

## Kevorkian's Legacy

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Volume 6, numéro 2, 2023

URI : <https://id.erudit.org/iderudit/1101137ar>

DOI : <https://doi.org/10.7202/1101137ar>

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### Éditeur(s)

Programmes de bioéthique, École de santé publique de l'Université de Montréal

### ISSN

2561-4665 (numérique)

[Découvrir la revue](#)

### Citer ce document

Gordon, M. (2023). Kevorkian's Legacy. *Canadian Journal of Bioethics / Revue canadienne de bioéthique*, 6(2), 143–148. <https://doi.org/10.7202/1101137ar>

### Résumé de l'article

L'histoire de l'introduction moderne du suicide assisté en Amérique du Nord suit un parcours tortueux, depuis le rejet total de l'idée jusqu'à sa mise en oeuvre dans de nombreuses juridictions. L'Amérique du Nord n'a pas été un leader dans cette approche des soins de fin de vie, les Pays-Bas et la Belgique ayant joué ce rôle. Après avoir occupé une place criminelle et éthiquement anathème dans la société nord-américaine, elle a été ressuscitée en deux décennies pour devenir une pratique juridiquement et éthiquement acceptable. L'évolution historique du suicide médicalement assisté et de l'assistance médicale à la mort a, à bien des égards, imité l'évolution d'autres changements majeurs dans la vision du monde de l'homme et, à l'instar du suicide assisté, a fait l'objet d'un rejet quasi universel, avant d'être finalement adopté par les personnes et les institutions qui avaient initialement rejeté les idées exprimées pour la première fois par des personnes réfléchies et héroïques. Galileo Galilei était l'une des icônes de la science et de la découverte : il a failli être brûlé sur le bûcher pendant l'Inquisition avant d'être « ressuscité » et de retrouver sa place au panthéon des grands penseurs – mais il lui a fallu près de quatre cents ans pour atteindre ce sommet. Nous devons faire très attention à la manière dont nous interprétons les nouvelles idées et pensées, ainsi qu'au processus et aux conséquences que nous appliquons en cas de rejet.

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TÉMOIGNAGE / PERSPECTIVE

## Kevorkian's Legacy

Michael Gordon<sup>a,b</sup>

### Résumé

L'histoire de l'introduction moderne du suicide assisté en Amérique du Nord suit un parcours tortueux, depuis le rejet total de l'idée jusqu'à sa mise en œuvre dans de nombreuses juridictions. L'Amérique du Nord n'a pas été un leader dans cette approche des soins de fin de vie, les Pays-Bas et la Belgique ayant joué ce rôle. Après avoir occupé une place criminelle et éthiquement anathème dans la société nord-américaine, elle a été ressuscitée en deux décennies pour devenir une pratique juridiquement et éthiquement acceptable. L'évolution historique du suicide médicalement assisté et de l'assistance médicale à la mort a, à bien des égards, imité l'évolution d'autres changements majeurs dans la vision du monde de l'homme et, à l'instar du suicide assisté, a fait l'objet d'un rejet quasi universel, avant d'être finalement adopté par les personnes et les institutions qui avaient initialement rejeté les idées exprimées pour la première fois par des personnes réfléchies et héroïques. Galileo Galilei était l'une des icônes de la science et de la découverte : il a failli être brûlé sur le bûcher pendant l'Inquisition avant d'être « ressuscité » et de retrouver sa place au panthéon des grands penseurs – mais il lui a fallu près de quatre cents ans pour atteindre ce sommet. Nous devons faire très attention à la manière dont nous interprétons les nouvelles idées et pensées, ainsi qu'au processus et aux conséquences que nous appliquons en cas de rejet.

### Mots-clés

éthique, Kevorkian, AMM, euthanasie, Galileo

### Abstract

This history of the modern introduction of assisted suicide in North America follow a tortuous course, with complete rejection of the idea, to implementation in many of its jurisdictions. North America was not a leader in this approach to end-of-life care, with the Netherlands and Belgium playing that role. Tracing the path from a felonious and ethically anathematic place in North American society it was resurrected into a legally and ethically acceptable practice over a period of two decades. The historical course of PAS (Physician Assisted Suicide) and MAID (Medical Assistance in Dying) in many ways mimicked the evolution of other major changes in our view of the world, and like assisted suicide, experienced almost universal rejection and ultimately the embrace of those people and institutions that initially rejected the ideas first expressed by thoughtful and heroic persons. Galileo Galilei was one of the icons of science and discovery: he was almost burned at the stake during the Inquisition only to be “resurrected” to his place in the pantheon of great thinkers – but it took almost four hundred years to reach that pinnacle. We must be very careful how we interpret new ideas and thoughts about the process we apply and the consequences if we reject them.

