

FORUM 411

Engaging Arizona's Leaders

YIN AND YANG POLITICAL SCIENCE

Suddenly Americans everywhere are debating the roles of government in our lives. Should the federal government bail people out when they make poor financial decisions? Is regulation the answer this time?

What *is* Government For?

These fundamental questions are rooted in philosophical world views. It's been a long time since they were debated in ways beyond election campaign slogans. However especially in Arizona, the fallout from the housing bust and credit crunch brings the reality of government's many roles into sharp relief. The dense tangle of interests and agencies points out how complicated and dynamic the connections between business and government – not to mention citizens and government – have become.

When Arizona became a state, its populist leaders gave power to the people to balance that of the mines, railroads, and ranchers. Now nearly 100 years later, besides the state government and 21 sovereign tribal governments, Arizona has 15 county governments, more than 80 municipalities, and hundreds of special districts and authorities that were created for such purposes as educating kids, managing irrigation for agriculture, and redeveloping blighted areas. In contrast to 1912, we also have more than 6 million residents, a \$216 billion economy, and evidence that our stewardship of Arizona's land and communities has often left a lot to be desired. Arizonans have been fairly clear too about what they want in the state: good-paying jobs, reasonable housing, and an outdoor lifestyle, plus

- quality schools and neighborhoods
- mobility without always depending on cars
- efficient responsive government
- a competitive economy



MORRISON INSTITUTE
FOR PUBLIC POLICY
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Forum 411 is a quarterly briefing series offering policy, business, and community leaders information on Arizona's critical issues. Forum 411 refers to Morrison Institute's location at the ASU Downtown Phoenix campus, which is located at 411 North Central. Morrison Institute seeks to be a source of public policy ideas and provide a venue for discussion. Morrison Institute invites everyone to be part of Forum 411.

“That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.”

Thomas Jefferson



We are also expecting another three to four million more Arizonans in the next 30 years who will need houses, roads, schools, and services from the public, nonprofit, and private sectors just as today’s residents do.

So, complexity is understandable, as is the fact that expectations and outlooks are affected by current situations, even as basic values remain the same. The question really is: What do we really want from government at this time and in these circumstances?

Answering this question involves personal choices and philosophies that fall beyond the scope of a single briefing paper. However, the current focus on the federal government and the state’s related budget deficit have provided an opportunity to reconsider the yin and yang of regulation, public services, and their effects on our lives.

Thinking about all governments and public services at once is daunting. So, we look at five state or local entities, why each exists, and how its roles have evolved. We chose institutions that the average Arizonan probably knows little about to focus on the reasons behind them.

First, a brief refresher on two points of high school civics.

Remember the Social Compact?

Thomas Jefferson (of course) said it best: “*That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.*”

The social compact means that to exist as an orderly society, we must agree among ourselves to a set of rules by which to be governed. Those rules limit each of our individual rights to some degree. We are burdened by limitations, but we also benefit from the fact that everyone experiences the same restrictions. *I have to stop for red lights, but so do you.*

It is pretty easy to see that some rules are necessary for society to function. So how has consent changed as society has become bigger and more complicated?

It’s the United States

The basic unit of government in the American system is the state. The states came together in the constitution to form the federal government and give it specific powers. In their own constitutions, states created local units of government. But it is to the individual states that the people gave “the consent of the governed.” Five agencies provide examples of Arizona’s evolving interpretation of the social compact.

ARIZONA CORPORATION COMMISSION — Consumer Protection, Business Oversight, and Infrastructure Development

ARIZONA CORPORATION COMMISSION

Governing Body	Five elected Commissioners who serve four-year terms
Budget FY06	\$25,913,481
Revenue Sources	State general fund and fees
Employees	300

Source: Arizona Corporation Commission.

Unlike most states, Arizona has a constitutionally formed Corporation Commission (ACC). The five elected commissioners regulate public utilities, oversee the incorporation of businesses, ensure railroad and gas pipeline safety, and maintain the integrity of the securities marketplace. Seven divisions do the extensive work of the commission. For example, the Utilities Division monitors the operations of more than 850 companies and approves rate changes. In 2005-2006, the pipeline safety group completed 749 comprehensive inspections and its railroad safety group inspected more than 1,300 miles of track. The Corporations Division approves articles of incorporation for Arizona corporations and limited liability companies. Arizona has approximately 430,000 active corporations and LLCs. It also grants foreign corporations permission to conduct business in the state.

