

Reflective Essay: "Social Analysis"

THE GOVERNMENT OF ALAMOGORDO, NEW MEXICO SHOULD
LEGISLATIVELY ADDRESS THE SOCIAL ISSUE OF PANHANDLING

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There are homeless people in virtually every city and town in America. In my small town of Alamogordo in South Central New Mexico, they seem to make up the lion's share of people begging for money. I have witnessed a couple of places these people make a personal request for individual assistance: at the exit from Wal-Mart, on a major intersection in the middle of town and on a couple other conspicuous, highly traveled areas in town. The issue I will address is what the Alamogordo government should do legislatively to address the social issue of soliciting, also referred to as panhandling or begging in many ordinances. I will be using these terms interchangeably in this paper.

Many towns and cities across the country in the past five to ten years have been creating ordinances to address panhandling. It is my assumption throughout this paper that the panhandlers are citizens of the United States. In starting the discussion of this issue, first we need to enumerate the primary reasons I have found for this trend. The first concern is that the town image is degraded, negatively affecting businesses and home buying. The presenters of this first argument claim the presence of panhandlers, most of whom present an unkempt, dirty appearance, are not conducive to an atmosphere most people want to conduct business or make a home purchase. Proponents claim this is the reason businesses leave town and families choose not to purchase homes. A second reason against solicitation is that some panhandlers act aggressively toward their benefactors, such as blocking sidewalks, washing the windshields of motorists after which payment is demanded, and disrupting business by panhandling at entrances to these establishments (Alberto 1). Thirdly, there have been reports of scam artists who dress down to prey on the citizens' compassion, ironically oftentimes living in bigger

houses and driving nicer cars than those who give. A final concern is that the money is used to purchase alcohol or illegal drugs. This funds addictions and prolongs these problems.

The stated purposes of panhandler laws vary, such as to rid the streets of these people (Thompson 2¹), to protect the image and business of the city or to protect citizens from assault or fraud. The only New Mexico Administrative Code that contains legislation affecting all of the State is one in which people are prohibited from begging in State parks and at monuments.² The few other references in other legislation referring to assistance provided to people shows that the State has the authority and responsibility to care for homeless children,³ the State has the responsibility to provide for the welfare of those displaced, left homeless or who are otherwise victims of disaster or conditions of war,⁴ and to ensure the homeless are not barred from assistance because they do not have a residence to prove they are residents of New Mexico⁵ (Bender). The City Attorney of Alamogordo is presently writing legislation pertaining to this issue at the request of two City Commissioners. He expressed the belief that the government does have a responsibility to care for its citizens and informed me that this city is a 'home rule' city, which allows it to create any laws necessary to deal with its issues (Kirchner). My representative on the City Commission believes we have a responsibility to help others and stated he would not support an ordinance to rid panhandlers from town (Cole).

The issue of panhandling touches on several legal areas pertinent to this discussion. The First Amendment right to free speech applies to all, in this issue, panhandlers and business owners. The Supreme Court held that solicitations for money are so closely intertwined with speech that "solicitation to pay or contribute money" is

protected under the First Amendment. A second, related issue is the equality of rights between different groups, such as panhandlers and business owners, since they are all citizens of this country. The government does not have the right to discriminate and deny one group their rights for the benefit of another. Finally, the Supreme Court has upheld prohibitions on solicitation of funds at a state fairground, on sidewalks outside of post offices and within airport terminals. (CCI, 2-3)

While limited, my two personal experiences of solicitors with distinct approaches might help this exploration. The first occurred several years ago in Albuquerque, New Mexico, as I exited a shopping center. A man with a squeegee and a pail of clean water asked me for a dollar to wash my windshield. I gave him two dollars, but declined the work because I had just had my car washed. The second happened this year when we were leaving the Wal-Mart in Alamogordo. My wife had me stop so she could give a sandwich and drink to a person standing there with a sign, to which he responded, "God bless you." In the first incident, the man appeared clean and busy as typical of someone who was working by the sweat of his brow. In the second, the man and his dog appeared filthy, as if they had slept on the dirt. The methods employed by these two men were distinctive, one soliciting work in a parking lot and one begging. Because I do not have enough background on these two people, no more can be gained from examining them.

