

RELIGION & PHILOSOPHY

eral moral principle that prohibits assaults on the defenseless. Torture, Shue notes, has nothing to do with a "fair fight" between declared combatants; it begins only after the fight is finished.

"Suppose a fanatic, perfectly willing to die rather than collaborate in the thwarting of his own scheme, has set a hidden nuclear device to explode in the heart of Paris. There is no time to evacuate the innocent people or even the movable art treasures—the only hope of preventing tragedy is to torture the perpetrator, find the device, and deactivate it."

Is the torture morally permissible? Yes, says Shue, but "artificial cases make bad ethics." One cannot easily draw conclusions for ordinary cases from extraordinary ones, and "as the situations described become more likely, the conclusion that the torture is permissible becomes more debatable." Torture ought to remain illegal and anyone who believes it to be justified in a certain instance should be required to convince a group of peers in a public trial afterward that all necessary conditions for a morally permissible act were satisfied.

*Relationships
of Confidence*

"Beyond the Priest-Penitent Privilege: The Church, the FBI and Privacy" by Dean M. Kelley, in *Christianity and Crisis* (Feb. 20, 1978), 537 W. 21st St., New York, N.Y. 10027.

On January 24, 1978, two female employees of the Episcopal Church were released from the Manhattan Correctional Center. They had been jailed for 10 months for refusing to answer questions posed by a grand jury investigating radical terrorist bombings in New York. In ordering their release, Judge Robert L. Carter rejected their claim that religious liberty was at stake, but concluded that six months should be the maximum period of confinement for civil contempt.

Kelley, an executive of the National Council of Churches, argues that Maria Cueto and Raisa Nemikin, former employees of the Hispanic Commission of the Episcopal Church, had a valid claim to the ordained clergy's generally recognized immunity from testifying about confidences obtained from a penitent's confession. (Judge Lawrence Pierce, who had ordered them jailed for contempt, had held that the two women, though calling themselves "lay ministers," had *not* been ordained and were engaged not so much in "religious ministry" as in "social work" within New York's Hispanic community.)

The priest-penitent privilege should not be confined to ordained clergy, Kelley contends. "Any person who can be compelled to testify can break the relationship of confidence and trust without which the religious community is no longer a community." The free exercise of religion, protected by the First Amendment, is not something that can be practiced by isolated individuals. It depends upon a community for its effectiveness. That community, Kelley says, is dependent upon a relationship of confidence and trust for its existence.