Most Arizonans know little about the state's Corporation Commission and there's no real reason they should, unless perhaps they own investments or plan to form a corporation. Or use electricity. Or gasoline. Or water. In truth, the ACC is almost like a fourth branch of government, combining executive, legislative, and judicial functions in overseeing much of the infrastructure that keeps Arizona functioning. This significant power seems inconsistent in a state that now regularly resounds with tirades against "big government." But the commission was intentionally created and planted securely in Arizona's constitution by founding fathers who bore a huge mistrust of big business. From the outset, the commission was a powerful state force for protecting residents against the power of monopoly, a classic product of the Progressive Era, when bigger government was often seen as a vital counterweight to the excesses of private corporations.

The Corporation Commission still sees itself as a watchdog for consumers. But increasingly many residents, business people, and policymakers expect this group of elected officials to play a bigger part in the state's competitiveness and foresee the infrastructure Arizona needs to adapt to more people, make good on renewable energy, and support public-private ventures to ensure that broadband telecomm access is available everywhere. The questions about investments and costs are different than they used to be. For an agency that was envisioned to watch out for the little guy, keeping rates low first and foremost may actually be a disservice if utilities can't invest in the infrastructure needed for a 21st century knowledge economy or equity for communities throughout the state. In comparison to the past, it would be easy for the Arizona Corporation Commission to be penny wise and pound foolish. Now, we want foresight and competitive insights, not just oversight.



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CENTRAL ARIZONA PROJECT — Water Management for Quality of Life and Economic Growth

Arizona is one of seven Colorado River basin states that negotiated water rights in the 1922 Colorado River Compact. Arizona, California, and Nevada, the lower basin states, received a 7.5 million acre-foot allotment to divide among themselves. After a lengthy dispute over allocations, Arizona approved the Compact in 1944. Today, Arizona is entitled to 2.8 million acre feet of Colorado River water per year.

With Arizona's entitlement secured, the Central Arizona Project Association was formed in 1946 to educate residents about the need for an extensive diversion canal system and lobby Congress for funding. President Johnson signed the Colorado River Basin Project Act of 1968, officially creating the Central Arizona Project (CAP). Constructed by the U.S. Bureau of Reclamation at a cost of more than \$4 billion, the CAP canal traverses 336 miles from Lake Havasu City to Tucson. Designed to provide water for municipalities, Indian communities, and irrigation, CAP also generates power and helps with flood control.

An elected board with members from Maricopa, Pima, and Pinal counties governs the Central Arizona Water Conservation District (CAWCD), which oversees Central Arizona Project. CAP's mission, in part, says it will "enhance the state's economy and quality of life and ensure sustainable growth for current and future populations." Plus, the entity must repay the federal government. Arizona's 50-year pay-back period began in 1993 when the project was declared "substantially complete." The CAWCD sets wholesale water rates for farmers and cities in central Arizona. It also sets a property tax in the three-county area to pay for its work.



CENTRAL ARIZONA PROJECT

Governing Body	15-member CAWCD Board of Directors elected from three-county service area
Budget FY07	\$227,700,000
Revenue Sources	Property tax, proceeds of water and energy sales
Employees	400

Source: Central Arizona Project.

As a society, we've decided that the acquisition, availability, quality, and cost of water... needs to be managed by government command and control.

The agency managing a lot of Arizona's water is obscure to say the least. Elections for the CAWCD board are low profile (although not uncontested), and meetings are held on the north edge of Phoenix in a location only a water "groupie" could find. Most Arizonans, if they think about the Central Arizona Project at all, probably do so in terms of why they can't ride their bikes on the banks of this canal. Few people think about the irony of CAP: a multi-billion-dollar project to make water flow uphill that was conceived, constructed, and managed in free market Arizona by a massive government enterprise. Some Arizonans may love to rail against the federal government, but without federally born and supported CAP and Salt River Project, we couldn't live here and much of the economic development of recent years would not have happened. In addition, options for restoring some damaged habitats and righting some old wrongs would have been severely limited. It's hard to imagine a better example of the complexity and multiple purposes that mark our approach to the role of government in the marketplace. In this case, public investments made a lot of private development possible, as well as protection of other Arizona water resources.

