Book Review

Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, and Genevieve B. Tung (eds.), *Integrating Doctrine and Diversity: Inclusion and Equity in the Law School Classroom*, Durham, N.C.: Carolina Academic Press, 2021, pp. 388, $49 (paper)

Reviewed by Ryan H. Nelson & Michael Ashley Stein

Ability Diversity in the First-Year Law School Classroom

Introduction

In *Grutter v. Bollinger*, the Supreme Court extolled the benefits of a racially and ethnically diverse student body in institutions of higher education: Diversity encourages a "robust exchange of ideas" stemming from the students' "exposure to widely diverse people, cultures, ideas, and viewpoints"; it "promotes cross-racial understanding"; it "prepares students for an increasingly diverse workforce and society"; it encourages "[e]ffective participation by members of all racial and ethnic groups in the civic life of our Nation"; and it helps create "leaders with legitimacy in the eyes of the citizenry."[1] With increasing vigor, law schools have labored to secure these benefits not just vis-à-vis racial and ethnic diversity, but with respect to many different axes of identity (e.g., disability status, sex, national origin).[2]

Ryan H, Nelson Assistant Professor of Law, South Texas College of Law Houston.

Michael Ashley Stein Executive Director, Harvard Law School Project on Disability; Visiting Professor, Harvard Law School (since 2005); Extraordinary Professor, University of Pretoria Faculty of Law, Centre for Human Rights. We thank Paul Harpur, Paul Marcus, Nicole Buonocore Porter, Robyn Powell, and D'Andra Shu for terrific feedback.

1 Grutter v. Bollinger, 539 U.S. 306, 324–25, 329–32 (2003) (citations and quotations omitted).

2 *Diversity in Law School*, LSAC: Law School Admission Council, https://www.lsac.org/discover-law/diversity-law-school (last visited Dec. 11, 2021).

Moreover, law schools have sought to augment equity (i.e., fair processes for all students)[3] and inclusion (i.e., welcoming students of all backgrounds)[4] across their increasingly diverse student bodies.[5] To that end, equitable and inclusive initiatives not only further diversify student bodies, they "ascribe value to the experiences of 'difference' carried by members of marginalized groups and minorities."[6] Unfortunately, law schools and their governing bodies tend to focus more on diversity than equity or inclusion,[7] notwithstanding that those latter virtues often have just as much of an impact, if not more, on improving students' learning experiences.[8]

Recognizing the urgent need for a renewed focus on equity and inclusion in our law school classrooms, co-editors Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, and Genevieve B. Tung's "Integrating Doctrine and Diversity: Inclusion and Equity in the Law School Classroom" ("Integrating Doctrine and Diversity") offers a compendium of advice for law schools and law teachers about how to integrate equity and inclusion into first-year classrooms.[9] *Integrating Doctrine and Diversity* is not only welcome, but *essential*, for law school administrators and anyone who teaches 1Ls. It lays out concrete, equitable initiatives that law schools and law teachers can adopt to improve the fairness of processes that are neutral on their face but tend to silence students from marginalized communities. It also offers real,

3 *'Equity' and 'Equality'*, Merriam-Webster, https://www.merriam-webster.com/words-at-play/equality-vs-equity-difference (last visited Dec. 11, 2021); *see also Equity of Opportunity*, U.S. Dep't of Educ., https://www.ed.gov/equity (last visited Dec. 11, 2021).

4 Pamela Newkirk, Diversity, Inc.: The Failed Promise of a Billion-Dollar Business 5 (2019); *see also* Integrating Doctrine and Diversity: Inclusion and Equity in the Law School Classroom 43 (Nicole P. Dyszlewski et al. eds., 2021) (citing Tillie Olsen, Silences vii, 10–15 (1978)).

5 *E.g.*, *Equity & Inclusion*, Univ. of Pa. Carey L. Sch., https://www.law.upenn.edu/inclusion/ (last visited Dec. 11, 2021).

6 Faisal Bhabha, *Towards a Pedagogy of Diversity in Legal Education*, 52 Osgoode Hall L.J. 59, 67–68 (2015).

7 Integrating Doctrine and Diversity, *supra* note 4, at 17–18 (citations omitted).

8 *Cf. Recommendations for Approval for Notice and Comment on Standard 206 Revisions*, ABA Standards Review Committee (Nov. 4, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov21/21-nov-std-206-notice-and-comment-w-appendix.pdf (proposing revisions to Standard 206, *inter alia*, in recognition of the importance of equity and inclusion on students' learning experiences). On August 8, 2022, the Council of the ABA Section of Legal Education and Admissions to the Bar withdrew its resolution before the ABA House of Delegates regarding proposed amendments to Standard 206 to consider further criticisms that the proposed revisions did not sufficiently address diversity, equity, and inclusion efforts on behalf of students, faculty, and staff with disabilities (as well as LGBTQ individuals). *See* Stephanie Francis Ward, "Legal Ed Pulls Back HOD Diversity Resolution Saying More Discussion is Needed." ABA Journal, August 8, 2022, https://www.abajournal.com/web/article/legal-ed-pulls-back-hod-diversity-resolution-saying-more-discussion-is-needed.

9 *Id.*

easily accessible examples of how law teachers can increase inclusion in their 1L classrooms.

Part I of this book review highlights key examples of these ends. In part II, we identify a few of its shortcomings vis-à-vis ability equity and inclusion for students with disabilities. Specifically, we focus on how law schools and law teachers ought to proactively implement equitable learning processes for students with disabilities (e.g., universal access to online learning systems and accessible PowerPoint slides and handouts), as well as how law teachers can leverage disability-focused case studies to further welcome and include students with a disability into their classrooms and create greater embrace of disability as a subject matter within their law schools.

Although there is no shortage of research on diversity, equity, and inclusion in classrooms, rarely does that scholarship put meat on the bones with hard-and-fast examples of how to integrate those values into the classroom. *Integrating Doctrine and Diversity* does just that. We celebrate this new work and hope that our focus on equity and inclusion for students with a disability furthers its laudable goals.

I. The Value of Integration

This part argues that, in theory and in practice, *Integrating Doctrine and Diversity* hits its mark of helping to augment equity and inclusion in the first-year classroom. In section I.A., we explore the book's research manual-style approach and highlight several examples of how law teachers might benefit from its use. Then, in section I.B., we report on how one of us (Professor Nelson) has practiced what *Integrating Doctrine and Diversity* teaches by integrating four of the book's examples into his civil procedure classroom.

