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# Transcript for Episode 18: Fairness for the First Time: Taxation in the 1972 Montana Constitution

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**[Fairness for the First Time-Taxation in 1972 Constitution]**

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**[Music]**

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**Narrator:** From the beginning of Montana's distinctive yet troubled history, the Treasure State was dominated both economically and politically by powerful outside interests who shipped in capital and bought control of the State.

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Historians tell us that as the Anaconda Company and its friends ran Montana, economic and political power flowed out into the hands of distant capitalists and corporations.

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Policy was determined in far off New York City and control of the press was rigid. Anaconda's corporate dominance in Montana's political affairs was unique in American history. For its first 75 years, Montana was a one-company State. But then big winds of change roared across the Treasure State; between 1965 and 1980 Montanans ripped off their copper collar, transforming Montana from a corporate colony into a free modern State.

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The people finally controlled their own destiny. The pitched battle between the people and the established power structure was not easily won but fired In a Crucible of Change a new Montana was born. Join Evan Barrett and real history makers of the time as they shine the light on this remarkable era.

00:01:19

**Evan Barrett:** Welcome back to *In the Crucible of Change*. You know our focus on the Montana Constitution, there's a lot of--there's a lot of very important Articles that we've taken a look at and today we're going to take a look at the Revenue and Finance Article of the Montana Constitution.

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You know they say the power to tax is the power to destroy. But the power to tax to raise appropriate money for government is also the power to create. So as we look at the Montana Constitution in this--the '72 Constitution in this light it's in the context of an 1889 Constitution that was written in a manner that served the interests of the powerful elites of that time, especially the mining interests of Montana and the Articles were written to serve their interests. And it was--some of the impetus for moving forth on the Montana Constitution came from egregious problems. Everyone understood the problems with the Legislature.

00:02:27

Everyone also understood the problems with fairness and taxation. And that was one of the things that led to the--to the vote to have a Constitutional Convention and we're going to explore the results of that today. We call this segment *Fairness for the First Time*, taking a look at the Constitution when it comes to taxes. And we have two special guests here with us today.

00:02:55

First is Roger Barber. I'm happy that Roger is with us. Roger comes from Denton, Montana and he left Denton and went to the University of Montana where he got a degree in journalism.

00:03:08

**Roger Barber:** Right.

00:03:09

**Evan Barrett:** And then you went to a more honorable thing--law school. [*Laughs*]

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**Roger Barber:** Some would question that.

00:03:16

**Evan Barrett:** Yeah; you wonder about that. And you got your degree in law and when you first left the law school your first job was with the Montana Constitutional Convention Commission, the Preparatory Commission. And you

were assigned the writing of the Montana Revenue Section. In fact, I looked at the book; it was 450 pages of writing you put together that summer.

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**Roger Barber:** My journalism training.

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**Evan Barrett:** Later you--you picked up your MBA at UM. You--you went to Washington, DC for a while with Senator Lee Metcalf. And then you--you taught at UM for four years and ended up at MSU Northern for 23 years as both a Professor and Administrator. And then in your last five years you became the Deputy Commissioner of Higher Education.

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**Roger Barber:** That's right.

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**Evan Barrett:** So a great career--

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**Roger Barber:** Great career.

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**Evan Barrett:** --after which you retired? How do you get to do that? I'm really wondering. **[Laughs]** Anyway welcome onboard; we're so happy because you were the--not only did you do the preparatory work but when the actual Convention occurred you became the Staff Member for the Revenue and Finance Section of the Constitution--that Committee.

00:04:31

**Roger Barber:** Right.

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**Evan Barrett:** Thank you for joining us.

00:04:34

**Roger Barber:** Thank you Evan.

00:04:34

**Evan Barrett:** And joining us again is Dan Bucks; Dan I always say is the preeminent expert in taxation that I know. Dan is a native of South Dakota, worked for the South Dakota Democratic Party at the same time as working for the Montana Democratic Party. You worked for Governor Kneip as well in South Dakota and--and then you came to Montana for the first time and you were the--in the Department of Revenue and became Deputy Director of the Department of Revenue. That was under Governor Schwinden. Then you went with the Multi-State Tax Commission for 17 years. Is that correct?

00:05:11

**Dan Bucks:** Yes; yes.

00:05:12

**Evan Barrett:** And in the latter part of that you moved and you ran that--is it a national organization that you ran remotely so to speak from Missoula. You got the opportunity to live in Montana and run the Multi-State Tax Commission?

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**Dan Bucks:** Yes; yes for 10 years, the last 10 years of the 17 I did that work from--from Missoula.

00:05:29

**Evan Barrett:** Then Governor Schweitzer nabbed you from that position to join his Administration and you were the Revenue Director for the entire eight years of the Administration. When we were talking about the--in opening this whole session about the 1889 Constitution and the challenges that came with that there were--it was clearly written to favor the powerful interests of that time, both the 1884 Constitution which didn't get passed and the '89 that did were in--were run--were done by Constitutional Conventions which were chaired by W.A. Clark, who was the--one of the copper kings from Butte.