As a society, we've decided that the acquisition, availability, quality, and cost of water cannot be left to Adam Smith's famous "unseen hand"; it needs to be managed by government command and control to make sure it is safe, reliable, and productive, economically and socially, for everybody.

INDUSTRIAL COMMISSION OF ARIZONA — Worker Protection and Employer Protection

INDUSTRIAL COMMISSION OF ARIZONA

Governing Body Five governor-appointed commissioners are confirmed by the Senate

Budget FY07 \$20,100,000

Revenue Sources Tax on workers' comp premiums

Employees 320

Source: Industrial Commission of Arizona.

Created in 1925 and supported by a tax on worker compensation insurance premiums, the Industrial Commission of Arizona (ICA) protects the life, health, safety, and welfare of employees of all types of employers, public and private. In 1969, the fund that pays workers injured on the job was split off into a separate entity, SCF Arizona.

The Industrial Commission retained authority over the processing of worker compensation claims. In FY 2007, 121,000 claims were processed. ICA's domain also includes occupational safety, youth employment standards, occupational rehabilitation, minimum wage, and wage disputes. The Arizona Division of Occupational Safety and Health (ADOSH) monitors compliance with federal standards, helps businesses achieve compliance, and inspects industrial equipment, including every elevator in the state. In FY 2007, ADOSH found 865 "serious willful and repeat violations" of federal safety and health standards and assessed nearly \$2 million in penalties, which went to Arizona's General Fund. The Industrial Commission was the agency designated to implement the voter-approved ballot initiative that increased Arizona's minimum wage.

If there were a contest to pick the least-known Arizona agency that affects the most lives, the top finishers would surely include ICA. With its wage and hour and safety emphases, the ICA at first seems a bit of a throwback to dark factories and short life spans among workers. But ICA is as much a part of the information age as it was the industrial era. Granted, its trust fund was spun off, and control over insurance rates and carriers was shifted to the Department of Insurance.



Still, the Commission's oversight of workers' compensation continues to have a huge impact on most workers and employers.

The commission's continuing work reflects the government role in curbing the excesses of the market. The workers' compensation system, after all, is meant to help employees from being simply cast aside when a workplace injury leaves them unable to sell their labor and make a living; and the system is paid for though a tax on employers. The system also reduces the chance that injured workers will sue their employers. Arizona's relatively low worker compensation rates show that the middle ground between employers and workers is still solid. Economic shifts have affected much of the work that employees do and how it gets done. Protecting workers and employers through a public-private system has stayed in step with the realities of work in every era.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY — Flood Control, Planning, and Waterway Regulation

Historically, Maricopa County's topography has made it prone to severe flooding. The Arizona Legislature established the Flood Control District of Maricopa County in 1959. It provides regional and local flood protection throughout Maricopa County. In 2007, the district became part of the Maricopa County Public Works Department. Now, the Maricopa County Board of Supervisors serves as the district's Board of Directors. Property tax provides a significant source of revenue, with additional funding generated by building permit fees, cost-sharing arrangements, and the sale or lease of rights of way. These resources are shared by eight divisions: Administration, Engineering, Executive, Geographic Information Systems, Operations and Maintenance, Planning and Project Management, Real Estate, and Floodplain Management and Services.

The district's primary activities include: administration of public awareness campaigns, identification of hazard areas, regulation of development that affects waterways, and the construction and maintenance of flood control structures. The agency also develops Watercourse Master Plans and Area Drainage Master Plans for the county. Since its creation, the district has constructed more than 80 flood control structures. In 1980, the ALERT system was enacted to warn of pending flood conditions, and in 1994 the Arizona Canal Diversion Channel was completed. The district is designated "Class 5" in the National Flood Insurance Program Community Rating System, which was a factor in reducing residents' insurance premiums.