A. In Theory

Both law school administrators and law teachers who teach first-year law students would benefit greatly from reading at least two of the nine chapters in *Integrating Doctrine and Diversity* (i.e., chapter one and the chapter addressing the subject area taught). Chapter one, which offers justifications for, and multiple approaches to, integrating equity and inclusion into the 1L classroom, is a must-read for all; most of this section of our review is dedicated to explicating chapter one's finer points. That said, chapters two through nine are where the rubber meets the road—these chapters are divided by subject area, offering readers a "choose your own adventure" approach, depending on their pedagogical focus (e.g., criminal law teachers might read only chapters one and four; torts teachers might read only chapters one and nine).[10] We conclude this section by highlighting some of the particularly effective recommendations that are scattered throughout those chapters, as well as examples of how Nelson successfully integrated some of those examples into a 1L classroom.

10 *Id.* at xiv.

We begin with chapter one. All too often, professors and instructors dive into the substance of their teaching, blowing past the first impression that most law students have of the course: the syllabus. *Integrating Doctrine and Diversity* challenges teachers to think of their syllabus as more than solely a tool for information conveyance, but as an opportunity to "create a safe space" for students.[11] Empirical data has called into question the utility of content/trigger *warnings* on syllabi,[12] but that evidence does not consider how students might benefit from teachers relating equitable *processes* in response to content that might trigger students. For example, advising students that content may include racism may not move the needle toward creating equitable and inclusive classrooms, but advising students that racist slurs and stereotypes will not be permitted as part of in-class discussion sets a welcoming tone for students of color reading the syllabus and establishes the professor as a role model for students to follow, thereby mitigating their fears of being silenced by such language in an upcoming class addressing race and the law. *Integrating Doctrine and Diversity* threads this needle with zeal, focusing on equitable syllabus content like addressing the teacher's approach to microaggressions and sarcasm.[13]

To its array of recommendations, we add that law teachers should consider including on their syllabi a section on accommodating students who believe that they cannot fully succeed in the course because of their disability, religious beliefs, and/or practices, or for any other reason, to the extent such a section is not required by the school. Although professors need not commit to any particular accommodation, welcoming and encouraging students to reach out to the teacher or the school's Americans with Disabilities Act ("ADA") coordinator (and including that individual's name and contact information), depending on school policy, lessens the burden on students. Instead of putting the onus on students to research where they ought to go to request an accommodation, the teacher proactively does the work for them, ensuring a more equitable classroom for students with disabilities and others. Furthermore, consider the potential harm to law students with disabilities that could result from imposing an attendance policy stricter than the ill-defined "regular class attendance" standard imposed on law schools accredited by the American Bar Association.[14] As one former law student with a disability put it, having such policies "incentivized ablebodied classmates to go to class when

11 *Id.* at 4.

12 Mevagh Sanson et al., *Trigger Warnings Are Trivially Helpful at Reducing Negative Affect, Intrusive Thoughts, and Avoidance*, 7 Clinical Psych. Sci. 778 (2019).

13 Integrating Doctrine and Diversity, *supra* note 4, at 4-8, 10-11.

14 Council of the ABA Section of Legal Education and Admissions to the Bar, *ABA Standards and Rules of Procedure for Approval of Law Schools 2020-2021*, Am. Bar Assoc., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-for-approval-of-law-schools.pdf (Standard 308(a)).

sick, meaning that immunocompromised people never felt safe in class"[15]—a fear realized by immunocompromised students (among many others) during the COVID-19 pandemic.

Two essays, one by Hoang Pham, a law student at the University of California, Davis, School of Law, and another by Harvard Law School Professor Emeritus Mark Tushnet, round out the first chapter by, respectively, highlighting another equitable initiative and introducing examples of the reference manual approach that the rest of the book adopts so effectively. First, Pham presents an equitable approach to case briefing that seeks to "reach[] all students."[16] He introduces the "critical case brief," in which critical facts left out of the opinion and a critical analysis of all facts are added into the traditional case brief.[17] For example, Pham discusses the facts of *Iqbal v. Ashcroft* that were omitted from the Supreme Court's analysis (e.g., race-, national origin-, and religious-laden suspicions that led to Javaid Iqbal's arrest and detention), as well as a critical analysis (e.g., perhaps these additional facts make it more likely that Fed. R. Civ. P. 8 was satisfied).[18] This equitable approach to case briefing helps to avoid the silencing of students from marginalized communities who might feel absented from a class that glosses over, or outright ignores, the painful lived experiences of members of the same community.

Finally, Tushnet reports on a lecture series and companion seminar that he taught in which he asked students to develop a "one-day 'lesson' in a 1L course of their choosing, in which they were to present materials dealing with diversity and social justice."[19] The students' lessons presented examples of integrating diversity and inclusion into the classroom: in civil procedure, discussing whether "the class action device [is] an effective vehicle for advancing social justice agendas" in light of cases like *Wal-Mart Stores, Inc. v. Dukes*; in contracts, assigning cases confronting the enforceability of arbitration agreements signed by plaintiffs who could not read and write English; in property, presenting the effects of eminent domain on low-income and minority residents; and so on.[20] These lessons highlight teaching diversity in a manner that is deliberate and holistic, not, as Professor Vernellia R. Randall puts it, as "happenstance" where the teacher "tr[ies] to sneak [diversity] in by bringing in a case here or

15 Lilith A. Logan Siegel, *How You Tell The Story: In Search of Complex Disabled Narratives*, 71 J. Legal Educ. 42 (2021).

16 Integrating Doctrine and Diversity, *supra* note 4, 53–54 (citing Meera E. Deo et al., *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 Chicana/o-Latina/o L. Rev. 1, 10 (2010)).

17 *Id.* at 54. For a similar critical project, see Feminist Judgments: Rewritten Opinions of the United States Supreme Court (Kathryn M. Stanchi et al. eds., 2016).

18 Integrating Doctrine and Diversity, *supra* note 4, at 56–59.

19 *Id.* at 34.

20 *Id.* at 34–40.

a comment there."[21] Indeed, chapters two through nine zealously tackle that project of holistic diversity integration.