### Keywords

ethics, Kevorkian, MAID, euthanasia, Galileo

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I remember the news reports; I was not quite sixty-years old. I had already completed my MSc in medical ethics and was a practicing academic geriatric specialist. I had some superficial interest in PAS (Physician Assisted Suicide) from papers I had read from the Netherlands. I had seen patients both old and young who I thought in the back of my mind, “why can't we do something to help them die”, acknowledging that it was illegal in North America.

As quoted by Margaret P. Battin in *Physician-assisted Dying and the Slippery Slope: The Challenge of Empirical Evidence*, in the November 2011 *Willamette Law Review*, quoting a statement from Canadian Medical Association, 1998 (1):

Euthanasia and assisted suicide are opposed by almost every national medical association and prohibited by the law codes of almost all countries... If euthanasia or assisted suicide or both are permitted for competent, suffering, terminally ill patients, there may be legal challenges... to extend these practices to others who are not competent, suffering or terminally ill. Such extension is the “slippery slope” that many fear.

This was the year before I read the following 1999 summary article from the *British Medical Journal*, which merits sharing again (2).

A Michigan jury last month found Dr Jack Kevorkian guilty of second degree murder in the death of Thomas Youk, a 52-year-old resident of Detroit who had amyotrophic lateral sclerosis. Dr. Kevorkian made a videotape of himself injecting Mr. Youk, who was paralysed, with lethal chemicals last September. The tape was broadcast in November by the CBS News programme *60 Minutes*. (3)

At his trial, Dr. Kevorkian failed to convince the judge that his proposed witnesses, Mr. Youk's wife and brother, were relevant to the defense. Aside from the videotape, which showed how much Mr. Youk was suffering while he was alive, no testimony was presented about Mr. Youk's condition and his apparent desire to end his life.

Because Dr. Kevorkian was charged with murder, Judge Jessica Cooper instructed the jury that the issue of whether Mr. Youk consented to his death was irrelevant.

This was the fifth time in a decade that prosecutors had tried Dr. Kevorkian in the death of a seriously ill person. Three trials ended in acquittal and a fourth ended in a mistrial. In all the previous cases, Dr. Kevorkian had violated laws against assisted suicide by helping patients give themselves a fatal injection through a so-called suicide machine (Figure 1)

**Figure 1: Dr. Jack Kevorkian showed reporters his "suicide machine"**



Credit: Associated Press (3)

In Mr. Youk's case, Dr. Kevorkian administered the fatal injection himself. Reaction to the verdict, and to the minimum sentence of 10 to 25 years in prison that Dr. Kevorkian faces, was mixed.

The Hemlock Society, chief proponent of doctor assisted suicide said, "This verdict is not about Dr. Kevorkian and the videotape. This verdict is about the contempt that the government has for people like Thomas Youk and other patients who are suffering painful deaths every day."

"This verdict is about the government's refusal to give dying patients and their families' reasonable choices at the end of life." (2)

At that time, medical assistance in dying already existed in the Netherlands following the well-known Postma case in 1973. It took almost thirty years for the practice to become legalised even though euthanasia was conducted without punishment until that time as long as the guidelines were followed; it became legalized in 2002 under strict conditions (4).

According to a report in the New England Journal of Medicine (5)

Since the notification procedure was introduced, end-of-life decision making in the Netherlands has changed only slightly, in an anticipated direction. Close monitoring of such decisions is possible, and we found no signs of an unacceptable increase in the number of decisions or of less careful decision making.

This finding was years before Kevorkian's euthanizing Mr. Youk in 1998, which provoked his first trial.

However, nine disability rights organisations in the United States have opposed the legalisation of assisted suicide and euthanasia. Diane Coleman, president of Not Dead Yet, a leading grassroots disability rights group, said that the euthanasia movement was “very threatening to a disabled person,” and she hoped that Michigan’s ban on assisted suicide would be maintained.

