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Issue 1. Is Crime Beneficial to Society? 2

YES: Emile Durkheim, from *The Rules of Sociological Method* (The Free Press, 1938) 4

NO: Daniel Patrick Moynihan, from “Defining Deviancy Down,” *The American Scholar* (Winter 1993) 9

Classic sociologist Emile Durkheim (1858–1917) theorizes that crime exists in all societies because it reaffirms moral boundaries and at times assists needed social changes. Former U.S. Senator Daniel Patrick Moynihan (D-NY) worries that Durkheim’s thinking omits the possibility of “too much crime,” especially violent crime, so that deviancy as a serious societal problem is not addressed.

Issue 2. Is Criminal Behavior Determined Biologically? 17

YES: Adrian Raine, from “The Biological Basis of Crime,” in James Q. Wilson and John Petersilia, eds., *Crime: Public Policies for Crime Control* (ICS Press, 2002) 19

NO: Jeffrey H. Reiman, from *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice* (Allyn & Bacon, 1998) 28

Adrian Raine argues that one of the principal reasons why we have been so unsuccessful in preventing adult crime is because crime control policies have systematically ignored the biological side of human behavior. Jeffrey Reiman asserts that social conditions, including poverty, are the essential sources of crime and that early childhood intervention and drug treatment programs can exert a major impact on crime rates.

Issue 3. Is a Person’s Body Type Clearly Linked to Criminal Behavior? 44

YES: Sean Maddan, Jeffrey T. Walker, and J. Mitchell Miller, from “Physiques, Somatotypes and Crime.” An essay. (2009) 46

NO: Chris L. Gibson and Kevin M. Beaver, from “Does Body Type Really Have an Effect on Criminal Behavior?” An essay. (2009) 53

Professors Maddan, Walker, and Miller argue that body type is related to criminal behavior because more criminals have muscular body builds. In other words, there is a strong correlation between a person’s body build and criminal behavior. Professors Gibson and Beaver argue, in contrast, that both biological and social factors lead to criminal behavior and that no single variable, such as body build, can explain crime. Moreover, they assert that while body type may be a predisposing factor for crime, that predisposition will surface only under certain environmental conditions.

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Issue 4. Should George W. Bush Be Prosecuted for War Crimes? 64

YES: **Vincent Bugliosi**, from "Opening Up One's Eyes," *The Prosecution of George W. Bush for Murder* (Vanguard Press, 2008) 66

NO: **John Barry**, from "The Politics of Vengeance," *Newsweek.com* (January 19, 2009) 69

Former Charles Manson prosecutor Vincent Bugliosi believes that George W. Bush should be prosecuted for the deaths of American soldiers and innocent civilians as a result of the War in Iraq. *Newsweek* writer John Barry argues that because the U.S. Congress was negligent in overseeing the Bush Administration, we should seek ways to prevent a repetition of these events, not vengeance for war crimes.

Issue 5. Does the United States Have a Right to Torture Suspected Terrorists? 75

YES: **Andrew A. Moher**, from "The Lesser of Two Evils? An Argument for Judicially Sanctioned Torture in a Post-9/11 World," *Thomas Jefferson Law Review* (Spring 2004) 77

NO: **Elisa Massimino**, from "Leading by Example? U.S. Interrogation of Prisoners in the War on Terror," *Criminal Justice Ethics* (Winter 2004) 90

Attorney Andrew A. Moher argues that judicially sanctioned torture of terrorists is appropriate for the purpose of preventing a greater evil. He further contends a judicially monitored system in the United States would be far superior to the current policy of practicing torture "under the radar screen" in other countries. Elisa Massimino believes that the use of torture is immoral and counterproductive for the United States. She asserts that if the United States wishes to rely on the protections of the Geneva Conventions, then it must comply with its provisions prohibiting the torture of prisoners.

Issue 6. Is Racial Profiling an Acceptable Law Enforcement Strategy? 98

YES: **Jared Taylor and Glayde Whitney**, from "Racial Profiling: Is There an Empirical Basis?" *Mankind Quarterly* (Spring 2002) 100

NO: **Michael J. Lynch**, from "Misleading 'Evidence' and the Misguided Attempt to Generate Racial Profiles of Criminals; Correcting Fallacies and Calculations Concerning Race and Crime in Taylor and Whitney's Analysis of Racial Profiling," *Mankind Quarterly* (Spring 2002) 112

Jared Taylor, president of the New Century Foundation, and Glayde Whitney argue that the disparity in crimes committed by members of different races justifies racial profiling by the police. Professor Michael J. Lynch, however, argues that a proper analysis of the crime data does not support Taylor and Whitney's conclusions. He finds racial profiling to be objectionable from a legal and moral perspective as well.

