

August 2020

Montana's Need For Change: A Historical Context for "To Make a Better Place."

Evan D. Barrett

Follow this and additional works at: <https://scholarship.law.umt.edu/plrlr>



Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Animal Law Commons](#), [Cultural Heritage Law Commons](#), [Energy and Utilities Law Commons](#), [Environmental Law Commons](#), [Indian and Aboriginal Law Commons](#), [Land Use Law Commons](#), [Law and Race Commons](#), [Natural Resources Law Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Science and Technology Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

Barrett, Evan D. (2020) "Montana's Need For Change: A Historical Context for "To Make a Better Place."," *Public Land & Resources Law Review*: Vol. 43 , Article 29.

Available at: <https://scholarship.law.umt.edu/plrlr/vol43/iss1/29>

This Article is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Public Land & Resources Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

**MONTANA’S NEED FOR CHANGE:
A HISTORICAL CONTEXT FOR
“TO MAKE A BETTER PLACE”**

Evan D. Barrett

In 2013, when I left the Governor’s Office following eight years with Governor Brian Schweitzer, I was completing a 44-year-period of direct activity in Montana politics, government, and economic development going back to 1969 and Governor Forrest Anderson.¹ Starting in 2013, I began four years at Montana Tech, where I was given the time to consider the myriad historic Montana events in which I had been blessed to be actively and directly involved. Also, while at Montana Tech, I taught a course on 20th century Montana, where I was able to delve into the history of Montana’s first 75 years—a history of corporate dominance, which led to the massive demand for change that produced many of the events chronicled in this collection.

Those reflections led me to produce the 43-hour Montana history video series, *“In the Crucible of Change: Montana’s Dramatic Period of Progressive Change 1965–1980.”* Appropriately, the subtitle of the series

1. In 1969, I started two years of working for Governor Forrest Anderson’s game-changing governmental restructuring effort through the Executive Reorganization Commission that he chaired; followed by a near three year stint as Executive Secretary (now Executive Director) of the Montana Democratic Party, where I was thrust into the middle of the critically important and impactful Montana sales tax battle and initiated a number of progressive legislative advancements in the area of politics and elections; several years handling the political side of Governor Tom Judge’s office, which culminated in my role as Deputy Campaign Manager of the 1976 Judge/Schwinden campaign for Governor/Lt. Governor, which produced a record plurality win to that time; several years as a consultant, which included managing economic development forums for Governor Judge and also being campaign manager for Pat Williams’ successful 1978 election to Congress (Door-to-Door for Congress); a short stint as Pat’s Field Staff Director followed by seven years as Field Staff Director for Senator John Melcher, during which time I campaign-managed Melcher’s successful 1982 reelection bid; 12 years as one of Montana’s members on the Democratic National Committee, where I was a long-standing member of the Rules Committee and Vice Chair of the DNC’s Western Region; 18 years as Executive Director of the Butte Local Development Corporation, helping create jobs and growth following the massive economic dislocation resulting from the complete closure of copper mining and smelting, during which time I helped create and was a founding member of the Montana Economic Developers Association (MEDA) and spent 14 years as chair of their legislative and public policy committee; followed by my eight years as Governor Schweitzer’s Chief Business Development Officer and head of the Governor’s Office of Economic Development.

is: “*From a Corporate Colony to a Citizens’ State and the Challenge of Keeping It That Way.*”² I embarked upon that series of video discussions having personally been in the mix of so much of that change and having personally known and worked with so many of the history-makers of that immensely important period. Much of that period and many of the players overlap the issues and people covered by this book.

The period of change highlighted in this book has been referred to as “Montana’s second progressive era” by University of Montana Professor Emeritus of History Harry Fritz. Big change was taking place—change needed if Montana was to metamorphose from its status as a corporate colony. In 1947, fifty-eight years after becoming a state, Montana had achieved a not-too-complimentary notoriety. That year, John Gunther, one of America’s most popular writers said in his top-selling book *Inside USA*: “Anaconda, a company aptly named, certainly has a constrictor-like grip on much that goes on, and Montana is the nearest thing to a ‘colony’ of any American state . . .”³

Fully and accurately understanding a great period of change is made meaningful only by understanding the conditions that needed changing, and Gunther had stated it well, with the clarity of someone looking at the mess from the outside.

