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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 reaffirms moral boundaries and helps bring about needed social changes. Former U.S. Senator Daniel Patrick Moynihan (D-New York) argues that modern crime has gone way beyond the point of being functional.

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. Professor Jeffrey Reiman asserts that social forces create the conditions that become sources of crime in American society.

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.

UNIT 2 CONTEMPORARY PUBLIC POLICY ISSUES IN CRIMINOLOGY AND CRIMINAL JUSTICE 63

Issue 4. Does the United States Have a Right to Torture Suspected Terrorists? 64

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) 66

NO: Elisa Massimino, from "Leading by Example? U.S. Interrogation of Prisoners in the War on Terror," *Criminal Justice Ethics* (Winter 2004) 79

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 5. Is Racial Profiling an Acceptable Law Enforcement Strategy? 87

YES: Jared Taylor and Glayde Whitney, from "Racial Profiling: Is There an Empirical Basis?" *Mankind Quarterly* (Spring 2002) 89

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) 101

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 6. Should Juvenile Courts Be Abolished? 115

YES: Barry C. Feld, from *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford University Press, 1999) 117

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) 128

Law professor Barry C. Feld contends that creating a separate juvenile court system has resulted in unanticipated negative consequences for America's children and for justice. Vincent Schiraldi, director of the Justice Policy Institute, and researcher Jason Ziedenberg maintain that moving thousands of kids into adult courts is unnecessary, harmful, and racist.

Issue 7. Is Exposure to Pornography Related to Increased Rates of Rape? 139

YES: Diana E. H. Russell, from *Dangerous Relationships: Pornography, Misogyny, and Rape* (Sage, 1998) 141

NO: Anthony D'Amato, from "Porn Up, Rape Down," *Northwestern Public Law Research Paper No. 913013* (2006) 150

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 percent in the last 25 years while access to pornography via the Internet has become more widely available to teenagers and adults.

UNIT 3 PUNISHMENT 159

Issue 8. Are Supermax (Control Unit) Prisons an Appropriate Way to Punish Hardened Criminals? 160

YES: Gregory L. Hershberger, from "To the Max," *Corrections Today* (February 1998) 162

NO: Rodney J. Henningsen, W. Wesley Johnson, and Terry Wells, from "Supermax Prisons: Panacea or Desperation?" *Corrections Management Quarterly* (Spring 1999) 167

Federal Bureau of Prisons regional director Gregory L. Hershberger contends that the challenges posed by hardened prison inmates support confining dangerous offenders in a supermax prison facility. Professors 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 crime control methods.

Issue 9. Do Three Strikes Sentencing Laws and Other "Get Tough" Approaches Really Work? 177

YES: Eugene H. Methvin, from "Mugged by Reality," *Policy Review* (July/August 1997) 179

NO: David Shichor, from "Three Strikes as a Public Policy," *Crime & Delinquency* (October 1997) 189

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 "three strikes" laws are costly, inefficient, unfair, and do little to reduce crime.

Issue 10. Should Private "For-Profit" Corporations Be Allowed to Run U.S. Prisons? 198

YES: Wayne H. Calabrese, from "Low Cost, High Quality, Good Fit: Why Not Privatization?" *Privatizing Correctional Institutions* (1996) 200

NO: Jeff Sinden, from “The Problem of Prison Privatization: The U.S. Experience,” *Capitalist Punishment: Prison Privatization & Human Rights* (2003) 206

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.

Issue 11. Is Capital Punishment a Bad Public Policy? 217

YES: David Von Drehle, from “Miscarriage of Justice: Why the Death Penalty Doesn’t Work,” *The Washington Post Magazine* (February 5, 1995) 219

NO: Ernest van den Haag, from “The Ultimate Punishment: A Defense,” *Harvard Law Review* (May 1986) 231

David Von Drehle, a writer and the arts editor for *The Washington Post*, examines specific capital punishment cases and data and concludes that capital punishment is a bad social policy. Ernest van den Haag, a professor of jurisprudence and public policy (now retired), maintains that the death penalty is just retribution for heinous crime.

UNIT 4 MODERN TRENDS IN CRIMINOLOGY AND CRIMINAL JUSTICE 241

Issue 12. Should Serious Sex Offenders Be Castrated? 242

YES: Lawrence Wright, from “The Case for Castration,” *Texas Monthly* (May 1992) 244

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) 251

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 13. Do Strict Gun Control Laws Reduce the Number of Homicides in the United States? 260

YES: Franklin E. Zimring, from “Firearms, Violence, and the Potential Impact of Firearms Control,” *Journal of Law, Medicine and Ethics* (Spring 2004) 262

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) 269

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 14. Should the Police Enforce Zero-Tolerance Laws? 286

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) 288

NO: **Judith A. Greene**, from “Zero Tolerance: A Case Study of Police Policies and Practices in New York City,” *Crime & Delinquency* (April 1999) 298

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. Judith A. Greene, senior fellow of the Institute on Criminal Justice of the University of Minnesota Law School, compares New York’s policing style with San Diego’s community policing model and argues that the latter is as effective and less costly.

Issue 15. Should Marijuana Be Legalized? 310

YES: **Ethan A. Nadelmann**, from “An End to Marijuana Prohibition: The Drive to Legalize Picks Up,” *National Review* (July 12, 2004) 312

NO: **John P. Walters**, from “No Surrender,” *National Review* (September 27, 2004) 319

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.