00:06:08

**Dan Bucks:** Right.

00:06:08

**Evan Barrett:** The big rich--one of the richest men in the world. And certainly they drafted a Constitution that served their interests. And the Committee met. What was the overarching theme and--and how long did it take them to coalesce around the need to--was there too much detail in the Old Constitution? I mean--

00:06:29

**Roger Barber:** Yeah; I--I assume that in previous programs staffers have talked about their work as researchers, spending long months studying their constitutional area and then writing a report for the Convention. It doesn't seem possible when you said that my report was 450 pages long but the reality is from a constitutional perspective and taxation the Constitution should say as little as possible because a-taxation is an inherent right of State government. And anything you say in a Constitution about taxation--limits or prohibits what--what State government can do.

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So in those 450 pages I spent a lot of time talking about the--the detail that was in the--the 1889 Constitutional Convention--Constitution and why it was inappropriate. And I also spent a lot of time suggesting they not do anything because again the more they did in the--in a new document the more they would interfere with the State's taxation power.

00:07:31

In fact, Sterling [Rigg], the Chairman of the Revenue and Finance Committee at the Convention, a wonderful gentleman from Kalispell really kind of set the tone for the Committee's report when he said that the 1889 Constitution had 42 different provisions dealing with taxation. And the Committee was proposing only 14 and--and they recognized by doing that--that they were suggesting that there were some limitations that were appropriate for State government, but if you compare 42 different Articles to--or Sections to 14 they really took to heart the idea that a Constitution should say as little as possible about taxation and revenue and finance, and give the State as much broad authority as possible to exercise that inherent power.

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**Evan Barrett:** I think a good example of the constraining--constitutional language constraining the State was a later Amendment that was put in for example that said if you're going to have a sales tax it can't be more than--

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**Roger Barber:** Four percent.

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**Dan Bucks:** Four percent; right.

00:08:45

**Evan Barrett:** --four percent. So that all of the sudden says *if* and of course Montana's history is that we wouldn't have a sales tax but if you had one those who don't think it should go high have got to--if you're from Washington State where it's at 8 or 9 or 10 you can't go that high because we constrained it in the Constitution.

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**Roger Barber:** That's exactly right; right. Yeah; that--

00:09:03

**Evan Barrett:** But those constraints aren't necessarily good in terms of governmental flexibility.

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**Roger Barber:** That's exactly right. And the Revenue Article I think has been amended three times and two of the limitations--two of the Amendments are specific limitations. The other one is to prohibit a--a sales tax on property transfer, which is another--another example of what you--from a--from a kind of historical perspective and a philosophical perspective, what a Constitution should do.

00:09:31

**Evan Barrett:** Yeah; just mentioning that--that sales tax provision that was put in the Constitution I think it's--it's worth taking a second and chatting about the context of the sales tax because in this period we're looking at *In the Crucible of Change* between 1965 and 1980, a period of dramatic progressive change in Montana, the preeminent political issue of the time was the sales tax because you know again, the--who gets taxed and who doesn't seems to be the crux of who are the winners and who are the losers when it comes to--to laws. And there were efforts and--and this all coalesced at the time of the Convention.

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The--just for our viewers, Governor Babcock liked the idea of a sales tax and in 1967 he proposed a 3-percent sales tax. He gave it to Speaker Felt who--from Billings, who put it up to the Legislature on the House side and they passed it. It went over to the Senate side and it was killed out of hand just by the Democrats universally voting against it. And so as I recall, Governor Babcock thought the--the view of the Democrats in the Senate did not represent the feeling of the people of Montana so when he ran for reelection in 1968 he--he ran on the sales tax idea, and Forrest Anderson the Attorney General adopted a slogan called *Pay More What For*. He was clearly in opposition to a sales tax. And the people voted and the incumbent Governor was thrown out and was beaten by 12-percentage points, which is a large amount of--.

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So it was clear the people were against it so in 1969 there was no sales tax proposed in the Legislature but in 1971 it came back again and it became the top issue in the '71 Session which was the very Session that implemented the--created the Preparatory Commission and so they ended up resolving that issue by putting it on the ballot in November of '71, the proposition that you have a choice in Montana between a 2-percent sales tax and a



10-percent income tax surcharge or a 40-percent income tax surcharge. And so that's just when you started writing something that said let's stay out of it.

00:12:12

**Dan Bucks:** And Evan and one comment there on that in terms of that particular point in history; that was a--the-- that vote on the sales tax was interpreted I think and rightly so as a vote in favor of something that the people thought was fair. They were making a judgment that an income tax is fair and a sales tax is less fair.

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**Evan Barrett:** And by the way the vote was 70-percent against the sales tax and for the income tax increase.

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**Dan Bucks:** The 40-percent income tax increase which is kind of astounding, and it really--I mean that--that large of a surtax that they chose to have over the 10-percent surtax and sales tax option. And--and really--and I think that this is--is reflected in--in the Constitution is--at the time was a concern about tax fairness and tax equality. And that was--that was something that characterized that particular area--era, and I think mostly throughout Montana history especially since preceding that there were so many inequities that existed in the tax system in Montana before that.

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So I think that helped--that particular vote was one that has resonated--continued to resonate because it was viewed as a vote for tax fairness over something that the public thought was less fair.

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**Evan Barrett:** Or let me ask you this Roger. In so many of the other programs we've had of people who were at the Convention spoke about the seating that was alphabetical.

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**Roger Barber:** Sure.