Periods of significant political and governmental change do not occur in a vacuum. They are usually the result of pent-up frustration and dissatisfaction. The linkage and relationship between the historical past, the present and the future has occupied the minds of many great thinkers. Confucius said: “Study the past if you would define the future.”⁴ And we all know the famous quote, attributed to both George Santayana and Edmund Burke: “Those who do not learn from history are doomed to repeat

2. The historical importance of chronicling the period of change covered by “In the Crucible of Change” was validated when the Board of Trustees of the Montana Historical Society presented me their prestigious Heritage Guardian Award for my work on the series. The entire series of “In the Crucible of Change” was broadcast multiple times statewide on TVMT (Television Montana), simulcast on 59 Montana cable television systems, and on over-the-air Montana PBS, as well as playing regularly (and still) on Community Television systems in Missoula (MCAT), Helena (HCTV), and Billings (Community7). It is currently being aired as an audio series by several community radio stations in Montana as well as being accessible for streaming on Montana Tech’s Digital Commons at www.crucibleofchange.com.

3. MARC C. JOHNSON, POLITICAL HELL-RAISER: THE LIFE AND TIMES OF SENATOR BURTON K. WHEELER 372 (2019).

4. GRAEME PARTINGTON, CONFUCIUS SAYS: FIRST 100 LESSONS 79 (2017).

it.”⁵ Authors also weigh in. E.M. Forster opined: “Unless we remember we cannot understand,”⁶ while Victor Hugo, in *Les Misérables*, said: “Let us study things that are no more. It is necessary to understand them, if only to avoid them.” And Winston Churchill, who in addition to being a major political and governmental leader was a writer and historian of substantial note, offered: “The longer you can look back, the farther you can look forward.”⁷

Starting from before Montana’s statehood in 1889, Montanans lived through an extended period of economic, political, governmental, and cultural dominance that led to a pent-up demand for change that bloomed during Montana’s second progressive era, part of which we chronicle in this collection. Governor Ted Schwinden outlines the convergence of factors that led to the changes of this period. Change from those factors found meaning in the importance of what needed change and, boy, did Montana need change. As Montanans entered the 1960s and 1970s, they could look to Montana’s past and learn from the experiences of our parents and grandparents grappling with the oppressive conditions of corporate dominance. Most Montanans felt the need for an explosion of change—setting the stage for what is covered here, and even more.

That notorious Anaconda Company (“ACM”) control Gunther referred to included a control of the press—the “Copper Press,” where ACM owned all but one of the major daily newspapers in the state. The Company did not divest of that control until 1959, seventy years after statehood. In 1957, *The Economist* noted Montana’s Copper Press situation when they wrote that Montana newspaper readers are: “worse informed about their own affairs than the inhabitants of almost any other state.”⁸

But after 1959, with the presence of a free press, including young investigative reporters here in Montana, along with the other factors Governor Schwinden discussed, Montanans became truly aware of the oppression of the past.⁹ Montana’s appetite for change was whetted by what we saw. As the stark recognition of the need for change entered the center ring, individual Montanans began to more strongly assert their wants and their will on the public processes that could bring about change.

5 JOHN HINSON, 100 [MORE] STORIES: THE LESSER KNOWN HISTORY OF HUMANITY 1 (2017).

6 E.M. FORSTER, ASPECTS OF THE NOVEL (1927).

7 SUSAN RATCLIFFE, OXFORD ESSENTIAL QUOTATIONS (2012).

8 DENNIS SWIBOLD, COPPER CHORUS 304 (2006).

9 *In the Crucible of Change: State of Change: Montana’s Period of Transformational Change* (Montana Tech video series broadcast July 27th, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/9.

