

TAKING SIDES 立

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第11版 11TH EDITION

CLASHING VIEWS IN
CRIME AND
CRIMINOLOGY

(美) Thomas J. Hickey 编

辩证思维训练

场

犯罪与犯罪学篇

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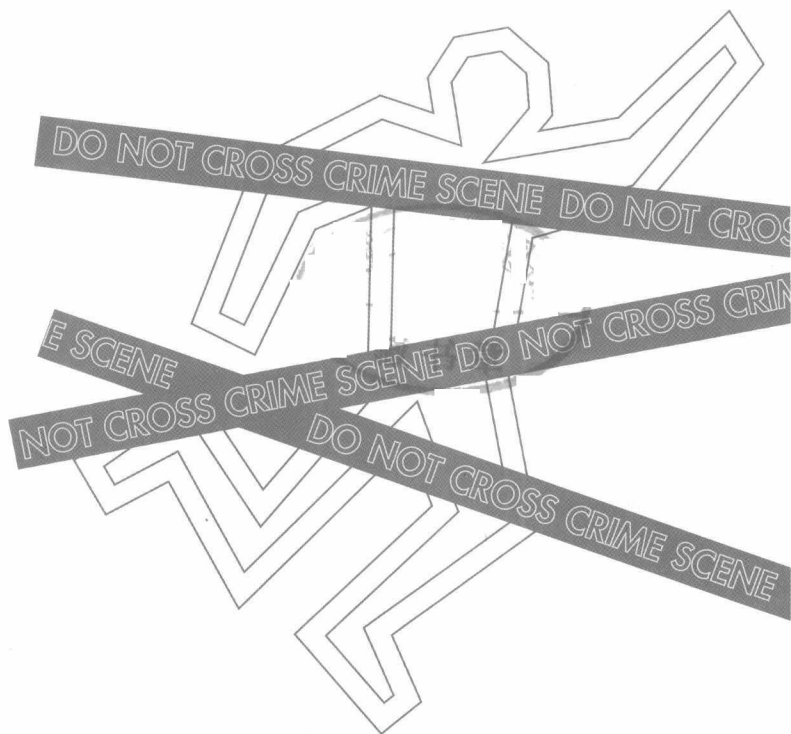
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TAKING SIDES: Clashing Views in CRIME AND CRIMINOLOGY

Eleventh Edition

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英语思辨，攻错他山

朱绩崧

学界奉为圭臬的《牛津英语大词典》（*The Oxford English Dictionary*）在side (n.)¹条目的18.a.义项里，把18.b.所收词组“to take a (or one's) side, take sides. Also to hold side (with one)”里的side解释为[t]he position or interests of one person, party, etc., in contrast to that of an opposing one, 个人立场相反、党派利益对立之意，了然无疑。

惜我愚钝，近年才明白，take sides不仅仅是英语词典里的一个词组，甚至可说是英国议会制度的根本；而议会制度，实在是英国对人类文明进步最大的贡献之一：通过take sides，把思辨，而非独断专行，尊奉为国事决策那不可撼动的核心机制。我们不会忘记，电影《铁娘子》（*The Iron Lady*）里梅里尔·斯特里普（Meryl Streep）新学一口英国腔就来西敏宫滔滔激辩的场景，那不是骂街，虽然嘘声迭起，那是两股思想在龙争虎斗，最终推进历史。

谈到西方好争论、善思辨的传统，古希腊已臻化境，垂范千古。但这并不意味着我国真如某些评论家所言，为定于一尊的儒学所戕害，使得读书人唯服从传承是务，从不挑战权威。

《古文观止》读到最后几卷，便会看到编注者吴楚材、吴调侯叔侄鼓励读者对古时定论大胆质疑的用心。如建文忠臣方孝孺的名篇《豫让论》，标新立异，一反古说，直指春秋时代为主雪仇的刺客豫让“不能扶危于未乱，而捐躯于既败者”，不配“国土”之誉。

甚至，在我们历史课本一向蔑之为“埋头故纸”、“皓首穷经”的乾嘉学派里，多数学者的考据也都具有很高的思辨性。从王念孙的《读书杂志》、刘宝楠的《论语正义》，到戴震“由字义以明经义”的治学方法和段玉裁《东原先生年谱》所载的戴氏札记——“仆生平著述最大者为《孟子字义疏证》一书，此正人心之要。今人无论正邪，尽以意见误名之曰理，而祸斯民，故《疏证》不得不作”——从文本到现实，立场鲜明，无不指向对真理的上下求索。

