

People v Kevorkian

The Right to Die

447 Mich 436 (1994)

In 1994, the Michigan Supreme Court made a significant contribution to the late-twentieth-century debate over the “right to die” and the right to physician assistance in exercising it. That year, the Court upheld a Michigan statute that outlawed assisted suicide, denying that either Michigan or the United States guaranteed a right to end one’s life. The principal leader of the physician-assisted-suicide movement, Jack Kevorkian, defeated in his effort to assert death as a constitutional right, was ultimately convicted of murder and imprisoned.

No other case in the Michigan Supreme Court’s history was so much the result of one man’s devotion to a social cause. Jack Kevorkian was born in Pontiac, Michigan, in 1928. His parents were Armenians who had escaped the Ottoman Turks’ attempt to annihilate that people during World War I. He attended the University of Michigan Medical School, where he specialized in pathology—the study of corpses to determine the cause of death.

As a medical resident in 1956, he published a detailed study of the eyes of patients as they neared death, which earned him the nickname “Dr. Death” among his fellow residents.¹ He became interested in the use of condemned criminals for medical experiments, having discovered that the ancient Greeks and thirteenth-century Armenians had undertaken such operations. He hoped that the organs of condemned criminals could be harvested for transplanting. Some observers drew parallels between Kevorkian’s approach and that of the Nazi physicians of the Holocaust, but Kevorkian maintained that his efforts were to relieve suffering rather than to cause it. He contended that what he saw as this misunderstanding, combined with old-fashioned sentimentality or religious scruples, would deprive humanity of the benefits of his experiments. Besides, he said, Holocaust victims “didn’t suffer as much” as his Armenian ancestors. University of Michigan officials were embarrassed by Kevorkian’s activities and persuaded him to quit his residency there in 1958.

He moved to Pontiac General Hospital, where he began experimenting with transferring blood from cadavers to live patients. In 1970, he became the chief pathologist at Saratoga General Hospital in Detroit. His extracurricular activities also indicated a fascination with death; in an adult-education art class, he produced “striking, gruesome surrealistic visions full of skulls and body



Dr. Kevorkian poses with his “suicide machine” in February 1991.

parts and cannibalism and harsh religious parody,” and he used human blood in his paint mixtures.²

In the 1970s, he gave up his pathology career and invested all his savings in a motion picture based on Handel’s *Messiah*. He produced the film, but could find no distributor for it; this bankrupted him. He then embarked on a new career as a “death counselor.” “His new crusade for assisted suicide would be an outgrowth of his lifelong campaign for medical experiments on the dying,” a biographer notes. He praised those Nazi doctors who tried to “get some good out of concentration camp deaths by conducting medical experiments.” He envisioned a system of institutions where people could go to obtain “death on demand,” and called these centers “obitoria.” With this agenda, he was unable to secure any medical position. In 1988, he went so far as to ask the Oakland County prosecutor if such institutions would be legal; he got no response. Kevorkian then assembled a machine by which a patient could inject himself with a series of anesthetic and lethal drugs, and called the device the “Thanatron” (death-machine). In June 1990, he made the Thanatron available to Janet Adkins, a 54-year-old woman suffering from Alzheimer’s disease, who sought to end her life.³

Was Kevorkian’s act illegal? Michigan had no statute regarding assisting a suicide. Under common law generally, a person could be tried for aiding and abetting murder if he counseled someone to commit suicide,⁴ but the Michigan common-law precedents were

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not clear. In 1920, the state Supreme Court upheld the conviction of Frank Roberts, who had helped his wife to commit suicide⁵ (*People v Roberts*, 211 Mich 187 (1920)). But the Court also denied review of a Court of Appeals decision in 1983 that held that incitement to suicide was not murder (*People v Campbell*, 124 Mich App 333 (1983), app den, 418 Mich 905 (1984)). Shortly after Janet Adkins' death, an Oakland Circuit Court judge issued an injunction ordering Kevorkian to stop assisting suicides. At the same time, the county prosecutor charged him with murder. Kevorkian retained the flamboyant and iconoclastic plaintiff's attorney, Geoffrey Fieger, to defend him. The criminal charges were dismissed, with the judge ruling that assisting suicide was not a crime in Michigan. The following year, Kevorkian used the death-machine (which Fieger had persuaded him to rename the "mercitron") in another suicide, and also provided a carbon monoxide mask for another patient. The state medical board then revoked his license.⁶

