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### November 21, 2012: The Tensions in Religious Liberty

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Title: The Tensions in Religious Liberty

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11/21/2012—During law school, I worked in a clinic-like program that protected the rights of tenants. During one semester, if I remember correctly, I worked on one case in which I used the laws of Connecticut to ensure that a tenant who had not been able to pay rent was not evicted. Because the tenant really could not pay the rent, this amounted to keeping the tenant in the apartment as long as possible by holding the landlord strictly accountable to all the procedural requirements of eviction.

Lawyers are doing the same today for homeowners who owe more on their mortgages than the houses are worth.

But it began to dawn on me even then that this was not the way to really help poor people. The landlord had not actually done anything wrong. So, the delay was not addressing any sort of problem other than the poverty of the tenant. Yet the landlord was not the source of the tenant's inability to pay the rent. So, I was just raising the cost of rental housing for everybody.

This is what happens when lawyers work only one side of a street. It is certainly proper for a lawyer to do this, but when an educational institution does it, you have to wonder what lessons are being taught. Is the clinic teaching the students the larger context?

I was reminded of my experience by the news reported on the [CLR Forum](#) that Stanford Law School is starting a religious liberty clinic to help religious believers achieve exemptions from general laws.

Here is a part of the announcement: "The clinic will offer participating students a dynamic, real-world experience representing a diverse group of clients in disputes arising from a wide range of religious beliefs, practices, and customs in a variety of circumstances. Students will learn in class and apply in practice the laws affecting religious liberty, whether statutory or constitutional, and will be expected to counsel individual or institutional clients and litigate on their behalf with technical excellence, professionalism, and maturity.

During the term, students can expect to handle a discrete accommodation project—e.g., represent a prisoner, student, or employee facing obstacles in the exercise of his or her faith—and likely also participate in a longer-term project involving religion in the public square—e.g., represent a small church, synagogue, or mosque with zoning issues, or a faith-based group seeking access to public facilities."

As the reader can see, the model is the believer facing the obstacles of secular society.

But is this the way into the future of religious liberty? Consider two scenarios. In the first, Buddhists challenge a cross on public property erected to commemorate the dead of WWI. Whose religious liberty is at stake here? In the second, a Catholic who does not follow Church teaching on contraception is denied insurance coverage because her University, which is Catholic, fights to exempt itself from the contraception coverage mandate under the Affordable Care Act.

In the second case, Professor Michael McConnell, who directs Stanford's Constitutional Law Center, and is a marvelous and thoughtful person, would say that the employee's religious liberty is not at stake. But is he right about that? What is religious liberty if I am forced to live by the religious convictions of someone else?

It seems to me we are back to my landlord tenant clinic and a one-sided approach that will not help resolve America's religious wars divisions.