When looking at historical change and the people involved, like those in this collection, it is helpful to contemplate the question of whether history is made by people or determined by events and forces. President Harry Truman told us: “Men make history and not the other way around. In periods where there is no leadership, society stands still. Progress occurs when courageous, skillful leaders seize the opportunity to change things for the better.”¹⁰ Winston Churchill seemed to second that when he more grandly stated: I have always taken the view that the fortunes of mankind . . . are principally decided . . . by its greatest men and its greatest episodes.”¹¹

The Montana “change” experience demonstrates several important things. First, and very clearly, the Montana experience showed that, notwithstanding the Truman and Churchill quotes, it wasn’t just “men” who brought about change. Thank God the women of Montana stood tall in the battle for change and have remained in the forefront since then. From the iconic Capitol staircase photo of the 19 women serving in the 1972 Constitutional Convention to the increasing number of women in the legislature and other areas of influence, Montana women drove much of our important change. Women rose to the top here in Montana just as surely as cream rises to the surface of milk. The League of Women Voters, the American Association of University Women, and other women’s organizations mobilized the grassroots for change through research, information sharing, and advocacy, and became driving forces for change in Montana. Institutions and forces had held women down for far too long, both nationally and here in Montana, and the aggressive entry of women into the arena was a seminal moment in the history of modern Montana.¹²

Second, those who observe history from a change perspective recognize that change comes from the convergence of people and events/forces. It is not exclusively one or the other. This book amplifies that thought in each and every chapter. We, as a state, were primed for change, and eager to get after the task. Yet for that energy to be released and real change to occur, there needed to be causes and challenges upon which it could be unleashed as well as people willing to take on the fight.

10. DR. GANESH SHERMON, DIGITAL CULTURES: AGE OF THE INTELLECT 338 (2016).

11. WINSTON CHURCHILL, CHURCHILL BY HIMSELF: IN HIS OWN Words (2011).

12. *In the Crucible of Change: Paving the Way—The Path to Calling Montana’s 1972 Constitutional Convention* (Montana Tech video series broadcast Dec. 24, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/16.

Because most of the chains that shackled the state for 75 years had been forged by the Anaconda Company and its allies dominating the public processes of Montana its elections, legislatures, statewide officials, statutes, Constitution and courts—it was primarily through those same public processes that the people of Montana brought about the needed dramatic change.¹³

During this critical period, Montana's new state Constitution was key to unlocking the door to change. Our old 1889 Constitution (mostly a rewrite of the 1884 effort that went for naught because Montana did not become a state until five years later) was drafted by men (yes, only men) of economic power who, as a result of their economic power, had credence in the public arena. Both the 1884 and 1889 Montana Constitutional Conventions were chaired by none other than the most infamous of the Copper Kings, William Andrews Clark, and the product was a document that institutionalized preferential treatment for mining and the other powerful economic interests that were its allies.

In order to have their way with their state, those powerful interests needed more than constitutional preferential treatments alone. Statutes needed to become law, elections needed to be held (and won), and judges needed to be appointed and influenced. A constitutionally and structurally weak Montana government contributed to the control of these public processes by these powerful men and industries. They did not want a strong, people-oriented government, they mainly wanted their economic interests protected. So, in 1889, they constitutionally crafted a weak governmental structure, one that would allow them, with their outside-of-government economic strength, to dominate the state without significant public interference.

They created an executive branch nominally headed by a weak governor who could not effectively govern because executive power was dispersed among other elected officials but, more important, to dozens of appointed boards. The staggered appointment processes for those boards meant that Governors could not get even minimal control of the board's membership until they had already spent a full four-year term in office. Montanans were hungry for a stronger executive branch headed by a strong Governor—a government that worked—so the stage was set.¹⁴

13. *In the Crucible of Change: Copper Collar: Montana's 75 Years as a Corporate Colony*" (Montana Tech video series broadcast Dec. 23, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/1.

14. *In the Crucible of Change: Executive Reorganization—Forrest Anderson Builds State Government to Work for People* (Montana Tech video series

Governor Forrest Anderson, easily the most experienced person ever elected Governor, fully understood the structure under the old Constitution and the way in which it hamstrung any and all who were seeking to seriously manage the state government. Anderson's executive reorganization miracle was a crafty and intricate bi-partisan process involving constitutional change and statutory implementation under precarious deadlines, cemented in place between the 1968 election and end of the 1971 legislature. The resulting reorganization of the executive branch created a strong governor who could actually make government run well and could advance the public agenda. By his craftiness, creativity and experience, Forrest accomplished this major change within the constraints of the old Constitution, and it was then absorbed into the 1972 Constitution and played out in our period of change.¹⁵

Forrest Anderson knew that the people were fixed upon the need for change but needed a path to accomplish it. He used the ballot box—the voice of the people—to cement the particular change that allowed him, as Governor, to make Montana government more responsive to the elected wishes of the people. He didn't want to be a caretaker or an errand boy for ACM, understanding how ACM ended up dominating the state beginning with the constitutional language put in place by Copper King Constitutional Convention Chair W.A. Clark and other powerful interests back in 1884–89.