The controversy over assisted suicide was one element in the late twentieth-century "culture war" between one strand of thought claiming the mantle of progressivism and orthodoxy.⁷ Kevorkian and Fieger believed that they were advancing science and enlightenment, rationalism against the backward and benighted forces of religious obscurantism, bigotry, and superstition. Kevorkian claimed that his prosecution was "a perfect manifestation of the existence of the Inquisition in this state, no different from the medieval one." He told a court that he regarded assisted suicide as "the first concrete step in a long-range plan that I have envisioned long ago...toward true enlightenment, in which we can develop a rational policy of planned death for the entire civilized world," and complained that he was being thwarted by a "Dark Age mentality born of a taboo." Fieger frequently denounced his opponents as religious fanatics, and claimed that Kevorkian's prosecution was "a civil rights matter on the scale of the Scopes trial," in which he faced judges who were attempting to "enforce morality."⁸ Kevorkian's opponents saw his campaign, like abortion and euthanasia, as a further step toward what Pope John Paul II called an atheistic "culture of death."

The Oakland County prosecutor again failed to win a murder case against Kevorkian in 1992, and he began to assist more suicides and acquire a national reputation. Near the end of the year, the state legislature acted. It passed a Janus-faced law that established a Commission on Death and Dying to study the issue of assisted suicide, and at the same time made assisted suicide a felony beginning at the end of March 1993, not until six months after the commission issued its report. In the weeks before the law took effect, Kevorkian assisted in seven more suicides, as many as he had conducted in the previous two and a half years. The legislature then enacted an assisted-suicide ban that would take effect immediately, on February 25. Kevorkian nevertheless continued to assist suicides, but was acquitted at every trial. Several circuit court judges held that assisted suicide was a constitutional right. In 1994, the Court of Appeals overturned the statute outlawing assisted suicide—not because there was a constitutional right to assisted suicide, but on the grounds that it violated the provision in the State Constitution (article IV, section 24) that "no law shall embrace more than one object." The statute at once established a commission to study assisted suicide, and, at the

same time, held that Kevorkian could be charged with common-law murder in these assisted suicide cases.

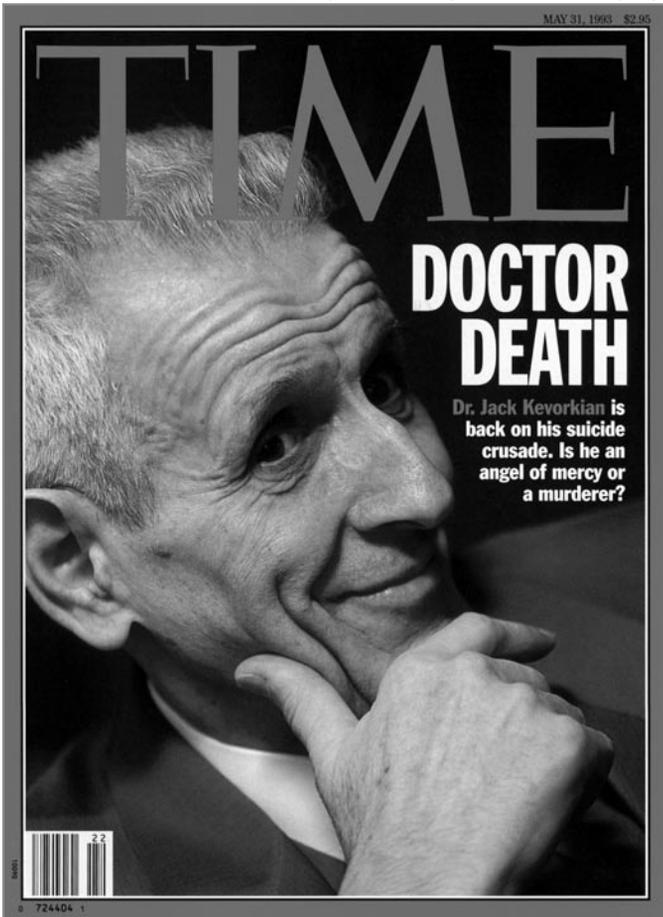
A majority of the Michigan Supreme Court upheld the legislature's assisted-suicide act. It held that the act was not constitutionally defective for having more than one object, and denied that the Fourteenth Amendment included a constitutional right to die. But the Court updated the common-law definition of murder and held that assisting suicide was not the same as murder. At least four justices agreed to these basic holdings, though several entered separate concurring and dissenting opinions.