Taking the data we have considered thus far, I understand the issue in the following ways. The question that has arisen from those who do not need to beg: is it constitutional to remove panhandlers from the streets of our towns and cities? While applicable to the issue in crucial ways, this question is rather narrow and does not capture the full meaning of the issue as I understand it. Stated in terms of rights and

responsibilities, the two questions that must be asked together are: does the government have the right to remove solicitors from plain view and what responsibility does the government have to assist its citizens when they do not have the means to provide the necessities for life such as food, shelter and clothing. All three questions (constitutionality, rights, and responsibilities) will be addressed below.

According to the Center for Community Interest Standards, under standard First Amendment analysis, restrictions on soliciting in a public forum, such as a city street or park in city limits must satisfy four requirements in order to meet constitutional muster. Such laws must: 1. Be neutral in content (form of speech regulated must apply to all equally, such as aggressive solicitations, not the content of the message), 2. Be narrowly tailored (regulating the time, place, or manner of expression does not violate the First Amendment solely because there might be an alternative that restricts speech less), 3. Leave open ample alternative channels of communication (can limit how the solicitation is done as long as solicitors have opportunities to solicit in other ways, such as an open palm or outright demand) and 4. Serve a significant government interest (Courts ruled that controls on solicitation must be designed to protect the public from intimidation and improve the quality of life and economic vitality of urban centers to be important and valid) (CCI, 2-3). We must now consider how present legislation works.

The following expresses my understanding of how the existing legislation works and relates to this issue. Removing and/or fining the offending party would most likely execute the only law restricting solicitation at State parks and monuments. While this law directly addresses the issue, the locality of the restriction is mainly outside of population centers such as towns and cities. The purpose of this law can clearly be

understood from the fact that these sites attract visitors from outside New Mexico. Since the State benefits from the money tourists spend and because it is not a location where people do business or live, this law does not directly bear on the issue at hand, which is how the government in a particular town handles solicitors. The other laws referred to show that the state has not only an interest, but also a responsibility to care for vulnerable and deprived groups, in these cases the homeless and those displaced by war or natural disaster (who would also be homeless or displaced). These laws directly address the responsibility of the state to its citizens and are therefore applicable to this issue. This brings up another area we need to explore, the values underlying the rights, responsibilities and constitutionality central to this issue.

This issue is underlain with several values or moral principles that need to be expressed and examined. The first moral principle is the moral imperative to help others in need (Matthew 25:31 – 45). This can be seen in several different applications at several different levels. Firstly, we are responsible for our neighbor (Luke 10:29 – 37). What happens to our neighbor is our business inasmuch as we can lend assistance when we are aware it is needed. A proviso relating to this principle is that we do not have the right to control our neighbor. This proviso directly bears on this issue when we consider some panhandler laws were created to limit directly our neighbor's freedoms and rights to suit another group. Secondly, we are all responsible to take care of our community. A major part of this is to deal with problems in such a way as to provide an actual solution, not to make a problem disappear so we can ignore it. The last application is that the purpose of government is to protect and serve its citizens (Lindsey, 251). It is in the government's best interest to help those who cannot help themselves, such as those who

lose their job, those who cannot find work through no fault of their own, and those who are physically or mentally disabled. The American governmental system adds weight to this by considering the very definition of government, as Hamilton said, “Here, sir, the people govern,” or as Lincoln so aptly stated, “...that government of the people, by the people and for the people, shall not perish from the earth.” The very nature of the American form of government and the “for” of Lincoln’s quote suggest that the government exists to provide, in the aggregate, a pooling of resources, what the individual household cannot provide in part. A couple of good examples of this are Police and Fire Departments and Welfare provision. The second moral principle is that the rights of different people and groups are equal. This extends to all people, in this issue, panhandlers and business owners. The third moral principle is the right to free speech. In the Bill of Rights, our founding fathers stated, “Congress shall make no law...abridging the freedom of speech” (Bill 1). No one has the right to take away another’s exercise of free speech unless that exercise causes a civil disturbance or threat to the safety of others. The last moral principle associated with this issue is the right to be secure in one’s person. This means one can expect to fear not that danger or harm might come to them from others.

