

# 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?
3. *Bowers v. Hardwick*
  - 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?

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24.04J / 17.01J Justice  
Spring 2012

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