B. In Practice

Rather than simply highlighting some of the excellent ideas that contributors offer throughout chapters two through nine of *Integrating Doctrine and Diversity,* we thought it more helpful to the reader to explain how Professor Nelson integrated four recommendations from this book into his civil procedure course and provide a (very preliminary) analysis of what resulted.[22]

First, Professor Frank Deale's essay, *Diversifying Civil Procedure*, is chock-full of useful ideas for building diversity into the fabric of the course, including teaching students that Marcus Neff, the plaintiff in *Pennoyer v. Neff*, came to claim his ownership in the land at issue in that case only as "the beneficiary of U.S. government schemes to swindle Native Americans of their land."[23] In light of this background, Professor Deale encourages a classroom discussion on who really owns the land—Samuel Pennoyer, Marcus Neff, or the Indigenous people of the Multnomah Tribe.

Building on this example, Professor Nelson excerpted for students Section 4 of the Donation Claim Act of 1850, which granted swaths of land to certain "white settler[s] or occupant[s] of the public lands, American half-breed Indians included," who met certain requirements,[24] on a PowerPoint slide during the class in which they discussed *Pennoyer*. Even behind their masks, many students seemed visibly surprised at the brazenness of *de jure* racism against Native Americans in the nineteenth century. Although several audibly gasped, some looked on stoically, and others nodded to a neighbor as if to say, "I'm not surprised." Pedagogically, the different student reactions were encouraging; one hopes that the in-class conversation will lead students surprised by the government's racist land-grab to discuss their surprise with students who expected the government to behave as it did, thereby increasing the likelihood of critical legal analysis. That possibility alone likely makes this brief, in-class tangent worthwhile. That said, no students took the bait when asked who really owned the land. Most likely, students were preoccupied trying to comprehend the nuances of personal jurisdiction and opted to

21 *Id.* at 6 (quoting Vernellia R. Randall, *Teaching Diversity Skills in Law School*, 54 St. Louis U. L.J. 795, 799–800 (2010)). Though we believe in the value of sneaking diversity into class wherever possible, it can hardly be doubted that a holistic integration of diversity in the classroom increases inclusion more than quick hits.

22 At South Texas College of Law Houston, civil procedure is two semester-long course of three credits each; for both, Professor Nelson assigns as the primary text Richard D. Freer et al., Civil Procedure: Cases, Materials and Questions (8th ed. 2020). Professor Stein no longer teaches first-year courses.

23 Integrating Doctrine and Diversity, *supra* note 4, at 310 (citing Eric Kades, *The Dark Side of Efficiency:* Johnson v. M'Intosh *and the Expropriation of Amerindian Lands*, 148 U. Pa. L. Rev. 1065, 1110–52 (2000)).

24 Donation Land Claims Act of 1850, § 4, 31 Cong. Ch. 76, 9 Stat. 497 (1850).

relegate secondary questions, like that of property ownership, to the back of their mind for the time being. Nonetheless, some potential for critical analysis and increased inclusion is better than none, and the *de minimis* in-class time spent on pursuing those ends seemed entirely worthwhile.

Second, and in a similar vein, Pham's essay on critical case briefing was the inspiration to provide students with similar critical facts when they read *Iqbal v. Ashcroft*—"a richer account of Iqbal beyond *Iqbal*," to borrow a phrase from Professor Shirin Sinnar.[25] To that end, students were shown a photo of Javaid Iqbal as they are confronted with his claims that, after his arrest and detention, "several officers kicked and beat him, called him a 'terrorist,' punched him in the face, and threw him against the wall," leaving him "bleeding from his mouth and nose," after which "he was forced to strip and undergo an extensive search."[26] Students were then asked whether these facts bore on the issue at hand; whether "narrative theory would help litigants meet the plausibility standard," as Professor Anne E. Ralph has argued,[27] and whether "aversive bias impacts judicial decision-making."[28] Ample and lively discussion followed.

Third, Professor Deale recommended using *Confederated Tribes of Chehalis Indian Reservation v. Lujan*, a more modern dispute between Native American tribes and the federal government than the one that preceded *Pennoyer*,[29] as a vehicle for teaching compulsory joinder. In that case, plaintiff tribes challenged the federal government's long-standing "recognition of the Quinault nation as the sole governing authority over the reservation on which a number of plaintiff Tribes resided" under the Indian Reorganization Act.[30] Yet the federal government used Fed. R. Civ. P. 19 as a sword, seeking and securing dismissal because "the Quinault nation was a necessary party defendant that was not named, even though it could not be named because of tribal sovereign immunity."[31]

Professor Nelson created a hypothetical fact pattern based on *Lujan* that raised not only the issue of compulsory joinder, but also compulsory counterclaims, interpleader, intervention, and consolidation.[32] In the hypothetical, members of three fictional Native American tribes (A, B, and C) occupy the same reservation, but tribe A is the sole governing authority

25 Shirin Sinnar, *The Lost Story of Iqbal*, 105 Geo. L. Rev. 379, 394 (2017).

26 *Id.* at 400 (citations omitted).

27 Integrating Doctrine and Diversity, *supra* note 4, at 35 (quoting an unidentified student of Professor Tushnet and citing Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 Yale J.L. & Human. 1 (2014)).

28 *Id.* (citing another unidentified student of Professor Tushnet's).

29 Confederated Tribes of Chehalis Indian Reservation v. Lujan, 928 F.2d 1496 (9th Cir. 1991).

30 Integrating Doctrine and Diversity, *supra* note 4, at 308.

31 *Id.* (citing *Lujan*, 928 F.2d at 1498–50).

32 The facts presented here raise only the issue of compulsory joinder. Students were given additional facts raising the issues of compulsory counterclaims, interpleader, intervention, and consolidation.

of that reservation recognized by the federal government. After tribe A authorized a new federal highway project through the reservation, tribe B filed a federal action against the U.S. Secretary of the Interior under the Indian Reorganization Act, demanding a seat at the negotiating table alongside tribe A. In response, the secretary filed a FED. R. CIV. P. 12(b)(7) motion to dismiss for failure to join tribes A and C. Students were, therefore, called upon to assess whether tribes A and C were required parties under FED. R. CIV. P. 19; whether it would be feasible to join them (no: Native American tribes have tribal sovereign immunity); and, if not, whether the court should dismiss the action or proceed in their absence.