Issue 7. Should Serious Sex Offenders Be Castrated? 126

YES: Lawrence Wright, from "The Case for Castration," *Texas Monthly* (May 1992) 128

NO: Kari A. Vanderzyl, from "Castration as an Alternative to Incarceration: An Impotent Approach to the Punishment of Sex Offenders," *Northern Illinois University Law Review* (Fall 1994) 135

Attorney Lawrence Wright argues that while castration may not be an ideal solution, if we treat it as therapy rather than punishment, as help instead of revenge, and if we view offenders as troubled victims, not monsters, then perhaps castration will become an accepted and humane option for sex offender treatment. Attorney Kari A. Vanderzyl asserts that castration should be rejected as an unacceptable, ineffective, and unconstitutional alternative to imprisonment for sex offenders.

Issue 8. Should Juvenile Courts Be Abolished? 144

YES: Barry C. Feld, from *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford University Press, 1999) 146

NO: Vincent Schiraldi and Jason Ziedenberg, from *The Florida Experiment: An Analysis of the Impact of Granting Prosecutors Discretion to Try Juveniles As Adults* (July 1999) 157

Law professor Barry C. Feld contends that the entire concept of a separate juvenile court system was wrong from the start. The results have been unanticipated negative consequences for America's children and for justice, including denial of due process, confusing of court functions, and terrible punishments purporting to be treatment. Vincent Schiraldi, director of the Justice Policy Institute, and researcher Jason Ziedenberg bemoan the increasing trend to transfer juveniles to adult courts. They feel that states in which prosecutors decide if children are to be tried as adults are especially pernicious in harming youngsters. Moving thousands of kids into adult courts, they argue, is unnecessary, harmful, and racist.

Issue 9. Is Exposure to Pornography Related to Increased Rates of Rape? 168

YES: Diana E. H. Russell, from *Dangerous Relationships: Pornography, Misogyny, and Rape* (Sage, 1998) 170

NO: Anthony D'Amato, from "Porn Up, Rape Down," *Northwestern Public Law Research Paper No. 913013* (2006) 179

Diana E. H. Russell argues that the evidence is overwhelming that exposure to pornography is a major causal factor of rape. She utilizes the concept of "multiple causation" to explain the relationship between pornography and rape. Anthony D'Amato contends that the incidence of rape has declined 85% in the last 25 years while access to pornography via the internet has become more widely available to teenagers and adults.

UNIT 3 PRISON PROGRAMS AND ALTERNATIVES 189**Issue 10. Is It Ethical to Segregate HIV-Positive Inmates? 190**

YES: Penny A. Robinette, from "Is the Segregation of HIV-Positive Inmates Ethical? Yes," *The Prison Journal* (March 1999) 192

NO: Billy Long, from "Is the Segregation of HIV-Positive Inmates Ethical? No," *The Prison Journal* (March 1999) 199

Penny A. Robinette, an administrator at Presbyterian Child Welfare Services in Richmond, Kentucky, contends that riskier behavior, significantly higher increases in AIDS cases, and the difficulties of controlling and treating AIDS within America's prisons all justify mandatory testing and segregation of HIV-positive inmates. Assistant professor of criminal justice Billy Long argues that the risks and incidence of AIDS in prisons have been greatly exaggerated. Moreover, she contends, mandatory testing and segregation of inmates will have more negative than positive consequences.

Issue 11. Are Supermax (Control Unit) Prisons an Appropriate Way to Punish Hardened Criminals? 206

YES: Gregory L. Hershberger, from "To the Max," *Corrections Today* (February 1998) 208

NO: Rodney J. Henningsen, W. Wesley Johnson, and Terry Wells, from "Supermax Prisons: Panacea or Desperation?" *Corrections Management Quarterly* (Spring 1999) 213

Federal Bureau of Prisons regional director Gregory L. Hershberger contends that the challenges posed by hardened prison inmates support confining all of them in one supermax prison facility. This approach may increase the safety of staff and inmates at other locations in the system and allow them to operate in a more effective manner. Rodney J. Henningsen, W. Wesley Johnson, and Terry Wells argue that supermax prisons are symbolic of the desperation Americans face in trying to reduce crime using traditional formal social control methods. Moreover, as the cost of incarceration continues to increase, public officials will be forced to consider a more balanced approach to crime control.