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**Evan Barrett:** Instead of by Party, splitting it by Party, and everyone said boy that made them all think well we're working together. I didn't--the person next to me wasn't necessarily of my Party. There were 59 Democrats, 35 Republicans, 6 Independents, but they were mixed among each other. How did that reflect itself in the Committee? How did the Committee deal; was there any sense of partisanship or division in Committee or--?

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**Roger Barber:** You know honestly Evan I can't remember--. I mean the way the Committees were organized, the-- the Chair positions were alternated between Parties, so my particular Committee had a Republican.

00:14:22

**Evan Barrett:** Former Legislator.

00:14:22

**Roger Barber:** As a Chair yes; Sterling [Rigg] and the Vice Chairman was a Democrat from Butte, Morris Driscoll. And the--

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**Evan Barrett:** Uh-hm; educator.

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**Roger Barber:** Yeah and the composition of the Committee was--again there was some attempt to make a balance between Republicans and Democrats because the Delegates had--had all run on a--with a Party label but as you say, when they organized themselves they decided that--that partisanship wasn't part of running a Constitution and in fact it would probably interfere with the Constitution.

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Now as we reflected on this earlier today, I sat and thought about it, I'm not sure I can tell you who--who the Democrats and Republicans were on the Committee. I can name the Committee members but I'm not sure I can

tell you who were Democrats and who were Republicans. And that was simply set aside. My Committee also operated a little differently from the other Committees in that they were separate from the Constitution. We were moved into the Mitchell Building early in the Convention's organization because there just wasn't room for every Committee in the Capitol. And so the--my group of Delegates literally were by themselves for much of the day especially in the early--early parts of the Convention when the Committees were doing the work and the--the Committee as a whole wasn't meeting that often.

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So they literally developed I think a--a camaraderie and a--and an appreciation for themselves because they spent so much time together separate from everybody else.

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I--I honestly cannot think of any instance where the Committee deliberations and discussions seemed to break down or devolve into a Republican discussion or a Democratic discussion. It really was on a--a level of what should a Constitution say about taxation? What should it say about revenue and finance? And again the message that they heard from--from me as a Staff Member and from my study documents and from--from other experts they brought in was it should say as little as possible, which I think is reflected in the Article. It's so much smaller than what we were used to. *[Laughs]*

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**Evan Barrett:** Dan your--your thoughts on the equity issue?

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**Dan Bucks:** Well I mean I think two points; first of all, I want to commend Roger and the Committee that worked and most of them are not alive today but they did a great service for the State of Montana. The Revenue Article of the Montana Constitution is probably one of the best Revenue Articles in the country just as I happen to believe the Montana Constitution is one of the best State Constitutions in the--in the country. And it's a remarkable document.

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But the--there's some things that come out of the work of the--of the Constitutional Convention that are just of incredible importance. First of all, the--the property tax system was viewed as inequitable. It was viewed as

rigged towards the mining companies with a net proceed system that they could manipulate, rigged towards favoritism through Local Assessors at the Local level. Delegate Mick [McKeon] said on the Floor of the--of the Constitutional Convention that the--the Delegates had--on the Revenue and Finance Committee had concluded that--that Local assessment was probably the greatest evil in the governmental system in Montana at the time. That's a pretty strong statement. And said that the basic source of the problem was that the Local Assessors had too much pressure for favoritism and there was widely viewed to be a problem of someone's value would be based upon who you know and how powerful you were or how influential you were.

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And there's a lot of anecdotes and stories about that--that we don't have time to go into but that certainly was the sense that was captured in Delegate [McKeon's] comments on the Floor of the Convention.

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In--

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**Evan Barrett:** So you had a Local Assessor--

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**Dan Bucks:** Yes.

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**Evan Barrett:** --in each county and who they might be related to or who they might know, who they might be indebted to or whatever could potentially influence their decision-making?

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**Dan Bucks:** Absolutely and--and sometimes--

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**Evan Barrett:** They were elected, too.

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**Dan Bucks:** --and they were elected. And the--and they were--and sometimes they--they had--they all kind of had a common--many of them had a common political agenda which was well-know which is the more we cut the values in our Local area the poorer our schools would be and that would then up the State aid. So they--there was a kind of a race to the bottom among Assessors to kind of grab money out of the General Fund without it ever being appropriated just to automatically--through the property formula [*Laughs*] that you've made your area poorer, you get more money from the State.

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**Evan Barrett:** So if you're an elected official in charge of this you can lower taxes--

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**Dan Bucks:** Right.

00:19:11

**Evan Barrett:** --locally which makes you look really good.

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**Dan Bucks:** Absolutely.

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**Evan Barrett:** And you get more State money as a result of that.

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**Dan Bucks:** Right.

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**Evan Barrett:** So that was a game they all wanted to play?

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**Dan Bucks:** They--a lot of counties played that--a lot of counties played that game. You know they had a constraint. It may keep them from--from some vital county services that they wanted to have or city services but it was a common game that was played and it was well-known. I know looking at Roger's report and that he had incorporated the work that the Legislative Council in the 1960s had done, the Montana Legislative Council that kind of blew the whistle on that game, so it was well-known.

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It was a lot of stuff going on that made the taxes inequitable and the big backdrop was is that under the '89 Constitution the mining companies had gotten themselves a sweetheart deal with the net proceed system which was-

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**Evan Barrett:** Now that's a property tax equivalent.

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**Dan Bucks:** Yeah; right.

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**Evan Barrett:** For the minerals.