It's tempting to consider the Maricopa County Flood Control District an agency that deserves its obscurity. It's a classic example of the need for government intervention and regulation to protect us against forces of nature. Repeated floods have plagued Phoenix from its founding, and early on proved too large, powerful, and destructive to be handled adequately by the efforts of a few private investors. The resulting collective effort has enabled the Valley of the Sun to grow and thrive, although flooding is still very much with us. Which means there is always a need to regulate percolation, run off, and retention. Odds are that the Flood Control District had a role in approving those wash corridors in your neighborhood, or that sunken park. The district's work takes place in the most technical realms of engineering and land use planning. The agency has many effects on our urban forms and the ways neighborhoods work. The district's decisions impact where and how development takes place, and how much home insurance will cost. In addition, this agency is increasingly called upon to use its



MARICOPA COUNTY FLOOD CONTROL DISTRICT

Governing Body	Maricopa County Board of Supervisors serves as the District's Board of Directors
Budget FY06	\$28,000,000
Revenue Sources	Property tax, fees, and county general fund
Employees	200

Source: Maricopa County Flood Control District.

resources and expertise to support environmental restoration and the creation of recreational amenities. For example, the El Rio project along the Gila River on the west side of metro Phoenix includes the Flood Control District as a partner. El Rio is a 17-mile-long plan that starts at the Gila and Aqua Fria rivers. Trails, revegetation, and recreational facilities will begin to take shape over the next five years.

The Flood Control District is basic to metro Phoenix. That means that the Flood Control District is also central to any changes in urban design and urban form. Many have called for Phoenix regions to be more pedestrian and nature friendly. New directions in what Phoenix areas look like and how development is done in the future will depend on how expectations for this agency are changed and diversified. Flood control may mean much more, and something much different, in the future than it does today.

ARIZONA DEPARTMENT OF REAL ESTATE — Buyer Protection, Professional Licensing, and Subdivision Regulation

ARIZONA DEPARTMENT OF REAL ESTATE

Governing Body	Real Estate Commissioner appointed by the governor
Budget FY08	\$3,800,000
Revenue Sources	Fees and state general fund
Employees	56

Source: Arizona Department of Real Estate.

The Arizona Department of Real Estate (ADRE) “protects the public interest through licensure and regulation of the real estate profession in the State of Arizona.” A nine-member board advises the Real Estate Commissioner. The department’s recent emphasis has been on consumer and community protection, focusing resources on policing agents, salespeople, and others who may harm the public. In particular, the agency has worked to combat illegal subdividers and reduce the number of properties that are used as “drop houses” by human smugglers. Staff investigate development violations related to everything from timeshares to cemeteries. Another important initiative has been the Homebuyer’s and Renter’s Bill of Rights.

In few places has the American Dream been more widely realized than in Arizona’s master-planned desert. And nowhere, at least in past decades, has that dream been more tarnished by land scams and scandals. ADRE seeks to preserve the former by preventing the latter. But Arizona doesn’t really regulate what real estate can be bought and sold. It licenses and monitors the people who do the selling, namely brokers and agents. However, oddly buried in the statutes regulating real estate professionals are substantive rules about property itself.

For example, before property may be offered to consumers, it is subject to a public report to disclose any problems that may exist. If you want to split a parcel into smaller pieces, the rules are spelled out in the same statutes.

Those rules have become a hot topic in discussions of many aspects of “smart growth.” Illegal lot splits have been noted for contributing to sprawl and inadequate infrastructure. For an agency that has been primarily about supporting the buying and selling of real estate, the subdividing issues have been hot because they suggest different policies for the disposition of private property in service of higher quality communities.

ADRE exemplifies the push and pull of regulation and service. We’re quite willing to regulate who can do something. That’s often the result of a professional group lobbying to protect their franchise. We’re also open to requiring disclosure so people can make informed decisions about their purchases and investments. But we also still believe *caveat emptor*: buyer beware. At the same time, we want this agency to do more to help growing communities protect their character and manage infrastructure costs. ADRE’s evolving role in community development, in addition to being an occupational regulator, shows how times change.



Remember the Limitations and Benefits?

At statehood, the collective good was given an extra push in some areas to make sure that monopolies didn't harm residents. That search for balance, like limitations and benefits, continues to be at the heart of regulation, public issues, and policy decisions. With an ever-changing economy and a shifting outlook on what is yours, mine, and ours in property, rights, amenities, opportunities, and responsibilities, thinking about the balance is more important than ever.