Issue 12. Should Juveniles Who Commit Murder Be Sentenced to Life in Prison Without the Possibility of Parole? 223

YES: Liza Matia, from "Parents Fight to Keep Juvenile Killers in Prison," *The Progress* (November 22, 2008) 225

NO: Human Rights Watch, from "When I Die They'll Send Me Home," *Human Rights Watch* (January 2008) 228

Writer Liza Matia argues that changing the law to allow parole for juvenile murderers would be devastating to the families of the victims of these crimes. Moreover, it is fundamentally unfair to make victims' families worry that previously convicted offenders may later be considered for early release. Human Rights Watch asserts, however, that "life without parole laws" are unnecessarily harsh when applied to juvenile offenders.

Issue 13. Should Private "For-Profit" Corporations Be Allowed to Run U.S. Prisons? 235

YES: Wayne H. Calabrese, from "Low Cost, High Quality, Good Fit: Why Not Privatization?" *Privatization Correctional Institutions* (1996) 237

NO: Jeff Sinden, from "The Problem of Prison Privatization: The U.S. Experience," *Capitalist Punishment: Prison Privatization & Human Rights* (2003) 243

Wayne H. Calabrese, vice president of the Wackenhut Corporation, argues that the privatization of U.S. prisons saves money and provides quality services. Jeff Sinden, managing editor of *Human Rights Tribune*, contends that the private prison industry has failed to achieve substantial cost savings and that there have been systemic human rights abuses in for-profit correctional institutions.

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Issue 14. Is Capital Punishment a Bad Public Policy? 256

YES: David Von Drehle, from "Miscarriage of Justice: Why the Death Penalty Doesn't Work," *The Washington Post Magazine* (February 5, 1995) 258

NO: Ernest van den Haag, from "The Ultimate Punishment: A Defense," *Harvard Law Review* (May 1986) 270

David Von Drehle, a writer and the arts editor for the *Washington Post*, examines specific capital punishment cases, statistics, and statements made by U.S. Supreme Court justices and prosecutors reversing their support of the death penalty and concludes that capital punishment is bad policy. Ernest van den Haag, a professor of jurisprudence and public policy (now retired), analyzes a number of objections to capital punishment, ranging from its unfair distribution to its excessive costs and its brutal nature. He rejects claims that capital punishment is unfair and barbaric, and he maintains that the death penalty does deter criminals and is just retribution for terrible crimes.

Issue 15. Will Strict Gun Control Laws Reduce the Number of Homicides in the United States? 278

YES: Franklin E. Zimring, from "Firearms, Violence, and the Potential Impact of Firearms Control," *Journal of Law, Medicine and Ethics* (Spring 2004) 280

No: Lance K. Stell, from "The Production of Criminal Violence in America: Is Strict Gun Control the Solution?" *Journal of Law, Medicine and Ethics* (Spring 2004) 287

Professor Franklin E. Zimring argues that there is a strong relationship between gun use and the death rate from violent crime and that handgun use increases the death rate from violence by a factor of three to five. Professor Lance K. Stell asserts that strict gun control institutionalizes the natural predatory advantages of larger, stronger, violence-prone persons and increases the risks of violent victimization for less well-off law-abiding citizens.

Issue 16. Should the Police Enforce Zero-Tolerance Laws? 304

YES: George L. Kelling and William J. Bratton, from "Declining Crime Rates: Insiders' Views of the New York City Story," *The Journal of Criminal Law & Criminology* (Summer 1998) 306

NO: Judith A. Greene, from “Zero Tolerance: A Case Study of Police Policies and Practices in New York City,” *Crime & Delinquency* (April 1999) 316

George L. Kelling, a professor in the School of Criminal Justice at Rutgers University, and William J. Bratton, former New York City Police Department commissioner, strongly defend Kelling’s formulation of zero tolerance/broken windows theory and Bratton’s implementation of Kelling’s ideas. They assert that crime, especially homicides, has rapidly declined in New York City as a result of this policing mode. Judith A. Greene, senior fellow of the Institute on Criminal Justice of the University of Minnesota Law School, examines many alternative explanations for New York’s crime decline and concludes that zero tolerance is only partially responsible at best. She compares New York’s policing model with San Diego’s community policing model, and she argues that the latter is just as effective and less costly in terms of both community relations and needed personnel.

