise teachers who were themselves enmeshed in current legal practices and developments.

This focus on faculty as practitioners is largely lacking in American legal education. For one, American law schools focus their hiring primarily on individuals with research experience and great publication potential.¹¹¹ The primary hiring criteria include such items as “superior academic grades from top rank law schools, law review experience, prestigious judicial clerkships, [and] scholarly publications” with little to no attention to practice or even teaching experience.¹¹² As a result, American law faculty by and large includes individuals who have little to no experience in the actual practice of the profession for which they are instructors.¹¹³ Unlike legal educators in the GDR—or even medical educators in the U.S., who are required to continue their medical practices as they teach¹¹⁴—American law faculty “struggle to balance legal scholarship with teaching duties and are often pressured to sacrifice the needs of the students for scholarly pursuits.”¹¹⁵ Students suffer in the classroom because the curriculum often revolves around a given professor’s scholarly work, rather than what is relevant to actual practice.¹¹⁶ In fact, a common complaint of law students is that their professors “are so far removed from legal practice that their teachings are theoretical and impractical.”¹¹⁷

Another way in which American law schools fail to focus on faculty as practitioners is in the hiring and promotion of practitioners as professors in law school courses. Because of the em-

¹¹⁰ *Id.*

¹¹¹ Sonsteng et al., *supra* note 4, at 351–52.

¹¹² *Id.* at 353.

¹¹³ *Id.*; Bard, *supra* note 4, at 171.

¹¹⁴ Bard, *supra* note 4, at 184.

¹¹⁵ Sonsteng et al., *supra* note 4, at 351.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 352–53.

phasis on academia and research, law school hiring committees rarely look to practitioners for teaching positions unless they meet the publication and research requirements mentioned above.¹¹⁸ When practitioners are hired as law faculty, for example, for clinics or other skills-based courses, their positions are more often than not lower-paid and with little to no opportunities for promotion, such as tenure.¹¹⁹ The ABA encourages the involvement of practitioners in legal instruction when it comes to “the history, goals, structure, values, rules and responsibilities of the legal profession,”¹²⁰ but does not require their involvement and in no way encourages their further integration into the law school teaching environment. In some ways, the hesitation to incorporate practitioners fully into legal education stems from a fear that doing so will “de-standardize” certain aspects of law schooling.¹²¹ “Some are concerned that practitioners will teach students bad habits or the wrong way of doing things. Others write that “[t]he quality of adjunct faculty is often uneven . . .”¹²² Nevertheless, some legal educators, like Wegner, recognize the importance of exposing students to “learning communities” in which they can benefit from learning from practitioners about the profession, particularly in the students’ second and third years of law school.¹²³ In this way, American law students, as was intended for the law students of East Germany, can achieve a more effective balance of theory and practice in their learning, as a direct result of better integration of faculty and practitioner roles.

V. A SHIFT IN PERSPECTIVE

As American legal educators look to ways in which to revamp U.S. legal education, it would be of huge benefit to consider policies, like that of the GDR, that combine a clear and consistent post-curricular focus with a careful balance between theory and practice. Recent policy discussions have centered on the importance of focus and practice in American legal education, but

¹¹⁸ See *supra* note 112 and accompanying text.

¹¹⁹ Bard, *supra* note 4, at 142.

¹²⁰ A.B.A. SEC. OF LEGAL EDUC., *supra* note 54, § 302(a)(5). The accompanying interpretation states: “A law school should involve members of the bench and bar in the instruction required by Standard 302(a)(5).” *Id.*, § 302-6.

¹²¹ Bard, *supra* note 4, at 204.

¹²² *Id.* (citation omitted).

¹²³ Wegner, *supra* note 58, at 956.

little has actually been done to shift those discussions into action. What is needed is a true shift in perspective regarding legal education in order to create meaningful change.

Even with the general recognition of the advantages of focused and practical legal study, the legal education system in the U.S. has been slow to move toward a more post-curricular, practice-centered focus. Unlike the system in East Germany, legal education in the United States comes from a long tradition of scholarly and academic focus. Indeed, the reluctance to incorporate focused, practice-centered study in American law curricula stems from a continual struggle between viewing law school as a trade or an academic endeavor.¹²⁴ In some ways, law schools have made varying degrees of progress in the right direction by integrating more skills- and practice-based courses into the curriculum and developing focused policy statements that point to the individual institutions commitment to preparing new lawyers for practice.¹²⁵ However, wide-scale reform of American legal education will not take place without a fundamental shift in perspective.

The legal education policy of East Germany grew out of a war-torn nation struggling to survive and it showcased a strong post-curricular focus and theory-practice balance. While the U.S. is not in such dire straits, American legal education faces a critical phase that cries for reform. Perhaps it is time to look in unlikely places to find helpful lessons that point toward true legal education reform.

¹²⁴ Bourne, *supra* note 105, at 661–62. *See also* Sullivan et al., *supra* note 3, at 93 (discussing the struggle of law schools “to escape the ‘trade school’ stigma”).

¹²⁵ Bourne, *supra* note 105, at 661–62; Wegner, *supra* note 58, at 945–46.