



The Goldwater Rule: a bastion of a bygone era?

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Aoibheann McLoughlin 

Tallaght University Hospital, Ireland

Abstract

In tandem with the changing political landscape in recent years, interest in the Goldwater Rule has re-emerged within psychiatric discourse. Initiated in 1973, the Goldwater Rule is an ethical code specific to psychiatry created by the American Psychiatric Association in response to events surrounding the USA presidential election of 1964, in which the integrity of the psychiatric profession was challenged. Current detractors view the rule as an antiquated entity which obfuscates psychiatric pragmatism and progression. Proponents underscore its role in maintaining both respectful objectivity and diagnostic integrity within the psychiatric assessment process. This essay aims to explore the origin of the rule, and critique its applicability to modern-day psychiatric practice.

Keywords

Ethics, history, politics, professional accountability, psychiatry

Origins of the Goldwater Rule

During the 1964 presidential election in the USA, the now defunct *Fact* magazine published a special issue concerning the divisive Arizona Senator and Republican Presidential nominee, Barry Goldwater. The magazine purported to examine the mental state of Goldwater in ‘the most intensive character analysis ever made of a human being’ (Borosan, 1964: 24). It was based on an informal survey conducted one week after Goldwater received the Republican Party nomination for president, and involved the distribution of a questionnaire to ‘all of the nation’s 12,356 psychiatrists’, asking ‘Do you believe Barry Goldwater is Psychologically Fit to Serve as President of the United States?’. Of those surveyed, 2,417 psychiatrists responded, with 1,189 deeming him unfit for office, 657 stating that they believed him to be mentally fit, and 571 opining that they did not know enough about Goldwater to answer the question objectively. The *Fact* survey invited supplementary commentary from board-certified psychiatrists and published 38 pages of remarks containing their responses. Opinions ranged from detailed speculative discourse citing Goldwater’s assumed pathologic presentation, with commentary ranging from references to his paranoid, unstable and perceived narcissistic characteristics, to the specious contention that Goldwater’s behaviour was dangerous and could lead to world destruction (Borosan, 1964).

Corresponding author:

Aoibheann McLoughlin, Tallaght University Hospital, Tallaght, Dublin 24, Ireland.
Email: aolibheannmcloughlin@gmail.com

The magazine cover proclaimed: ‘1189 Psychiatrists Say Goldwater is Psychologically Unfit to be President!’, and promotional advertisements for the issue appeared in various newspapers on the East and West Coasts of the USA one month before the presidential election. Goldwater ultimately lost the vote to Lyndon B. Johnson, with this topic viewed as one of the central components in the demise of his presidential prospects. (Many argued that Goldwater had little chance of winning in any case due to myriad factors, including his radical opinions on nuclear warfare, but the negative publicity certainly accelerated the implosion of his bid.) The Goldwater Campaign sued the publisher and editors of *Fact* magazine, with a total of \$75,000 in punitive damages awarded to the senator following the successful outcome of the ensuing defamation case. The Court of Appeals decreed that Ralph Ginzburg (*Fact* publisher and editor) and Warren Boroson (*Fact* writer and managing editor) were motivated by ‘actual malice’ (Goldwater v. Ginzburg)¹ when they published the special issue. Moreover, Ginzburg acknowledged that he had edited all the responses published in the magazine’s survey, and admitted that many of the original responses had been curated to give misleading interpretations. It was noted that ‘a false accusation of insanity, mental imbalance, or mental disease’ was ‘libellous per se’, as statements written by the plaintiffs were deemed harmful, given that the public may have presumed them to be true. It was declared that by printing ‘defamatory falsehoods about a public figure’, the plaintiffs had put themselves ‘beyond the pale of the First Amendment’ (Goldwater v. Ginzburg) which recognizes a constitutional right to freedom of speech. The ruling against *Fact* magazine was ultimately affirmed by the Court of Appeals.

Much to the chagrin of the field of psychiatry, this case served to undermine the integrity of the profession, where confidentiality, compassion and consent are held as fundamental aspects of practice. No formal guidelines existed at this time in relation to public commentary by psychiatrists concerning the presumed mental health of public figures they had not professionally evaluated. This catalysed the creation of what came to be known as the Goldwater Rule: Section 7.3 of the American Psychiatric Association’s (APA) *The Principles of Medical Ethics. With Annotations Especially Applicable to Psychiatry* (1973). Section 7.3 remains a component of the APA’s *Principles of Medical Ethics* to this day (APA, 2013, 2017a).

This rule explicates that, in relation to public figures, or information publicly conveyed, ‘it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination and has been granted proper authorization for such a statement’ (APA, 2013: 9). According to this rule, psychiatrists are prohibited from speculatively proffering an opinion on a public figure that they have not personally examined, or discuss information that is in the public domain about an individual without their consent (Mayer, 2017). This ethical rule is unique to psychiatrists, and reflects the fact that psychiatrists (among other clinicians) hold an ethical responsibility to retain the integrity of the diagnostic and treatment process via consent and interview.