There's no getting around the complexity of government. There's also no getting around the fact that government has gotten bigger and more complicated in part because the governed and their elected leaders decided more was needed to protect, defend, enhance – in short to solve problems affecting everyone and make investments that would support quality in the future. Agencies exist for valid reasons and have usually evolved to keep up with what residents see as desirable and appropriate. As a result, the issue isn't just arguing about regulation vs. deregulation or shrinking the bureaucracy ("starving the beast" as some like to put it). That misses the yin and yang – the range of positives, negatives, threats, and opportunities – of today's issues and the challenges of operating government in a huge, diverse economy in which public opinion is constantly moving.

Regulating monopolies, delivering water, protecting workers, guarding against floods, making sure people know what they're buying: voters and leaders thought these were good ideas decades ago, and they clearly have not wanted them to go away. In other words, regulation and government involvement to most now is a world in which positive and negative exist simultaneously. Public and private can both be good and bad – even at the same time.

Arizona's institutions are the product of its geography, history, demographics, and political climate. Most of these functions are undertaken by every state, though in different ways and by a variety of institutions. There has been a broad consensus that the social compact includes such activities. In Arizona, these five agencies employ hundreds of Arizonans and have combined budgets of several hundred million dollars. Much of that cost is paid by user fees, or in the case of CAP, by the sale of water and electricity. These activities, which seem to meet the basic test for appropriate government activities, have created institutional bureaucracies that often bear the brunt of criticism, both deserved and misplaced. The real questions now, however, are what do people want in a 21st century government? Are agencies exemplary, adapting appropriately to changing realities, and offering the best to the people and institutions that pay for them? Is government's form and the balance between public and private correct for both our values and aspirations? What are people willing to pay for as their expectations change? How creative are we in working together to understand the pros and cons of choices in this era of complexity? Do we need new institutions to tackle the problems that are emerging?



Among the questions:

What do people want in a 21st century government?

Is government's form and the balance between public and private correct for both our values and aspirations? What are people willing to pay for as their expectations change?

I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.

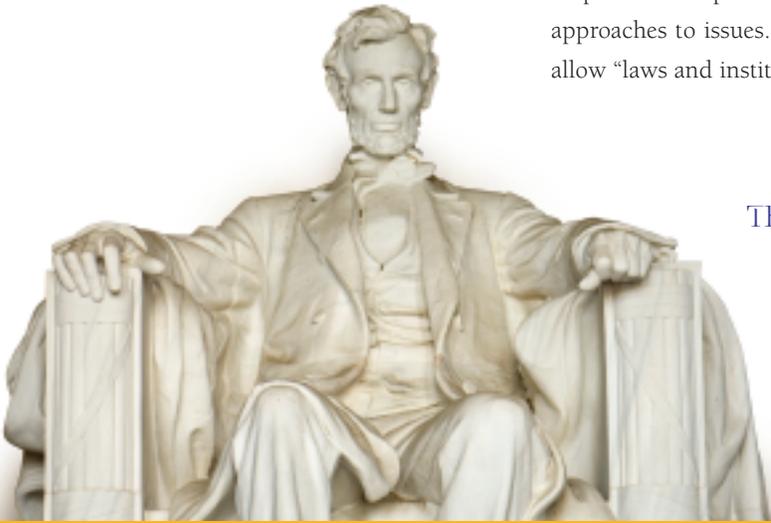
Thomas Jefferson

Take Action

ARE THERE GOVERNMENT SERVICES WE COULD AND COULDN'T DO WITHOUT?

Tell us a list of each. Send your suggestions to morrison.institute@asu.edu.

Despite the prevalence of campaign bumper stickers, few would argue with the proposition that government and regulation are more complex than they are often portrayed or that there are good reasons to encourage some actions and discourage others. Thomas Jefferson also wrote that “*laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times.*” This wisdom still resonates today in part because the economic, social, and environmental challenges of the 21st century are demanding different responses and protections from public institutions, and in some cases, calling for new approaches to issues. What is government for? One answer is to find the balance that will allow “laws and institutions to go hand in hand with the progress of the human mind.”



The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all in their separate and individual capacities.

Abraham Lincoln

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