Students read the hypothetical as an assignment before class, broke into small groups to discuss it for about an hour during class (acting as attorneys for tribe B), and then spent about thirty minutes debriefing together as a class. The goals of the exercise included: (1) helping students understand how all the pieces of the preceding module on the scope of civil litigation fit together; (2) giving students a chance to collaborate with their peers and learn by doing; (3) offering students the chance to apply opaque concepts to what could be a real-world client; and (4) helping students empathize with, and consider ways to help, their clients, thereby making the classroom more welcoming and inclusive to students from marginalized backgrounds—probably some of the very same students who knowingly nodded during the class on *Pennoyer* when they learned about the government's racist actions—and helping all students develop their cross-cultural competency.[33]

The exercise was successful on grounds (1), (2), and (3), but only marginally successful on ground (4). Students certainly got a better handle on the "big picture" after tackling such a complex fact pattern, they collaborated well with their peers, and they loved the opportunity to strategize on behalf of a mock client—something few 1Ls get the chance to do. But few students voiced concerns that the secretary, having used FED. R. CIV. P. 19 and tribal sovereign immunity as a sword, was effectively denying their client an opportunity to have its claim heard. Several students did apply FED. R. CIV. P. 19 mechanically and correctly concluded that it would have been infeasible to join tribes A and C due to tribal sovereign immunity, but practically none took the next step in identifying how damaging that conclusion was for tribe B. To be fair, one student did mutter "injustice," which could have led to an enriching discussion of how facially neutral laws can be unjust by marginalizing certain communities. But there just was not enough time to give such a conversation the nuance that it deserves. In future iterations, this hypothetical might be amended to present fewer issues of civil procedure, thus giving students the breathing room to identify and debate issues of inequality and marginalization,

33 *Cf.* ABA Standards Review Committee, *Memorandum re: Final Recommendations: Standards 205, 303, 507, and 508*, AMERICAN BAR ASSOCIATION LEGAL EDUCATION AND ADMISSIONS TO THE BAR (Aug. 16, 2021), https://taxprof.typepad.com/files/aba-council.pdf (the Standards Committee has recommended that ABA Standard 303 be amended to requires law schools to "provide education to law students on bias, cross-cultural competency, and racism").

but doing so would come at the expense of one or more civil procedure topics. All things considered, next time, it seems worthwhile to spend fifteen of the ninety minutes in this class meeting to dive deeper into issues of equity instead of, perhaps, intervention and consolidation (two issues that students seemed to grasp pretty well already).

Fourth and finally, one of Professor Tushnet's students recommended assigning *Wal-Mart Stores, Inc. v. Dukes*, in parallel with *Serving Two Masters* by Derrick Bell,[34] as a means of teaching modern headwinds against class actions.[35] Professor Nelson plans to create a simulation in which class-action law is reinforced (likely alongside other topics, like alternative dispute resolution or appellate review) from the perspective of a putative class-action representative who is a member of a marginalized community and who has been denied access to the class-action mechanism for any host of reasons and is looking for alternatives.[36] The goals focus not only on knowledge synthesis, but also innovation—that is, how might you creatively try to overcome your client's inability to form, and proceed as, a class? If one door is closed, are others open (or at least ajar)? After all, what use is reaching a legal conclusion if students cannot follow it up with a recommendation of how their clients should proceed?

Accordingly, *Integrating Doctrine and Diversity* offers law schools and law teachers excellent opportunities to augment equity and inclusion in the first-year curriculum. However, as the subsequent part shows, it could benefit from a greater focus on ability equity and diversity.

II. Ability Equity and Inclusion

Despite people with disabilities' representing the largest minority group in the United States, comprising sixty-one million American adults,[37] ability equity and inclusion in law schools very much remains a work in progress. Many law schools lack student organizations for students with disabilities, and the National Disabled Law Students Association was founded only in January 2019, well after the establishment of affinity groups for other identity characteristics.[38] Likewise, many law schools fail to offer routine, standalone

34 Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470 (1976).

35 Integrating Doctrine and Diversity, *supra* note 4, at 35.

36 For example, plaintiffs may be denied the class-action mechanism based on lack of commonality as per *Dukes* or a mandatory arbitration clause, as permitted by AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011), and Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018). Alternatives to class actions include the California Private Attorneys General Act, Cal. Lab. Code pt. 13 (West 2021), or the death-by-a-thousand-paper-cuts strategy based on bringing hundreds or thousands of individual arbitrations.

37 *Disability Impacts All of Us*, CDC, https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html (last visited Dec. 11, 2021).

38 *Our Story*, NDLSA, https://ndlsa.org/ndlsa-dark-mode/ (last visited Dec. 11, 2021). It

coursework addressing disability law,[39] and only a handful have research centers or clinics specifically focused on the issue.[40] Moreover, at most law schools, accommodating the needs of students with disabilities remains a reactive and compliance-driven exercise, not a proactive (read: equitable) process aimed at developing a culture that embraces disability as a valued identity characteristic.[41] And although students are likely to feel more included when their teachers share backgrounds or interests similar to their own, law professors with disabilities have been called the "[f]orgotten [d]emographic,"[42] Notably, the Association of American Law Schools ("AALS") Section on Law Professors with Disabilities and Allies was only just chartered in 2021, and the AALS Section on Disability Law was chartered in 2006.[43] For context, the AALS Section on Women in Legal Education and the AALS Section on Minority Groups were both chartered in 1973, the AALS Section on Law and

remains difficult to assess the quantity of students with disabilities enrolled in American law schools, but proposed revisions to ABA Standard 206 may begin to address the lack of data. *See supra* note 8. Previously, the ABA's Law Student Division had sponsored the National Association of Law Students with Disabilities, but that organization ceased operations in the past few years.

39 Nicole Buonocore Porter, *A Proposal to Improve the Workplace Law Curriculum from a Corporate Compliance Perspective*, 58 St. Louis U. L.J. 155, 159 (2013) (of the 195 law schools on the Law School Admission Counsel website in or around 2013, "seventy-four schools offer[ed] a course in disability law," either then or at some time in the past, having not removed the course from the school's online curriculum); *Postgraduate Studies in Disability Law and Policy*, Zero Project, https://zeroproject.org/practice/pra201623usa-factsheet/ (last visited Dec. 11, 2021) ("disability law is not often considered an established field of law").

40 *E.g.*, *Disability Rights Law Clinic*, American University Washington College of Law, https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/disability/ (last visited Dec. 11, 2021); *Harvard Law School Project on Disability*, Harvard Law School, https://hpod.law.harvard.edu (last visited Dec. 11, 2021); *Disability Rights Clinic*, Syracuse University College of Law, http://law.syr.edu/academics/clinical-experiential/clinical-legal-education/disability-rights-clinic/ (last visited Dec. 11, 2021).

41 In contrast, Loyola Law School, Los Angeles, has undertaken exactly the sort of proactive approach that embraces students with a disability by creating a dedicated pipeline for such students. *Pipeline for Students with Disabilities*, Loyola Law School, Los Angeles, https://www.lls.edu/coelhocenter/pipelineforstudentswithdisabilities/ (last visited Dec. 11, 2021).

