



Fall 2016

Community Section



*Issues in the Ethics of Interpretation*

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Imagine this: You have written a hundred letters and I now have all of these in my collection. These were composed at various times in your life. One was written when your beloved grandmother passed away. Another when playing for your high school championship football team, the time your pass was intercepted and the receiver ran forty yards for the touchdown that cost your team, the winning score. And another when you were given a horse for your birthday. Another when your audition got you first chair in the trumpet section of All-State-Band. Letters and more letters: some at times of great delight, others at times of great sadness. And a few at times with little emotion of any sort.

I do not know you. But on the strength of these letters, I am asked to write an evaluation of your emotional balance for a job that requires the ultimate in steady-handedness. Fine!

Whether or not I am fond of you, I could group the “happy” letters to say that your personality is manic, nearly to the point of perpetual intoxication. As with a differing selection of “sad” letter I would have evidence to suggest that you are depressed to the point of being a danger to yourself and others. I am not

making this up since these are *all* your letters. I have proven, on the basis of your own writing, that you are manic or depressed. The recipient of my evaluation will decide your future based on my research into these one hundred letters.

But you complain that I have not given an accurate or balanced view of your psyche. Others who have known you well for quite a long time think you are indeed a balanced individual who shows sadness in response to adverse events surrounding your life and cheerfulness in response to the opposite. The difference between these two outcomes is, of course, context. One might argue, that, to a large extent, we are our contexts. Certainly we are our contexts to the world outside of our head, and to interpret our letters properly requires knowledge of contexts.

Every historian is worried that some reviewers will point out when we violate that principle. One example can illustrate this point. Some historians of the evangelical sort have attempted to make the Founding Fathers of the United States into evangelical Bible-believers. Some of these people repeated the stories about the Fathers which originated at the time of the Second Great Awakening<sup>1</sup>. These people made the attempt to show

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<sup>1</sup> The Second Great Awakening (C 1820-1840) was an intense evangelical movement which has subsequently shaped American public religion. One factor explaining its emergence was the French Revolution (1789-1793) which destroyed the French monarchy, thereby uncaging fears all over the Western world that all governments were vulnerable to attacks by the

forces of “reason” and revolution. In the climate of such fear, it was important for the evangelical cause to make it appear that the leaders of the newly-formed American government were allied with the evangelical and not under the sway of European intellectuals. This context was shaped by fear of such a revolution rising in America.

that, from the start, Americans all were devoted to evangelical theology and, consequentially, God rewarded their devotion, granting, victory in the Revolution.

The fact is, however, that the times when Jefferson, Washington, Franklin, and Paine were active, American “high culture” was deeply under the influence of the Enlightenment. This movement prized empirical thought following the model of the physical sciences. Accordingly, biblical reports of floating axe-heads or anyone walking on water were immediately greeted with skepticism, if not outright laughter. Same too, with stories of feeding thousands from the contents of a grocery bag.

What do you imagine that Jefferson or Franklin would say to the following account? It was said that Washington was praying, on his knees, for victory in the upcoming battle of Trenton. As Washington prayed, an aide broke into the tent with news of the British deployment of forces. So upset was Washington at the interruption in prayer that, twisting on his knees, he drew his pistol and fired it into the leg of the thoughtless aide.

Nearly everything we know of the context of Washington’s demeanor suggests that this story is pure fabrication. Washington always regarded religious opinions as a strictly private matter, for example.

Interpretations of this sort violate the context of time. What was in the air at that time was scientific thinking and skepticism about any divine “adjusting” of the laws of nature. The Scottish philosopher David Hume, for example, thought that all historical reports should be evaluated on the basis of one’s observations of the ways things happen in nature. For example, he would believe

that Jesus walked on water only if one has seen someone walking on water, which he himself had never seen. His concern for context was, first of all, judged by his own experience. The “laws of nature” so often mentioned in the Enlightenment were, in fact, summaries of human experiences.

Accordingly, it is all too easy to impose my experience when dealing with any historical document. Appreciation for the tendency to inflict our experiences on historic data is likely what the Enlightenment philosopher Voltaire meant by saying that history is a bag of tricks that we play on the dead.

