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ANALYSIS

What Do Civil Rights Lawyers Do?

In this article, Ilann M. Maazel provides several definitions for civil rights and continues on to explain what it is that civil rights lawyers do and how they make a living.

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Civil Rights

By Ilann M. Maazel | November 14, 2023 at 10:00 AM



Say I'm at a dinner party and receive the typical New York question: "What do you do?" If I say, "I'm a lawyer," I'll receive knowing responses, because everyone knows (or thinks they know) what a lawyer is and does. Other times, though, I might say, "I'm a civil rights lawyer." Here the reaction is different: "How exciting!" or in more recent years, "Thank you."

The next question usually follows: "But what do civil rights lawyers do?"

What do we do? Many associate civil rights with the Civil Rights Movement of the 1950's and 60's, often the only "civil rights" we learn about in school. Others might believe, as someone told me the other day, "I thought you were all in Guantanamo," or, true quote, "I thought civil rights lawyers were not normal humans."

Perhaps, at some level, all these responses are true. But let's approach the question with a little more rigor.

Definitions

Black's Law Dictionary defines "civil rights" as "rights . . . granted to every citizen of the United States by the constitution and all of its amendments." Merriam-Webster defines "civil rights" as "the nonpolitical rights of a citizen."

Both definitions are unsatisfying. Civil rights plainly extend far beyond rights guaranteed by the United States Constitution. For example, the Civil Rights Act of 1964, a congressional statute, created Title II, which prohibits various forms of discrimination in public accommodations such as restaurants and theaters, and Title VII, which prohibits various forms of employment discrimination. State constitutions also create civil rights, often more expansively than the federal constitution.

As to the Merriam-Webster definition, civil rights plainly do include political rights, including the right to vote and to associate with others in political parties. And civil rights extend to both citizens and non-citizens.

Restraint on Governmental Power

A slightly better definition of civil rights is restraint on government, arguably the essential unifying concept of the Constitution. Primarily but not exclusively through the vehicle of [42 U.S.C. §1983](#), private individuals can sue state and local government officials for violations of the Constitution, for damages, injunctive relief (*i.e.*, reform), or both.

If a police officer uses excessive force against a civilian, he has committed an unreasonable search or seizure under

the [Fourth Amendment](#) and can be sued. If a city denies protestors a permit to march on the street, it has likely violated the First Amendment and can be sued. If a municipal or state government discriminates in employment on the basis of race, it has violated the Equal Protection Clause and can be sued.

Police misconduct, prison misconduct, wrongful convictions, voting rights, free speech—these are all classic civil rights cases restraining governmental abuse of power.

Similarly, civil rights plaintiffs can, in [increasingly limited circumstances](#), sue federal officials for violations of the Constitution under [Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics](#).

Restraint on Government and Large Institutions

When my law firm was founded some 25 years ago, New York Times columnist Bob Herbert generously wrote a [column](#) about our founding, and my partner Richard Emery defined our “chief mission . . . as a counterforce to the abusive practices of government and other large institutions.” This is a better, more expansive definition of what civil rights lawyers do.

For in our capitalist country, government is hardly the only source of power. This broader definition includes housing discrimination cases against landlords and real estate companies, employment discrimination cases against companies and lawsuits to hold [Big Oil](#), Big Tobacco and other companies accountable for their profit-induced assault on our health and our planet.

Restraint on All Abuse of Power

But even this definition is too narrow. I would hardly be the first person to note that power corrupts at every level, whether United States presidents, Enron, Big Oil, district attorneys, a police officer with a gun or a staff member in a group home for people with disabilities.

Civil rights lawyers hold sexual assault perpetrators—individuals—accountable for their abuse of power. [#MeToo](#) cases, [Adult Survivor Act](#) cases, [Child Victims Act](#) cases: all are civil rights cases. So, too, are [bullying](#) cases, disability abuse cases in a private group home, and any number of other cases where anyone abuses power.

A Broader Definition

But even *this* definition—restraint on all abuse of power—is too narrow. Because civil rights lawyers often advance a positive, proactive vision for the world.

For example, many years ago, New York City Mayor Rudolph Giuliani signed a contract to destroy the [High Line](#). The Friends of the High Line hired our firm to block the contract and the wrecking ball, and through a lawsuit, we did, until High Line supporter Michael Bloomberg was elected mayor. Helping save the High Line may not be a restraint on abuse of power, but it remains one of the proudest accomplishments of my law firm.

At the end, I prefer the most expansive definition of civil rights lawyering: seeking justice, promoting equity, advancing democracy, and in a broad sense, using the power of the law to do what is “right.”

How Do Civil Rights Lawyers Make a Living?

Back to our dinner party: “But how do you make money?” This question seems to be a source of enduring mystery and fascination, and here’s the answer.

First, some civil rights clients—not many—can actually pay their lawyers. Second, on occasion, an outside funder will fund a civil rights case.

Third, civil rights cases are often “fee-shifting,” meaning that if the plaintiff wins, the defendant pays her legal fees. [42 U.S.C. §1983](#) is one such statute, but there are many others. Fee-shifting is powerful. It allows private lawyers to take righteous cases with low damages. For example, if someone is falsely arrested and spends an unexceptional night in jail, they may receive a \$50,000 jury verdict but, after years of litigation, incur \$500,000 in reasonable legal fees and costs. The defendant would have to pay both the verdict and the fees/costs. Fee-shifting also puts settlement pressure on the defendant to settle strong liability cases early in the case, before fees balloon.

Nevertheless, I am amazed how often defendants fail to settle cases early, litigate aggressively, drive up fees dramatically, then at the end have to pay a much larger settlement or judgment, usually on the taxpayer’s dime.

Finally, civil rights lawyers, like most plaintiffs’ lawyers, often work on contingency, typically for one-third of the settlement or judgment. Contingency arrangements, of course, make the most financial sense when damages are high.

Conclusion

So what do civil rights lawyers do? We fight the good fight, we speak truth to power and we make a living saving the world. What could be better than that?

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