42 Katie Eyer, *Petition for New AALS Section on Law Profs with Disabilities & Allies*, Workplace Prof Blog (Apr. 2, 2021), https://lawprofessors.typepad.com/laborprof_blog/2021/04/petition-for-new-aals-section-on-law-profs-with-disabilities-allies.html; *see also* Leslie Pickering Francis & Anita Silvers, *No Disability Standpoint Here!: Law School Faculties and the Invisibility Problem*, 69 U. Pitt. L. Rev. 499 (2008); Joan W. Howarth, *Recruiting Sexual Minorities and People with Disabilities to be Dean*, 31 Seattle U. L. Rev. 751, 757–58 (2008) (citing Alessandra Iantaffi, *Women and Disability in Higher Education: A Literature Search*, *in* Breaking Boundaries: Women In Higher Education 180, 182 (Louise Morley & Val Walsh eds., 1996)).

43 *Section on Law Professors with Disabilities and Allies*, AALS, https://www.aals.org/sections/list/section-on-law-professors-with-disabilities-and-allies/ (last visited Dec. 11, 2021); *Section on Disability Law*, AALS, https://www.aals.org/sections/list/disability-law/ (last visited Dec. 11, 2021). The Section on Law and Mental Disability has a longer history, having been chartered in 1973. *Section on Law & Mental Disability*, AALS, https://www.aals.org/sections/list/law-and-mental-disability/ (last visited Dec. 11, 2021).

Religion was chartered in 1974, and the AALS Section on Sexual Orientation and Gender Identity Issues was chartered in 1983.[44] In contrast, the American Bar Association ("ABA"), which caters not just to law schools but to the entire legal profession, includes the ABA Commission on Disability Rights, which traces its origin back to 1973, when it focused only on mental disabilities; it changed in scope to include all persons with disabilities in 1990, when it became the Commission on Mental and Physical Disability Law.[45] Then, in 2011, it changed its name to its current one in an effort to focus on disability rights—a focus lagging behind the rights-based push of the 1980s and 1990s.[46]

As these examples show, ability equity and inclusion has often taken a back seat to equity and inclusion for students and faculty from other marginalized communities. *Integrating Doctrine and Diversity* offers examples of equitable initiatives with respect to race (e.g., how a teacher can plan to address stereotypes used in class) and critical theory generally (e.g., the critical case brief) but does not discuss access to learning from the perspective of students with disabilities. This strikes us as a major oversight. Part II.A. proposes initiatives that would help to ensure such access. Furthermore, while *Integrating Doctrine and Diversity* does a truly remarkable job of offering law teachers concrete examples of integrating diversity into the classroom in an effort to include students of all backgrounds, examples focusing on disability are rare. Part II.B. seeks to remedy that by offering several disability-specific case studies that could be used in the 1L classroom that can connect substance and pedagogy to prominent and continuing legal developments in global disability law and policy.

A. Equitable Access to Learning

Equity demands that law schools assess the effects of facially neutral policies and practices, weigh the justifications for them against the harms that they inflict, and intervene to minimize unintended disparities in outcomes. Yet too often, well-meaning law schools and law teachers assign materials that are not accessible to everyone.

At a minimum, law schools should make it a point to consider the accessibility of the learning management systems (e.g., Blackboard, Canvas) and the mobile apps (e.g., iClicker) that they require or encourage their

44 *Section on Minority Groups*, AALS, https://www.aals.org/sections/list/minority-groups/ (last visited Dec. 11, 2021); *Section on Women in Legal Education*, AALS, https://www.aals.org/sections/list/women-in-legal-education/ (last visited Dec. 11, 2021); *Section on Law & Religion*, AALS, https://www.aals.org/sections/list/law-and-religion/ (last visited Dec. 11, 2021); *Section on Sexual Orientation & Gender Identity Issues*, AALS, https://www.aals.org/sections/list/sexual-orientation-and-gender-identity-issues/ (last visited Dec. 11, 2021).

45 *About the Commission on Disability Rights*, ABA, https://www.americanbar.org/groups/diversity/disabilityrights/about_us/ (last visited Dec. 11, 2021).

46 Paul K. Longmore, *The Second Phase: From Disability Rights to Disability Culture*, Disability Rag & Resource (Sept./Oct. 1995), https://www.independentliving.org/docs3/longm95.html.

students to use.[47] Learning management system vendors should be required to confirm that their products comply with at least Level AA of the Web Content Accessibility Guidelines ("WCAG") 2.0,[48] the industry standard for website accessibility for users with disabilities.[49] WCAG 2.0 Level AA requires, inter alia, alternatives for time-based media (e.g., captions on videos for students who have hearing impairments), easy navigation (e.g., mechanisms to bypass blocks of material like menus that begin each web page for students who have visual impairments and may use screen readers), and distinguishable content (e.g., resizable text, sufficient contrast).[50] Similarly, mobile app vendors ought to confirm that their products comply with at least Level AA of WCAG 2.0,[51] especially given the growing prominence of mobile apps in the classroom and the unique accessibility challenges that they can pose (e.g., small screen sizes for students with visual impairments, touchscreen keyboard controls for students with certain mobility impairments).

System accessibility largely falls on law school administrations that secure school-wide contracts for learning management systems, but course-specific content can also pose accessibility problems that individual teachers have the opportunity to address. For example, teachers who use in-class PowerPoint slides might share those slides electronically and, if they have access to newer versions of PowerPoint, ensure that photos or videos include "alt text" so students with visual impairments might have their screen readers provide a written explanation of the photo or video that they may not be able to see.[52] Teachers might also consider providing students with manipulable electronic versions of in-class handouts so students can alter the content in the way that is most accessible to them (e.g., enlarging text); doing so may require teachers to apply an optical character recognition ("OCR") tool to convert files like PDFs into readable files (e.g., a searchable PDF). Teachers also ought to consider the impact of prohibiting laptops in class on students who rely on laptops as a reasonable accommodation for their disability.[53] Finally, law

47 For an overview of the technical and legal issues surrounding digital accessibility, see Jonathan Lazar et al., Ensuring Digital Accessibility through Process and Policy (2015).

48 *Web Content Accessibility Guidelines (WCAG) 2.0*, W3C, https://www.w3.org/TR/WCAG20/ (last visited Dec. 11, 2021).

49 *Accessibility Conformance Levels: Standards*, Level Access Blog, https://www.levelaccess.com/accessibility-conformance-levels-standards/ (last visited Dec. 11, 2021).