An “unethical interpretation” is an instance of imposing one’s categories and understandings on a subject to which these are foreign and perhaps irrelevant. What has happened here is that the subject is made to be the text for a sermon or a pronouncement of the “interpreter.”

Not only are we likely, in our time, to play these tricks on the dead, but just ask any Roman historian what it was that made the Empire “fall.” Explanations ranging anywhere from gross sexual immorality to softness produced by conversion to Christianity (see Edward Gibbon) have been employed. There various “causes” of Rome’s alleged fall are often cited as supporting a corrective alternative to some of our contemporary problems. One might think of Billy Graham who in many sermons urged America to undergo an awakening as a solution to many pressing social problems which Graham thought likely would lead to America’s own “fall.”

Not only are societies of past centuries victims of unethical interpretations but it is to be expected that we too will be the object of context violated in both temporal or spatial categories.

A speaker at a recent conference on global warming suggested that our time would also be the object of future criticism. He could imagine a textbook two centuries hence discussing our profligate ways of dealing with oil, the ideal lubricant. This text referring to our time would have a sentence heading, "they actually burned the stuff." To you and me, of course, nothing could seem strange about standing at the pump filling our tank and burning the gasoline. We have our contexts too. To hold us responsible to some future interpretation leads to the possibility of anachronism. We have the responsibility, ethically considered, to deal with the problems and issues which are presently before us.

We have the issue of why there is importance involved with an ethical interpretation of both the past and of understanding our contemporaries correctly. We build the future on the basis of what has already taken place. Unethical interpretations lead to dangerous conclusions about what to expect from each other and about decisions involving policy.

Historians, for example, argue that their discipline is important because our experience is broadened by including narratives of past experiences under similar contexts. Often repeated is the theme, "those who do not remember the past are doomed to repeat it." If, however, the report of some particular historical event or experience is surrounded by a context different from the one we presently face, the pertinence of that event is valueless. It is perhaps dangerously misleading for forming any decision about which direction is appropriate for understanding today's situation.

Properly to guide social policy it makes a difference whether the Roman

Empire fell owing to a populace totally immersed in exotic pursuits, or whether it owed to an uniformed tax policy, or if it was attacked by superior forces and defeated in battle, or, most interesting, whether it fell at all. A recent painful example was the "domino theory" which held that one defeat automatically led to another. The model for that theory, of course, was Hitler and the Third Reich. But the contexts surrounding Germany in the Twenties differed greatly from North Vietnam in the Sixties. Even though thoughtful people knew the difference, the domino theory formed the "meta-plan" for everything we hoped to do there. This theory is in disrepute nowadays especially after the disintegration (did someone say "fall?") of the Soviet Union.

To sum up these comments we then have the topic of translation. There are two kinds of translation. The most familiar is to translate from one language to another (German to English, Greek to English). A good product leaves clarity of meaning, and the reverse yields mayhem. To go from one culture to another also requires a form of translation. There are symbols and assumptions about the nature of life itself which must be explained to the second culture, especially the context. To fail to make this translation work invites hard feelings at best and perhaps war at worst.

Translating from language to language is a skill, a valuable one. Translating from culture involves societies past and present. Some important documents that fit this model are the Bible and Constitution and the Bill of Rights. Biblical interpretation requires a knowledge of societies at least two millennia distant. The American founding document, one tenth as old, also need interpretation and the Supreme

Court is given that task. “What did those verses or articles mean then and what now?” Both are vitally important, and so is the ethics of interpretation.

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*Legislative Travel Paid for by Lobbyists Raises Ethical Questions*

**John D. Olsrud**  
Bismarck, ND

Why would an out-of-state corporation spend thousands of dollars to send a North Dakota legislator on a trip? To answer that question, one has to understand the structure and relationships between private companies and state legislators. Corporations expect a return on their investments, and when they host legislators on trips, corporations expect to get their money's worth<sup>1</sup>.

I had the privilege of serving as an attorney on the staff of the North Dakota Legislative Council for 40 years, the last 25 of which I was the director of the agency. I was aware of numerous trips being taken by the people I worked for, and many times I was asked not to tell anyone. I will honor those commitments in this article—no names, no specific trips. This is just an overview of what I see as an ethical problem for the legislative branch of state government in North Dakota.