读书为求真。这句话，是儿时由老师灌输给我的，我不曾怀疑过。可也正是老师告诉我“乾嘉学派在历史上的作用是反动的”、“高考答题时，如遇到岳飞，不能勾选为民族英雄，他打的仗是人民内部矛盾”等等当年不容我怀疑辩驳的“事实”。

往事固不可追，令我大失所望的却是“寓教于乐”、“反对应试教育”了不知凡几年，中小学生在变本加厉地背记历史、语文的“标准答案”，到了

易只字则为错的地步。有人甚至把中小學生语文水平的普遍降低归咎于英语课太多，视母语、外语修习为零和博弈，全然不去审视、拷问、批判当下严重阻碍思辨与创造的文科教育体制本身。试问这样的教育，又如何能培养出活泼泼的人来？如何能引导他们求真？

求真，真真何其不易也。有时，权威发声，莫敢深究。有时，缺乏条件，无从寻觅。信息爆炸、思路开阔的今天，更多情况下是众说纷纭，莫衷一是，乃至有时在“是”与“非”这两者之间，都不知何从矣。

而相对综合型、重意合（parataxis）的汉语，英语是分析型语言，重形合（hypotaxis），语法规则更明确，对指代、性数格一致等形式要求更高，且有强烈的时态观。不能不说，这在很大程度上避免了汉语常见的因文害意：把一些站不住脚的歪理，用华丽辞藻一包装，就算是“美文佳构”了。（这方面，韩愈的个别名作，如为名教张目的《原道》，可算反面教材，远逊柳宗元的《驳复仇议》。后者的论理，简朴而流畅，本质上与今天英美法院经典判词如出一辙，堪称我国古代taking sides的典范。）加之英美学者好辩的传统在当代通过课堂教育、学术论文等形式得以强化，思辨的局面委实优于我国。

我素为古罗马倾倒，曾读国人编著的几种罗马史，又看了英国剑桥大学克里斯托弗·凯利（Christopher Kelly）教授写的《罗马帝国简史》（*The Roman Empire: A Very Short Introduction*），后者末章呈现的学者思辨生动别致，过目难忘，非我国传统重介绍“史实”的史书可比：20世纪初，英国历史学家、律师、自由党政治家詹姆斯·布赖斯（James Bryce）认为罗马帝国与大英帝国非常相似，都能维持高水平的内部和平与秩序，民人深谙工程技术，勇猛活跃，不畏困苦；牛津古代史教授弗朗西斯·哈弗菲尔德（Francis Haverfield）进一步说明，罗马帝国的成功，在于把行省居民同化为一个秩序井然、富有凝聚力的文明；曾奉职印度的英国古典学会会长埃弗林·巴林（Evelyn Baring）持不同看法，在“同化”问题上，大英帝国与罗马帝国有不可弥合的区别，单论印度语言、宗教、种族的多样性，就和罗马人征服的任何地区不同；哈弗菲尔德不同意巴林，认为英国之所以有印度问题，是因为征服印度时，印度已经发展成发达社会，文明形态稳固；牛津的古代史专家、考古学家D. G. 霍加斯（D. G. Hogarth）也反对巴林，认为罗马帝国有三个阶段，即“尚未同化”、“有意同化”、“积极同化”，大英帝国对印度犹处“尚未同化”的第一阶段。

把学者taking sides过程中的各种观点陈列出来，供读者思辨，是我国各阶段教材的短板。同时，也应注意，为提高我国学生的思辨水平以及英语能力，taking sides的内容不宜学科专业化程度过高（上述关于罗马帝国与

大英帝国的争辩即有此虞），还是具有一定社会影响力、为民众熟知的话题更宜为组织教材的出发点。

美国著名的*Taking Sides*丛书，其宗旨正在于满足成长中的思考者兼英语学习者的需要。这套书系，诞生于20世纪80年代，迄今出版52种专题分册，多数一版再版，其中传媒凡12版，经济、环境达15版，社会、教育更已有17版之多。畅销程度，不劳赘言。

从题材看，外研社首批择取的七册分别覆盖了社会、教育、经济、环境、科技、大众传媒与全球性问题，无一不是当下公众话题的焦点。但呈现的手法却很“单一”，即先提出问题，再摆出正反双方最典型、最具说服力的论证，最后引导读者作进一步的阅读与思考：