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**Dan Bucks:** And what's important here and I want to just go back to--I know we're going back in the story here a little bit, but there was an important chapter in Montana history which was that the--in--in the early '20s there--there was a study being done by a courageous economist. He was asked to--to do the study here, a young economist, Lee Levine here at the University of Montana. And he documented the fact that basically the Anaconda Company paid

roughly half the property taxes that they should as compared to all the other industries and businesses in Montana because of that net proceeds system.

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Now the Anaconda Company didn't respond by saying oh gosh; that's too bad. We'll pay more property taxes. No; they got him fired from the University in a--in a gross violation of academic freedom. Now later the [recovery] action was he got reinstated but he knew the problem and he left and for an academic career elsewhere because--where he wouldn't be harassed by a large corporation as he was in the--in the--.

00:21:20

**Evan Barrett:** Well again that tends to fit with the--the basic thrust of this entire series which is that we are talking about a period when the unshackled, unlimited power almost of the Anaconda Company to dominate the politics and the government and the economy of Montana was going away and we were shedding the copper collar if you will and empowering people for the first time. And so what you're saying is reflective of the copper collar being on pretty tight.

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**Dan Bucks:** Right and--and along with all these others and inequities. Now the solution and I think I want to ask Roger to explain it, one of the hallmarks--there were several--there are a lot of good things in the Revenue Article including things like the Legislature cannot surrender or delegate the power to tax to--or contract it away to private parties. You're not supposed to let corporations determine their own tax bill for example and there was rumors that--that kind of thing went on.

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And there are other things about strict accountability for the use of public funds and--and that. But one of the hallmark measures in the Constitution involved--and involved a reform of the property valuation system. And I'd really like Roger to address it because it was their work and it's--it's so historically important and historically important in national terms. And I'd like Roger to really address that.

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**Roger Barber:** I can talk about it though Dan certainly needs to step in here because he has worked extensively with this--with this change. But probably one of the seminal moments where the Committee as it deliberated of what it should include in a Revenue Article was its decision to literally make property tax assessment a statewide program and to turn that responsibility over to the State so that there would be an equality of taxation across the State.

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I mean much of that decision was based on that legislative study from 1966 which I mean Dan has talked about some of the horror stories. But there were also--there all sorts of statistical information in that study about how literally where your property was located determined how you were taxed, and literally if your property was in cross-county boundaries it would be taxed differently. And often the bill was wildly significant. So the Committee, I mean almost--I think the kind of historic decision and kind of historic moment in its deliberations was its decision to include something in the Constitution about the need for the State to assume responsibility for property tax assessment, again recognizing that anything they put in the Constitution is a limitation so that means that only the State could have that responsibility if the Constitution were approved. And the State would have the power and authority to do that to insure equality of taxation powers.

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But they decided that the abuses and the history in Montana were so significant that it was--it was a strong statement of taxation fairness that needed to be included in the Constitution.

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As we talked earlier today in preparation for this discussion, I told both Dan and Evan that one of the difficulties that a Constitution always faces is that its language is often broad, it's--because it's written for the future, and its principles are usually quite high. They're quite magnanimous. You're talking about--you're talking about ideas like freedom of speech and equal protection of the law. And in this case, fairness when it came to your Taxation Bill and so because the--because the language is often broad and also talking about a very high standard it's difficult then as the provision is--is implemented and interpreted to meet those expectations. I mean literally the--the quality and significance of constitutional language ultimately depends on the people, the government, and its citizens deciding to live up to that expectation, that standard. And Dan can certainly talk about that.

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This was a wonderful provision that was revolutionary for the Committee. They didn't know how it would fly with the other Delegates but it really was a strong statement about--about how a Constitution should reflect tax fairness and tax equality. And it--it passed; it was accepted, but that doesn't mean that it's always lived up to its expectations.

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**Dan Bucks:** During my service as Director of Revenue, I more than once had--went back and I want to talk to how it's been implemented and--and legislated around in--in terms of--of a point we need to think about. But I want to stay with the Constitutional Convention just a little bit, because I often would go to read the--the material on the Constitutional Convention and the transcripts of the Floor debate and discussion to give me guidance as Director of Revenue.

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And a couple of things stood out. Number one, Delegate David Drum from Billings who was later a member of the Legislature, a prominent businessman, entrepreneur in the State, he said in the Floor of the--

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**Evan Barrett:** Very well-respected guy.

00:26:56

**Dan Bucks:** Yes; yes. He--he said on the Floor of the Convention in terms of the--regarding the--the--this Article, the Provision on the Statewide Property Valuation, he said if Montana is to go ahead we're going to have equalization--we are going to have to have equalization in the eyes of those who would like to either stay in Montana and invest money or those who would like to come to Montana and invest money creating more jobs for our young people.

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Now what he was saying was we need a level playing--as a businessman, we--I don't want to have a situation of where I find out that I'm being taxed on a value for my property that is higher than that of a--of an equally valued property of somebody I compete with. That if you're going to have fair competition in the

marketplace, a level playing field you've got to treat everybody equally and fairly. And he saw that not just as a matter of justice; he saw that as necessary for certain need for investment and that the--that the economic growth depended upon fairness.

