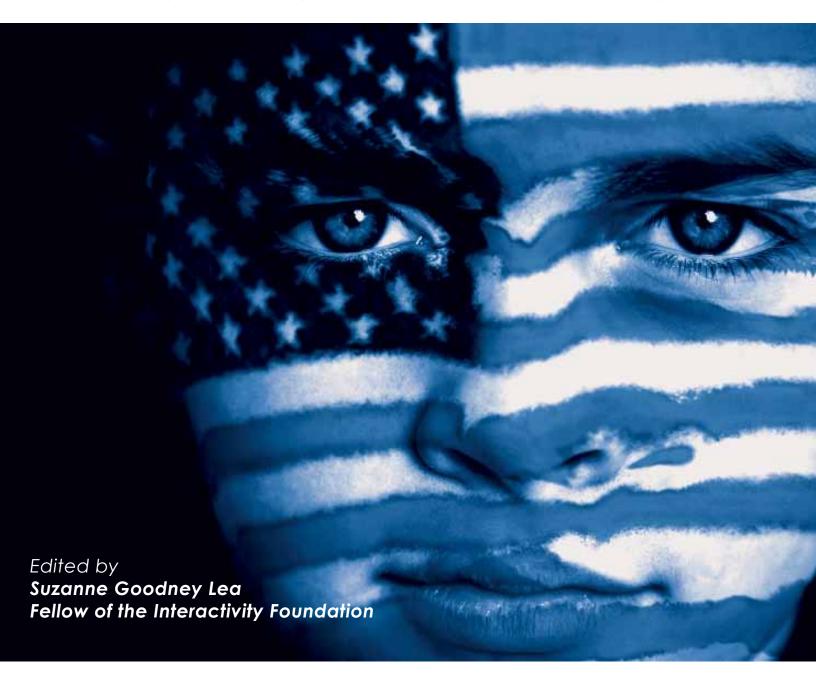
# FUTURE POSSIBILITIES ECIVIL RIGHTS POLICY

#### **PUBLIC DISCUSSION MATERIALS**

What might the civil rights movements look like for future generations?



# INTERACTIVITY FOUNDATION REPORTS: A WAY TO START DISCUSSIONS, NOT SETTLE ARGUMENTS

	TYPICAL POLICY REPORTS	IF CITIZEN DISCUSSION REPORTS	
WHY	<ul> <li>To make or influence immediate decisions</li> </ul>	<ul> <li>To provide a starting point for exploratory discussions</li> </ul>	
WHAT	<ul><li>Analysis of a problem</li><li>Recommendations for solutions</li></ul>	<ul><li>Areas of concern</li><li>Contrasting possibilities</li><li>Possible outcomes</li></ul>	
WHO	<ul> <li>Experts and representatives of interest groups</li> </ul>	Expert-specialists and citizen-generalists	
HOW	<ul> <li>Public discussions</li> <li>Decisions made by compromise or consensus</li> </ul>	<ul> <li>In "sanctuary"</li> <li>Freedom to speak openly</li> <li>Focusing on ideas, not personalities or participants' interests</li> <li>Decisions made through convergence, while preserving contrasts</li> </ul>	

This report is a product of the Interactivity Foundation (IF), a nonpartisan public-interest foundation that was established to promote citizen discussions like the one you are about to have. One of IF's roles is to produce discussion materials like this report.

# THE **IF** REPORT PROCESS

ypically, IF reports result from a series of discussions that unfold over the course of a year and half. They are organized and conducted by a single IF Fellow, who also edits and collects the material in the form of a report. In this case, an IF discussion project produced an initial set of possibilities, which were then re-drafted and tested in three additional discussion series during the fall of 2011. In all, six discussion panels (meeting in four regions of the country) and seven IF facilitators had a hand in this report.

