Arthur Andersen and the capital punishment debate

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Abstract *The paper may provide policy makers with another tool for analyzing the impact of disciplinary actions against public accounting firms. It analyzes the termination of US public accounting firm Arthur Andersen using arguments developed in the capital punishment debate and develops a paradigm for examining future actions against public accounting firms. The authors reviewed major arguments for and against capital punishment and assessed their usefulness as a tool in examining the Andersen case. A paradigm was then developed to assess the propriety of the action against Andersen and possible future cases. Most arguments regarding capital punishment were applicable to the Andersen case, allowing the authors to develop a template for assessing future disciplinary actions against public accounting firms. The "death penalty", as applied to Arthur Andersen, was justified. While corporations are "legal persons", they are obviously not human. This weakens (or renders moot) some of the most powerful arguments against capital punishment. Furthermore, this paradigm may be less useful in societies that prohibit capital punishment. Provides a unique way of examining the impact of disciplinary action against public accounting firms.*

Enron and the demise of Arthur Andersen

Enron began as a regional transporter of natural gas. Since the 1980s, however, the company moved beyond its traditional network of pipelines to become an energy trader and broker. Enron had even grander plans, seeking to become the market place for energy trading in the USA.

All this expansion came to a halt in 2001, however, when massive amounts of unreported debt at Enron's special purpose enterprises (SPEs) came to light. To make matters worse, top company executives were controlling these SPEs and manipulating them for their own benefit. These same executives then encouraged shareholders (including employees) to continue buying Enron stock even as the company was sliding into insolvency.

In the search for culprits attention quickly focused on Arthur Andersen, Enron's independent auditor. Andersen had recently suffered a number of high profile failed audits, and investigators were wondering whether the firm's failure to blow the whistle was simple incompetence or something worse. When evidence surfaced that employees in Andersen's Houston office were shredding documents related to the Enron audit, the Justice Department decided to file a single obstruction of justice charge against the firm in March of 2002. After a month-long trial the firm was found guilty the following June. Arthur Andersen is appealing the conviction but has surrendered its licenses and ceased performing audits effective August 31, 2002.

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The capital punishment debate

Arguments surrounding the propriety of the death penalty have been advanced for centuries. These arguments have become more heated and strident over the past few decades, as most industrialized nations of the world have abandoned capital punishment as a means of meting out justice. Those nations which still resort to capital punishment are coming under increasing international pressure to cease using this "relic of a barbarous age".

It cannot be denied that, deep in mankind's past, the death penalty was perhaps too liberally applied; in fact, it was often merely the starting point for additional punishments meted out. In Homer's (1951) *Iliad*, the following plea is invoked in the enforcement of a truce:

> Zeus, exalted and mightiest, and you other immortals, let those, whichever side they may be, who do wrong to the oaths sworn first, let their brains be spilled on the ground as this wine is spilled now, theirs and their sons', and let their wives be the spoil of others.

Later, during the Roman Empire, persons executed for state crimes often had their bodies hurled down the steps towards the Tiber River to be rent asunder by wild dogs and carrion fowl, or were thrown off the Tarpeian Rock to fall to their death.

For most of recorded history, capital punishment was viewed as a natural and appropriate punishment for many crimes in addition to murder. The edicts of most major religions (Judaism, Christianity, and Islam) initially made provision for capital punishment under appropriate circumstances. Although some religious groups such as Buddhists and Quakers have always been in opposition to the death penalty, these groups, on this issue, were outside of the mainstream of current thought.

Religious and philosophical support for, or acceptance of, the death penalty is in evidence through much of history. Plato[1], in his *Laws*, wrote that:

> But the citizen who has been brought up as our citizens will have been, if he be found guilty of robbing his country by fraud or violence, whether he be caught in the act or not, shall be punished with death; for he is incurable.

Immanuel Kant (n.d.), in *The Right of Punishing*, wrote rather unequivocally that "whoever has committed murder, must die."