The Legislature had become the poster child for the weak and secretive government that allowed the ACM to have its way in Montana. The 1889 bunch authorized a Legislature that could be shrouded in secrecy, where decisions were made behind closed doors with few if any meaningful votes recorded. Because of that, the people had no way of knowing how their laws were being made.¹⁶ If lawmaking is like making sausage, in Montana the people didn't know who created the recipe or even what kind of meat was being used. And they certainly couldn't know the spice mixture going into the sausage. Those things were the purview of the Anaconda Company ("ACM") lobbyists, and their brethren, who operated out of the 6th floor of the Placer Hotel in Helena (echoing their 6th

broadcast Dec. 23, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/5.

15. *In the Crucible of Change: The Force of the Fox—Governor Forrest Anderson's Leadership & Political Acumen* (Montana Tech video series broadcast Dec. 23, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/4.

16. *In the Crucible of Change: Legislative Legacy—1972 Constitution Brings Legislature Closer to the People* (Montana Tech video series broadcast Dec. 23, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/19.

floor occupancy of the Hennessey Building in Butte, where ACM's corporate headquarters were located). ACM, the Montana Power Company and the Montana Stockgrowers Association were the primary corporate players who dominated the legislature and the government by the time our period of change came.

Many legislators preferred to have corporate bill writers draft their bills. But even when a legislator used the small group of state bill drafters, corporate tentacles came into play. Eugene Tidball, first head of the Legislative Council, recalls that as the legislature sought to improve its printing processes in the late 1950s, it tried to figure out where all five printed copies of introduced bills went. One went to the committee, one to enrolling, one to engrossing, one somewhere else, but no one seemed to know where the 5th copy of each introduced bill went. After massive research, they embarrassingly discovered that the 5th copy went to "the Company"—a clear indication how legislative sausage was made in Montana by ACM.¹⁷

In legislative committees, "executive session" meant closing the session to everyone except the committee members. No public allowed. No votes recorded. The chair just announced the results after the committee had concluded its action. Often, the most important vote for any bill is when a bill is on the floor on second reading (where debate is conducted and amendments can be made). Whether a bill passed on second reading or not was the most important vote for any bill. Yet there were no recorded votes on second reading, only "voice votes." Citizens had no idea what their legislators were doing. And when votes were cast, the results were very often determined as a result of many legislators (not all) looking toward the balcony where lobbyists for ACM and other powerful interests sat. They were looking to see if the sign for action on the bill or amendment was "thumbs-up" or "thumbs-down."

And of course, the legislative districts from where members were elected, especially in the State Senate, did not represent people, but represented economic interests—cows, trees, and copper, not people. That was the very antithesis of the direct words of *Reynolds v. Sims* where, in 1964, the U.S. Supreme Court imposed the one-man, one-vote principle that required states to reapportion their legislatures. In *Reynolds*, Chief Justice

17. Interview by Bob Brown with Eugene C. Tidball (Oct. 1, 2005), *Bob Brown Oral History Project*. OH 396-033. <https://scholarworks.umt.edu/brown/66>.

Earl Warren said “Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.”¹⁸

Since 1889, in Montana, each county had one senator, regardless of the number of people in the county. By the early 1960s, the 800 people in Petroleum County had one senator, the same number that the 80,000 people in neighboring Yellowstone County had. Similarly, but not as disproportionate, each county had at least one house member. State Senators representing just 16% of the population could exercise majority control of the Senate while Representatives of 37% of the population could exercise majority control of the House of Representatives.¹⁹ That kind of slanted institutionalized minority control ultimately was reflected in the laws and policies of the state, which for many decades were not favorable to the bulk of the people. Powerful interests who exercised control at that time did not like the change brought on by reapportionment. Republican Governor Tim Babcock sided with the cows, coal and copper when he told the 1965 legislature that “the theory of ‘one person—one vote’ did not fit Montana.”²⁰ But reapportionment was required and the federal court imposed legislative districts that began changing the very nature of the legislature. But even then the more representative legislature brought by reapportionment continued to operate under the old Montana Constitution, laws and rules—more change was still needed.