Generally, participants in IF projects are selected for their ability to think creatively and constructively about the chosen area of concern. Discussion panelists are then divided into two groups: one of expert-specialists; the other of citizen-generalists. The advantage of having two groups is that the resulting discussion report will draw on different and complementary skills. The expert-specialists contribute professional or special knowledge; the citizen-generalists contribute their life experiences and general insight. When they come together at the end of a project, each group's thinking enriches the other's.

Another important feature of the IF process is that IF panels meet "in sanctuary," meaning panelists are guaranteed confidentiality from start to finish. This way, they are not expected or obligated to assert their authority, defend a particular constituency or organization, or avoid probing questions or mistakes. They are free to think and speak openly and creatively. This also means that those who discuss IF reports are free to focus on the ideas presented rather than the personalities or backgrounds of the authors.

In other IF projects, discussion panels are free in another important sense: They make selections or decisions through a deliberate process of exploration and convergence rather than consensus or compromise. Panels can take their time exploring and developing a wide range of possibilities. Convergence occurs as panelists agree on a range of possibilities that they believe are worthy of public discussion rather than ones they personally or collectively endorse. In addition, throughout the sanctuary discussion process, any single panelist can keep alive a particular possibility simply by asking that it be preserved. This procedure helps ensure that the panels achieve their goal of developing a series of contrasting possibilities, rather than a single set of recommendations or conclusions.

If you are interested in further information about the process used to develop IF reports or IF's work in general, we invite you to consult our Website at interactivity foundation.org.

# AN INTRODUCTION TO PUBLIC CONCERNS ABOUT CIVIL RIGHTS POLICY



Participants in this project were asked to imagine the policy directions that might define civil rights over the next 30 to 40 years. Having elected its first black president in 2008, the United States is arguably at a crossroads. Civil rights concerns are hardly eliminated by this historic election, but they are being redefined.

At the core of discussions surrounding civil rights is the basic notion of what exactly constitutes a civil right. For some, the Constitution is the determining factor; others believe that the Constitution, while providing an important guideline, does not provide a relevant social framework more than 200 years after it was written. For these individuals, civil rights policy must

be adaptive, incorporating ideas such as those expressed in the Universal Declarations of Human Rights and other trajectories of social and cultural change.

For those who felt that civil rights should be based on the Constitution and its interpretation, via entities such as the Supreme Court, there were two further sets of concerns: a worry that sometimes rights or acts are created to fix a bigger problem by providing entitlements to placate a particular group and that the cost of expanding state protections and entitlements is becoming cumbersome—all while those collecting such provisions want more while giving little back.

Those who saw civil rights in a more expansive way tended to have a very different set of concerns. Instead of agonizing over people taking advantage of the system, these individuals seemed more concerned about establishing a minimum standard, below which no one can slip. These participants were also more likely to talk about needing civil rights protections from a strong state and powerful corporate entities. Finally, some worried that U.S. citizens are not only ignorant of their own rights but also apathetic about the rights of others.

We are hoping that, with this discussion, you will have a chance to consider a range of concerns, perspectives, and policy possibilities. We encourage you not to become mired in any particular political point of view. Instead, imagine ways of bridging the gap between concerns about an overexpansive government and the cost of services with the desire to engage more citizens in our democracy. Is there a base below which we, morally, feel no one should be left to fall? Are we willing to leave people out on the street during an icy winter? Would we feel differently if we put a mother and her small child out in the cold than we would a veteran? Do we feel like there should be limits on government surveillance of citizens—even if done in the name of "homeland security"? Should corporations have civil rights? Do African Americans still need special protections now that we have had a black president? There is much to explore.