As history has progressed, the death penalty has been viewed as an appropriate punishment in fewer and fewer cases. In the colonial period of US history, the death penalty was viewed as appropriate punishment for murder, rape, arson, burglary, counterfeiting, and other crimes. Opposition initially came from the Quakers, but spread to such an extent that by 1860 no northern state imposed the death penalty for any crime other than murder or treason, and several northern states had abolished the death penalty entirely by this time. In the southern portion of the USA, the death penalty continued (and still continues) to enjoy greater political support for a longer period.

The change in the attitudes towards the death penalty is apparent in examining historical arguments for and against the penalty. It used to be taken for granted by most philosophers and theologians that the death penalty was appropriate in many cases, and the arguments of the time surrounded how far it should be extended. Kant wrote that:

> ... it has never been heard of that a criminal condemned to death on account of a murder has complained that the sentence inflicted on him more than was right or just; and any one would treat him with scorn if he expressed himself to this effect against it.

Clearly this is not the case in the current climate.

There are several arguments that are raised repeatedly both in defense of and against the death penalty, and there are well-practiced rebuttals and rejoinders associated with each of these arguments. Some of these arguments are well-reasoned, and hinge on the acceptance of the underlying premises which are often subtly nuanced. Other arguments are much weaker, and are based on blatantly fallacious constructs.

Most of the arguments surrounding the death penalty debate depend on the moral frame of reference of those engaged in the argument. Although societal norms regarding appropriate justice, the value of human life, the moral status of criminals, and what constitutes "cruel and unusual" punishment have changed drastically over the years, the fundamental notions of right and wrong, of good and evil, should be constants.

Deterrence

One of the chief arguments advanced in support of the death penalty is that of deterrence. Although no one could argue that the death penalty fails to achieve specific deterrence (i.e. the executed cannot commit further crimes), the issue of general deterrence – that the existence of the penalty will dissuade others from committing crimes – is subject to much debate.

Those opposed to the death penalty often cite statistics indicating that those jurisdictions which employ the death penalty do not enjoy lower violent crime rates than those jurisdictions without capital punishment, and that there is no evidence of reduced crime rates after the reinstitution of the death penalty following its temporary rescission due to the 1972 Supreme Court ruling in *Furman* v. *Georgia*. These statistics, while arguably relevant to showing a statistical association between crime and the death penalty, cannot purport to show causality. Inter-jurisdictional comparisons are difficult to make because of different demographics and conditions in the various jurisdictions, and inter-temporal studies are very likely to be affected by other factors which have changed over the time span under study. An additional rejoinder to these arguments against the deterrence argument is that while the death penalty exists on the books, its application is by no means certain (and in no case is it timely in the USA). Threatened punishment, when never carried out, soon ceases to be viewed as a potential threat.

In many cases the arguments regarding the general deterrence aspect of capital punishment become the core point of contention in the capital punishment debate; it is the one area of argument where quantitative, statistical evidence can be brought to bear by either party. This is unfortunate, since general deterrence is not the sole or main reason for administering capital punishment. If it were, arguments supporting capital punishment would be untenable, since an almost unavoidable conclusion would be that deterrence would justify the execution of an innocent man if the public thought him guilty. "Retribution" and "justice", in addition to deterrence, are also central themes around which the death penalty arguments revolve.

Retribution and justice

Proponents of the death penalty tend to use the word "justice", while opponents tend to call it "vengeance". Retribution is a more neutral word, as it implies "repaying" like with like. The semantic connotations of these words – vengeance, retribution, and justice – are often central to the perceived effectiveness of these arguments.

Arguments against capital punishment as a vehicle for retribution often appeal to religious (especially Christian) teachings – "... if anyone strikes you on the right cheek, turn to him the other one also". In the *New Testament*, Romans (12 and 13) seems at first blush to give conflicting instruction. At one point it is written:

> Dearly beloved, avenge not yourselves, but rather give place unto wrath: for it is written, Vengeance is mine; I will repay, saith the Lord (Romans 12:19).

However, in the next chapter it is written:

> Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil (Romans 13:1-4).

These two passages seem to imply that individual vengeance is inappropriate, while capital punishment is a proper function of the ruler. In most of the major religious texts, however, evidence can be found to support both retribution against wrongdoers as well as mercy in the application of retribution.

