

Invited Commentary: SLEEP: A HUMAN RIGHTS ISSUE

Sleep: A Human Rights Issue  
[Invited Commentary for *Sleep Health*]

Clark J. Lee, JD, MPH, CPH

*Center for Health and Homeland Security  
University of Maryland, Baltimore*

*Center for Health Outcomes Research  
University of Maryland, Baltimore*

*Department of Behavioral and Community Health  
School of Public Health  
University of Maryland, College Park*

Correspondence Address:

Center for Health and Homeland Security  
University of Maryland, Baltimore  
500 West Baltimore Street  
Baltimore, Maryland 21201  
U.S.A.

Telephone: +1 (410) 706-1014  
E-Mail: [clee@law.umaryland.edu](mailto:clee@law.umaryland.edu)

REVISED DRAFT (*Updated: 14 December 2015*)

The final published version of this article is available online at  
<http://dx.doi.org/10.1016/j.sleh.2015.12.007>  
[https://www.sleephealthjournal.org/article/S2352-7218\(15\)00195-3/fulltext](https://www.sleephealthjournal.org/article/S2352-7218(15)00195-3/fulltext)

## Sleep: A Human Rights Issue

1  
2 In October 2009, a group of homeless individuals (the Plaintiffs) sued the U.S. city of  
3 Boise, Idaho, its police department, and its police chief in federal court to challenge Boise's  
4 enforcement of certain city ordinances prohibiting camping and sleeping in public outdoor places  
5 on nights when there was insufficient shelter space to accommodate the city's homeless  
6 population.<sup>1</sup> The lawsuit alleged that Boise's enforcement of these ordinances on such nights  
7 effectively criminalized the Plaintiffs' status of being homeless and therefore amounted to cruel  
8 and unusual punishment<sup>1(p20)</sup> — a violation of the Eighth Amendment to the U.S. Constitution.<sup>2</sup>  
9 Citing the U.S. Government's interest in protecting individuals against "unconstitutional and  
10 abusive policing" and in "ensuring that justice is applied fairly, regardless of wealth or status,"  
11 the United States Department of Justice filed a Statement of Interest on behalf of the U.S.  
12 Government in this lawsuit on August 6, 2015.<sup>3</sup> In its Statement of Interest, the U.S.  
13 Government urged the Court to rule in favor of the Plaintiffs on their Eighth Amendment claim.  
14 More specifically, the U.S. Government argued:

15 When adequate shelter space exists, individuals have a choice about whether or  
16 not to sleep in public. However, when adequate shelter space does not exist, there  
17 is no meaningful distinction between the status of being homeless and the conduct  
18 of sleeping in public. Sleeping is a life-sustaining activity — *i.e.*, it must occur at  
19 some time in some place. If a person literally has nowhere else to go, then  
20 enforcement of the anti-camping ordinance against that person criminalizes her  
21 for being homeless.<sup>3(p12)</sup>  
22

23 The U.S. Government thus argued that because sleeping is a "universal and unavoidable  
24 consequence[] of being human"<sup>4</sup> that is "necessary for human survival," penalizing homeless  
25 individuals for sleeping in public when they cannot access shelter space constitutes cruel and  
26 unusual punishment.<sup>3(p12)</sup>

27           Although the lawsuit was ultimately dismissed on procedural grounds in September  
28 2015,<sup>5</sup> the U.S. Government’s Statement of Interest raised some issues of relevance to the sleep  
29 health community. Legally speaking, the U.S. Government’s position in the Boise case was a  
30 narrow one in that it was limited to the context of enforcing certain local ordinances against  
31 homeless individuals who could not find overnight shelter. It is a stretch to conclude from this  
32 position that the U.S. Government believes that sleep is a legal right in the U.S. On the other  
33 hand, by characterizing sleep as a “life-sustaining activity” and a “universal and unavoidable  
34 consequence of being human,” the U.S. Government acknowledges the essential role of sleep in  
35 human health and well-being and, therefore, arguably recognizes access to sleep as a basic  
36 human right.

37           The concept of “human rights” refers to fundamental freedoms, immunities, and benefits  
38 that, according to modern international values, all human beings should be able to claim as a  
39 matter of right in the society in which they live.<sup>6</sup> Whereas legal rights are created and enforced  
40 by legal systems, human rights are inherent to all human beings.<sup>7,8</sup> In theory, human rights can  
41 be protected, enforced, and even violated by law, but they cannot be extinguished by law: basic  
42 human rights continue to exist even when laws violating them exist.<sup>7</sup> Thus, for example, a law  
43 authorizing the torture of criminal suspects violates a suspect’s basic human right to be free from  
44 torture and other cruel, inhumane, or degrading treatment, but it in theory does not take away the  
45 suspect’s right to claim this basic human right.

