I. ORIGINS AND SOURCES OF LAW

A. THE COMMON LAW

1. Before the existence of constitutional governments, there was a body of
   unwritten law in England known as the Common Law.

2. In the eighteenth century, English jurist William Blackstone wrote
   Commentaries on the Laws and Customs of England, which became the
   foundation for much of our current system of laws.

   a. The common law is that body of law which includes all the
      statutory and case law that existed in England and the American
      colonies before the American revolution.

3. Common law is distinguishable from statutory law in that it is not written
   down. It was not created by the enactment of legislation. It is a body of laws that
   derives its authority from usage and custom “of immemorial antiquity.” Black’s

   a. Common law is also used in a different context to describe
      judicial decisions interpreting statutory and constitutional law.

B. TODAY’S LAW


2. State Constitutions.


4. State Criminal Codes (Vernon’s Annotated Missouri Statutes (V.A.M.S.).)

5. Municipal Ordinances.

6. Judicial decisions interpreting the constitutions and laws (the common law).

II. CLASSIFICATION OF CRIMES

A. MISDEMEANOR VERSUS FELONY

1. A misdemeanor carries a possible punishment of less than one year in local jail
   or prison.
2. A felony carries a possible punishment of one year or more in prison.

B. A CAPITAL CRIME

1. A capital crime is one which allows for the death penalty. The imposed punishment may turn out to be less than death in a particular case, but it is still a capital crime.

C. OTHER CLASSIFICATIONS

1. Mala in Se (“wrongs in themselves”) and Mala Prohibita (“prohibited wrongs”): The first involves inherently bad conduct such as murder; the second involves criminal conduct created by statute such as knowingly and wilfully failing to file your federal income tax return.

D. THE LAUNDRY LIST

1. Crimes against the state (treason and sedition).

2. Crimes against person (murder, manslaughter, rape, kidnaping, assault, and battery).

3. Crimes against habitation (burglary and arson).

4. Crimes against property (larceny, embezzlement, false pretenses, malicious mischief, and robbery).

5. Crimes against public order (disorderly conduct and public drunkenness).

6. Crimes against the administration of justice (bribery and obstruction of justice).

7. Crimes against public morals (prostitution, fornication, and profanity).

III. PUNISHMENT

A. CIVIL VERSUS CRIMINAL LAW

1. Both civil and criminal law exist to right some wrong. Someone has done something which has resulted in a harm to someone else. The victim of the act may be a person or an entity, such as a government or a corporation.

2. In very general terms, the chief distinctions between civil litigation and criminal litigation are:

   a. Civil litigation involves private parties, i.e., a private plaintiff
brings an action against a private defendant, e.g., John Doe vs. Richard Roe. In criminal litigation, the plaintiff is always the government, e.g., the City of Kansas City, or the State of Missouri, or the United States of America vs. Richard Roe.

1) This is not to say that the government cannot bring a civil action. They frequently do. However, only the government may institute a criminal prosecution.

2) The parties to civil litigation is endless. They may include individuals, citizens, aliens, governments, proprietorships, partnerships, not-for-profit corporations, publicly-held corporations, a class of similarly situated people, and so on.

3) The number of parties to civil litigation is endless. There must be at least two -- a plaintiff and a defendant. But after that, the number is endless, e.g. John and Mary Doe vs. Richard Roe, Roe Insurance Agency, and AAA Insurance Company, Inc.

b. Civil litigation the remedy being sought is usually involves money – either directly or indirectly. Someone has been injured and seeks compensation for the injuries. Or, something is likely to occur in the future which will injure another, and that potential victim wants an injunction (a permanent stay) to prevent the anticipated injury or damage. In criminal litigation, the remedy is punishment.

1) Punishment takes the following forms (1) the death penalty; (2) a term of incarceration in a jail or prison; (3) a term of probation, either unsupervised or supervised by a probation officer; (4) a split sentence, part to be served in prison and the balance to be served on probation; (5) the imposition of a fine; (6) the order to pay restitution to the aggrieved victim or victims; and (7) community service.

a) With the exception of restitution, none of these is designed or intended to make the victim whole. And as a practical matter, restitution is seldom an effective remedy to make a victim whole because the criminal
defendant is usually without the
means to repay the victim.

3. Therefore, there is something different about the character of criminal behavior that makes it distinct from civil behavior in that mere compensation is inadequate to address the wrong.

A. It is that the behavior is so vile or potentially damaging to the basic fabric of society that it threatens the foundations of society.

1) When human beings join a society, they give up certain rights and freedoms. In exchange for this, the society provides certain basic protections as to safety and security – “life, liberty, and the pursuit of happiness.” Members of the society are protected from outside forces and errant internal forces.

2) When human behavior threatens or breeches this promise of safety and security, the society (the government) will protect itself and the integrity of its social contract. It does so through the enactment and enforcement of criminal laws.

4. Can an act result in both civil and criminal litigation? Yes. While the defendant may be the same in each case, the plaintiffs will be different – in a civil case the plaintiff will be a private person and in a criminal case the plaintiff will be the government (e.g., the City of Kansas City, or the State of Missouri, or the United States of America).

B. PURPOSES OF PUNISHMENT

1. Reformation: Change the defendant’s behavior and return the offender to society to become a productive member.

   a) Most agree that reformation, for whatever reason, does not work.

      1) There is a high degree of recidivism among criminal defendants.

2. Restraint: A defendant in prison is incapable of committing any more crimes against society. Of course, the defendant is still able to commit crimes within the walls.

   a) This philosophy taken to the extreme is captured by the slogan “Lock ‘em up and throw away the key.”
b) The concept of storing criminal defendants may be palpable when talking about dangerous and violent individuals, but it is highly questionable when addressing the non-violent individuals.

c) The problem is making the distinction between those who require long prison sentences and those who deserve less draconian measures.

1) For example, the Federal Sentencing Guidelines.

3. Retribution: This philosophy is captured in the slogans “The criminal owes a debt to society” and “Make the punishment fit the crime.” It is literally government’s implementation of the biblical admonition, “An eye for an eye, a tooth for a tooth.”

a) This is the current model in effect within most of the states and the federal government.

4. Deterrence: This philosophy is aimed at both the defendant before the court and the general population which is not. The purpose is to demonstrate the punishment that will befall he or she who violates the law so that the defendant will not do so again and so that the community at large will be deterred from acting in a like manner.

a) It is fair to say that the more a crime is premeditated and planned, the more the prospect of punishment may deter such crime. However, there is no empirical data to support even this theory.

C. CONSTITUTIONAL RESTRICTIONS ON PUNISHMENT: THE EIGHTH AMENDMENT

1. The eighth amendment to the United States Constitution prohibits the use of “cruel and unusual punishment” and the imposition of “excessive fines.”

2. Just what constitutes “cruel and unusual punishment” depends on the time in which one is living and the composition of the U.S. Supreme Court. It is an evolving principal.

3. The eighth amendment precludes patently cruel practices such as torture and execution by painful or lingering methods. It also precludes punishment that is disproportional to the criminal act.

   A. The courts defer to the legislature as to appropriate punishment except to the extent it is so disproportional that it violates a provision of the constitution, i.e., the eighth amendment.
a) Capital punishment by lethal injection is not a violation of the 
eighth amendment as cruel and unusual.

1) However, the states have been experiencing some 
problems with capital punishment on another front, 
i.e., the due process clause of the fifth and 
fourteenth amendments and the competency of 
counsel under the sixth and fourteenth amendments.