Cruel and unusual punishment

One of the main legal avenues for attacks against the death penalty is that it violates the eighth amendment to the Constitution's injunctions against "cruel and unusual punishment". Support for, or opposition to this argument hinges on one or both of two issues:

(1) what exactly constitutes cruel and unusual punishment?; and

(2) to what extent should the original intent and expectations on which the Bill of Rights was constructed be subordinated to current determinations of "cruel and unusual"?

What is "cruel and unusual" punishment? It would be difficult to arrive at a definition of "cruelty" which would satisfy all parties to the argument. Some would argue that "cruelty" implies maliciously inflicting physical pain or suffering, while others would argue that the effect (i.e. the mental or physical suffering of the punished) is a more relevant determination of cruelty than the aims of the punisher (i.e. whether malice or cruelty is intended). If one is to accept the argument that the death penalty is "cruel" because of the physical or mental anguish it causes, then such acceptance can be used to call into question virtually any form of punishment (e.g. "it is cruel to confine someone to a cell because of the mental anguish it causes"). The societal and judicial notion of what is "cruel" is subject to change over time. Stating that depriving someone of life is in and of itself cruel seems to be both the premise and the conclusion in these arguments; it is a first principle from which the argument against the death penalty often evolves.

The "unusual" aspect of the eighth amendment's injunction is similarly open to debate. The use or disuse of capital punishment will in itself make it usual or unusual. It is often argued that capital punishment in this country is "unusual" because it is unusual relative to the norms in other industrialized countries. This of course begs the question of whether our determination of what is "usual" or "right" should be influenced by the stances of other states.

If one wished to parse words in this matter, one could note that the eighth amendment states "cruel *and* unusual". Those who wish to argue against capital punishment would need to show simultaneously that capital punishment is "cruel" (however that may be defined) as well as "unusual" (again, subject to definition).

Clearly, capital punishment was not "cruel and unusual" to the framers of the Constitution; as was noted previously, death was the accepted penalty for a number of offences, most of which are no longer punishable by death. If we are to accept that the death penalty is "cruel and unusual", we must similarly accept that all articles in the Constitution and the Bill of Rights are subject to reinterpretation as societal mores or definitions change.

Dangers of misapplication

One of the strongest arguments against the death penalty, and one which has a great deal of currency, is that the death penalty is irrevocable and may be erroneously applied to an innocent party. Opponents of the death penalty argue that this risk should be enough to cause the state to cease use of the death penalty, while proponents of the death penalty argue that this risk should cause the state to improve the judicial process to ensure that the innocent are not deemed guilty. Parties on either side of the argument cite faulty statistics or use faulty reasoning in pursuing this argument. Opponents of the death penalty cite the great number of cases where an inmate on "death row" had his or her sentence overturned or sent back for review. The implicit conclusion which they wish the listener to draw is that these were cases where an innocent party was convicted. Instead, the great majority of these reviews are brought about due to procedural errors rather than uncertainty regarding the actual accuracy of the conviction. Furthermore, proponents of the death penalty respond that pre-execution reversals prove that the appeals system works.

On the other side of the argument, supporters of the death penalty cite research which shows that there has never been a case where an executed prisoner was later found to be innocent. Part of this finding is due to the lengthy appeals and review process, which is designed to protect against this type of mistake. Another part of this finding is very likely due to a cessation of reviews and investigatory activities after the convicted party is put to death. In any case, the unspoken conclusion which the proponents of the death penalty wish the listener to draw – "there is no risk that an innocent individual will be put to death" – is by no means valid.

Forgone societal contributions of the condemned

A lesser-cited argument in opposition to the death penalty is that it makes it impossible for the executed to make any contributions or recompense to society. Assuming that the convicted person committed a crime sufficiently abhorrent to merit consideration of the death penalty, it is unlikely that that person would ever be restored to a position in society which would enable him or her to make any meaningful contribution. Additionally, one could argue that this argument is tantamount to arguing that justice can or should be bartered away for some unknown future consideration from the convicted.