50 *Supra* note 24.

51 *Mobile Accessibility: How WCAG 2.0 and Other W3C/WAI Guidelines Apply to Mobile*, W3C, https://www.w3.org/TR/mobile-accessibility-mapping/ (last visited Dec. 11, 2021).

52 *Cf. Add alternative text to a shape, picture, chart, SmartArt graphic, or other object*, Microsoft, https://support.microsoft.com/en-us/office/add-alternative-text-to-a-shape-picture-chart-smartart-graphic-or-other-object-44989b2a-903c-4d9a-b742-6a75b451c669 (last visited Dec. 11 2021) (explaining how to add "alt text" to a photo or video on a PowerPoint slide).

53 *See* Ted S. Hasselbring & Candyce H. Williams Glaser, *Use of Computer Technology to Help Students with Special Needs*, 10 Future Child 102 (2000).

libraries must ensure that their typically vast array of resources are accessible to all who would seek to use them.[54] These equitable actions would improve access to learning not only for law students with disabilities, but for all law students, given that these actions are universal design for learning strategies,[55] all without imposing significant burdens on law schools or law teachers.

Finally, ensuring equity for students with disabilities reduces higher education institutions' legal risks. Preeminent universities have been accused of violating Titles II and III of the ADA and Section 504 of the Rehabilitation Act of 1974 by offering online tools like learning management systems and live-streamed events that are inaccessible to individuals with disabilities.[56] Some institutions have settled those allegations by agreeing to take equitable actions, thereby providing other institutions with a road map for how to make online content accessible.[57] Other institutions chose to remove online content entirely rather than allow everyone to access it,[58] harking back to municipalities in the civil rights era being ordered to desegregate public swimming pools and responding by filling those public pools with concrete rather than allowing everyone access to them.[59] Ability equity in law schools demands a proactive strategy not only to welcome and increase learning outcomes for all students, but also to minimize institutions' litigation risks and avoid responding to such litigation with a strategy that stymies learning rather than one that provides equitable access for everyone.

B. Case Studies in Ability Diversity

Disability is occasionally included in *Integrating Doctrine and Diversity* within longer catalogs of classifications like race and sex,[60] but more often it is left off

54 For an excellent contemporary analysis of this issue, see Raizel Liebler & Gregory Cunningham, *Can Accessibility Liberate The "Lost Ark" of Scholarly Work?: University Library Institutional Repositories Are "Places of Public Accommodation,"* 52 UIC J. Marshall L. Rev. 327 (2019).

55 Thomas Hehir, New Directions in Special Education: Eliminating Ableism in Policy and Practice 86–110 (2005); Jennifer Jolly-Ryan, *Bridging the Law School Learning Gap Through Universal Design*, 28 Touro L. Rev. 1393, 1396 (2012).

56 National Association of the Deaf et al. v. Harvard and MIT, Cohen Milstein Sellers & Toll PLLC, https://www.cohenmilstein.com/case-study/national-association-deaf-et-al-v-harvard-and-mit (last visited Dec. 11, 2021); Tanya Roscorla, DOJ vs. UC Berkeley: *Forcing Online Content to Be Accessible*, Gov't Tech. (Sept. 23, 2016), https://www.govtech.com/education/higher-ed/web-accessibility-investigation-higher-ed.html.

57 Sarah Kim, *Harvard University, The Latest Higher Education Institution to Be Mandated to Provide Video Closed Captioning*, Forbes (Nov. 29, 2019), https://www.forbes.com/sites/sarahkim/2019/11/29/harvard-university-national-assoc-of-the-deaf-lawsuit/?sh=31e9a68d6699.

58 Carl Straumsheim, *Berkeley Will Delete Online Content*, Inside Higher Ed (Mar. 6, 2017), https://www.insidehighered.com/news/2017/03/06/u-california-berkeley-delete-publicly-available-educational-content.

59 *What 'Drained-Pool' Politics Costs America*, The Ezra Klein Show (Feb. 16, 2021), https://www.nytimes.com/2021/02/16/opinion/ezra-klein-podcast-heather-mcghee.html.

60 Integrating Doctrine and Diversity, *supra* note 4, at xii, 10, 13, 22.

those laundry lists[61] or simply ignored. Likewise, throughout the book, myriad case studies seek to diversify the classroom by, for example, highlighting perspectives of people of color, women, LGBTQ+ individuals, and individuals representing other marginalized communities. These efforts are necessary and appreciated, but regrettably, few case studies specifically focus on the challenges faced by individuals with disabilities.

One notable exception is Professor D.O. Malagrinò's case study on *Hill v. Community of Damien of Molokai* in the chapter on property. His essay presents a useful framing for teaching about the Fair Housing Act in the context of neighbors attempting to leverage a private restrictive covenant limiting subdivision lots to "single family residence purposes" to exclude from their neighborhood a group home for four individuals living with AIDS.[62] Malagrinò uses *Hill* to introduce students to discriminatory intent and disparate impact; intersectional harm for individuals with disabilities who are also likely to be people of color or those who are gay, living with a substance use disorder, and impoverished; and the import of language in judicial opinions (e.g., *Hill* and the statute it interprets speak in terms of discrimination based on "handicap").[63]

Further, content focusing on individuals with disabilities includes Professor Ruthann Robson's thoughtful reflection on the Supreme Court's use of the phrase "mentally retarded" in *City of Cleburne v. Cleburne Living Center,* in her essay considering the use of "hateful" language in the classroom,[64] Professor Shamika D. Dalton's discussion of disability (and race) discrimination in the context of a workplace's "no beards" policy,[65] and a digest of two legal articles addressing disability discrimination in the context of tort law.[66] The chapter on constitutional law could be further supplemented with a discussion of *Buck v. Bell*, which could be used as a vehicle, perhaps alongside the *Slaughterhouse Cases* and *Lochner*, to teach 1Ls how the Fourteenth Amendment used to be interpreted.[67] Unfortunately, the chapters addressing contracts, criminal law, legal writing, civil procedure, and torts fail to substantively discuss ability

61 *Id.* at 3, 7, 27 n.10, 43, 45, 51, 52, 59.

62 *Id.* at 103.

63 *Id.* at 101–09.

64 *Id.* at 198.

65 *Id.* at 283.