# SUMMARY OF POSSIBILITIES

		MOTIVE		LOCUS OF
POSSIBILITY		CONCERN(S)	GOAL(S)	RESPONSE
T RIGHTS	YOUR MONEY OR YOUR RIGHTS	<ul> <li>The government is making more promises than it can keep</li> <li>Think carefully about the cost and basis for adding new rights</li> </ul>	<ul> <li>Clarify which rights are worth having or maintaining</li> <li>Examine the cost of adding new rights</li> <li>Distinguish rights from entitlements</li> </ul>	<ul> <li>Independent assessment and review of policy proposals</li> <li>Local, state, and federal agencies and legislatures</li> </ul>
CONSTRIC	DISTINGUISH RIGHTS BY CITIZENSHIP STATUS	<ul> <li>Put a sense of responsibility back into the concept of rights</li> <li>Curtail abuses of rights, services, and protections by the non-entitled</li> </ul>	<ul> <li>Protect access to rights and privileges by citizens</li> <li>Prevent non-citizens from gaining rights they do not merit</li> </ul>	Local, state, and federal regulators
RIGHTS	CREATE MORE RIGHTS	<ul> <li>Certain groups or individuals should not be excluded because they are in the minority</li> </ul>	<ul> <li>Expand rights whenever possible</li> <li>Clarify that it's cheaper to add than curtail rights</li> </ul>	Legislative process— mostly federal but possibly state or local
EXPAND	FINISH THE BASEMENT	<ul> <li>There should be baseline guarantees below which no one can fall</li> <li>Include more provisions so that more people benefit</li> </ul>	Create a wide buy-in so that the baseline does not seem to be entitlements for just economically vulnerable citizens	Local, state, and federal providers of service

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	DOCCIDII ITV	MOTIVE		LOCUS OF RESPONSE
POSSIBILITY		CONCERN(S)	GOAL(S)	
REGULATION	PUT AN EXPIRATION DATE ON CIVIL RIGHTS LEGISLATION	<ul> <li>Civil rights legislation can eventually become irrelevant as groups served moved into new positions</li> <li>Technology makes some provisions irrelevant in a very short time</li> <li>Some civil rights guarantees should be exempt from review, as a protection from populist passions</li> </ul>	Imagine a way of better regulating civil rights acts and legislation	• Legislative review
EDUCATION	GET IN THE GAME	<ul> <li>People do not understand their rights</li> <li>People do not care about others' rights</li> </ul>	Find ways to encourage citizens to learn about their rights—and about why others' rights matter	Individuals and community organizations

#### POSSIBILITY A:

## YOUR MONEY OR YOUR RIGHTS

Some rights are simply too expensive for our society to maintain. Therefore, we must think carefully about which rights we want to provide to all or to any particular group.



t may be that there are some rights that transcend a cost-benefit analysis, and that these are effectively "priceless rights." In the United States, these might include core values such as freedom of speech or the right to due process. Such rights might seem as if they don't demand much in terms of cost. However, ensuring that unpopular, minority, or critical views can be heard often requires a significant police presence. Exposing the abuses of due process can require a great deal of legal work and, possibly, media coverage.

In the end, we can have all the ideals we want, but a right that cannot be enforced or asserted is not really a right. As state, local, and federal budgets tighten, can we ensure that existing rights can be enforced? And, if they cannot, does it make sense to add additional rights? If you belong to a group that is seeking broader rights or protections, it may seem like a cost well worth paying. But what if your fellow citizens disagree? Should populist attitudes determine how, when, and if rights are extended? Given that many civil rights laws are designed to apply to minority groups, it would seem troubling to leave such decisions to the majority population.

One thought is that we could have people pay in advance for the rights they anticipate needing, though rights are often things that people don't give much thought to—until they need them. A significant concern could be the 2009 decision by the Supreme Court that allows groups to effectively buy speech via political ads. Does this suggest that some rights are already being allocated based upon one's ability to pay? Does this make the right no longer universally assured since it alters access to the game?