问：计算机对学生成长是否有副作用？

正：有。学校对电脑技术的迷信与滥用，导致学生心智发育与创造力受损。

反：无。如对电脑善加利用，能促进教学革新，从而使学生获益。

后记：“学校”或许正在由“地点”转变为“概念”，随着计算机技术的进步，许多教育手段都不必在课堂实施，但随之而来有许多新问题，需要探讨。多媒体能让学生与更多的信息产生互动，但往往也减少了学生与学生、学生与所在环境之间的互动。相关研究请见……（扩展阅读涉及三十余处学术资源）

（《教育篇》第10话题）

目录并不冗长，但当读者学完全书，必会惊喜地发现，自己在这一领域的知识结构已搭建得初具规模。摆在面前的问题往往庞大空疏，报章常见，迄无公断。从这个角度思考，有这样的道理可知；从那个方面切入，有那样的结论可得。读者的任务，就是跟着两派的思路各走一遍，最终判定哪派有理。当然，结果也可能是两派皆不尽善，或者需要修正调和之后才能获得正解。但无论如何，这一过程本身，实在是智力上的一次奥德修斯式的旅行（an intellectual odyssey）。

之所以要用荷马史诗的隐喻，是因为读*Taking Sides*与看街边吵架或中学生议论文最根本的差别，就是需要调用的思想、学术资源极多。以《社会篇》第8话题为例，菲利普·迪瓦恩（Philip E. Devine）在得出“酷刑不可保留”的结论之前，将自由主义政治学、康德学说、功利主义、自然法等一一引出，要言不烦。对迪瓦恩这位哲学学者而言，这些理论或许早已熟烂于胸。

但对一般读者而言，为了确证作者没有断章取义，至少得就上述内容再读通几本导论、简介之类的书。顺便一提，酷刑当否的问题，我在近年畅销的一部法律通俗读物《法治》（*The Rule of Law*）论恐怖主义的一章中，也曾读到评论。作者、已故英国前首席大法官汤姆·宾厄姆（Tom Bingham）反对向恐怖主义犯罪嫌疑人施以酷刑的理由由本质上与孔子的“己所不欲，勿施于人”无异，认为这是对法治原则的破坏。与迪瓦恩相较，其说直指人心，唯于学理微缺然。

事实上，*Taking Sides*书系所选文章，无论篇幅修短，莫不观点鲜明，针锋相对，而每一方都有强大的理据支撑，乍看难以撼动。由此，我们也不得不感叹，人类文明在今天呈现出的多样性，自有其道理，无论是同一文明内还是不同文明间发生的碰撞冲突，其背后都有复杂的理性动因，绝非皂白可以分明，需要我们全面观察，深度分析，最终选定立场。

我出身英文系，工作后常应媒体之邀，写些时事评论。落笔之前，现已养成习惯，会去新浪微博、知乎、Quora等网站，浏览各方的理性评论，在争议极大的问题上，熟悉*Taking Sides*封面上印的那两个词：Clashing Views（对立观点）。这是我在“后大学”时期补上的一堂课。

回想本科求学时，这方面所受教育几乎为零。教育的重点是背同义词、反义词与词形变化。文章，读通便好，却读不透，因为读通之后，总觉所言有理，不会想着去倾听“不同的声音”。这个弊端，到写毕业论文时曝露无遗：说明文还凑合，议论文就写不好了。名虽论文，连核心的论点都渺不可寻。这几年，本专业内，我还常常看到号称博士论文的研究综述，或者连文献回顾都没有的论文。

为了矫正这一通病，不少学校从编教材上下功夫，课文引入争议性话题，意在以此激发学生的critical thinking——“批判性思维”遂成高校英语教师培训班极为青睐的广告亮点。可惜，在我有限的学术视野内，能一变风气的作品，尚阙如焉。我看到过浅尝辄止者，其内一篇课文，取自美国某小报，讲一对夫妻人工受孕后离婚，胚胎留在医院冰箱里，不知如何处置，遂对簿公堂。最终，作者只是提出问题，没能向学生指出解决的途径。如果有至少两种具备一定思想深度与差异性的观点呈现在教材里，附上扩展研读的书目、提要，教育的效果定会面目一新，我们也会真正地开始在语言教育中培养思想者，而不只是机械的记忆者、复制者。这一任务，如前所示，*Taking Sides*完全胜任。