The origins of this rule did not emanate from philosophical underpinnings then, or a clear concern for the public interest, but as a bid to avoid political prognostication and erosion of the credibility of the scientific basis of the psychiatric profession. It has been asserted that this rule was an extreme organizational response to an embarrassing moment in time for psychiatry in America, but is now outdated, obsolete and based on dubious scientific assumptions in relation to clinical judgement (Kroll and Pouncey, 2016; Lilienfeld, Miller and Lynam, 2018). In contrast, others postulate that it continues to have relevance in its aim to avert harm to living persons and prevent the discouragement of those in need of mental health care from seeking or accessing it (Appelbaum, 2017).

Since the advent of the Goldwater Rule, psychiatric parlance has become more colloquialized and freely used by the media to describe opinions and provide social commentary on public figures (Pouncey, 2018). According to the APA, however, a psychiatrist using psychiatric terminology

when describing a public figure equates to a diagnostic impression, and could be interpreted as a formal diagnosis (Pouncey, 2018). Since the inauguration of Donald Trump, ubiquitous public discussion about his presumed mental state distilled the argument for psychiatrists to add to the discussion about what his actions and comments might have meant for public safety. In response to this, the APA broadened Section 7.3 in March 2017 to add: ‘when a psychiatrist renders an opinion about the affect, behaviour, speech, or other presentation of an individual that draws on the skills, training, expertise, and/or knowledge inherent in the practice of psychiatry, the opinion is a professional one’ (APA, 2017a: 75, 2021), thus tightening the reins of the Goldwater Rule further.

Interpretations

Hermeneutic-based queries have emanated from the Goldwater Rule since its inception. A narrow reading of the rule deems it unethical if a psychiatric-led evaluation is performed on a non-consenting public figure, while a wider-ranging interpretation deems it unethical to provide psychiatric commentary on any subject without interview and consent (Martin-Joy, 2017). Rigid application of the rule (according to its broadest interpretation) would appear to invalidate long-standing working practice in the courts and in insurance and government agencies, where psychiatric opinion without diagnostic interview is commonplace.

Arguments against the Goldwater Rule

Insistence on an in-person interview as the foundation of psychiatric assessment has been challenged on the basis that there is scant empirical or theoretical evidence to support the claim that only personal examination can produce a valid diagnosis (Kroll and Pouncey, 2016). Conscious and unconscious intra-psychic distortions affect the validity of the diagnostic process, as patients may try to shape impressions within the clinical encounter. Written records and accounts, along with video footage, can provide robust diagnostic information on patients not personally interviewed.

A lack of clarity exists as to why it is deemed ethical to perform psychiatric commentary in institutional settings without consent or interview, but not in the media, and arguments have been made for the development of a more integrated theory which clarifies ethics for settings where consent and interview are absent (Martin-Joy, 2017). A further criticism of the rule lies in its curtailing of scholastic endeavour of psychiatrists who seek to study the behaviour of public and political figures for historical or advisory reasons. This may involve prohibiting public guidance to government officials or publishing a psychobiography (Appelbaum, 2017; Post, 2002).

What of instances of public interest where there may be a duty to warn about potential risks? Section 7 of the American Medical Association’s *Principles of Medical Ethics* (APA, 2013) opens with the recommendation that the duty of the physician is to ‘recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health’ (p. 9). This includes notifying others of matters of public risk (for example, the obligation to inform the public about infectious diseases or pandemics). Now what if the improvement of public health would be served by psychiatrists offering opinions on specific mental health matters concerning public figures – for example, in a case where the psychiatrist feels that there is an imminent threat caused by aspects of behaviour of public figures in positions of power that may lead to harmful decision-making?

Duty to warn has been enshrined in clinical practice and in US jurisprudence, following the Tarasoff decision of the Supreme Court of California in 1976. Psychiatrists and psychotherapists have a legal duty to breach confidentiality when risk becomes apparent, in order to warn an

identifiable victim or member of the public of a patient's serious threat of harm (Felthous, 2006). The application of the Goldwater Rule in this instance has been rebuked by the APA on the basis that the Tarasoff duty to warn does not apply if there is no physician–client relationship (APA, 2017b). Interpreting public domain information or commenting on figures in the public eye would not constitute a physician–patient relationship, due to the absence of one-to-one examination in this instance. Yet the theory of protecting the public against what the clinician perceives (in good faith) to be imminent risk stands, and adheres to the initial APA tenet of advocating for ‘the betterment of public health’ (APA, 2013: 9).