# **POSSIBLE CONSEQUENCES:**

- Deciding upon rights based on a cost-benefit matrix could lead to discrimination against minority groups that do not have sufficient numbers to justify the advancement of their rights.
- Approaching rights in this way could help clarify between rights and privileges and help put money behind those rights that are deemed to be universally important.
- Rights for minority groups could be determined by referendums, which could lead to discrimination and a feeling of disenfranchisement by members of minority groups.
- Governments looking to save money could deem that extending civil rights to particular identity groups is not the responsibility of government.
- There can be significant economic consequences to limiting or extending rights. For instance, when publicsector jobs were forced to cut samesex partner benefits, this affected many people.
- Citizens could come to view rights as valuable if forced to justify their enforcement.
- Some public resources, such as police and fire services, which are seen by most citizens as entitlements, may suddenly be made "pay-for services."



# QUESTIONS

- Do we need to worry about the cost of extending new rights? How can we, as a society, distinguish between a right and a privilege? Is a privilege essentially a right that you do not need?
- Are there some rights that are priceless and therefore should be made accessible to all people? How can this be done, in practical terms?
- What about the cost of enforcing such rights? Who will pay for it?
- Should we take rights that we do not bother enforcing off the books, since they really don't have any real influence?
- Are we socially obliged to pay for rights that protect minorities even if, by definition, these are not protections that the majority group might want to pay for? For example, should a hospital have to provide an interpreter to a deaf man whose hearing wife is having a baby? Since he himself is not in need of the medical care directly, what rights should he have?



#### POSSIBILITY B:

# DISTINGUISH ONE'S CIVIL RIGHTS BY CITIZENSHIP STATUS

The extent of one's civil rights should be based upon one's citizenship status.



ou might have been born in the United States or you might be a naturalized citizen. You might be here as a legal immigrant or even as an illegal immigrant. Perhaps you're here on a work, student, or tourist visa. Perhaps the rights afforded to each individual should depend on citizenship or residency status.

Making such a distinction when it comes to civil rights could seem anti-American and undemocratic. People's behavior and actions matter more than their citizenship status. How can you tell whether a person is a citizen or an immigrant, anyway? Would people have to carry their papers at all times, as many countries require? Defining rights in this way could limit people's sense of possibility by making them feel monitored and marginalized. A final consideration is

that the Constitution prioritizes individuals over groups. Would a focus on people's broader citizenship categorizations be unconstitutional—or at least undermine the Constitution's intent?

Some people contend that we have to defend our borders and secure our resources and opportunities for American citizens. The economic downturn has put a lot of people out of work. There is a feeling that, either because jobs are being moved to other countries or because too many people are moving here and taking jobs, there are fewer employment opportunities for U.S. citizens. Conversely, work sectors that employ large numbers of immigrants purport that Americans won't take low-paying jobs that bring in less than they might earn from unemployment. Is this true? Americans have a strong work ethic and might well take these jobs if there weren't so many people available to do the work often for less than minimum-wage pay. Should the government be regulating these employment sectors in a way that ensures a level playing field for all? Why don't federal authorities do more about this issue?

Thinking about civil rights provisions in terms of a person's citizenship or residency status could be viewed as a stopgap measure that strives to solve economic and fairness concerns in lieu of a clear federal policy on immigration—just as more police and more prisons became the solution to a lack of federal drug policy.

Should people who are born here be entitled to more rights than someone who is a legal resident or even a naturalized citizen? Legal residents cannot vote, even if they have lived in the United States for 40 years. Naturalized citizens cannot become president. Some people live here illegally for many years and even raise children here. If a child is born here, he or she is a citizen. However, children who come here at a young age and spend their entire lives in the United States can be deported if their parents never applied for their citizenship. An illegal parent is unlikely to approach the state to try to get citizenship status for his or her child. Should there be some sort of amnesty extended to people who have lived in the United States for years, working, raising families, and being good citizens? Should the years spent here and one's specific situation be considered? Should a citizen's status and its associated rights be reserved for people who bring resources to the country (skills/education, a work ethic, willingness to serve in the military, etc.)?