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Later in the Constitutional Convention consideration of this, Convention Delegate Dorothy Eck said that--and she gave a different dimension in looking at this; she said she really saw this Revenue Article and its emphasis on fairness and equality of taxation as being an extension of the Equal Protection Clause in the State and the US Constitution. So she tied it to the human rights. So both from the standpoint of it being a right to be treated fairly and from the standpoint of being a foundation for economic growth, the--the Convention was so strongly committed to this idea. And I think these two dimensions that it's a human right and it's good for the economy were both there. And I just want to lay that as a groundwork.

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Now in terms of where we--how this has been administered, it took quite a while to get fully implemented the statewide valuation system, but today in terms of the way it performs, when we're talking about ordinary property in the State, commercial and residential property in particular, as compared to other States in the country, and this will be hard for--for maybe people to realize this, but Montana actually has more equity in taxation in terms of how the--the property is uniformly valued than almost anywhere else in the country.

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Maryland also has a statewide system and they have a very fair system. But we're not talking about just a little difference with other States. In other States the taxes--the property tax valuations are much more inequitable. And there's a much higher level of fairness here in Montana than anywhere else.

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**Evan Barrett:** So there are only two States that you know of in the United States that have a--a State-control of equalization like that of--?

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**Dan Bucks:** Yes; yes and that's only--only Montana and Maryland.

00:30:08

**Evan Barrett:** Being up to the high standard it almost looks like when it comes to that system as--in terms of we're almost mission accomplished, now maybe not completely but--. Now before we continue in that vein let me talk about two things about the property tax system. One was that the appeals from the Local--the Local Assessor was a politically elected official; so inherent was that some opportunities for mischief, self-interest or whatever you might want to call it. But the appeals went to a County Board of Appeals that was the County Commission under the Old Constitution.

00:30:57

Additional elected officials; is that your recollection of what was there before?

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**Roger Barber:** That sounds right Evan; yes.

00:31:02

**Dan Bucks:** Yeah; yeah. The system you know no system is perfect. But the system in Montana is working much better than in almost every other country--every other State in this country. And it's--it's working well and it is--is--it's difficult for people to grasp that because taxes are not people's favorite subject, but it in fact is true. You can go to statistical study after statistical study, our system is fairer and uniform than elsewhere and that's because of the work of the '72 Convention that--. And there will always be shortcomings. There will always be errors and mistakes, but the system is better here than elsewhere. Now--now--

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**Evan Barrett:** Let me--let me give a--

00:31:45

**Dan Bucks:** --as far as ordinary property is concerned, there are some problems that are emerging.

00:31:50

**Evan Barrett:** Right; well let me give--I remember at the time of this Convention, now one of the examples that was used on why we needed to go to--was that it dealt with property that crossed county lines. You mentioned that. And particularly ranches, and so the Local Assessor, elected Assessor would come and if you were in a ranch that crossed the boundary between Petroleum County and Fergus County and you--that miraculously this was the story at the time, I remember it well--that when the Petroleum County Assessor came to assess your cattle they were over on the Fergus side of the ranch. And when the Fergus Assessor came they were on the Petroleum side of the ranch. And so somehow there was really a serious under-assessment of the cattle.

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So that was what was being passed around and was one of the things that contributed to the--the feeling that hey we got to do something that's fair here and--.

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**Dan Bucks:** Right and there was--there were always the anecdotes about how the copper interests in Butte would come to the Local Assessor and say you know we're not going to pay any more than this so you can't put our values any higher than this. And which goes to this Anti-Surrender Clause in the Constitution that says no, no, no. No, no; no interest, no corporation gets to decide what it's going to pay. That's decided by the Rule of Law fairly under the law and not by the company coming in.

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**Evan Barrett:** Although--although that is anecdotal--

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**Dan Bucks:** That's anecdotal.

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**Evan Barrett:** --and it is--

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**Dan Bucks:** Can't prove it; can't prove it. [*Laughs*]

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**Evan Barrett:** --and it is not something we can establish by a report.

00:33:31

**Dan Bucks:** No.

00:33:33

**Evan Barrett:** But I suspect that it was reasonable to assume that--that since Anaconda Company had that much clout over the entire State they certainly had some juice with the Local Assessor in Butte.

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**Dan Bucks:** I--I can't prove it. I got it from--from a long-time, very--a reputable, honorable State Legislator who said that's the way it worked, you know.

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**Evan Barrett:** That's the way it worked.

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**Dan Bucks:** And that's the anecdote, whether it's--whether it's true or not someone else--

00:34:01

**Evan Barrett:** It seems reasonable.

00:34:03

**Dan Bucks:** --reasonable to believe. But you know it doesn't--the system can always be--and this is important--there's two things. Roger is right; you can set up a Constitution that has the high standards but it's up to the people and the people who are appointed or elected to serve them to do it right. And it isn't always done right. And I'll give you some examples.

00:34:26

So the proceed system that had been gamed and played hard before the New Constitution when the valuation went to the State level, the State Department of Revenue started to check the proceeds reports and audit particularly around the early '80s. They began with--the Department of Revenue began to really check to see if these reports made sense. And there was the--the industry that--for example, the oil and gas industry didn't like being audited on the reports. They wanted to just--

00:35:03

**Evan Barrett:** We'll give you a number and you should enjoy it.

00:35:05

**Dan Bucks:** You should accept what is given. And--and some auditing began and--and that became controversial. And so we adopted rules so that they understood what the rules were. Then an Administration came along by the early '90s and some of those interests that had been close to that Administration came to the Director and convinced the Director to actually order the staff to stop doing any audits of the oil and gas proceeds system and to accept the returns as filed by the companies.