Issue 16. Should Juries Be Able to Disregard the Law and Free “Guilty” Persons in Racially Charged Cases? 324

YES: **Paul Butler**, from “Racially Based Jury Nullification: Black Power in the Criminal Justice System,” *Yale Law Journal* (December 1995) 326

NO: **Randall Kennedy**, from “After the Cheers,” *The New Republic* (October 23, 1995) 331

Paul Butler, an associate professor at the George Washington University Law School, argues that black jurors should acquit black defendants of certain crimes to make up for inequities in the criminal justice system. Randall Kennedy, a professor at the Harvard Law School, finds it tragic that black jurors would pronounce a murderer “not guilty” just to send a message to white people.

UNIT 5 THE U.S. SUPREME COURT, CRIME, AND THE JUSTICE SYSTEM 337

Issue 17. Does the U.S. Constitution Protect the Right to Possess a Firearm? 338

YES: **Antonin E. Scalia**, form Majority Opinion, *District of Columbia v. Heller*, 554 U.S. 570 (2008) 342

NO: **John Paul Stevens**, from Dissenting Opinion, *District of Columbia v. Heller*, 554 U.S. 570 (2008) 356

Justice Antonin E. Scalia, writing for the U.S. Supreme Court in *District of Columbia v. Heller* (2008), held that a District of Columbia law making it a crime to carry an unregistered handgun and prohibiting the registration of handguns, but that authorizes the police chief to issue 1-year licenses, and requires residents to keep lawfully owned handguns unloaded and disassembled or bound by a trigger lock or similar device, violates the Second Amendment. Justice John Paul Stevens, dissenting in *District of Columbia v. Heller* (2008), asserted that neither the text of the Second Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms. Moreover, there is no indication that the Framers intended to enshrine the common-law right of self-defense in the Constitution.

Issue 18. Is the Death Penalty an Unconstitutional Punishment for Juvenile Offenders? 367

YES: **Anthony M. Kennedy**, from Majority Opinion, *Roper v. Simmons*, U.S. Supreme Court (2005) 369

NO: **Antonin E. Scalia**, from Dissenting Opinion, *Roper v. Simmons*, U.S. Supreme Court (2005) 377

Associate Justice Anthony M. Kennedy, writing for the Court, asserts that the death penalty is an unacceptable punishment for juveniles who commit murder because it constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. Associate Justice Antonin E. Scalia, dissenting in the same case, argues that there is no clear social consensus that would favor abolishing the death penalty in these cases and that in doing so, the Court's majority is usurping the powers of state legislatures.

Issue 19. Does Confining Sex Offenders Indefinitely in Mental Hospitals After They Have Served Their Prison Sentences Violate the Constitution? 389

YES: **Stephen Breyer**, from "Dissenting Opinion," *Kansas v. Hendricks*, U.S. Supreme Court (1997) 391

NO: **Clarence Thomas**, from "Opinion," *Kansas v. Hendricks*, U.S. Supreme Court (1997) 400

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 postimprisonment civil confinement laws do not violate the Constitution.

Issue 20. Does an Imprisoned Individual Have a Constitutional Right to Access the State's Evidence for DNA Testing? 412**YES:** John Paul Stevens, from "Dissenting Opinion," *District Attorney's Office v. Osborne*, 557 U.S. ____ (2009) 416**NO:** John Roberts, from "Majority Opinion," *District Attorney's Office v. Osborne*, 557 U.S. ____ (2009) 422

Justice John Paul Stevens, in a dissenting opinion in *District Attorney's Office for the Third Judicial District v. Osborne* (2009), contends that a fundamental responsibility to ensure that "justice" has been served requires a state to provide a defendant with postconviction access to DNA evidence. Because it could conclusively establish whether an accused had committed the crime in the first place, this right should be protected by the Fourteenth Amendment's Due Process Clause. Chief Justice John Roberts, writing for the majority, in *District Attorney's Office for the Third Judicial District v. Osborne* (2009), held that the U.S. Constitution's Due Process Clause provides no right to postconviction access to DNA evidence because it would take the development of rules and procedures in criminal cases out of the hands of state legislatures and courts.

UNIT 6 BONUS ISSUES 435**Issue 21. Should It Be a Crime to Download Copyrighted Music from the Internet? 436****YES:** Barry Shrum, from "The Magical Ring of Gyges: Why Illegal Downloading Is so Rampant in the Age of Cyberspace," *Law on the Row* (2011) 440**NO:** Janis Ian, from "The Internet Debacle—An Alternative View," *Performing Songwriter Magazine* (May 2002) 444

Attorney Barry Shrum argues that downloading music illegally from the Internet is wrong morally and should be considered a crime because it fails to pay creative individuals for their intellectual property. Moreover, because approximately 95 percent of the music downloaded from the Internet is done so illegally, the problem is a very compelling one. Noted recording artist and songwriter Janis Ian, in contrast, believes that there is no evidence to support the proposition that material available for free online downloading is harming anyone, especially the artists who produce it. In fact, free downloading may actually benefit the majority of artists because it allows them potentially to reach millions of new listeners, who may later purchase CDs, and attend their live concerts.

Issue 22. Should It Be Lawful for the Police to Conduct Jailhouse Strip Searches of Persons Arrested for Minor Offenses? 455**YES:** Anthony M. Kennedy, from "Majority Opinion," *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. ____ (2012) 459**NO:** Stephen Breyer, from "Dissenting Opinion," *Florence v. Board of Chosen Freeholder of County of Burlington*, 566 U.S. ____ (2012) 468

U.S. Supreme Court Associate Justice Anthony M. Kennedy asserts that police officers and correctional officials must be permitted to develop reasonable search policies to detect and deter the possession of contraband within their facilities. Moreover, exempting people arrested for minor offenses from such searches may put the police at greater risk and result in more contraband being brought into jails. Associate Justice Stephen Breyer, in contrast, believes that because strip searches involve close observation of the private areas of the body, they constitute a serious invasion of personal privacy and may not be justified in cases involving minor offenses.

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