# **POSSIBLE CONSEQUENCES:**

- Enacting this policy could create a pecking order by which people who happened to be born here would have special rights and privileges.
- This policy could clarify immigration policy so that we would have more control over who is allowed to immigrate to this country.
- A civil rights policy that extends from citizenship status could lead to things such as the Japanese internment camps during World War II, in which certain groups of naturalized citizens and legal immigrants were targeted.
- This approach would curtail the perceived trend by some people to take advantage of our liberal immigration policy and would thereby help us continue to define and defend American culture.
- Making this policy law would completely change the ideological definition of what America is; we would no longer be a melting pot that welcomes talent and dreams from all places, and this could make our culture and society far less robust or relevant.



# QUESTIONS

- How do we think about the basis of citizenship? What are the rights and responsibilities of citizens? Do we expect more from naturalized citizens?
- How do we ensure that U.S. policy engages our legal framework but also adheres to universal treaties (i.e., universal declarations of human rights)?
   Should such international treaties constrain our domestic policy?
- Doesn't someone who is accused of even the most heinous crimes have rights, both in terms of American ideals and laws and vis-à-vis our international treaty agreements, regardless of citizenship status? How do we ensure that we live up to our ideals even when it's difficult to do so?
- Does national identity correlate well with personal or cultural identity? What happens when these seem to clash—even when one has legal standing?



#### POSSIBILITY C:

## CREATE MORE RIGHTS

Extending rights costs less than trying to limit access to them. So we, as a society, should strive to extend demands for rights whenever possible.



his possibility takes a very different approach than Possibility B. Here, the argument is that creating rights is always cheaper than limiting rights, i.e., it would be cheaper for our society to extend gay rights, gay marriage, etc., rather than trying to limit them. Extending basic services to all people living in the country might be cheaper than engaging in legal maneuverings to restrict them. Legalizing immigrants who are here illegally would also extend the tax base.

It might seem like it is impossible to know whether it really costs more to limit or to extend rights, but we're asking you to consider this possibility. We know that the cost of keeping rights and privileges away from people is not cheap. Referendums and policies limiting rights are expensive. You might talk with your discussion group, broadly, about the costs that various policy approaches might incur. But don't worry about the factual details; just concentrate on the big picture. We're asking you to imagine what our society would look like if we were to take an expansive approach to civil rights instead of a restrictive one.

It is also worth considering what new rights we might imagine creating and extending to the population over the next 20 to 30 years. Is there a means by which we might better anticipate emerging rights? What if we think about it in terms of empowering people? What could this mean? How do we decide between rights and privileges? If I am deaf, do I have the right to an interpreter when I go to the emergency room or do I just have to rely on a friend or family member to interpret for me? Is having access to an interpreter a right or a privilege?

Is there a minimum or maximum boundary to rights? If creating a right means that there is an obligation to enforce it, how does that affect a mandate to expand rights?

Technology is an issue that comes up often as an emerging source of new rights; everyone needs reliable and easy access to the Internet and protections while on the Internet. But whether technology, or access to it, is a right remains to be seen. As more schools put homework assignments and updates online, does Internet access not become a right? A flip side of this technological embrace gets to another concern: privacy. When thinking about privacy in terms of security, people are not so sure that any individual has (or should have) so many rights. When we think about privacy in terms of medical records, however, there's a different picture: Do I want all of my private medical information available at the click of a button and moving in digital form from office to office? Looking at the impact of social networking on democratic protests suggests yet another concern regarding privacy and security: What if the government moves to shut down access to such tools to "protect" people just as people are acting to curtail an oppressive government? And what if that same oppressive government uses technology to identify citizens to punish for engaging in a protest or other such activity?



# **POSSIBLE CONSEQUENCES:**

- It may cost more to extend rights rather than limit them.
- Extending rights—even if it is cheaper—could alienate individuals and groups that have strong moral or religious views about enfranchising a particular group of people, making the expansion of rights unfeasible.
- Not extending rights disenfranchises some people and groups.
- Governments could decide to simply modify existing rights to create new policies, rights, or laws as they think through the cost-benefit equation of extending or limiting rights with this approach.
- This approach could save state, local, and federal governments a great deal of money.