A collection of essays entitled ‘The dangerous case of Donald Trump: 27 psychiatrists and mental health experts assess a president’ (Lee, 2017) rejected the position of the APA and openly defied the Goldwater Rule. Here it was argued that a civic and moral *duty to warn* the public in relation to the potential dangers posed by Donald Trump (based on public observation of his mental state) superseded political neutrality (Lee, 2017). This duty to warn was viewed by the authors as an educational and mitigating factor in highlighting a perceived threat to public safety. In accentuating potential risk, psychiatrists are viewed as having an obligation to share concerns with the wider community, not only about unprofessional or erratic behaviours of individuals in the public eye, but also in order to heighten public understanding about acts of violence and mass tragedies where there can often be frequent misconceptions (Kroll and Pouncey, 2016). By stultifying psychiatric participation in promoting public awareness measures through censorship, the Goldwater Rule potentially undermines an obligation towards the maintenance of public health and safety that applies to every physician (Kroll and Pouncey, 2016).

It is argued that encouraging educative debate, rather than silencing discussion, will enhance public knowledge and deepen understanding in relation to mental health considerations affecting public safety matters (Lee, 2017; Pouncey, 2018). The matter of public interest extends beyond risk of harm, however. Psychiatrists have an obligation to participate more freely in public debate by clarifying what mental illness means, and by educating the public that diagnostic terms are not soubriquets—even if personality-based difficulties such as ‘histrionic’, ‘borderline’ and ‘narcissistic’ are inappropriately used as insults (Kroll and Pouncey, 2016). Could this information sharing and education still be achieved within the confines of the Goldwater Rule? Perhaps it could, but communicating in a more responsive manner to media reports could help to clarify, educate and de-mystify public misconceptions about mental health. Adding psychiatric opinion to the mix could help to re-frame mental health in a more measured manner. By opposing the Goldwater Rule, the psychiatrist is applying the use of professional terminology with the added benefit of applying an educational basis to the debate for the interest of the public (Pouncey, 2018), thereby, adding a moderating influence and more dexterity to public discourse.

Having a mental illness should not preclude an individual from holding any office. The social construction of mental illness as it stands at present does not align itself with a positive view of treatment and recovery. Consequently, this impacts on understanding among the public, which affects access to help seeking. Psychiatric commentary, through informing the public about mental health and illness, can only enhance awareness. Psychiatric opinion on specific public matters could challenge the view of the profession as a vehicle for social control, but rather encourage reflective debate on mental health issues affecting public figures.

Arguments for the Goldwater Rule

Speculatively discussing an individual's mental health in a public forum appears ethically ambiguous at best. Publicly reflecting on the mental state of an individual (without their consent and not having examined them) undermines the assessment process whether or not they are in the public eye.

Potential harm could be caused to the individual who has not given consent for potentially prurient supposition about their mental health to take place. In addition, can one really assess a public figure without ever talking with or examining them? Can one truly evaluate the subtleties of the mental state of individuals discussed in the media using historical public records and video footage?

Diagnosis from a distance (Martin-Joy, 2020) dilutes the validity of diagnostic formulation and de-stabilizes ethics of confidentiality which are at the core of psychiatric practice. The comprehensive psychiatric interview demands careful and thoughtful analysis of an individual's directly assessed mental state, in combination with an assessment of personal, historical, familial and social factors affecting the client. In addition, a collateral history from a relative or loved one, when available, is often an integral component of psychiatric formulation and care planning (Kelly, 2018). In this context, adherence to the Goldwater Rule in the public interest makes sense. It upholds ethics of confidentiality, compassion and understanding. It ensures a sense of professional decorum, and a sense of objective stoicism that enables assessment to occur within the private domain. Here, the patient is safe in the knowledge that an assessment of their mental state will not be broadcast to the masses.

If the Goldwater Rule were abolished, the role of the media in potentially conflating opinion and fact may lead to a misrepresentation of psychiatric analysis, and result in potential damage to the public if these opinions were treated as verifiable facts (Levine, 2017). Opinions can be misconstrued in the ever-extending realm of media forums. Sensational headlines and hyperbolic editing may diminish the veracity of the intended message to the public. The difference between intention and actuality can be shaded by the editing process, which will be beyond the control of the clinician. Furthermore, the intended message may take on an entirely different and embellished meaning as it is widely disseminated through unregulated social media/viral channels.

The Goldwater Rule states that psychiatrists may share their expertise with the public about psychiatric issues in general (APA, 2013). Therefore, articulating professional opinions in the public domain without speculating on individuals who have not been personally examined is encouraged. In this context, it is possible to provide public health information that can challenge the pervading stigma around mental health and illness, without referencing public figures or events. The challenge is to provide measured information that educates the public in a balanced and consistent manner. By scaffolding a well-thought-out view of factors influencing mental illness in the public domain through ongoing dialogue, it is possible that, over time, mental illness will be re-framed through a recovery-based constructional framework. Essentially, public education can occur within the current framework of broad information-giving. The Goldwater Rule does not inhibit discussion around matters of general public interest in terms of promoting de-stigmatization and mental health awareness.