00:35:40

So even if you have a Constitution and a law that makes sense, it can get undermined in the Administration. Now that's been corrected again. But it took about 20 years for that to be fully corrected.

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**Evan Barrett:** So for about a 20-year period--

00:35:55

**Dan Bucks:** Fifteen to twenty--fifteen to--

00:35:57

**Evan Barrett:** --say 15-year period you--you had a circumstance where the natural gas values were--tax values were as reported by the company without really being seriously audited?

00:36:11

**Dan Bucks:** Yeah substantially. There was--some of it was because of that order from the Director at that one time and some of it was because there was also an effort in the late '90s to reorganize the Department of Revenue so that it wouldn't emphasize tax fairness, equality, and compliance. And there was a whole--what was called re-engineering of the Department that downgraded the emphasis on getting the taxes right in favor of just getting the--the money in and moved around as efficiently as possible for all of State government turning the Department of Revenue into a back office allocator of funds as opposed to an instrument for equality and fairness in taxation.

00:36:59

Fortunately that effort to re-engineer the Department crashed and burned with a computer system that didn't work and so it enabled us to have a new start in the--to get back to fairness and equality later on in Montana because that effort at re-engineering--that's the second administrative--. Another symptom of this--one particular case--in 1988, a prominent natural gas producer in the north central part of this State had an audit for the proceeds. And it was adjudicated by the early '90s and the full assessment was made and determined to be legal. That natural gas producer refused to pay--ever pay that, just defied the assessment. And for some reason the Department for a while didn't pursue it.

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Now fortunately it hadn't expired and the staff kept it alive. But there were no conscious efforts to produce it but ultimately in 2007 or 2006 or '07 or '08 we finally collected the \$2,000,000 that was due from that producer that--to an audit that stretched clear back to 1988. There was a period of lacks administration and a period of time when fairness was--and equality was not important. Now that's administratively.

00:38:25

Legislatively there's been back--there was backsliding as well. In--in--while I emphasized how the property tax system became more equitable with the New Constitution, mostly for ordinary property and also for all other property, but the--the Constitution also provided choices and the ability of the Legislature to create exemptions and--and different classes of property. And so in 1999 the Legislature at the time did some significant things. First of all they were tired of litigation that the railroads brought under Federal law over their values. And so the Legislature gave the railroads a deal, a--a--they intruded on the professional valuation process and established a method of valuing the railroads, a detailed formula, arbitrary formula under the law that today results in the largest railroad that operates in this State getting--having--enjoying a value that is one-half of what it should be under the standard system for valuing large properties like railroads. And they--and so they got a deal that has--that has resulted in the progressively over time their values lagging behind more and more where it should be.

00:39:55

**Evan Barrett:** So to make the progressive and fairness elements of the very general and broad constitutional language which everyone thinks was advisable to do, you didn't just had two; you really had three places where it could become a cropper? One being in the Administration, one being in the Courts, and one being in the Legislature?

00:40:21

**Dan Bucks:** Right and the--and the Courts--the Courts incidentally have done a great job of upholding equality by and large in terms of the--the Courts have done a good job in Montana. And the--administratively there was backsliding; that has now been reversed. It was reversed in the Schweitzer Administration and in the current Administration. There's a strong commitment to making sure that taxes are fair and auditing is done to make sure that compliance is--under the law is--is done--.

00:40:54

**Evan Barrett:** But--but since this recovery of fairness has occurred under Schweitzer and Bullock but it had slid previously it would seem like vigilance is necessary to keep the provisions of the constitutional fairness.



00:41:12

**Dan Bucks:** Absolutely and the point is tax--you know if there's a message for the public it is tax--yes taxes are boring. They're irritating. They're complicated, etcetera. But they're vitally important. And let me just state a general reason as to why they're important. You know there's two fundamental foundations for a democratic society. One, an absolute guarantee of equal human rights for everybody because unless you have that you don't provide an opportunity to every--everybody to have a fair shot at participating in society and contributing to society; secondly, once you have that guarantee of human rights and people do participate in society on an equal basis they will naturally come together to want to provide services for the common good. And when they do come together they have to have the means of financing in it. And the way and the only way of doing that is to have a fair and equitable tax system because if it isn't fair and equitable it will fall short of the public's needs and expectations for the common goods that they want to provide.

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So human rights and tax equality go together.

00:42:27

Now I'm sorry; go ahead.

00:42:28

**Roger Barber:** No; I just wanted to interject kind of a funny little story. When the staffers were putting together their reports we were told to find a quotation that could go on the first or second page of the report. And the quotation I found was *taxes are the price we pay for a civilized society--Oliver Wendell Holmes*, which is also above the entrance to the IRS Building which probably discredits--. [*Laughs*]

00:42:56

**Dan Bucks:** The IRS has difficulties let me tell you.

00:42:58

**Roger Barber:** But it is--I mean that's an interesting statement from a very prominent jurist in our--in our country's history.