During my years as Legislative Council Director, I had the duty of providing ethics training to legislators. I used to preface my presentations by saying I often heard we have no ethics problems in North Dakota. Translation: we have no one in jail for ethics violations. Perhaps the reason we have no one in jail is because legislators write their own ethics laws and rules, and care is taken

to make sure nothing is done to disturb the cozy relationship between legislators and lobbyists.

Once elected to the state legislature, a person enters a world of privilege and perks unheard of by the rest of us. Suddenly, a new legislator is invited to numerous dinners and parties. Most of these dinners and parties are open gatherings, and the media sometimes covers these occasions. There have been pictures in the paper showing a freshman legislator holding a beer in one hand and a hot dog in the other. Some people see those pictures as a problem, because someone has purchased that beer and hot dog for the legislator. To me, those kinds of dinners and parties are not cause for alarm, as the money spent per person is not large and these gatherings are open to the public. The question the media should ask is who is not at those open dinners and parties? Some legislators might make an appearance and then disappear, only to go to some lavish private dinner hosted by deep pocket lobbyists. Those private dinners, away from public scrutiny, should get our attention.

State law puts limits on how much a lobbyist can spend on a legislator on a specific occasion, and anything above that amount is supposed to be reported to the Secretary of State. Lobbyists have found a

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<sup>1</sup> This article first appeared in the 2013 issue of the Northern Plains Ethics Journal ([http://northernplainethicsjournal.com/archive/NPEJ\\_V1N1/archiveV1N1.html](http://northernplainethicsjournal.com/archive/NPEJ_V1N1/archiveV1N1.html)). It is reproduced here to provide context for the following articles on a North Dakota Ethics Commission.

way to avoid making those reports. If a dinner or party exceeds the cost per person allowed by state law, lobbyists simply go together, so if two or more lobbyists buy a dinner, they split the cost, and no reports are made. The smart money in the lobbying business is far too sophisticated to endanger the sponsoring corporations from getting bad publicity over these matters. So, instead of buying meals for large groups of legislators in a public setting, the smart money goes to private dinners where just a few key legislators meet with corporate sponsors for special time out of public view. Likewise, trips paid for by corporations are kept out of public view.

It should be understood this article is not addressing trips paid for with public money. Legislators attend meetings of public interest groups such as the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG). Those trips are at public expense and there is full accountability. Records of those trips are open to the public. I see no problem with those trips. In fact, I think the public is well served by investing in activities that help legislators do their jobs.

My concern is with private trips paid for by people and corporations seeking favors from legislators. It should be understood that lobbyists do not directly pay for trips by legislators. That would require a full report and the public might be upset. Instead, in order to make it impossible to follow the money on trips paid for by lobbyists, corporations launder their money through innocent-sounding nonprofit entities. Ever heard of the American Legislative Exchange Council (ALEC) or the State Legislative Leaders Foundation (SLLF)? These are private groups that are not open to public scrutiny. Rather than paying for airline tickets and hotels for legislators, corporations pay their money to nonprofit entities of this kind, and the public has no way of knowing

who is really paying for a trip taken by a North Dakota legislator. We never find out if our legislators' trips are paid for by specific lobbying groups that have particular interest in issues in North Dakota. We never hear with whom our legislators sat on long flights to China, India, Russia, and other distant venues, or whether those seating arrangements were prearranged as opportunities for specific lobbyists to spend valuable time with key legislators.

What, you may ask, are these corporate interests buying on those trips? The key word is access. A good lobbyist is going to know who has real power in the legislative process, and what these special interests want is to be able to pick up the phone, be on a first name basis, and ask for favors. A lobbyist for a pharmaceutical company once told me it is worth many thousands of dollars to his firm if he can keep certain bills from being introduced. If he cannot keep a bill from being introduced, think of the value of being able to make a single phone call to achieve desired results. If a phone call to a legislative leader will bring a commitment to see that certain legislation fails, think of the thousands of dollars in travel costs, not to mention valuable time, a corporation might save by not having to send its people to Bismarck.

If anything you have read in this article disturbs you, or if you think something will be done to limit these kinds of expenditures for our legislators, do not expect anything to change. A lobbyist once told me that if the name of his company ever appeared in the press regarding a scandal involving lobbying expenditures, that lobbyist would lose his budget for those expenditures. We will never see the internal communications lobbyists use to justify their budgets. As noted previously, corporations expect a return on their investments. And what better way to justify next year's lobbying budget than to show what a good return the

corporation got for last year's expenditures?