Now that we have examined the applicable moral principles that demand just laws, we need to analyze the morality of the different sides of the solicitation issue. The first to come under scrutiny is a couplet, the criticism of some that the town image and business are degraded in some way and the desire to rid the streets of such unsavory looking people. Because the rights of all people are equal and because we are required by moral imperative to help others, we must find solutions that balance respecting the

beggar's dignity and realizing the best interests of the community. Making people in need go somewhere else so that the populace is ignorant of the need flouts our responsibility to our neighbor. The second is the reasonable belief that one is in danger because of the actions of an aggressive solicitor. Everyone has the right to feel secure in their persons and the government has the obligation to provide both the legislative framework and the manpower to protect all citizens from harm and fear of being harmed. The government therefore must enact legislation and provide an ample police force to protect citizens. This area is not as pressing, since "it is common knowledge that most panhandlers are not of the aggressive variety" (Whitehead, 1). Then there are those who would misrepresent themselves in order to make a living. The misrepresentation in this issue is those who perpetrate fraud and prey on the good will and charity of unsuspecting strangers. This manipulation of the moral imperative to help others in need causes people to harden their hearts against those in need and, as such, is diametrically opposed to this moral principle. For this reason, the government is responsible to warn the populace about this type of fraud in the community, while the public ought to take note simultaneously of this 'caveat emptor' of charity. A related issue is that there needs to be some sort of verification mechanism that safeguards state funds from being expended for those not really in need. Finally, we need to examine the misuse of charity. Some solicitors will take the money given them and purchase alcohol or illegal drugs to continue habits that only make their personal situation worse. This offends the moral principle to help others because it takes an attempt to assist and turns that on its head, accomplishing the exact opposite intended. Also, the principle that individual rights are equal is applicable because we do not have the right to harm others. In applying this

principle, the one helping is responsible for those known to do this by providing material needs such as food, shelter or other help instead of money.

It is now time to answer the question that frames the entire issue: What ordinance should the City Commission of Alamogordo pass to address the social issue of solicitation or panhandling? An ordinance ought to be passed that is content neutral, narrowly tailored, allows for alternatives and is of significant government interest. This context should be used to provide a constitutional solution that protects the safety and rights of all and deals with four areas. First, it needs to protect one from harassing or threatening actions. Second, it should provide a place for dirty people to go daily to clean up, eat and wash clothes. Third, those using these services would be required to give an honest effort to try to find work and transportation should be provided to transport people without means to get to job search agencies or businesses for interviews so that they might be reintroduced into society as taxpaying citizens. Finally, there needs to be some mechanism in place to verify the people using the shelter are residents of Alamogordo.

Writing a paper dealing with such a pervasive issue in our society as this would not be complete without addressing what a citizen can do about such a problem. Its import can be seen when we examine reasons why people do not get involved. I believe most people feel powerless to enact changes in society for several reasons: too much work and not enough time, lack of understanding how our Democracy works, lack of knowledge where to go to make their voice heard, and lack of interest because it is believed the government is the enemy. Four things I can do to help implement changes are as follows. The first is to research the issue. Secondly, discuss the problem with elected representatives and other officials by attending meetings and interviewing

government representatives. Another way is to start a group in one of my social circles, such as at Church or work, to discuss the issue and come up with creative new solutions to help those less fortunate affordably without becoming a magnet for panhandlers to come in from other places. Finally, I can write a letter to the editor of our local paper to try to widen the discussion and enter into the public debate.

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¹ Page numbers for internet sources are given by pasting into a MS-Word document with default formatting

² Title 4 Cultural Resources: Chapter 4 State Monuments: [Part 2] [Visitor Management -- New Mexico State Parks]: [4 NMAC 4.2.18] 112. Conduct

³ Statutory Chapters in New Mexico Statutes Annotated 1978: Chapter 9 Executive Department: Article 8 Human Services Department: 9-8-13 Authority to conduct social services. (1992)

⁴ Statutory Chapters in New Mexico Statutes Annotated 1978: Chapter 12 Miscellaneous Public Affairs Matters: Article 10 State Civil Emergency Preparedness Act: 12-10-2. (1989)

⁵ Title 8 Social Services: Chapter 102 Cash Assistance Programs: Part 410 Recipient Policies - General Recipient Requirements: 8.102.410.11 NMAC Residency