46           Several internationally-recognized basic human rights are enumerated in the Universal  
47 Declaration of Human Rights, including the aforementioned right to be free from torture (Article  
48 5), the “right to life” (Article 3), and the “right to a standard of living adequate for the health and  
49 well-being of [oneself]” (Article 25).<sup>7</sup> Furthermore, the preamble to the Constitution of the

50 World Health Organization asserts that “[t]he enjoyment of the highest attainable standard of  
51 health is one of the fundamental rights of every human being without distinction of race,  
52 religion, political belief, economic or social condition.”<sup>9</sup> Thus, health and well-being are  
53 recognized internationally as human rights issues.

54 Arguments recognizing sleep as a human rights issue due to its essential role in  
55 maintaining human health have been raised previously in non-U.S. legal contexts. For example,  
56 in 2012, the Supreme Court of India explicitly recognized sleep as a basic human right and a  
57 legal right in a case arising out of a night-time police raid on an encampment of sleeping  
58 protestors.<sup>10,11</sup> In his concurring judgment, Justice Chauhan wrote:

59 38. An individual is entitled to sleep as comfortably and as freely as he  
60 breathes. Sleep is essential for a human being to maintain the delicate balance  
61 of health necessary for its very existence and survival. Sleep is, therefore, a  
62 fundamental and basic requirement without which the existence of life itself  
63 would be in peril. To disturb sleep, therefore, would amount to torture which  
64 is now accepted as a violation of human right.<sup>10(p1151)</sup>  
65

66 Justice Chauhan also asserted that “the concept of sound sleep has been associated with sound  
67 health,” which is an “inseparable facet” of the right to life protected under the Indian  
68 Constitution.<sup>10(p1145),12</sup>

69 Recognition of sleep as a human rights issue by governmental and legal entities (as  
70 illustrated respectively in the Boise and the Indian cases) raises the profile of sleep health as a  
71 societal concern. Although these cases may not lead to immediate public policy changes, their  
72 recognition of sleep as a human rights issue infuses the public discourse about the importance of  
73 sleep health with loftier ideals about what it means to be human. Such recognition also elevates  
74 the work of sleep researchers and practitioners from serving the altruistic purpose of improving  
75 human health at the individual and population levels to serving the higher altruistic purpose of  
76 promoting human rights for all people. These conditions create an environment in which policy

77 change that values individual and population sleep health can occur gradually over time,  
78 particularly in societies with strong democratic traditions.

79         Some readers may dismiss such rhetoric as overly idealistic, hokey, or Pollyannaish. Yet  
80 if one accepts the premise that science, medicine, and public health all aim to improve the human  
81 condition, then one also should be able to understand the acceptability of researchers and  
82 practitioners recognizing the relevance of human rights to their fields of study and practice.  
83 Human rights, after all, are based on ideals aimed at optimizing the human condition for  
84 everyone.

---

### References

<sup>1</sup> Complaint for Injunctive and Declaratory Relief, and Monetary Damages, *Bell v. City of Boise*, No. 1:09-cv-540-REB (D. Idaho Oct. 22, 2009).

<sup>2</sup> U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).

<sup>3</sup> Statement of Interest of the United States, *Bell v. City of Boise*, No. 1:09-cv-540-REB (D. Idaho Aug. 6, 2015).

<sup>4</sup> *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136-37 (9th Cir. 2006), *vacated after settlement*, 505 F.3d 1006 (9th Cir. 2007).

<sup>5</sup> Memorandum Decision and Order, *Martin v. City of Boise*, No. 1:09-cv-00540-REB (D. Idaho Sept. 28, 2015).

<sup>6</sup> *Black’s Law Dictionary*, 7th ed. Saint Paul: West Group; 1999. Human rights; p. 745.

<sup>7</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948).

<sup>8</sup> Office of the United Nations High Commissioner for Human Rights [Internet]. Geneva: OHCHR; c1996-2015. What are human rights?; [date unknown] [cited 2015 Dec 4]. Available from: <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

<sup>9</sup> Constitution of the World Health Organization pmb., 14 U.N.T.S. 185, 186 (1946).

<sup>10</sup> *In re: Ramlila Maidan Incident Dt. 4/5.06.2011 v. Home Sec’y, Union of India*, (2012) 4 S.C.R. 971 (India).

<sup>11</sup> Mahapatra D. Right to sleep a fundamental right, says Supreme Court. *The Times of India* [Internet]. 2012 Feb 25 [cited 2015 Dec 4] Available from: <http://timesofindia.indiatimes.com/india/Right-to-sleep-a-fundamental-right-says-Supreme-Court/articleshow/12025358.cms>.

<sup>12</sup> INDIA CONST. art. 21 (“No person shall be deprived of his life or personal liberty except according to procedure established by law.”).

ACCEPTED MANUSCRIPT