Universal sanctity of human life

Perhaps the chief argument against the death penalty is based on the moral premise that it is wrong to take the life of another. The universal sanctity of human life is a central element in the moral teachings of many religious traditions. For example, the

sacredness of human life at all stages is the central point underlying the consistent life ethic of the Roman Catholic Church.

If one approaches the death penalty argument with an acceptance of this premise, it is logically impossible to draw any other conclusion than that the death penalty is wrong in all cases. Essentially this premise serves as both a premise and a conclusion, without the need for any additional information or reasoning.

How the capital punishment debate informs the Arthur Andersen case

There has been much debate surrounding the government's treatment of Arthur Andersen. Was it appropriate to destroy an 85-year-old firm and disrupt the lives of 28,000 US employees in order to punish a relative handful of executives? Given the firm's recent string of audit failures, was Andersen's company culture fatally flawed? Will the fate of the (former) big-five auditor deter others from unethical behavior? These questions must be addressed as we deal with other corporate financial scandals.

The capital punishment debate can provide insight to these questions. If a limited liability partnership is a person in the eyes of the law, then the legal action indeed "killed" Andersen. Furthermore, the same questions of retribution, justice, and capacity for reform arise in both venues.

Like all analogies, however, comparing the demise of Arthur Andersen with capital punishment has its limits. While a person who is executed can do no more, Andersen's former partners and managers continue their public accounting careers. More importantly, the innate value of individual human life obviously does not apply to a company. Nevertheless, we believe that judicious use of this analogy can help inform the Andersen debate and improve the response to other accounting scandals.

The death penalty arguments as applied to Arthur Andersen

Some of the death penalty arguments are applicable to Arthur Andersen's situation, while others are not. What follows is a brief discussion of each of the arguments, evaluated in the context of Arthur Andersen's situation. In addressing this question it is tempting to get sidetracked by questions of collective punishment (i.e. punishing Arthur Andersen's 28,000-plus employees for the actions of a small group of employees). Although this is an extraordinarily important moral question, it is not the subject of the current discussion. Similarly, although Arthur Andersen may cease to exist as a firm, the employees who engaged in egregious behavior will in many cases be free to continue their activities elsewhere. If we allow the distinction between the firm and its employees to become blurred it becomes difficult to apply the capital punishment arguments to the case; clearly, we are not contemplating applying capital punishment in a blanket manner to the employees of Arthur Andersen. Our concern here is whether the economic entity known as Arthur Andersen should be terminated as a result of its activities.

Deterrence

Again, the distinction needs to be made between specific deterrence and general deterrence. Clearly, if Arthur Andersen does suffer the "death penalty" and ceases to exist as a firm, then the firm cannot engage in additional harmful activities. However, the managers and professionals who engaged in the improper behavior will in many cases remain active in the profession, and may continue their aberrant behavior

elsewhere. In this case, then, the claim of "specific deterrence", although valid as specifically regards Arthur Andersen itself, is by no means necessarily valid when contemplating the future actions of those individuals who actually engaged in the illicit activities. That having been said, it is reasonable to suggest that many former Andersen employees will be reluctant to engage in the behavior that led to Andersen's demise.

In terms of general deterrence, it might be expected that the death penalty in this context does serve as deterrence against similar behavior by other firms. If we assume that accounting firms are rational economic agents making decisions based on expected costs and benefits, then the threat of economic dissolution may be enough to induce firms to avoid actions which would result in this penalty. Unlike the deterrence argument in more conventional cases, these are not crimes of passion where rational forethought may not be present. Additionally, since the mere indictment of Arthur Andersen was seen as a death sentence, the speed and certainty of the penalty increases its value as a deterrent.

In summation, the deterrence argument has both strengths and weaknesses when applied to the Arthur Andersen case. Unlike the deterrence argument as applied to human defendants, where the specific deterrence is unquestioned and the general deterrence is subject to debate, in the Arthur Andersen case the specific deterrence aspect is questionable while the general deterrence argument is probably better supported. Although the economic entity known as Arthur Andersen, and the company culture which it embodied and which may have encouraged the aberrant behavior, will cease to exist, the specific agents who engaged in the illicit activities may still be actively engaged in the profession. However, the swiftness and surety of the punishment meted out against Andersen may in fact dissuade other rational economic decision makers from engaging in similar behavior.

