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## OPINION

## ■ THE PORTLAND ARCHDIOCESE

## Damned if you do...

By Yitzchok Adlerstein and Michael J. Broyde

SPECIAL TO THE NATIONAL LAW JOURNAL

As it hypocritical for the Archdiocese of Portland, Ore., to argue in an Oregon court that a woman suing for child support should have used a contraceptive device, despite the catechism teaching that such protection is "intrinsically evil"? With

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failure to exercise ordinary caution. The church must abide by the dictates of this second system, the one not of its making and not of its choice. Is it fair to ask it (or its adherents) to accept the legal disadvantage of adhering to both systems simultaneously?

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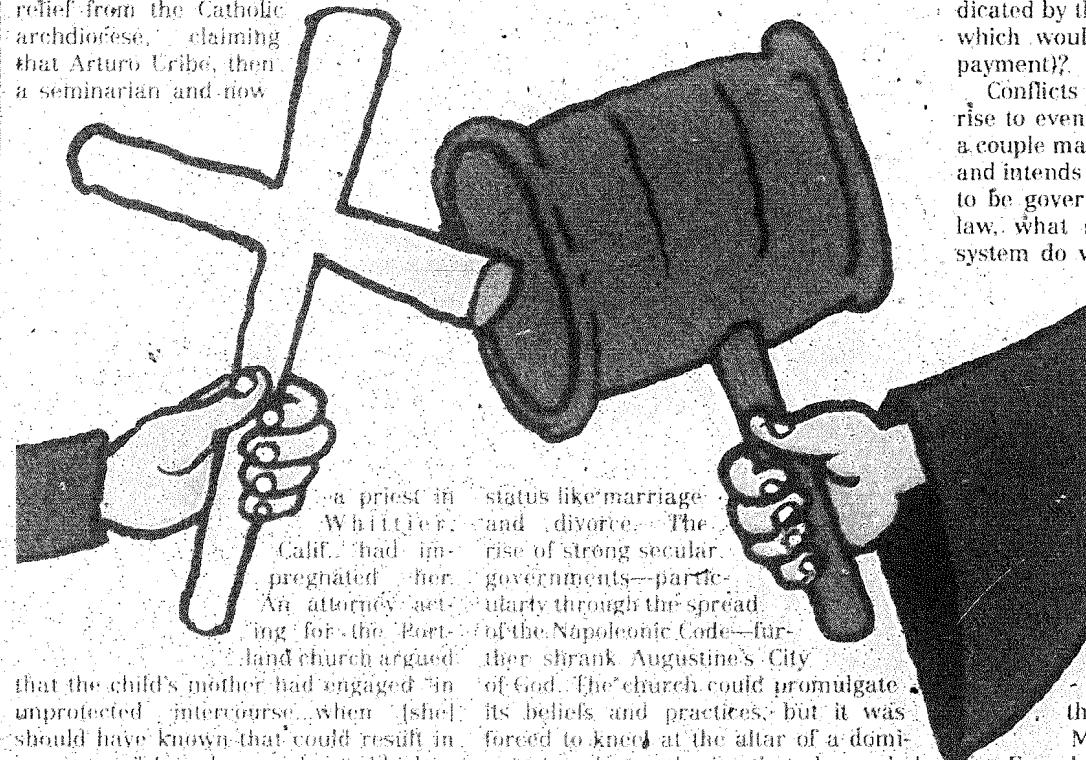
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**W**AS IT hypocritical for the Archdiocese of Portland, Ore., to argue in an Oregon court that a woman suing for child support should have used a contraceptive device, despite the catechism teaching that such protection is "intrinsically evil"? With Catholics on the left and right assailing William Cardinal Levada for condoning such an unusual claim, he might be open to some support from unusual places. Perhaps even from a 15th century rabbi and the Jewish legal tradition.

The facts are simple and sad: In 1994, Stephanie Collopy sought relief from the Catholic archdiocese, claiming that Arturo Uribe, then a seminarian and now



taining doctrinal purity for the church worldwide.

The larger issue behind this suit, though, suggests that Levada and the church have been criticized too harshly. Religious institutions live with an enforced legal double jeopardy that is problematic and, sometimes unfair. The Catholic Church—like any synagogue or mosque—must answer to the American legal system, but when it does so, and plays secular law by its own rules, many observers decry this as hypocrisy.

For hundreds of years, the church was the law in much of Europe, especially in matters pertaining to personal

status like marriage and divorce. The rise of strong secular governments—particularly through the spread of the Napoleonic Code—further shrank Augustine's City of God. The church could promulgate its beliefs and practices, but it was forced to kneel at the altar of a dominant secular authority that demanded the final legal say.

The anti-clerical wave that flooded post-revolutionary Europe gradually receded, and governments and religion came to an accommodation of peaceful coexistence. The faithful, however, continue to be vulnerable to demands that they adopt the stringencies of two systems, even when they are incompatible.

From the standpoint of ecclesiastical law, the plaintiff could have sought relief from the father of the child and not from the church. A 1992 decision of the

catholic diocese of Portland held that failing to exercise ordinary caution. The church must abide by the dictates of this second system, the one not of its making and not of its choice. Is it fair to ask it (or its adherents) to accept the legal disadvantage of adhering to both systems simultaneously?