Lobbyists fear scandals that might get the attention of top corporate officials or, worse, stockholders. Stockholders do not want to read in the paper that their money is being spent taking North Dakota legislators on trips. If the public, especially stockholders, knew about the trips corporations are buying for legislators, those trips would end. That is why it is so important to keep those trips out of the public eye.

With North Dakota's newfound wealth, particularly from oil, decisions made by our elected representatives are going to earn the attention of corporate interests that have much to gain from valuable access to the movers and shakers in the legislative process. We are talking about big money, and big money buys the access so desired by everyone who wants something from the legislature. What is so unfortunate about this picture is that the public will never know who is buying influence under current laws.

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**John D. Olsrud** retired in 2007 after working as an attorney for the North Dakota Legislative Council for 40 years. The last 25 of those years he was director of the agency, and one of his duties was to provide ethics training for legislators and staff. Olsrud taught an online ethics course for five years as an adjunct professor at Bismarck State College, where he is now teaching political science courses. Olsrud has degrees in public administration and law from the University of North Dakota. He grew up in Beach, North Dakota, where his father was a Lutheran minister.





*ND Ethics*

**John Stern**  
Retired Retailer

I recently participated in a panel discussion at NDSU on whether or not ND should establish an ethics commission. It was a very interesting and enlightening discussion, with plenty of audience participation. And in the audience were several ND legislators, from both parties. ND is one of just 7 or 8 states that do not have an Ethics Commission. Five of the eight states are small states like ND, including New Hampshire, Vermont, South Dakota, and Wyoming.

The discussion started with questioning whether there was a problem in ND with ethical behavior in state government. Some examples were presented of sponsored trips for legislators and the never ending after-hours receptions and sponsored dinners for legislators, which seem to be the “grey” areas. No examples were presented of any egregious financial impropriety. But areas of potential abuse seem to be centered on the use of campaign finance funds and the sponsored trips. Currently there are no rules or laws relating to either. Anyone can raise money to finance a campaign. Donations of \$200 or more have to be documented, but how the money is spent does not. While it is unlikely that any candidate for any office in ND has large amounts of money left after running a campaign for office, one can imagine how it would be possible. Perhaps a coal company, or oil pipeline company, or electric utility would like to donate a large amount to a Public Service Commission candidate. There is no rule or law that would prohibit that, and

no requirement to show how the money was spent. Theoretically, the candidate could pocket any money not spent and not violate any state rules or laws.

While there does not seem to be a problem at this time, the potential does exist for abuse. And ND does not have official commission, nor does it have any rules, relating to these issues. Or does it?

Late in our discussion, it was revealed that there is a provision in the ND Century Code (#54-35-02.8) that establishes a Legislative Ethics Committee. This section of the law states “The legislative management shall appoint an ethics committee to consider or prepare a code of ethics.” It was a surprise to everyone in the room, including the legislators present. In neglecting, or refusing, to appoint an ethics committee, the legislature management has been in violation of the law (the Code says “shall appoint” not “may appoint”). I suppose our legislative leaders don’t believe there is a problem, and perhaps they would have difficulty putting together a bi-partisan committee to deal with this requirement.

I would urge our legislative leaders to take this issue more seriously than they have in the past. We in ND like to think we are different than the rest of the world, but human nature doesn’t really change. We are no better nor are we any worse than anyone else. Most civic organizations have a code of ethics. Our youth organizations such as the Boy Scouts and the Girl Scouts have them too. Most businesses have policies proscribing behaviors deemed contrary to

standard business ethics. The legal and medical professions have committees that deal with ethical issues. It seems to be a laudable standard in America.

I would suggest that it is time for our state leaders to address this issue. I believe that it would be better for all concerned if an independent ethics commission were appointed to develop a code of ethics for all branches of our state government. This commission could also be tasked to deal with perceived violations of the code. Certainly it would be a difficult job, one that few would want. The media have done a pretty good job of watching and reporting on our government, but in the absence of any code of ethics, I suspect that there is much that is ignored.