Dr Nancy W Dickey, president of the American Medical Association (AMA) said, “Patients in America can be relieved that the guilty verdict against Dr Jack Kevorkian helps protect them from those who would take their lives prematurely.”

“The AMA remains committed to assuring patients’ dignity, adequate relief of pain, and palliation of other symptoms during their final days. The AMA has long been a proponent of compassionate, quality care for dying patients. We will continue our efforts to teach physicians everything they should know about providing proper end of life care.” (2)

Years later, after Kevorkian’s death, relevant excerpts from an article published in *The American Journal of Bioethics*, in 2011 (6), included the following statements:

(He died), but not by his own hand or through physician-assisted suicide. Known as the physician who helped dozens of people end their lives and, in one case, committed active euthanasia. He was eighty-three years old and had been suffering from complications of hepatitis, cardiovascular disease, hypertension, and lung disorders. Kevorkian’s enduring fame came from a crusade he undertook with a vengeance, helping people die, people who had terminal illnesses or debilitating disorders like Alzheimer disease and Lou Gehrig’s disease. By his own count he helped more than 130 people die. The state of Michigan convicted Kevorkian of second-degree murder in 1999, for directly injecting lethal substances into Mr. Youk.

Most bioethicists shunned the man who treated his ideas like certainties engraved in moral stone. Most bioethicists believe that broad discussion is necessary to introduce far-reaching changes and want deliberated choice, especially in morally fraught matters, but Kevorkian was better at monologue than dialogue. Virtually without exception, the medical profession has rejected Kevorkian’s unilateral call for the creation of the specialty of “obitiatry,” a medical discipline focused on his proposals regarding experimentation and death.

Bioethics does not always get to pick the pioneers who pave the way in medical and legal change.

Unpolished and confrontational, Jack Kevorkian styled himself as an outsider as he campaigned to make better medical use of bodies before people died and after they died. ‘Dr. Death’ certainly made a dent in the view that no physician anywhere should ever help a patient die. When the Supreme Court handed down two decisions regarding physician-assisted suicide in 1997, the retired pathologist in Michigan was only at the margins of the discussion (*Vacco v. Quill* 1997; *Washington v. Glucksberg* 1997). Later on, the Supreme Court also declined to review his conviction. For all his bravado, Kevorkian ended up largely irrelevant to the legalization of physician-assisted suicide where that has occurred (6).

As kidney disease progressed toward the end of his life, Kevorkian indicated that he regretted his actions. The lawyer explained: “He did what he did, and it brought [physician-assisted suicide] to public awareness. ... He now realizes that having performed it when it was against the law, wasn’t the, probably, appropriate way to go about it. ... What he should have done was work towards its legalization verbally.” (7)

Thirteen years later, in 2023, with PAS legalized in many states in the United States, MAID in Canada, and various forms of PAS and MAID in most countries in the western world, one might look at Kevorkian, whatever his motives or his flawed personality, as a tireless advocate for a humane way for those experiencing irremediable pain and suffering who no longer have to pass through the jaws of modern medical technology to die (8,9).

Kevorkian was obviously not the first pioneer of medicine and science, whether visionaries or stubborn egoists whose initiatives eventually became part of the fabric of the societies in which they lived. In his book *Galileo*, James Reston Jr. (10) recounts how Galileo was many centuries ahead of his time regarding his astronomical discoveries and writings, and which led him to almost be burned at the stake during the Inquisition. Extracts from Wikipedia, also documented in Reston’s book, show how Galileo defended *heliocentrism* based on his astronomical observations of 1609, i.e., placing the sun rather than the earth at the centre of the solar system (11).

By 1615, Galileo's writings on *heliocentrism* had been submitted to the [Roman Inquisition](#) by Father [Niccolò Lorini](#), who claimed that Galileo and his followers were attempting to reinterpret the Bible, which was seen as a violation of the [Council of Trent](#) and looked dangerously like [Protestantism](#). In February 1616, an Inquisitorial commission declared *heliocentrism* to be "foolish and absurd in philosophy, and formally heretical since it explicitly contradicts in many places the sense of Holy Scripture". The Inquisition found that the idea of the Earth's movement "receives the same judgement in philosophy and ... in regard to theological truth it is at least erroneous in faith". [Pope Paul V](#) instructed Cardinal Bellarmine to deliver this finding to Galileo, and to order him to abandon *heliocentrism*." (11)

For the next decade, Galileo stayed well away from the controversy. He revived his project of writing a book on the subject... Galileo's resulting book, *Dialogue Concerning the Two Chief World Systems*, was published in 1632.