Retribution and justice

Public accounting firms occupy a place of special trust in our society and economy. Economic decision makers rely on the work of public accounting firms in making decisions regarding the allocation of capital and other resources; the efficient operation of the capital markets depends critically on the attestations of these firms. If a firm indicates by its actions that it cannot be trusted to fulfill this function honestly, then its continued operation in this capacity cannot be justified or tolerated.

As Arthur Andersen is an economic entity in the eyes of the law, it seems somehow appropriate that economic crimes by this economic entity should be met with the economic death of the offending party. This hearkens back to Kant's philosophy of repaying "like with like".

Cruel and unusual punishment

Although, as was noted above, the interpretation of what constitutes "cruel and unusual" punishment is often problematic when applied to human cases, there seems to be less equivocation when contemplating the death penalty in the current context. Firms are frequently "litigated out of existence" when they commit torts. Other firms have had their fortunes curtailed when their products are banned or restricted by the government. Clearly, then, the death penalty cannot be viewed as "unusual" in this case.

The definition of "cruel" is as difficult in this context as it is in the context of the death penalty as applied to human offenders. As was noted above, cruelty is often described as being a function of either the punisher's malicious intentions or the punishee's emotional response to the punishment. As Andersen is an economic agent, incapable of an emotional response, the latter criterion for assessing cruelty cannot be met. The former criterion, that of the malicious intent of the punisher, seems equally inapplicable in this case. One might think that malicious punishment is meted out in order to engender physical, emotional, or psychic suffering on the part of the punished. Since Andersen is incapable of displaying these conditions, the malicious use of any form of punishment seems unlikely.

Dangers of misapplication

There is always the possibility that an individual or a company may be wrongly convicted of a crime. While the consequences in the individual case are clearly more troubling, they are not trivial regarding a business entity. Arthur Andersen employed 28,000 people in the USA, every one of whom experienced significant economic hardship and anxiety. Furthermore, these people lost their livelihoods in the midst of a weakening economy. While most of them (particularly the professionals) quickly found other employment, there are undoubtedly many people who have not.

It is not our current purpose to determine whether Andersen's punishment was proper. At this point we are merely exploring the ways in which the capital punishment debate can inform the discussion on how to punish errant businesses. It is also clear that the consequences of misapplication are clearly more serious in the case of capital punishment. That having been said, the dangers of misapplication are significant in the case of businesses and should not be dismissed lightly.

Forgone societal contributions of the condemned

When a person is executed their ability to make further contributions to society (for good or ill) is terminated. This is not entirely true in the Andersen case. While the company itself can do no more, most of the individual employees will find other jobs. To the extent that they are successful in those endeavors, former Andersen personnel will continue to influence society.

On the other hand, there is a large body of literature suggesting that organizational culture strongly influences individual behavior. Furthermore, leaders of other companies will have different objectives, preferences, and goals than did those at Arthur Andersen. Both of these points suggest that in some way the future societal contributions that would have been made by Arthur Andersen have indeed been forgone.

Finally, Arthur Andersen was one of the largest accounting and consulting firms in the world. One could argue that the economies of scale resulting from the magnitude of their operations led to increased efficiency in providing accounting and consulting services, and that these efficiencies benefited Andersen's clients as well as society in general. If the economic entity known as Arthur Andersen ceases to exist, then these efficiencies will no longer be available. Additionally, if Arthur Andersen ceases to exist as an accounting and consulting firm there will be less competition in the market for these services, which will further discourage efficiency and innovation in this field.

In attempting to apply the "foregone societal contributions" argument to the Andersen case, the questions that must be addressed are:

- Did Andersen possess any unique traits which would enable it to make contributions which would otherwise not be made?
- Does the benefit of these potential future contributions outweigh the need to appropriately sanction Andersen for its actions?

Universal sanctity of human life

Clearly, this argument does not apply in the current context. While Arthur Andersen is a person in the eyes of the law, it is not a unique, living creature. Furthermore, while an executed individual can do no more in this world, the former employees can (and in most cases will) continue to contribute to society in a variety of ways.

