

HOW THE FREEDOM OF THE HILLS HAS BECOME ANARCHY IN THE BACKCOUNTRY – DO WE NEED A BACKCOUNTRY RESPONSIBILITY CODE?

Drew Hardesty^{1*}

¹Utah Avalanche Center, Salt Lake City, Utah USA

Grand Teton National Park, Moose, Wyoming USA

ABSTRACT: The Freedom of the Hills has always been one of the draws of exploring the mountains with the opportunity to test one's mettle and skills through self-reliance and preparedness; however, today's backcountry is not the same as it was 20 - or even 10 - years ago. The sheer numbers heading to the backcountry have skyrocketed and so has the number of accidents and close calls among backcountry parties, government agencies, cities and townships. The author wishes to initiate a dialogue as to how communities might change the perception and behavior of the "rugged individual" to see himself as being responsible to the community at large. Unless we as individuals or communities can foster a culture of social responsibility, more accidents and fatalities may lead to punitive actions by individuals and government agencies. Other results may involve filing charges of negligent homicide or permanent closures of certain backcountry terrain. It begs the questions: Is the Freedom of the Hills now a myth? Should the Backcountry Require a Social Contract or Backcountry Responsibility Code - and if so, how should it be developed, implemented, and/or enforced?

KEYWORDS: public safety, backcountry responsibility code, liability

1. INTRODUCTION

By all accounts, winter backcountry recreation use and numbers have been skyrocketing over the last 1-2 decades in North America. This includes nearly all user groups, from snow-shoers, skiers, snowboarders, lift-accessed backcountry users, snowmobilers, among the myriad winter recreational styles. Many trailheads and desired terrain are both easily accessed and adjacent to roads, buildings, or other infrastructure. With increasing number of close calls, it may be time for forward-looking communities to foster a backcountry responsibility code/social contract and/or user permit for accessing public lands.

2. ROLES AND RESPONSIBILITIES

It is the role of government and government agencies to protect the safety of its citizens through various means. Similarly, guide services and winter mountain resorts are obliged to protect and

offer reasonable ways and means to protect clients according to industry standard. In this way, the government or private agency has a *duty to act* to provide for safety and welfare.

3. THE ORIGINAL SOCIAL CONTRACT

The social contract is not a new idea. The 18th century English political philosopher Thomas Hobbes's seminal treatise *Leviathan* well describes the relationship between government and citizens. Hobbes points out that the best arrangement allows for a strong central government or governing principles to avoid, what he referred to, as "the war of all against all". He went on to say that individuals that are able to give up minor portions of absolute freedom are actually *more free* by avoiding outright anarchy. Otherwise, Hobbes argued, "Life in the state of nature is nasty, brutish, and short." It is easy to see how this might apply to the backcountry.

4. CURRENT EXAMPLES OF THE SOCIAL CONTRACT

4.1 *Rules of the Road and Traffic Laws*

Sea-faring ships and automobiles that operate with absolute freedom may choose any route, speed, or self-interested protocol to meet their in-

* *Corresponding author address:*

Drew Hardesty, Utah Avalanche Center
2242 West North Temple
Salt Lake City, UT 84116

tel: 801-524-5304

email: drew@utahavalanchecenter.org

dividual needs; however these situations result in a multitude of accidents and fatalities. City or municipal streets lacking stop signs, stop lights, and proper rules of the road are a recipe for disaster.

4.2 Mountain resort avalanche control

Mountain resorts employ a type of social contract as well and is usually found on the back of the lift ticket or season pass. It requires that the individual give up some perceived freedoms in order to make a greater freedom for the mountain resort and all clients. Clients must obey roped closures during avalanche control efforts and ski/ride at safe speeds. In other words, the freedom here is tempered by the dictum "Do No Harm." In this way, the resort hopes to create a situation where everyone is free from harm.

5. CRIMINAL NEGLIGENCE

Criminal negligence stems from gross or wanton disregard for property and human life when actions a person takes directly leads to harm, injury, or death. The term 'negligent' is demonstrated in contrast to what a reasonable person might do. A reasonable person is appropriately informed, capable, aware of the law, and fair-minded.

5.1 Negligent Homicide

Negligent homicide then, is when negligence results in the loss of life.

5.2 Negligent Endangerment

Negligent endangerment then, is when a person negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another.

6. A SOLUTION TO THE PROBLEM?

A backcountry permit system for winter recreationists, particularly in high density or high risk areas, may ensure that backcountry users would be both educated and informed about potential risks and thereby reduce the likelihood of untoward events. High density or high risk areas may include terrain above roads and infrastructure as well as "side-country" terrain accessed from exit gates at the mountain resorts.

6.1 Education and Awareness

A free on-line permit system that explains not only the mission and operations of DOT, NPS, and mountain resorts but the ethics and culture of the backcountry community and the potential for personal liability would accomplish much to stem the tide of increasing close calls and incidents. Current information would include the local avalanche bulletin and permanent or temporary closures of public and private land and property due to avalanche hazard or planned mitigation efforts.

6.2 Backcountry Ethics and the Social Contract

Ethics rely on a shared responsibility concept for winter backcountry users. These include

- Awareness of current avalanche conditions and potential consequences of triggering an avalanche
- Never ski cut or drop cornices on slopes with others below or if poor visibility precludes that no one is below
- Awareness from below – avoid tracks across or up terrain where people may be about to enter from above
- Understand that despite all efforts toward self-reliance, any rescue may entail others putting their lives at stake to effect your rescue

6.3 Compliance

Compliance would be assumed through education and outreach of the permit system, peer to peer education, punitive actions, and routine field patrols by the agencies or their proxies.

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