66 *Id.* at 359–60 (citing Mark C. Weber, *The Common Law of Disability Discrimination*, 2012 Utah L. Rev. 430 (2012)); Sofia Yakren, *"Wrongful Birth" Claims and the Paradox of Parenting a Child with a Disability*, 87 Fordham L. Rev. 583 (2018)).

67 For an excellent contextualization of *Buck v. Bell* as a jarring rejection of the Fourteenth Amendment to protect individuals with intellectual disabilities from state-mandated sterilization when the same Court was leveraging the Fourteenth Amendment to strike down states' economic regulations left and right, see Stephen A. Siegel, *Justice Holmes,* Buck v. Bell*, and the History of Equal Protection*, 90 Minn. L. Rev. 106 (2005).

diversity, and in doing so further marginalize and devalue disability as an identity category through its absence.

Moreover, and beyond equity, including more disability-focused case studies in legal education is a pedagogically useful method for raising fundamental questions related to autonomy versus paternalism, as well as equality in the context of access to justice, thereby inculcating in our students principles that are core to our profession.[68] Raising these issues within the context of disability injects that category into the mainstream of legal thought and classroom processes.

One overarching legal concept that has the potential to accomplish those lofty goals is that of legal capacity—the right to be recognized as a "legal person" before the law. Breaking with two millennia of the legal device of guardianship, which presumes the incompetence of persons with disabilities to make their own decisions and therefore delegates that authority to judicially recognized guardians, the United Nations Convention on the Rights of Persons with Disabilities ("CRPD")[69] requires states parties instead to acknowledge the capacity of persons with disabilities and to provide supported decision-making mechanisms when needed.[70] Despite the United States' having signed, but not yet ratified, the CRPD,[71] the recognition of legal capacity is precipitating practical changes among self-advocates,[72] as well as formal legal reforms at the state level.[73] At the same time, the scope and content of legal capacity remain

68 *Cf. ABA Mission and Goals*, Am. Bar Ass'n, https://www.americanbar.org/about_the_aba/aba-mission-goals/ (last visited Dec. 11, 2021) (objectives of the American Bar Association include "[p]romot[ing] full and equal participation in the association, our profession, and the justice system by all persons" and "[e]liminat[ing] bias in the legal profession and the justice system").

69 United Nations Convention on the Rights of Persons with Disabilities, A/RES/61/106, 2515 U.N.T.S. 3 (2006).

70 *Id.* at Art. 12 ("States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."); *see generally* Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road From Guardianship to Supported Decision-Making*, 19 Human Rights Brief 8 (2012). Also consider General Comment No. 1 promulgated by the Committee on the Rights of Persons with Disabilities, which interprets Article 12 as mandating the eradication of "substitute decision-making regimes such as guardianship, conservatorship and mental health laws that permit forced treatment." *General Comment on Article 12: Equal Recognition Before the Law*, Committee on the Rights of Persons with Disabilities, https://www.ohchr.org/documents/hrbodies/crpd/gc/dgcarticle12.doc.

71 Michael Ashley Stein & Janet E. Lord, *Ratify the UN Disability Treaty,* Foreign Policy in Focus (July 9, 2009), https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1066&context=popular_media.

72 *See, e.g.*, Bill Alford et al., *Supported Decision-Making for Persons with Intellectual and Developmental Disabilities*, Harv. L. Rev. Blog (Aug. 7, 2021), https://blog.harvardlawreview.org/supported-decision-making-for-persons-with-intellectual-and-developmental-disabilities/.

73 Benjamin A. Barsky, *Dual Federalism, Constitutional Openings, and the Convention on the Rights of Persons with Disabilities*, U. Penn. J. Con. L. (forthcoming 2021); *see also In Your State*, National Resource

unclear, at times controversial, and a work in progress;[74] hence a wonderfully amorphous and evolving topic of in-class discussion.

Consider the interplay of the law and brief psychotic disorder, a condition that lasts at least one day but no more than one month, which can be diagnosed by the presence of one or more of the following symptoms: (1) delusions, (2) hallucinations, or (3) disorganized speech (e.g., frequent derailment or incoherence), and possibly also (4) grossly disorganized or catatonic behavior.[75] Specifically, consider an individual who previously was diagnosed with having such a disorder, but who was experiencing only gross disorganization at all relevant times. We illustrate how this simple example of a complex phenomenon could be leveraged in each of the following 1L classrooms to highlight ability diversity while investigating challenging issues. Moreover, many of these hypotheticals could be the basis for an excellent memo- or brief-writing assignment in a legal writing course.

Contracts (and *property*). What if this individual signs a contract (such as a conveyance of real property)? This hypothetical fact pattern poses several critical questions. What is the relevance of medical diagnoses to legal analysis (e.g., medicine is a descriptive venture in which physicians seek precise diagnoses for the purpose of precise treatment, whereas rulemaking is a normative venture in which rulemakers seek to write precise rules for the purpose of regulating actions)? Does the presumption of capacity justly protect this individual or unjustly interfere with the ability to engage in everyday commercial activities? Specifically, does common law situating lack of capacity as an affirmative defense employ an ableist presumption that individuals with certain disabilities lack the capacity to contract? And what are the pros and cons of such a default rule (e.g., judicial economy as a pro, systemic ableism as a con)? Do individuals with psychosocial impairments like bipolar disorder or cognitive impairments like dementia or Alzheimer's disease always have the mental capacity to have a meeting of the minds, and if the answer in an individual case is "no," how might supported decision-making—as a state initiative or arising out of community-based supports—enable such a meeting of the minds?[76] And, turning briefly to *property*-specific considerations, what is the capacity of a special needs trust beneficiary or a guardian's ward, and

---

Center for Supported Decision Making, http://www.supporteddecisionmaking.org/states (last visited Dec. 11, 2021).

74 For a variety of perspectives, including those of the stakeholders, see Mental Health, Legal Capacity, and Human Rights (Michael Ashley Stein et al. eds., 2021) and Nina A. Kohn, *Legislating Supported Decision-Making*, 58 Harv. J. Legis. 313 (2021).