# QUESTIONS

- What would an expansive approach to rights look like?
- Does it arguably cost less to expand rather than restrict rights?
- Should proposals to extend or restrict rights come with budgets attached? Doesn't expanding rights also mean that money will have to be set aside to enforce these new rights? Is it more costly to enforce a right or to restrict it?
- Is Internet access a civil right? Might it be in five or 10 years?
- Can we predict what sort of rights might be sought in the future?
- What sorts of privacy rights might be of concern in the future?



## FINISH THE BASEMENT

We should establish a baseline set of rights to which everyone is entitled and below which no person can fall.



There might be certain rights that could or even should be guaranteed to all. These might include clean air and clean water, or food and shelter. Some countries guarantee medical care to all of its citizens and consider this care to be a basic human right. Others include an education—even higher education—among these guaranteed rights.

In the United States, certain rights are laid out as universal by the Bill of Rights. Thinking of human rights as unfolding over three generations—the first expressed as civil political rights, which protect citizens from the state, and the second as civil social rights that extend first-generation protections to everyone—we might view the current era as the third generation. Are there rights that extend beyond the civil, social, or political realms? Another way of thinking of these sorts of rights might be a ground floor—a place from which no one would be allowed to fall below. (Hence, if housing were a guaranteed right, we would not allow anyone who wanted housing to live on the streets).

Do you think it makes sense to guarantee a baseline of rights? Can this be done in this era of budget shortfalls and mounting government debt? What sorts of rights might be included? How can we find ways to get a broad spectrum of Americans on board?



# **POSSIBLE CONSEQUENCES:**

- Governments have significant budget shortfalls, which means that any programs intending to protect citizens closest to the ground floor make for easy budget "fixes," as these individuals are not likely to be politically active.
- Unless minimal guarantees really give something to everyone, it is all too easy for more affluent citizens to think of such programs as being "handouts" for those whom they perceive as less hard-working.
- It could be difficult to reach a consensus as to what provisions might be guaranteed to all.
- Some people could be more comfortable living in the basement with just the basics, not striving to do more to guarantee that these minimal guarantees turn into entitlements.
- Presumably, these guarantees would be funded with tax dollars, and some citizens would view this as financial redistribution.



# **QUESTIONS**

- Should civil rights extend from the Constitution? Why or why not? Are we now meeting the promises made in the Bill of Rights?
- Is there a common set of rights or standards that could be defined as inalienable? What might this look like? How could it be made broad enough to engage most citizens?
- What are the costs and benefits of creating a minimum standard below which no citizen could fall? Does a wealthy industrial society have a moral obligation to provide such a safety net?
- If people take advantage of such protections, does this mean that those protections should not be provided?
- How could such a system be paid for?



#### POSSIBILITY E:

#### PUT AN EXPIRATION DATE ON CIVIL RIGHTS

Civil rights requirements vary over time. A right that is necessary today may be unnecessary in 30 years, which suggests that any civil rights legislation should be subject to scheduled expiration—or at least to scheduled review.



ou may feel as though there has been important civil rights legislation enacted in the past but might question whether those provisions should extend indefinitely. For example, affirmative action programs based upon race and gender have played an important role in leveling the playing field for racial and ethnic minorities and for women. Should that legislation now be reviewed or even repealed? Is there a place for such legislation at this point in U.S. history?

One might alternatively feel that there is a great arc to civil rights legislation in the United States so that earlier legislation provides a base upon which other laws

might be added. Removing the base, however, could be disastrous. Civil rights provisions are often designed to protect minority groups or "inconvenient" rights (such as the right to protest or speak freely). They should therefore be made permanent to guard against a potential surge of populist energy against the protected group.

