

ment prohibits the death penalty today. The key is his belief that the Framers wanted the Amendment to be flexible, as exemplified by their (arguably) deliberately vague words: “If the Framers had wanted to prohibit only those punishments they themselves considered ‘cruel and unusual’ in 1791, they could have said so. They did not, choosing instead to employ ‘excessive,’ ‘cruel,’ and ‘unusual’—familiar words that any judge, in any time, can interpret perfectly well and with relatively little difficulty” (p. 312).

Taking this explicitly “evolvist” position, Bessler aims to demonstrate why the death penalty, nowadays, is cruel and unusual. His arguments here are not always entirely convincing (e.g., his assertion that execution is “cruel” because dictionary definitions say that it is cruel to inflict suffering on a person suffers from the basic point that all punishments inflict suffering) but are for the most part convincingly grounded in jurisprudential interpretations of the words.

Ultimately, Bessler passionately urges his readers to look forward to abolition in the United States by looking back to Beccaria’s utilitarian vision of penal reform. Perhaps because of the author’s fervently normative stance on the topic, the arguments are occasionally unclear, and he occasionally neglects discourses about punishment that directly address the death penalty. Despite these problems, *Cruel and Unusual* is an important contribution.

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The Right to Be Out: Sexual Orientation and Gender Identity in America’s Public Schools. By Stuart Biegel. Minneapolis: University of Minnesota Press, 2010. 300 pp. \$19.95 paper.

Reviewed by Joe Rollins, City University of New York

Stuart Biegel’s *The Right to Be Out* offers an expansive treatment of the legal and policy issues facing LGBT students and educators in America’s public schools. Separated into two parts, the first surveys “the legal principles underlying the right to be out,” and the second “sets forth the research-based principles that inform a proactive focus on school climate” (p. xix). Both parts begin with an introductory overview that is followed by three case studies. The author describes the project as “a series of building blocks, with each chapter expanding on what has come before.” Although the book stands as an integrated whole, “each of the eight chapters is also designed to stand alone” (p. xix).

Chapter 1, "The Legal Foundations of the Right to Be Out," begins with the observation that the right to be out is a combination of First and Fourteenth Amendment principles. Here, the author quickly summarizes and synthesizes key public forum and right-to-an-education cases before turning brief attention to the student organization cases of the 1970s and 1980s. The story of Jamie Nabozny, a Wisconsin teenager who suffered relentless torment at the hands of his classmates while school officials ignored his pleas for help, is given slightly greater attention in order to spotlight waning judicial tolerance for such cavalier administrative apathy. Nabozny sued and ultimately won a sizable settlement in federal court, a success from which Biegel draws a hopeful jurisprudential conclusion: "all such treatment must end" (p. 12). Discussions of *Lawrence v. Texas* (2003) and a selection of Religion Clause cases are then marshaled in support of the author's argument that in educational settings there is constitutional support for a right to be out.

Chapters 2, 3, and 4, address, respectively: the emerging rights of LGBT students; challenges for LGBT educators; and curriculum, religion, morality, and values. Echoing *Nabozny*, what Chapter 2 shows most clearly is that while LGBT students were once seen as the disruptive problem in educational settings, judges have begun to understand that bullying and administrative disregard are the intolerable behaviors that must be changed. Chapter 3 shows that something similar is becoming true for LGBT educators. Whereas LGBT educators were once almost certainly subject to dismissal if they came out, courts have started to protect their right to be out on the job. Chapter 4 deals with the thornier problem of balancing LGBT curriculum and free-speech issues with religious and moral objections. Here, Biegel strives admirably, and optimistically, to find the middle ground in a controversy that is unlikely to go away any time soon.

Part II turns attention to education policy in an effort to guide professional development for administrators, set forth creative initiatives to address school climate, and address LGBT-specific programs. Drawing from research in the field of education, Biegel notes, "the sum total of all the research-based implications in this section is that a truly effective education process cannot be limited to either basic skills or traditional curricular content but must also include goals and objectives that focus on the building of social intelligence and emotional acumen" (p. 115). Chapter 6 suggests ways that teachers can bring LGBT content into the classroom and curriculum, Chapter 7 considers issues related to school sports, and Chapter 8 outlines the problems faced by transgender youth. The conclusion moves from Alan Drury's 1959 novel *Advise and Consent* to the story of Harvey Milk (and others), seemingly to demonstrate

the educational necessity of visibility and acceptance if LGBT youth are to be prepared for successful, productive, survivable futures.

The Right to Be Out will be of greatest use and interest to readers in the field of education. Legal scholars and those versed in the study of sexuality will have already found these cases, issues, histories, and arguments treated in greater depth and with fuller analysis elsewhere. The book's one persistent shortcoming stems from the author's propensity for speculation. For example, we read about what *might* have happened if a case had gone forward (p. 64); what school officials "might have concluded" (p. 68); that possible case outcomes are "highly doubtful" (p. 95–96). Other stories related in the book, such as those about professional athletes, are interesting but feel somewhat tangential to the central project. Nonetheless, by bringing these materials together in a schematic and accessible manner, Biegel has provided, bravely, a useful service for those who need it most. The trenchant problems addressed by the book are today felt most keenly by those on the front lines of the battle for LGBT rights—kids—and any effort put forth on their behalf is laudable.

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Punished: Policing the Lives of Black and Latino Boys. By Victor M. Rios. New York: New York University Press, 2011. 218 pp. \$20.00 paper.

Reviewed by M. Kristen Hefner, University of Delaware

Punitive strategies such as "tough on crime" and "zero tolerance" policies that have traditionally been restricted to the field of criminal justice are currently being implemented in mainstream institutions that serve youthful populations, such as schools and civic centers. While examinations of punitive discourses and practices, poverty, and youth crime are widely documented within the current sociological, criminological, and legal literature, studies often fail to take into account the lived experiences of the youth themselves. Through life history interviews and observations, Victor Rios's book, *Punished: Policing the Lives of Black and Latino Boys*, provides a voice for marginalized young men in Oakland and elucidates the processes through which these young men are shrouded in a culture of punishment that shapes their life experiences and trajectories. Moreover, Rios's work is a timely contribution given the current social and political debates regarding punitive policies.