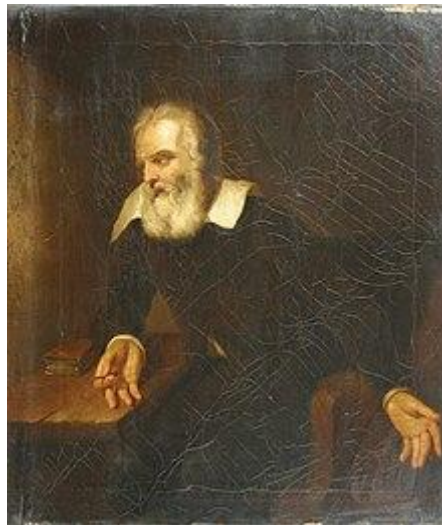
Being avant garde can be dangerous, especially when it brings into question widely accepted and deeply believed norms and world views – and this led to Galileo's interrogation by the Inquisition.

His final interrogation, in July 1633, concluded with his being threatened with torture if he did not tell the truth, but he maintained his denial despite the threat (12).

The sentence of the Inquisition was delivered ... in three essential parts:

- Galileo was found "vehemently suspect of heresy" (though he was never formally charged with heresy, relieving him of facing corporal punishment), namely of having held the opinions that the Sun lies motionless at the centre of the universe, that the Earth is not at its centre and moves, and that one may hold and defend an opinion as probable after it has been declared contrary to Holy Scripture. He was required to "[abjure](#), curse and detest" those opinions.
- He was sentenced to formal imprisonment at the pleasure of the Inquisition. On the following day, this was commuted to house arrest, under which he remained for the rest of his life.
- His offending *Dialogue* was banned; and in an action not announced at the trial, publication of any of his works was forbidden, including any he might write in the future (12).

**Figure 2: Portrait of Galileo gazing at the words "E pur si muove"**



Source: [And yet it moves](#), Wikipedia

But while being forced to officially renounce his work, and then isolated, Galileo nonetheless continued to advance his studies.

According to popular legend, after recanting his theory that the Earth moved around the Sun, Galileo allegedly muttered the rebellious phrase "[And yet it moves](#)"... Galileo was allowed to return to his villa at [Arcetri](#) near Florence in 1634, where he spent part of his life under house arrest (13).

It was while Galileo was under house arrest that he dedicated his time to one of his finest works, [Two New Sciences...](#) this book was highly praised by Albert Einstein. As a result of this work, Galileo is often called the "father of modern physics" (14).



Figure 3: Statue outside the Uffizi, Florence



Source: [Galileo Galilei](#), Wikipedia

Of the many lessons that can be learned from the history of Kevorkian and Galileo is that new ideas might be shunned by the authorities and “experts” in a given field of study, only to be shown to be valid years or even decades later – or as in the case of Galileo, centuries after the first reporting. Even with the rigor of so-called *Evidence-based medicine* (EBM), very strict recommendations that affect millions of lives might be proven erroneous years after the initial studies on which the recommendations are made. The case of Hormone Replacement Therapy (HRT) is a case in point. More than twenty-years after the almost total prohibition of its use, it is now evident that the results of the study resulted in substantial harm to many hundreds of thousands of women world-wide (15). The current anti-vaccination movement is an historical continuum of strong negative views about vaccines even as scientific evidence has proven their value over a number of centuries (16).

After so many years, many of those who support the concept and implementation of MAID and PAS probably don't know the name of Kevorkian. For those who are older, some may continue to think of him as “Dr. Death”, rather than the pioneer that he was, with all the attendant human and social complexity that this involved (8).

**Reçu/Received:** 21/02/2023

**Conflits d'intérêts**  
Aucun à déclarer

**Publié/Published:** 27/06/2023

**Conflicts of Interest**  
None to declare

**Édition/Editors:** Hazar Haidar & Aliya Afddal

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