JUSTICE

Lecture 3 – Communal norms

1. Last time:
   a. The parts of the Principle of Utility and the case for them
   b. Implications of the Principle of Utility
      i. A comprehensive (personal and political) morality
      ii. Legal protection for unpopular behavior where punishment “unprofitable”
      iii. Rights understood as means to maximizing happiness

2. Civil liberties: will they be secure if we accept utilitarianism?

   a. Due Process Clauses guarantee a fundamental right to privacy, but
   b. Right to privacy does not extend to protection for homosexual conduct, because
      i. Argument A: “no connection” with family/marriage/procreation
      ii. Argument B: majority’s conviction is a “rational basis” for criminalization

4. Lawrence v. Texas
   a. Right to privacy extends to protection for matters of sexual intimacy, because
      i. Argument A: the argument from “autonomy”
      ii. Argument B: majority’s conviction insufficient basis for criminalization

5. How to weigh the majority’s antipathy towards unpopular private conduct?
   a. View 1: there are no fundamental rights, and antipathy always counts for something
   b. View 2: majority’s antipathy counts only where no fundamental right at stake
   c. View 3: majority’s antipathy never counts, even when no fundamental right at stake

6. Benthamite utilitarianism and civil liberties
   a. Does Bentham’s view lead to the right result?
   b. For the right reason?