Class 1: Chapter 1 Section A. pp. 9-34: The Criminal Process: Failures, Choices, and Legitimacy. Section A. shows the early Supreme Court efforts to regulate state criminal processes. Be sure to read the notes following the Brown and Powell cases. The Goodman article preceding Powell provides useful background to the case and the factual background. Lefcourt’s excerpted article and the notes following will be discussed.

Class 2. Chapter 1 Section B: The Norms of the Criminal Process pp. 34-44. This is important because it discusses the justification for the limitations on government control set out in the Bill of Rights. The notes beginning on p. 43 are very interesting and we may discuss several of the problems in Note 3 p.43. We will discuss Duncan v. Louisiana. Read pp. 55-63. This is background reading which we may not discuss in class.

Prepare for the simulation exercise in Vitiello, Criminal Procedure Simulations: Chapter 1: pp. 1-5. The simulation will be Chapter I from Criminal Procedure Simulations on the topic of Selective Incorporation.

The assignment is given on pp. 3-5. The senior partner in your law firm has asked you to advise him on certain questions affecting a Supreme Court argument he will be making. He wants to know how he should argue the case.

Advising the partner requires both practical and theoretical considerations. Would an argument based on the Privileges and Immunities Clause be a sound argument? What are the practical implications of such an argument and if you rely on that argument, will it affect the likelihood that your client will prevail? Can a plausible argument be made for overruling the Slaughterhouse cases? What about the law of substantive due process? How strong an argument can you make for selective incorporation versus total incorporation or fundamental fairness? Be ready to answer questions on Duncan.

In our simulation, performed in the classroom, I will play the partner and I will select one or more of you to play the junior associate. All materials needed for advising the partner are contained in Chapter I of Simulations. There is also material assigned in Dressler, pp. 44- 57 for further background. As a class, we will discuss the simulation issues after the role play.