00:43:05

**Evan Barrett:** I think that speaks to that introductory comment I made that it's the--not just the power to destroy but the power to create, to create a civilized society and--

00:43:13

**Roger Barber:** And I want to follow-up on something else that--that Dan said. I mean Dan talked about--about exemptions and it's--it kind of shows one of the paradoxes of Montana's Constitution. I mean we talked about the broad language in the Constitution and how the--the Revenue and Finance Committee really wanted to give the Legislature as much power as possible. And those property--those--those tax exemptions come from--or they're based on a constitutional provision which says that the Legislature can't exempt any other classes of property from taxation. Again it's one of the paradoxes that--that the Article didn't want to interfere with the Legislature's ability to create a taxation system but in doing that it also opened the door to possible abuses.

00:44:04

**Dan Bucks:** And--and that--there is a--there is a difficulty brewing on that front in Montana which is that again, the '99 Legislature broadened and created a broad and ambiguous exemption for something called intangible property. And I don't want to go into the details because it gets complicated and--and is lengthy. But let me just say this; that particular broadening and ambiguous provision has the--planted the seed for resulting in valuing large corporate property called centrally assessed property on a basis that was--would cut the values unfairly for that property as compared to homeowners and small businesses. It is a--it is a--it is a--it is a ticking away within the--within the property tax system for future problems of where we may go back to the era where large corporations are taxed on a much more generous basis, unfairly given breaks as compared to other property.

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I don't have--you know this is not the venue to explain that but it's a case of where the exemption power of the Legislature may be--may conflict with the standard of tax equality and tax fairness.

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**Evan Barrett:** Now it is--most of the report of the Committee, it--a number of the other Committees had a--almost two separate reports that were--mirrored each other, a great big majority report and then a minority report that was radically different than the majority report. In your recollection there wasn't that; there were a few minority reports on very specific items.

00:45:54

**Roger Barber:** Right.

00:45:56

**Evan Barrett:** But that the broad format brought forth by the Committee, most people agreed with?

00:46:02

**Roger Barber:** Yes; yes.

00:46:04

**Evan Barrett:** There was a minority report on the exemption issue.

00:46:07

00:46:06

**Roger Barber:** That's exactly right; yes.

00:46:07

**Evan Barrett:** And that was by the Butte and Anaconda Delegates Mick [McKeon] and Morris Driscoll?

00:46:14

**Roger Barber:** And I think--I think there was one more.

00:46:16

**Evan Barrett:** Mike [McKeon]--oh and--and Bill Arts.

00:46:18

**Roger Barber:** Bill Arts from Great Falls.

00:46:20

**Evan Barrett:** And Bill Arts. I see here that they signed a minority report on the wisdom of the provision and it suggested the new provision opened the door too wide and placed too much discretion in the hands of the Legislature and that the provision should limit the right of the Legislature to grant exemptions. That was part of the constitutional transcripts. Those folks maybe had their--their finger on something.

00:46:52

**Dan Bucks:** Yes; I think they--I think that they were pressing it. They were good prophets of potential problems and that conflict is there. And I think that the Legislature has opened the door to a substantial inequity in property taxation with this exemption for intangible property and at some point in the future it needs to be revisited and corrected if the ideal of trying to tax property on the basis of equal market values is to be attained. That's a problem to be solved in the future here.

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**Evan Barrett:** And the challenge that it's maybe white or black, you know that it; you either--you can give exemptions and if there's going to--if you can give exemptions at the Legislature there's a potential for abuse. If you say straight up you can't then there's a rigidity in the system that maybe is a problem, too.

00:47:48

**Dan Bucks:** There was a potential middle ground which is to say that the Legislature can exempt classes of property provided that it is balanced with the requirement to achieve equality of taxation. And so if there were a balancing test of some sort and I wouldn't like that--that may have been preferable to what exists now where I think that there's a bit--there's a collision course here between a broad exemption of--for one type of property that

collides with the standard of equal--equal valuation. It was hard to--and that those three individuals are to be credited with--with--with seeing the potential for opening the door too wide. It is opened a bit wide--the exemption power. And I think it would be wise to look at that seriously and study that.

00:48:41

**Evan Barrett:** Now that was Bill Arts who was a--as I remember, an accountant from--

00:48:44

**Roger Barber:** CPA from Great Falls.

00:48:46

**Evan Barrett:** --Great Falls, Morris Driscoll who was an educator from--from Butte, and Mick [McKeon] who was a young attorney from Anaconda at the time and now an attorney out of Butte. So they were--they were seeing things ahead--they could see around the corner a little bit.

00:49:01

**Dan Bucks:** Right; all the pressures and this is really important for Montana citizens to understand. This is happening across the country. All of the pressures now are--as the middle class has been declining and under pressure, the forces for wealthy interests, for individual--wealthy individuals and corporations go around to State Legislators and say on you've got to cut our taxes or you won't get jobs.

00:49:28

Well guess what? That's been tried in various States; there's been a recent experiment comparing Wisconsin and--and Kansas where the tax cuts for the wealthy and income tax cuts and property tax cuts for the wealthy and for large corporations has been tested in those two States versus what happened in California and Minnesota since the Great Recession where taxes were increased on the wealthy and maintained on corporations. And guess what? Job growth in California and in Minnesota that took the tax fairness root, job growth has been stronger and greater since the Great Recession in those States than in the States that took the--give the wealthy and

large corporations a tax cut so that they can make the rest of us wealthy. That formula has resulted in Kansas and Wisconsin lagging in job growth behind the rest of the nation.