None of the justices accepted the claim that the assisted-suicide statute violated the one-object provision of the Michigan Constitution. Outlawing assisted suicide while establishing a commission to study the issue "reflected permissible joining of statutory provisions." "There is virtually no statute that could not be subdivided and enacted as several bills," the Court noted.⁹ More serious was the charge that the act limited a Fourteenth Amendment right to suicide, which several of the circuit courts had recognized. Kevorkian's advocates emphasized that a constitutional right to die could be inferred from the United States Supreme Court's abortion decisions. Most recently, the Court had reaffirmed the right to abortion in the 1992 case, *Planned Parenthood v Casey*. In that decision, the Court claimed that, "At the heart of liberty is the right to define one's own concept of existence, of the universe, and of the mystery of human life."¹⁰ Read broadly, this definition of Fourteenth Amendment liberty would trump nearly any governmental restriction on individual choice. In addition, Kevorkian claimed that the United States Supreme Court had ruled that patients or their representatives could refuse or discontinue life-sustaining medical measures.¹¹ But the Michigan Supreme Court majority rejected these arguments. It maintained that there was a distinction between the right to refuse life-continuing treatment and the right to insist on life-ending treatment. Here it drew upon the law's distinction between misfeasance and nonfeasance. It also held that there was no history or tradition supporting a right to die. Most states prohibited suicide by statute or common law, provided for involuntary commitment for the suicidal, and permitted the use of non-deadly force to prevent suicide. "The right to commit suicide is neither implicit in the concept of ordered liberty nor deeply rooted in this nation's history and tradition," it concluded. "It would be an impermissibly radical departure from existing tradition, and from the principles that underlie that tradition, to declare that there is such a fundamental right protected by" the Fourteenth Amendment.¹²

At the same time, the Court held that Kevorkian's actions in assisting suicides could no longer be treated as murder under the 1920 *Roberts* precedent. "Few jurisdictions, if any, have retained the early common-law view that assisting in a suicide is murder,"

After serving eight years, Jack Kevorkian was released from the Lakeland Correctional Facility on June 1, 2007. On March 12, 2008, he announced his plans to run for congress in Michigan's 9th Congressional District. He ran as an Independent against incumbent Joe Knollenberg and Gary Peters, a professor at Central Michigan University.

Photo by Steve Liss/Time Magazine/Time Life Pictures/Getty Images



Time cover May 31, 1993, "Doctor Death" Dr. Jack Kevorkian.

they noted. Most states—now including Michigan—had enacted statutes that made assisted suicide a lesser crime. Since 1920, "interpretation of causation in criminal cases has evolved in Michigan to require a closer nexus between an act and a death." They concluded, "Only where there is probable cause to believe that death was the direct and natural result of a defendant's act can the defendant be properly bound over on a charge of murder."¹³ On this point Justice Boyle dissented, believing that the majority had excessively weakened the moral culpability in assisted suicide. The Court's alteration of the common law of murder "effectively converts every criminal homicide accomplished by participation into assisted suicide." She claimed that the majority "sends the message that it assess the quality of particular life and judges as a matter of law that it is less culpable to destroy some lives than others."¹⁴ On the other side, Justices Levin and Mallett believed that there was a Fourteenth Amendment liberty interest in suicide, at least for a "competent, terminally ill person facing imminent, agonizing death."¹⁵ Levin and Mallett opined that Michigan could not legally prohibit assisted suicide for such individuals.