75 American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 94 (5th ed. 2013).

76 Christopher P. Guzelian et al., *Credit Scores, Lending, and Psychosocial Disability*, 95 B.U. L. Rev. 1807, 1850 n.231 (2015) (citing *supra* note 55, at Gen. Comment No. 1, ¶ 23).

what are some of the pros and cons of an all-or-nothing approach to capacity in these contexts?[77]

Criminal law. What if this individual is found guilty of committing murder despite raising an insanity defense because applicable state law defines insanity only as the inability to understand the nature of one's actions, not the inability to understand whether those actions are morally wrong? Just last year, in *Kahler v. Kansas*, the Supreme Court considered whether a state violates the Due Process Clause by adopting such an insanity test, concluding that it does not.[78] Discussing *Kahler* in criminal law not only serves as an ideal vehicle for teasing out the differences between the "moral capacity" and "cognitive capacity" prongs of the *M'Naghten* test for insanity, but it allows students to question the extent to which the criminal justice system effectively accommodates individuals with psychosocial disabilities. Moreover, as a broader matter, this fact pattern can facilitate discussion of whether an insanity defense should exist at all,[79] and if so what repercussions flow from successfully mounting it (e.g., confinement well beyond the maximum sentence resulting from a guilty verdict).[80]

Civil procedure. If this individual appeared as a *pro se* plaintiff, cases like *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal* undoubtedly increase the likelihood of the complaint's being dismissed for a failure to state a plausible claim. Is such a result justified under Fed. R. Civ. P. 8? What about the Equal Protection Clause (consider *City of Cleburne, Texas v. Cleburne Living Center, Inc.* and *Washington v. Davis*, the former of which rejects heightened scrutiny for laws that target individuals with disabilities and the latter of which forecloses disparate impact claims under the Fourteenth Amendment)?[81] Should the government or the ABA mitigate against such outcomes by providing potential litigants with a civil right to counsel in certain actions (formerly and colloquially known as "Civil *Gideon*") to improve universal access to justice?[82] Could this individual

77 *See generally id*. at 1853–58.

78 Kahler v. Kansas, 140 S. Ct. 1021 (2020).

79 *See generally* Stephen J. Morse, *Mental Disorder and Criminal Law*, 101 J. Crim. L. & Criminology 885 (2011); Stephen M. LeBlanc, *Cruelty to the Mentally Ill: An Eighth Amendment Challenge to the Abolition of the Insanity Defense*, 56 Am. U. L. Rev. 1281, 1286–95 (2007); Christopher Slobogin, *The Integrationist Alternative to the Insanity Defense: Reflections on the Exculpatory Scope of Mental Illness in the Wake of the Andrea Yates Trial*, 30 Am. J. Crim. L. 315 (2003); Faye Boland, Anglo-American Insanity Defense Reform: The War Between Law And Medicine 1 (1999); United Nations Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, ¶ 47, U.N. Doc. A/HRC/10/48 (Jan. 26, 2009).

80 *See generally* Jones v. United States, 463 U.S. 354 (1983); Bailey Wendzel, *Not Guilty, Yet Continuously Confined: Reforming the Insanity Defense*, 57 Am. Crim. L. Rev. 391 (2020).

81 City of Cleburne, Texas v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985); Washington v. Davis, 426 U.S. 229 (1976); *see also* Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 365–68 (2001) (reaffirming *Cleburne*).

82 *Criminal and Civil Rights to Counsel*, National Coalition for a Civil Right to Counsel,

represent persons with different psychosocial disabilities in a class action, especially considering how strictly courts have interpreted FED. R. CIV. P. 23's commonality, typicality, and adequacy of representation requirements?[83] Finally, just as a contracts class might ask whether individuals ought to be presumed to have the capacity to contract, a civil procedure class might ask a similar question regarding capacity in the context of FED. R. CIV. P. 9.[84]

Torts. What if this individual's disorganization led her to improperly store her luggage on a common carrier and that luggage fell and injured her, causing her to suffer not only physical injuries, but also consequential injuries (e.g., exacerbated disorganization leading to her employment's being terminated)? This hypothetical fact pattern can help teach students the difference between contributory negligence and comparative negligence regimes; force students to question whether contributory negligence regimes are as "harsh [and] illogical" as many scholars have made them out to be, especially as they affect individuals with disabilities;[85] introduce students to the duty of care that common carriers owe to all individuals generally and to individuals with disabilities specifically;[86] and pose the question whether "eggshell plaintiffs" are entitled to the full extent of provable compensatory damages. This case study also raises a favorite debate in *torts* classes: What is a reasonable person, and how, if at all, does that person differ from a reasonable person with a disability?[87] Finally, other disability-focused instruction, such as a discussion about wrongful life and wrongful birth cases,[88] could be added into the curriculum naturally without the need to resort to our hypothetical individual with brief psychotic disorder. Any of these fact patterns could be turned into a brief, in-class hypothetical or a longer, in-class simulation designed to both reinforce learning and help make the 1L classroom more welcoming and inclusive for students with disabilities.[89]

---

http://civilrighttocounsel.org/about/criminal_and_civil_rights_to_counsel (last visited Dec. 11, 2021).

83 Michael Ashley Stein & Michael E. Waterstone, *Disability, Disparate Impact, and Class Actions*, 56 DUKE L.J. 861, 901 (2006); *see also* Siegel, *supra* note 15.

84 FED R. CIV. P. 9(a)(1)(A) ("Except when required to show that the court has jurisdiction, a pleading need not allege . . . a party's capacity to sue or be sued.").

85 Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 CAL. L. REV. 841, 876 (1966) (citations omitted); *accord* Adam A. Milani, *Living the World: A New Look at the Disabled in the Law of Torts*, 48 CATH. U. L. REV. 323, 341–55 (1999); *see also* Poyner v. Loftus, 694 A.2d 69, 72 (D.C. 1997).

86 Milani, *supra* note 85, at 369–81; tenBroek, *supra* note 85, at 883–96.

87 *See* RESTATEMENT (SECOND) OF TORTS § 283C (1965) (exploring the effect of disabilities on the reasonable person standard); Siegel, *supra* note 15.

88 *See* Wendy F. Hensel, *The Disabling Impact of Wrongful Birth and Wrongful Life Actions*, 40 HARV. C.R.-C.L. L. REV. 141 (2005).

89 Although it is beyond the scope of INTEGRATING DOCTRINE AND DIVERSITY and this review, the upper-level law student curriculum could similarly benefit from a greater focus on disability-

Conclusion

Integrating Doctrine and Diversity is one of those books that one should pass around to law school administrators and all law professors and instructors teaching 1L courses, tenured and untenured alike, to help them brainstorm innovative ways to make their classrooms more inclusive. In so doing, readers will undoubtedly improve students' learning experiences, especially students from oft-marginalized communities. We applaud the practical utility of this new book and hope that our recommendations can proactively help to augment ability equity and further welcome law students with disabilities into the legal community.

focused case studies; courses on wills, trusts, and estates, family law, and employment law come to mind as ideal subject matters to highlight issues related to disability.