我乐于推荐该书系作精读教材的另一项理由在于语言质量。就量而言，目前的精读课（Intensive Reading），阅读量普遍过低，一两千词的文章，一读就是十天半月，课程设计者不明白唯有大数量与短时间的结合，方成就

intensive之效。与此相比，以本书系一卷之量，读一学期，日均1500词左右，恰到好处。以质而论，本书系符合我的外语习得理念：中高阶学生，应以非虚构作品（non-fiction）为“主食”。例如，本书系中有大量美国国会证言（congressional testimony），思维严谨，语言地道，学习西方法律、外交以及高等翻译等专业的学生如能熟读成诵，其英语学习的眼界势必更上层楼。从实用的角度看，有理、有力、有节的明快文风才是日常工作、生活所需，是语言的“常态”；文学作品中因作者意图而创造出的丰富表达，只是语言的“变态”。由常入变，初地坚固，发展空间亦大。反是，恐事倍功半。

至于“泛读”，也有一个基于*Taking Sides*的策略可行：各个话题牵涉到的著作，一学期可读上三五本。如读《环境篇》，可辅读雷切尔·卡森（Rachel Carson）的《寂静的春天》（*Silent Spring*）；读《科技与社会篇》，可辅读阿道司·赫胥黎（Aldous Huxley）的《美丽新世界》（*Brave New World*）。此时，不妨多些文学作品，加深对“精读”义理的体悟思辨，可全“文以载道”之功。

此外，*Taking Sides*对如今各高校流行的英语辩论也有直接的指导作用，无论其辩题还是论据，都可在模拟阶段直接取用。我更相信，认真研读过本书系的学生，其论文一定不会沦为简介、综述，不会抄袭维基、百度，因为他们掌握了论文写作的核心技术：如何灵巧运用事实与逻辑来作严肃的学术之论，而非执着于印象、习惯、偏见的意气之争。

总之，希望*Taking Sides*书系的引进，能综合我国英语学生的语言习得与思维训练，既提升交流的效率，更开启求真的法门，在乱云飞渡的当今时代，帮助读者迅速达成思想之质与辞藻之文的兼美共谐。

Contents

导读 英语思辨, 攻错他山 朱绩崧 v

Preface xv

Topic Guide xvii

Introduction xviii

Issue 1. Is Crime Beneficial to Society? 1

YES: **Emile Durkheim**, from “The Normal and the Pathological,” *The Rules of Sociological Method* (The Free Press, 1938)

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

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 a Person’s Body Type Clearly Linked to Criminal Behavior? 24

YES: **Sean Maddan, Jeffery T. Walker, and J. Mitchell Miller**, from “Physique, Somatotypes and Crime.” An essay. (2009)

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

Professors Maddan, Walker, and Miller argue that body type is related to criminal behavior because most of the 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, but that predisposition will surface only under certain environmental conditions.

Issue 3. Is Exposure to Pornography Related to Increased Rates of Rape? 50

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

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

Diana 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.

Issue 4. Should It Be a Crime to Download Copyrighted Music from the Internet? 77

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)

NO: **Janis Ian**, from "The Internet Debacle—An Alternative View," *Performing Songwriter Magazine* (May 2002)

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 5. Are Supermax (Control Unit) Prisons an Appropriate Way to Punish Hardened Criminals? 108

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

NO: **Daniel P. Mears**, from "A Critical Look at Supermax Prisons," *Corrections Compendium* (September/October 2005)

Federal Bureau of Prisons regional director Gregory Hershberger contends that the challenges posed by hardened prison inmates support confining dangerous offenders in supermax prison facilities. Professor Daniel Mears argues that supermax prisons are an unproductive response to our crime problems. Moreover, they are incredibly expensive and prevent states from developing correctional programs that may actually be much more effective.

Issue 6. Does Imprisoning Drug Offenders Reduce Crime Rates? 142

YES: Ilyana Kuziemko and Steven D. Levitt, from “An Empirical Analysis of Imprisoning Drug Offenders,” *Journal of Public Economics* (2004)

NO: Dave Bewley-Taylor, Chris Hallam, and Rob Allen, from “Report 16: The Incarceration of Drug Offenders: An Overview,” *The Beckley Foundation Drug Policy Programme* (2009)

Professors Ilyana Kuziemko and Steven D. Levitt argue that incarcerating drug offenders is almost as effective in reducing violent and property crime as locking up other types of offenders. Professors Bewley-Taylor, Hallam, and Allen, in contrast, assert that increasing incarceration rates for drug offenders throughout the world has had only a marginal and/or temporary impact upon the illegal drug market and generates many negative financial and collateral costs.