The legislature prior to our change period bears no resemblance to the Legislature of today. And the outrageous operations of the legislature were a primary reason people voted overwhelmingly to call a constitutional convention. In 1970, 65.1% of the voters (133,482) voted for holding a constitutional convention while only 34.9% opposed (71,643). All but five rural counties approved the referendum to call the Convention. Interestingly, the Legislative vote to place the question on the ballot passed the Senate 37–18 with 15 Republicans and three Democrats opposing. It met the 2/3 requirement in the House by a vote of 70–28 with 19 Republicans in opposition joined by nine Democrats.²¹

The vested interests who drafted the 1889 Constitution also created a flawed court system, tilted toward influence and power. Our courts, though involving elections, usually started with District and Supreme Court judges being appointed by a governor alone, a governor who usually exhibited subservience to the large economic interests that helped get him elected. Yes, there were courts to be appointed and influenced. And once

18. *Reynolds v. Sims*, 377 U.S. 533, 563 (1964).

19. ELLIS WALDRON & PAUL WILSON, *ATLAS OF MONTANA ELECTIONS: 1889–1976* 234 (1978).

20. *Id.*

21. *Id.* at 249.

appointed, to be subsequently re-voted in elections dominated by the powerful interests. The judiciary of today, following constitutional change, is much more open to public control, public scrutiny and public accountability with a judicial nominations process and judicial standards being enforced by constitutional processes.²²

It is safe to say that if you are among the large economic interests of a state you have power in many forms. Generally, because you have power, you get your way. And if you have the power to get your way in the economic and social world outside of government, it is not in your interests to have to deal with the nuisance of people-oriented governmental interference. Government is not needed to protect the powerful. On the other hand, if properly structured and operated in a democratic fashion, it may provide some level of protection to the less powerful. "Power to the people" was not on the agenda of Montana's powerful interests so, in 1889, Montana got the weak government the powerful interests wanted in the first Constitution.

So began and continued the economic and political dominance that empowered the powerful, allowed little if any power to the powerless, and led to the Treasure State being known as a corporate colony.

For example, the old constitution effectively made mining tax free. If that was to be pointed out by a study and book by a university professor, that professor might find himself without a job. And, the tax laws and local tax officials made it possible for large, multi-county ranches to avoid almost all taxes on their cattle.

In Montana's territorial and early statehood days and during its early elections, the election system and lawmaking were controlled by block voting of employees by their company employers. Domination by the powerful even took the form of bribery, as in the case of W.A. Clark's attempted purchase of a U.S. Senate seat by bribing members of the Montana Legislature which, in those days, elected U.S. Senators.²³ Politics in Montana was so dominated by the vested interests to the point that the people took it upon themselves to enact, via initiative, the Montana Corrupt Practices Act in 1912, during Montana's First Progressive Era. Though this powerful rejection of corporate dominance remained as the law in Montana for a century before it was gutted by the U.S. Supreme

22. *In the Crucible of Change: Blind Justice: Montana's Judiciary Improved by 1972 Constitution—Threatened by Political Money* (Montana Tech video series broadcast Dec. 24, 2015), available at https://digitalcommons.mtech.edu/crucible_episodes/20.

23. WALDRON ET AL., *supra* note 19, at 23–24.

Court's "Citizens United" case, actual enforcement of it was rather tepid during the ongoing company dominance of the state.

Creating change and shifting power from corporate dominance to the people was a daunting task for the citizens of Montana, one that would germinate for 75 years before blossoming in the period of change we are addressing in this book.

Once unshackled by constitutional changes (Executive Reorganization and the new Constitution itself) and energized by a voter rebellion that elected more progressive officials, including women, along with reflecting the national and international emergence of environmental movement, Montana was well-positioned to make changes that are the primary focus of this book.

What Montana did with that opportunity is a great historical narrative resulting in serious change that has mostly stood the test of time. But powerful interests, from day one until now, have tried to roll back the progress of this period and in some cases have been successful. Continued vigilance by Montana citizens is needed to prevent further erosion. Hopefully, this book of personal historical recollections can help create an awareness of the past dominance of powerful interests, the need Montana had for a change from that situation, the changes that were made by the people during our Second Progressive Era and the need to protect those changes into the future.