Civil rights legislation and protections are currently reviewed periodically—about every seven years. Many would point out, however, that with the pace of modern technology, seven years is far too infrequent. Disability access and rights, in particular, which rely extensively

on technology, are likely to change (and need updating) much more frequently than every seven years.

Can we put an expiration or a review date on all civil rights legislation? Are there some civil rights guarantees that should be exempt from review? For instance, if the right to marry is extended to same-sex couples, should this be subject to review or revision? Or, consider "Don't Ask, Don't Tell": if its repeal creates problems, at what point would the military need to consider putting the guideline back into place? By what criteria would civil rights legislation be reviewed? And who would do the reviewing?



# **POSSIBLE CONSEQUENCES:**

- While some programs based upon the goal of enacting civil rights goals might become redundant, extending rights to a group and then taking them away could adversely affect individuals and their families.
- Serious review of a program would require an independent body to do a cost-benefit analysis and to assess how effectively goals are being met.
- Programs designed to help reach civil rights goals would need to take into consideration consequences, in addition to establishing measurable outcomes to determine how long the program might be needed.
- Review must incorporate some way of internalizing changes regarding the program—either from the top (government leaders) or the bottom (citizens).



# QUESTIONS

- Should civil rights laws be exempt from review or repeal?
- How do we distinguish programs designed to help groups gain equality or advancement from core rights that aim to assert and protect the basic dignity of a group and its members?
- Who should review such legislation and programs? How often?



NOTES	

### GET IN THE GAME

Make people aware of the importance of their civil rights and the civil rights of others.



oo many people have little knowledge of their civil rights. Worse, few people seem to feel much motivation to engage in civil rights concerns unless they are directly affected. This possibility proposes ways to make everyone's civil rights important and relevant.

How can we engage people in issues related to another group's civil rights? Does education help us better engage and connect with others, or does it reify an elitist sense of "us" and "them"? What are some ways that we could effectively educate citizens about their civil rights

and the importance of others' rights? This would seem like a natural opportunity for community building.

Education is a central component of this possibility. Participants were struck by how little they, and the people they knew, understood about their civil rights protections. Would it make sense to require that people have some basic knowledge of their civil rights and the reason they have such rights? How could such testing be made both universal and mandatory? Is there a way to incentivize this learning as an alternative

to creating some mandatory test? For instance, could the demonstration of such knowledge mark a passage into adulthood? This might engender some greater sense of ownership in the person who is learning the material. Could we create positions by which people could become civil rights educators or advocates, perhaps offering tax incentives or some other benefit(s) to those filling these positions?



# **POSSIBLE CONSEQUENCES:**

- Making people more aware of their rights could create more run-ins between citizens and authority figures—like teachers and police—who have a strong interest in maintaining order and compliance.
- Having better knowledge of one's rights could ensure that people are able to better take advantage of existing protections and provisions.
- Creating a common expectation for learning about one's rights—and the rights of others—might create opportunities to form bonds within and across communities.
- Making citizens more aware of the rights sought out by other groups could lead to a reactive response.
   Some citizens, for example, might decide that they cannot and will not support a group's rights due to religious or moral convictions.
- Democratic discussions could create chances for morally opposed groups to interact, which could lead to a better understanding and connection. Getting to know someone who would be directly affected by a referendum is different from just going to a ballot booth and checking a box.



# QUESTIONS

- How can we make citizens more aware of their civil rights? Is this knowledge that can or should be mandated? Is there a way to incentivize such learning?
- How could civil rights education be done in a way that builds and strengthens a community rather than divides it?
- Is it possible to make a person care about other people's rights—rights that may not directly affect that person?
- Does education promote better understanding of others' quests for rights?





Edited by
Suzanne Goodney Lea
Fellow of the Interactivity

Copy Editor: **Chana Garcia**Publication Design & Layout: **Calida Rawles**