### Conflicts of law

There are many wrinkles to this conflict-of-law question. Is it right for a Muslim to threaten a secular lawsuit in which he will recover damages plus interest from another Muslim who has wronged him according to Islamic law, if he is unwilling to have the dispute adjudicated by the local *khadi* (Islamic court, which would never assess an interest payment)?

Conflicts in the area of family law give rise to even greater complexities. When a couple marries in a religious ceremony and intends at the time of their marriage to be governed by that faith's religious law, what should our American legal system do when one side opts out and seeks a secular divorce? Although there are many cases on this point from Jewish, Catholic and Muslim perspectives, our legal system has always provided the same answer: Divorce is governed by secular law. Religious people are then forced to resolve their disputes under a legal system that neither one of them wanted at the time of marriage. When they do, they fight by the rules of the system to win.

More than 500 years ago, a French rabbi, Joseph Kolon, addressed these conflict-of-law concerns with regard to a Jewish litigant who first tried his hand in a secular court to collect money. Unsatisfied with the result (since he lost), he then turned to a Jewish court for relief. Rabbi Kolon ruled that the Jewish court need not and should not hear the case. If you choose one system when two are available, don't expect to use the other as a backup. You can't have it both ways. If we as a society expect churches, synagogues or mosques to

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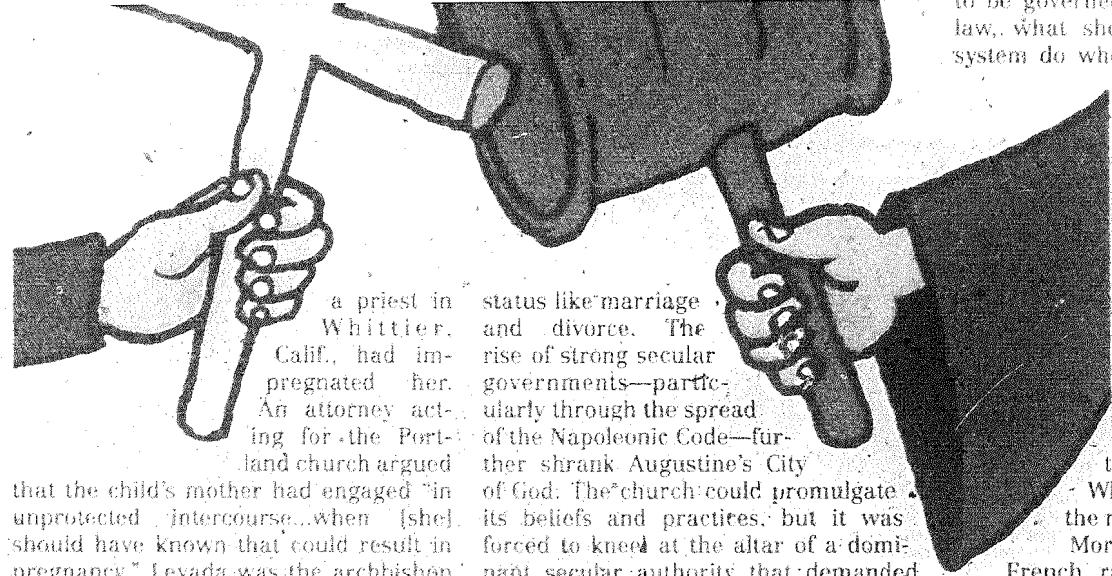
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a priest in Whittier, Calif., had impregnated her. An attorney acting for the Portland church argued that the child's mother had engaged "in unprotected intercourse...when [she] should have known that could result in pregnancy." Levada was the archbishop at the time, and presumably responsible for the course of all legal actions and claims made on his archdiocese's behalf.

To the vast majority of those who have commented on this case, Levada does not come out looking like a choirboy. How could the archdiocese, merely to save a few shekels, compromise its absolute objection to contraception? Conversely, how immutable is the church's position on birth control if the church need not adhere to it in legal arguments? The irony of Levada's elevation to his present post is not wasted on his critics, either. This May, he succeeded Cardinal Ratzinger, now Pope Benedict XVI, as prefect of the Vatican's Congregation for the Doctrine of the Faith, in charge of maintaining

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to be governed by that faith's religious law, what should our American legal system do when one side opts out and seeks a secular divorce? Although there are many cases on this point from Jewish, Catholic and Muslim perspectives, our legal system has always provided the same answer: Divorce is governed by secular law. Religious people are then forced to resolve their disputes under a legal system that neither one of them wanted at the time of marriage. When they do, they fight by the rules of the system to win. More than 500 years ago, a French rabbi, Joseph Kolon, addressed these conflict-of-law concerns with regard to a Jewish litigant who first tried his hand in a secular court to collect money. Unsatisfied with the result (since he lost), he then turned to a Jewish court for relief. Rabbi Kolon ruled that the Jewish court need not and should not hear the case. If you choose one system when two are available, don't expect to use the other as a backup. You can't have it both ways. If we as a society expect churches, synagogues or mosques to conduct themselves in accordance with secular law, we should not be surprised when they do just that. The duty of all religious people to obey the secular law of our society gives rise to the right to use secular law to one's advantage when one is a defendant.

Theologically, Rabbi Kolon and Cardinal Levada move in separate universes. In trying to navigate the narrow straits between two opposing systems of law, however, it just might be that the rabbi would back the cardinal. ■

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