Issue 7. Is Capital Punishment a Bad Public Policy? 185

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

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

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.

Issue 8. Do Strict Gun Control Laws Reduce the Number of Homicides in the United States? 219

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

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)

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 3–5. 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 9. Should It Be Lawful for the Police to Conduct JailHouse Strip Searches of Persons Arrested for Minor Offenses? 257

Yes: **Anthony M. Kennedy**, from “Majority Opinion,” *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. ____ (2012)

No: **Stephen Breyer**, from “Dissenting Opinion,” *Florence v. Board of Chosen Freeholder of County of Burlington*, 556 U.S. ____ (2012)

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.

Issue 10. Should an Imprisoned Convict Who Claims Innocence Have a Constitutional Right to Access the State’s Evidence for DNA Testing? 289

YES: **John Paul Stevens**, from “Dissenting Opinion,” *District Attorney’s Office v. Osborne*, 557 U.S. ____ (2009)

NO: **John Roberts**, from “Majority Opinion,” *District Attorney’s Office v. Osborne*, 557 U.S. ____ (2009)

Justice John 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 opinion 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.

Preface

But the peculiar evil of silencing the expression of an opinion is that it is robbing the human race, posterity as well as the existing generation—those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error.

—(John Stuart Mill, *On Liberty*, 1859)

Discussion and debate are essential components of the learning process. To have confidence in our viewpoints, we must expose them to others and learn from their ideas in a constant process of reformulation and refinement. As J. S. Mill teaches, only rarely does any point of view present a complete version of the truth; however, we move closer to the truth when we are willing to exchange our opinions with others, defend our positions, and refine our ideas by what we learn from an intellectual opponent.

This book presents students and teachers with an opportunity to exchange viewpoints by focusing on a series of controversial issues in crime and criminology. Few issues in modern society generate more substantial disagreement in our morning newspapers or around the dinner table. They focus on an important aspect of modern life and were selected in an effort to engage students. Hopefully, they will also generate classroom discussion and debate and provide a vehicle for interactive learning.

Many of the topics presented in this volume are hotly contested. Few reflective people will find themselves adopting truly neutral positions on these issues and there may be a tendency to embrace one side of a debate without fully considering the opposing arguments. As you read these materials, try to resist that temptation and keep an open mind.

For example, if you are a death penalty advocate, think about how you would develop an argument against capital punishment. Even though such an exercise may not change your views, it will provide you with greater insight into the capital punishment debate.

This book considers important issues in crime and criminology and includes articles presented in a pro and con format. The *Introduction* to each issue presents a synopsis and sets the stage for the *Yes* and *No* debate between the authors. All issues conclude with an *Exploring the Issue* that considers some of the more important points in the debate and includes up-to-date suggestions for further reading on the topics. In addition, the *Internet References* that accompanies each issue provides a list of Internet site addresses (URLs) that should prove informative.

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Topic Guide

This topic guide suggests how the selections in this book relate to the subjects covered in your course.

All the issues that relate to each topic are listed below the bold-faced term.

Crime Control

6. Does Imprisoning Drug Offenders Reduce Crime Rates?

Deviant Behavior

2. Is a Person's Body Type Clearly Linked to Criminal Behavior?
1. Is Crime Beneficial to Society?

Genetics

10. Should an Imprisoned Convict Who Claims Innocence Have a Constitutional Right to Access the State's Evidence for DNA Testing?

Gun Control

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

Interrogation

9. Should It Be Lawful for the Police to Conduct JailHouse Strip Searches of Persons Arrested for Minor Offenses?

Pornography

3. Is Exposure to Pornography Related to Increased Rates of Rape?

Punishment

5. Are Supermax (Control Unit) Prisons an Appropriate Way to Punish Hardened Criminals?
6. Does Imprisoning Drug Offenders Reduce Crime Rates?
7. Is Capital Punishment a Bad Public Policy?

Sentencing

5. Are Supermax (Control Unit) Prisons an Appropriate Way to Punish Hardened Criminals?
6. Does Imprisoning Drug Offenders Reduce Crime Rates?
7. Is Capital Punishment a Bad Public Policy?
4. Should It Be a Crime to Download Copyrighted Music from the Internet?

Social Change

1. Is Crime Beneficial to Society?

Somatotypes

2. Is a Person's Body Type Clearly Linked to Criminal Behavior?