Dr. Jack Kevorkian, shown here in a 2005 mug shot, was released from prison on June 1, 2007.

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In the following years, the legal debate over assisted suicide continued. Some federal courts struck down state laws against assisted suicide on constitutional grounds; others upheld them. The United States Supreme Court finally declared in 1997 that there was no constitutional right to die and affirmed that states could outlaw assisting suicide. Kevorkian continued to assist in suicides, participating in a hundred of them by 1998. In 1995, Kevorkian opened a "suicide clinic" in Springfield, Michigan. He was prosecuted for several assisted suicides, but acquitted in three trials in 1996. The following year, prosecutors dropped a case after a mistrial. Michigan juries continued to acquit him, until finally, in 1998, when he videotaped himself administering a lethal injection to Thomas Youk. The tape was broadcast on the television news program *60 Minutes*. With this evidence, Kevorkian, who had fired Fieger and now conducted his own defense, was convicted of murder and sentenced to prison for 10 to 25 years. Though Michigan voters had rejected a referendum to permit assisted suicide by a 70-30 percent margin a few months before Kevorkian's trial,¹⁶ the conviction was perhaps more of a reaction to Kevorkian's defiance of the law than a judgment about assisted suicide. "This trial was not about the political or moral correctness of euthanasia," the judge told Kevorkian at sentencing. "It was about you, sir. It was about lawlessness. It was about disrespect for a society that exists because of the strength of the legal system. No one, sir, is above the law."¹⁷

In 1998, Oregon enacted the Death with Dignity Act, allowing patients to have physicians prescribe lethal medication, and nearly 300 people have died under the terms of the act. However, no other state followed suit. After serving eight years in prison, Kevorkian was paroled in 2007, promising to assist in no more suicides.¹⁸

FOOTNOTES

1. Betzold, *Appointment with Doctor Death* (Troy, MI: Momentum Books, 1993). Ironically, Kevorkian's birthplace was also the site of the Michigan Supreme Court decision that there was no legal obligation to prevent another person from killing himself (*People v Beardsley*), and he ended up in a state prison in Lapeer, site of the eugenic sterilizations upheld by the court (*Haynes v Lapeer*).
2. *Id.* at 7–18.
3. *Id.* at 24–35.
4. Urofsky, *Lethal Judgments: Assisted Suicide and American Law* (Lawrence: Univ Press of Kan, 2000), p 68.
5. *People v Roberts*, 211 Mich 187; 178 NW 690 (1920).
6. Betzold, *Appointment with Doctor Death*, *supra* at 56–102.
7. Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991).
8. *Kevorkian Vows to Keep Fighting Laws Barring Assisted Suicide*, New York Times, December 18, 1994, p 43; Betzold, *Appointment with Doctor Death*, *supra* at 51, 80–81.
9. *People v Kevorkian*, 447 Mich 436, 457–459; 527 NW2d 714 (1994).
10. *Planned Parenthood v Casey*, 505 US 833, 851; 112 S Ct 2791; 120 L Ed 2d 674 (1992).
11. *Vacco v Quill*, 521 US 793; 117 S Ct 2293; 138 L Ed 2d 834 (1997).
12. *People v Kevorkian*, *supra* at 464, 471, 477, 481.
13. *Id.* at 488, 493.
14. *Id.* at 498, 503.
15. *Id.* at 513.
16. Proposal B, defeated November 3, 1998.
17. Urofsky, *Lethal Judgments*, *supra* at 85.
18. Davey, *Kevorkian Freed After Years in Prison for Assisting Suicide*, New York Times, June 2, 2007, p 8.