The consistent life ethic provides perhaps the strongest argument against capital punishment. Its inapplicability *vis-à-vis* Arthur Andersen suggests that society will (and should) be far more likely to terminate errant companies than human criminals.

Did Andersen deserve to die?

The question now arises, should Arthur Andersen have been terminated? Was it moral for tens of thousands of people, most of them entirely innocent, to lose their livelihoods in order to punish top management? Were the repeated infractions of Andersen's leadership so egregious that an example had to be made of them?

Initially both authors thought that the answer was "no". However, after examining the evidence in light of recent events we reluctantly came to the conclusion that the best course of action was to terminate the firm. Our reasoning, in light of the arguments surrounding the death penalty, is outlined in Table I. In Table I we attempt to indicate how the argument applies to Andersen's case, as well as whether the application of that argument would support the termination of Andersen.

There appears to be little doubt that the extinction of Arthur Andersen will have a powerful deterrent effect on the public accounting profession. Executives tend to be rational utility maximizers. If they see that the penalty for repeated, large scale audit failures can include the loss of their impressive equity stake in the firm, it is reasonable to assume that they will pay more attention to potential audit failures in their own firm.

The argument of retribution and justice is a bit murkier. Although the termination of Andersen is just when viewing Andersen as an individual entity, the question of justice for innocent employees also arises. It is not fair that thousands of these entirely innocent employees should lose their livelihood for the sins of a few top managers. It is also unfortunate that Enron employees and stockholders have lost a deep-pocketed defendant from whom to recoup their losses. On the other hand, the large judgments levied against Andersen in the past did not appear to deter top managers. What else could be done?

Thus, it would appear that the possibility of "cruel and unusual punishment" against innocent employees has to be weighed against the very real possibility of recidivism by top management. Under these circumstances it would appear that "death" was not an inappropriate penalty for Arthur Andersen.

The scale and scope of Andersen's operations enabled them to exert a strong influence, for good or ill, on the provision of audit, accounting, and consulting services on a global scale. The termination of Andersen will of course cause a loss of the

Argument	Support or opposition for Andersen termination?	Summary
Specific deterrence	Strong support	The termination of Arthur Andersen will result in a dissolution of the corporate culture which condoned the behavioral problems which led to the current crisis. Although the individual malefactors are still present in the profession, the corporate culture which harbored them is no longer present
General deterrence	Strong support	Since the mere indictment of Andersen was viewed as tantamount to a "death penalty", the swift and sure punishment meted out should serve as a strong deterrent against similar behavior in other firms. Since accounting firms should be viewed as rational utility maximizers, the threat of a very significant negative payoff to these aberrant actions should serve as a deterrence against engaging in these actions
Retribution and justice	Strong support	Since Andersen repeatedly displayed an inability or unwillingness to properly perform the functions with which it was entrusted, it seems only just to prohibit it from continuing to engage in these functions Additionally, the main burden of punishment (in terms of loss of reputation and economic assets) will probably fall on the partners of Andersen. Since the partners of Andersen are either directly responsible for the malfeasance or participated in the culture which condoned it, it is appropriate that the burdens imposed by this punishment will fall most heavily on their shoulders
Forgone societal contributions	Weak opposition	Andersen's scale of operations undoubtedly contributed to its ability to render especially efficient and effective service to the profession. The dissolution of Andersen necessarily means that the benefits of these economies of scale will be lost
Damage to innocent parties	Strong opposition	There can be no doubt that the vast majority of Andersen employees were not in any way responsible for, or aware of, the behaviors which led to Andersen's dissolution. The dissolution of Andersen will impose a burden and hardship on these innocent parties
Cruel and unusual punishment	Neutral	Not applicable – Andersen cannot "suffer" in the same sense that a sentient biological organism can
Danger of misapplication	Neutral	Not applicable – Andersen clearly engaged in the egregious behaviors which led to this punishment
Sanctity of human life	Neutral	Not applicable

Table I.
Analysis of Andersen termination

economies of scale which they enjoyed, and which undoubtedly could have benefited society at large. All future societal contributions from Andersen are not lost however, as the individual economic and human assets which comprised Andersen still exist, and there is nothing to preclude another firm from growing to the scale and stature which Andersen once enjoyed.