When it comes to public interest, a duty to warn does not invoke a necessity to warn publicly (Kelly, 2018). There are many ways to convey information without violating the rule, while still upholding the public interest (Appelbaum, 2017). If a psychiatrist is concerned about the mental health of an individual in the public domain, they can make efforts to contact the individual privately; and failing that (due to a person's lack of insight or inability to make contact), the psychiatrist may attempt to communicate risk to family or friends in order to facilitate access to assessment and support. There is no role for widespread public dissemination of this information in this instance, as it is entirely possible to convey risk through private channels, with legal structures in place to ensure ongoing care where individuals are seriously unwell and are a risk to self and/or others (Kelly, 2018).

Conclusions

Article 40 (6.1.i) of the Irish Constitution highlights that the state guarantees liberty of the right of citizens 'to express freely their convictions and opinions'. It qualifies this by noting that 'organs of

public opinion' such as the media 'shall not be used to undermine public order or morality or the authority of the State' (Government Publications, 2015: 160). Article 19 of the Universal Declaration of Human Rights advocates that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers' (United Nations, 1949: 4). Taking this into account, it would seem that the Goldwater Rule is a historically legitimized form of interference, shackling the participation of psychiatrists in promoting matters of public interest.

If a well-known magazine published a story ahead of the next American presidential election proclaiming that 1,189 psychiatrists deemed a prospective candidate psychologically unfit to hold office, would it gain the same public traction that it did in 1964? Probably not. Would it garner the same reaction from the psychiatric community? Who knows? This is difficult to predict. However, it would appear that the Goldwater Rule's influence is diminishing in light of recent publications and debates (Lee, 2017; Pouncey, 2018). Times have changed, and this is the era of truth, post-truth and 'fake news'. Individuals are increasingly savvy about what information they read, download, listen to, and stream across multimedia platforms, using multivariate sources.

Although the motivation behind the Goldwater Rule has dubious origins, questions of morality and ethics abound. Is it ethical to comment publicly about the presumed mental health of a public figure or to openly analyse behaviours of an individual who has not been personally examined? While it may not undermine the morality or authority of the state, it arguably does undermine the ethical underpinnings of psychiatric practice.

Methods are in place for privately exploring matters concerning the public interest that arise within the context of observed public behaviour. In cognizance of this, it does not behove the psychiatrist to break the Goldwater Rule, because issues of safety can be dealt with in the private domain and within a legal framework. In essence, the rule does not prevent the dissemination of psycho-education in the public interest, because this can be provided in general terms. Overall, this rule does not prevent public safety measures from taking place, but it limits clinicians in accessing their own professional, social and personal value systems in order to impart knowledge that could potentially be in the public interest.

If psychiatry is the prism through which compassion, wisdom and understanding are refracted into meaningful components professionally, it behoves psychiatrists to fully embrace ethical discourse, in its entirety. Ethical practice can be maintained without rigid adherence to the Goldwater Rule. Instead, all public discourse should be undertaken with due diligence, respect and consideration, with a view towards balancing risk to prevent any harmful implications when it comes to public health. It behoves psychiatrists to act in accordance with ethics of integrity and confidentiality at all times, with the best interests of the individual and of society in mind. This does not change if the Goldwater Rule no longer exists in its current incarnation.

The Goldwater Rule is flawed. It is an anachronism, a bastion of a bygone era where censorship and status ruled. That is not to say that the Goldwater Rule is completely atavistic however. Its importance in promoting an ethical framework for thoughtful and sensitive practice and for preventing harm to others has not evaporated. But the interface of communication, data gathering, patient consultation and information distribution is changing. Information sharing is at an all-time high. Psychiatric diagnostic practices are evolving too. Psychiatrists could add so much more to the debate about the intersectionality between health and illness in the public domain, while remaining sensitive to the needs of individuals in the public realm (Kroll and Pouncey, 2016). It is time for the Goldwater Rule to evolve and revise its recommendations to afford clinicians the possibility of moving towards a more progressive approach to psychiatric practice.

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ORCID iD

Aoibheann McLoughlin  <https://orcid.org/0000-0002-4041-481X>

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1. Goldwater v. Ginzburg. United States Court of Appeals Second Circuit. Argued April 15, 1969. Decided July 18, 1969. 496–499, Dockets 32804–32807. 414 F. 2d 324, 1969; accessed (25 Sept. 2021) at: <https://law.resource.org/pub/us/case/reporter/F2/414/414.F2d.324.496-499.32804-32807.html>

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