UNIT 5 FUTURE TRENDS IN CRIMINOLOGY AND CRIMINAL JUSTICE 329

Issue 17. Should Marijuana Be Legalized? 330

YES: Ethan A. Nadelmann, from “An End to Marijuana Prohibition: The Drive to Legalize Picks Up,” *National Review* (July 12, 2004) 332

NO: John P. Walters, from “No Surrender,” *National Review* (September 27, 2004) 339

Ethan A. Nadelmann, the founder and director of the Drug Policy Alliance, contends that contemporary marijuana laws are unique among American criminal laws because no other law is both enforced so widely and yet deemed unnecessary by such a substantial portion of the public. Enforcing marijuana laws also wastes tens of billions of taxpayer dollars annually. John P. Walters, director of the Office of National Drug Control Policy, argues that marijuana does the most social harm of any illegal drug. Moreover, Walters asserts that the ultimate goal of those who advocate marijuana legalization is tolerated addiction.

Issue 18. Do Three Strikes Sentencing Laws and Other “Get Tough” Approaches Really Work? 344

YES: Eugene H. Methvin, from “Mugged by Reality,” *Policy Review* (July/August 1997) 346

NO: David Shichor, from “Three Strikes as a Public Policy,” *Crime & Delinquency* (October 1997) 356

Eugene H. Methvin, senior editor for *Reader’s Digest*, contends that a very small number of juveniles and adults commit the majority of serious crimes. The main solution to the crime problem, then, is to identify them as early as possible and increase the punishments each time they offend, eventually incarcerating the repeat offenders. Professor of criminal justice David Shichor argues that the “three strikes” policy is permeated with negative unanticipated consequences; it is costly; inefficient, and unfair; and it does little to reduce crime.

Issue 19. Should Juries Be Able to Disregard the Law and Free “Guilty” Persons in Racially Charged Cases? 366

YES: **Paul Butler**, from “Racially Based Jury Nullification: Black Power in the Criminal Justice System,” *Yale Law Journal* (December 1995) 368

NO: **Randall Kennedy**, from “After the Cheers,” *The New Republic* (October 23, 1995) 373

Paul Butler, an associate professor at the George Washington University Law School, notes that a vastly disproportionate number of blacks in America are under the auspices of the criminal justice system. In order to balance the scales of justice, he argues, black jurors should acquit black defendants of certain crimes, regardless of whether or not they perceive the defendant to be guilty. Randall Kennedy, a professor at the Harvard Law School, in examining the acquittal of O. J. Simpson, finds it tragic that black jurors would pronounce a murderer “not guilty” just to send a message to white people. He maintains that, although racism among the police and others is deplorable, allowing black criminals to go free does not help minorities, particularly since their victims are likely to be other blacks.

Issue 20. Does Confining Sex Offenders Indefinitely in Mental Hospitals After They Have Served Their Prison Sentences Violate the Constitution? 378

YES: **Stephen Breyer**, from “Dissenting Opinion,” *Kansas v. Hendricks*, U.S. Supreme Court (1997) 380

NO: **Clarence Thomas**, from “Opinion,” *Kansas v. Hendricks*, U.S. Supreme Court (1997) 389

Associate Justice Stephen Breyer asserts that if a state’s law attempts to inflict additional punishment on an offender after he has served a prison sentence, it will violate the federal Constitution. Associate Justice Clarence Thomas, writing for the Court, contends that post imprisonment civil confinement laws do not violate the Constitution.

Issue 21. Should the United States Abolish the Exclusionary Rule of Evidence in Criminal Cases? 401

YES: **Akhil Reed Amar**, from “Against Exclusion (Except to Protect Truth or Prevent Privacy Violations),” *Harvard Journal of Law and Public Policy* (Winter 1997) 403

NO: **Yale Kamisar**, from “In Defense of the Search and Seizure Exclusionary Rule,” *Harvard Journal of Law and Public Policy* (Winter 2003) 411

Yale Law Professor Akhil Reed Amar argues that if reliable evidence is excluded from trials, wrongful acquittals and erroneous convictions will result. Moreover, he believes that the exclusionary rule of evidence hurts innocent defendants while helping the guilty ones. University of Michigan Law Professor Yale Kamisar contends that the exclusionary rule is the sole effective remedy to secure compliance with the Constitution by the police and that admitting evidence obtained illegally requires courts to condone lawless activities of law enforcement officers.