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This is only one example, again and again when the experiment--

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**Evan Barrett:** Well I think it's been pretty well--been established that the whole idea of trickle down doesn't really work but it still seems to be a--a mantra for many people in politics.

00:50:43

**Dan Bucks:** It is politically popular and it is an economic failure and the--and the--and this is one reason why ordinary citizens really need to pay attention to tax policy. Here in Montana in 2003 a version of this was enacted in Senate Bill 407 where--

00:51:01

**Evan Barrett:** That was in the latter stages Martz Administration. They did get a Bill through to change the income tax structure somewhat. How did that end up?

00:51:12

**Dan Bucks:** And what happened was is that in the first year it was implemented in 2005 it--it resulted in the--in the public treasury of Montana being--losing \$100 million of revenue, nearly half of it, almost \$50 million went to 1,500 households--only 1,500 households that earned more than a half a million dollars a year or more. And within five years the State of Montana had spent on this tax cut for the wealthy about a quarter billion dollars between '05 and '10 and then we looked at what the economic results were. It was supposed to cause wealthy people to come to Montana and make the rest of us wealthy. No effect of that kind at all on migration. It was supposed to create new jobs because the wealthy people would invest more. We looked for the evidence of this. We looked at the actual households who got these benefits and we couldn't find any increase in investment that created jobs in the State as a result. The only thing we found was that for households with incomes above a--\$250,000 a year or more where there

had been two-earner households they often became one-earner households. Instead of job creators, we got job quitters in Montana.

00:52:37

And there's been no economic benefit for the common good. And the money is still--continues today to be wasted on this tax cut for the wealthy without any economic benefits to show for the results when you look at the actual data and the actual results.

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**Evan Barrett:** Well again speaking to the issue that the generalized approach which allows flexibility of the Legislature, the Administration, and then ultimately adjudication by the Courts has the possibility of fairness and the possibility of still depending on you know who you are and what the political lay of the land is maybe some preferential treatment in the income taxes as well as in--in property taxes. So it's a challenge; it's a challenge of vigilance on the part of the electorate, huh?

00:53:31

**Dan Bucks:** Yes and my--my plea with the electorate and you know people can honestly disagree and have different points of view on these matters, but it's important that the public exercise its right to know. And the Montana Constitution, another marvelous piece is this strong public right to know provision and the public right to participation in agency decision-making, it does require the sacrifice by citizens and citizenship requires the expenditure of time and energy and effort to be able to make sure that we live up to those high standards that we proclaim in this wonderful Constitution because it can all slip away. And it has backslid at various points and it gets reclaimed. But it--it does require constant participation. The opportunity is there. And even if it sounds dull and boring what's at stake here is the future, the future of education for our kids, the future of infrastructure that does create jobs, the future of our ability to help people reclaim their lives either from bad luck or bad choices; all of that is at stake here. And it is--and--and my plea to the public is that they get engaged and stay engaged and particularly to be engaged in fiscal matters and matters of taxation regardless of how remote or difficult or complicated it might be, because you--some day you may wake up and find that your government is under-funded, there are not the

services you expect, and you may find that some people are not paying taxes and you're paying a lot and the system is not fair. And you could have prevented it if you were involved in--in the system yourself.

00:55:26

**Evan Barrett:** Now there's a lot of complexity in taxes and the big challenge is citizens being able to grapple with stuff that is created by cadres of attorneys and accountants who work for people who want special provisions. But that's an inherent problem in all this stuff. Now we are getting actually pretty close to the end and--and time goes so fast when we do these things. I told you the hour would seem like it would go by very fast.

00:55:54

Tell me Roger a little bit about your personal reflections. What did--what did working for the Constitutional Convention mean to you and--and do you have any insights that came out of that or reflections for the good of Montana?

00:56:10

**Roger Barber:** Well I often tell people that when I graduated from law school it was the only job I really went after. I didn't interview with a law firm. I didn't interview with State government. I saw this as a historic moment in Montana's life and I wanted to be a part of it. And I luckily was granted that opportunity.

00:56:32

I was part of the '60s and '70s generation, very idealistic and the Constitutional Convention seemed to be a natural part of that idealism. And I was hired to work with a--a bunch of other remarkable young people with the Preparatory Commission to do the--to do the research and to--to help educate the Delegates when they were finally elected on constitutional issues. And that probably was one of the great joys was getting to--getting to work with young idealistic often brash and not always polite members of that '60 generation. I mean we approached the Constitution much the same way. I--I think we literally thought that we knew more than the Delegates. I mean we had spent--we had spent months researching these--these issues and they had come to us and tell us what they'd think should be done. I mean that seemed--that seemed unacceptable to a lot of us; I mean we were the--we were the experts.

00:57:35



We weren't always well-behaved. I think about some of the things we did as--as a group of young idealistic Staff Members. It was a wonderful opportunity. I hope I carry some of those--those gems with me.

00:57:46

**Evan Barrett:** Well you know we all three are the same age and we all emerged at the same time and we all cut our teeth in government and politics at the same time and tried to make a difference. And we really appreciate the role you played in our Constitution. Thanks to both of you for bringing your expertise and your--your personal experiences to the table here for us today on this area that's complex but critically important. And for our viewers, we look forward to seeing you in the next segment.

00:58:16

*[Music]*

00:59:16

**[End Fairness for the First Time-Taxation in 1972 Constitution]**