Would an Ethics Commission be a solution in search of a problem? If there is not a current problem with ethical behavior on the part of our government leaders, legislative, executive, or judicial, there is always the potential, as has been demonstrated time and again in other states. We are kidding ourselves to think otherwise.

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**John Stern** was born in Fargo. An Eagle Scout, he graduated from Dartmouth and spent a year teaching English in Thailand as a “volunteer in mission” at a Christian school. He returned to Fargo to join his family’s small business, Straus Clothing. He has been very involved in civic affairs, including the local and state chambers of commerce, the Boy Scouts, the FM Symphony, Children’s Village, his church, and many other organizations. Recently retired, he and his wife Sherri have 8 grandchildren.



## *Transparency for the Legislative Branch*

**Dina Butcher**  
Private Citizen

North Dakota has been governed by a super-majority in the House and Senate for several legislative sessions. All state elected offices are also held by Republicans. With conservatives in control of government one could assume that there should be no problem with establishing a formal process for transparency in all branches of governance. The Century Code 54-35-02.8 provides for an ethics committee and could provide citizens with the assurance that their locally elected legislators are properly accounting for their campaign contributions from special interests as well as trips which might be paid for by non-governmental sources. The section reads:

*The legislative management, during each biennium, **shall** appoint an ethics committee to consider or prepare a legislative code of ethics. The committee may recommend legislation relating to legislative ethics. The committee shall operate according to the laws and procedures governing the operation of other legislative management interim committees.*

Legislators through the budget process review all programs and functions of state agencies and educational institutions which receive any state funding. They review the management and fiscal audits provided by the elected state auditor's office. Legislators go through the budgets of agencies and institutions presented in the Governor's budget in great detail, often

questioning travel and participation in organizations by agencies and institutions even to the extent that legislation has recently been discussed to extend that oversight authority to non-governmental foundations at universities.

During recent sessions, minority members have introduced legislation calling for an ethics commission to be established similar to those in all but a few states. Each time such legislation comes forward, the main issue raised by the super-majority members is fear of such a commission being totally politicized and used to vilify members of the opposite party. With the wisdom and power which the majority has wielded in redistricting formulations and tax policy, one would assume they could make sure such a commission would not become that kind of petty forum.

Legislators are to be commended for the sacrifices they make in their personal and professional lives to be citizen legislators. The pay and per diem they receive are deserved for the intense 90 day sessions and interim duties required of them. The majority of those who serve arrive with the best of intentions to serve their constituents interests and to maintain their own moral and ethical standards.

Because legislators need to be informed about the multitude of issues that come before them, there are batteries of special interests ready to provide information and assistance. Sometimes in the rush of a session, with a campaign contribution made in the heat of running, a dinner here and

drinks there, a legislator might not even realize that influence is being pedaled. And then leadership might offer a favor to a new or loyal member to take a trip to learn more about, say trade with Taiwan or Turkey. And because the offer is laundered through leadership or a national legislative organization, one doesn't even ask who bought the ticket. An ethics commission would not preclude any of these things from happening, but it would help legislators take pause to make sure they know who is paying for their travel, contributing to their campaigns and trying to influence their votes, and that their constituents will also know that because it will be reported somewhere.

Legislative campaigns used to be run on very slim budgets, with the main "price" being paid by the candidates going door to door in their districts. However, one district candidate this year is predicting a need for \$200,000 to run for office. Contributors deserve to know for what those funds are spent and if funds are left over, how they will be used.

As legislators require transparency of all the agencies and institutions under their purview, it should only be reasonable that legislators hold themselves to the same standard. The majority has a great opportunity to allay citizen concerns by using what is already in the Century Code to build upon and create that type of transparency.

*regional director of North Dakota Teacher Learning Center. A former language teacher, she is a past president of the Bismarck Rotary Club.*

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**Dina Butcher**, *who successfully led the recent statewide campaign to defeat Measure #1 (personhood constitutional amendment and woman's right to choose), was named 2015 Woman of the Year by the North Dakota Women's Network. She owned and operated Association Management Services, Inc., for nine years, working as a lobbyist for various agricultural interests, managing agricultural associations, and launching numerous grass roots businesses. Butcher was interim director for the National Association of Wheat Growers Foundation and*