Arthur Andersen had made many significant contributions to the public accounting profession. It was one of the oldest firms in the profession and for many years it represented the "gold standard" for auditor independence. Unfortunately, for reasons that will be the topic of future research, something in the firm's culture changed significantly in recent years. As long as this tone at the top remained intact, it appeared that the firm would continue to be a source of dangerous audit failures. Thus, terminating the firm might have been the only way to protect the financial community.

On the other hand, Arthur Andersen may have been able to reform itself. The firm had hired Paul Volker and given him unprecedented power to implement reforms. In addition to changing the tone at the top, these reforms could have served as a model for a more general reform of the accounting profession (and forestalled more radical reform actions by Congress). Unfortunately, we will never know the impact of these reforms because the firm collapsed before they could be implemented.

It is difficult to conclude that a firm with a proud history of achievement and innovation deserved to be driven out of business. It is even more difficult to throw thousands of innocent employees into the street during a recession. In the final analysis, however, the danger of recidivism, the justice of terminating the entity known as Arthur Andersen, and the need for deterrence probably made such an action necessary.

Conclusion

Any analogies between capital punishment as applied to Arthur Andersen and capital punishment as applied to individuals can be tenuous at times. However, since Andersen's CEO invoked the emotive phrase "death penalty" in describing the effects of the indictment against the firm, it seems only fitting that the propriety of the sentence be analyzed via the same arguments used in the more common debates surrounding the death penalty.

Several common arguments for and against the death penalty have been examined, both in general terms as well as in the context of the Arthur Andersen's situation. The strongest argument against the death penalty – that human life is sacred – clearly does not apply to the Andersen case. Similarly, it would prove difficult to apply the injunction against "cruel and unusual punishment" to the Andersen case. Instead, we are left with questions of "justice" and how to best strike a balance between the costs and the benefits to society of the termination of Arthur Andersen.

Several of the death penalty arguments do seem to support the contention that Arthur Andersen should suffer the death penalty. "Justice" would suggest that a firm which shows itself unwilling or unable to adhere to regulations in the performance of a function (i.e. auditing the financial statements of publicly traded firms) should be barred from engaging in that activity. It has also been suggested that the strong and timely sanction imposed on Andersen would dissuade other firms from engaging in similar practices (deterrence).

Other arguments from the death penalty debate do not necessarily support the application of the "death penalty" to Andersen. Just as is the case with more

conventional death penalty cases, there is always the danger that the death penalty may be imposed on an innocent party. Although the nature and severity of the error is much less in the case of the death of an economic entity as opposed to a human defendant, this disparity in effect should not cause this argument to be overly discounted. Admissions of wrongdoing by employees and officers of Andersen suggest that the penalty would not be applied to an innocent party in this case. However, some would argue that the fact that the risk of misapplication in general exists is enough to cause the death penalty to never be invoked.

The final argument which might be advanced in Andersen's favor is that, as a result of its dissolution, Andersen is not in a position to make any further contributions to society. Although Andersen's employees and economic assets are still capable of making contributions to society through their employment in other firms, any unique capabilities possessed by Andersen were lost when the firm ceased to exist. Although it is probably true that Andersen possessed unique characteristics which enabled it to make distinct contributions to society, such potential future benefits should not be the basis on which justice is meted out. If one accepts the "potential future benefits" argument as a reason not to terminate Andersen, then one is essentially endorsing the position that different entities, with different potential future benefits to offer to society, should be subject to differing punishments.

One of the most difficult aspects of this analysis is keeping a clear distinction between the economic entity known as Arthur Andersen and its employees. Clearly, the dissolution of Arthur Andersen has had an enormous negative impact on all of Andersen's employees, the vast majority of whom were completely blameless in the events leading up to Andersen's indictment. The purpose of this paper, however, was to analyze the arguments surrounding the "execution" of the economic entity known as Arthur Andersen.

Note

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