The Intertwined History of Malingering and Brain Injury: An Argument for Structural Competency in Traumatic Brain Injury

Stephen T. Casper

Keywords: Concussion, Traumatic Brain Injury, Malingering, Structural Competency, Stigma

Abstract: Every year millions of people suffer minor brain injuries, many of which occur in collision sports. While there has been substantial commentary and debate about the nature of this public health crisis, it is clear that the scientific and clinical arguments reflect values preferences and judgments that are often invisible in documents which combine artful language with undue focus paid to sources of uncertainty at the cost of clarity and transparency. This essay gives a brief history of these patterns and proposes a remedy.

Introduction

Scholars estimate that every year tens of millions of people globally suffer brain injuries.[1] While substantial research has investigated this silent public health crisis for decades,[2] debates in traumatic brain injury (TBI) research often reflect deeper values, preferences, and judgements which in contexts of uncertainty, and particularly in the area of sport become catalysts for controversies that often result in victim-blaming.[3] The difference historically between the patient with TBI and the malingering patient starts fundamentally with a judgment call by a clinician: either the invisible injury is real and explains the patient's troubles or it does not. That diagnostic and prognostic call has historically been structured by several overarching, implicitly-held and sometimes explicitly practiced practitioner beliefs including whether the injury is the victim's fault.[4] Different populations experience TBI stigma differently and in different ways by different people.[5] These manifest historically in discussions of class, gender, race, sport, and legal and cultural representation.[6]

Alone such matters can present brain injured patients and their caregivers with substantial challenges.[7] TBI patients must manage substantive divisions within therapeutics. Patients encounter practitioners in orthopedic surgery, psychology, psychiatry, physical therapy, occupational therapy, and neurology that themselves navigate profound differences about the importance of structure and function in these injuries, and each specialty dichotomizes differently bodily, mental, and environmental dimensions of

Stephen T. Casper, Ph.D., *is Professor of History at Clarkson University. He discloses that he is retained as an expert witness in medical history in pending concussion litigation brought by plaintiffs worldwide.*

The Journal of Law, Medicine & Ethics, 49 (2021): 365-371. © 2021 The Author(s)
DOI: https://doi.org/10.1017/jme.2021.55

https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press

trauma.[8] Add to this that individual cases have historically often fallen into both medical and legal domains, and it is easy to see that historical and sociological tensions between medicine and law emerge around such patients, with personal sympathies towards putative claimants and defendants resulting in profound differences of clinical experience.[9]

The specter of the malingering patient haunts this altogether messy picture.[10] Concerns about malingering patients have long been productive of stigma in neurology and that history is highly detrimental in clinical care domains and legal contexts.[11] Stigma changes the treatments patients receive. It structures their legitimacy. The existence of widespread, stigmatizing knowledge about individuals who simulate injury encourages self-harming behaviors because normative pressures assert the importance of carrying-on and keeping a stiff upper lip.[12] Stakeholders add to these pressures in ways that place coercive pressures on people to tax themselves unnecessarily or overlook injury. In litigation these matters become exacerbated and cynicism about patient claims can frustrate patient care generally and in the courts result in substantive downplaying of harm that was nonetheless real.

Over the last sixty years these issues have played out in TBI medicine and litigation. Medicine and the law have at once echoed culture currents and simultaneously shaped them, facts that imply the need for structural competency to inform TBI research and diagnosis now.[13] On one hand, the motivations that drove patients in other walks of life to seek help from doctors and redress from lawyers have structured patient encounters, experiences, and legitimacy. On the other hand, research and litigation on sport injuries has flowed back towards non sport injuries and accidents often in ways that have worked to downplay harm.[14] Exploring this historical interplay across these many domains, this paper builds on extensive research in to the history of TBI to show schematically through a few choice examples the remarkable resilience of biases and prejudices that historically shape and shaped and undermine/undermined brain injured patients' life experiences in Britain and America. The result likely led patients into further harm in their efforts to accommodate normative pressures to conform to their normal roles rather than identify with chronic sickness.[15] Normative pressures should be understood in this essay as commonly accepted traditions and behaviors that structure behavior and that are difficult to challenge without critical reflection. In the conclusion, this paper calls for a reflexive turn in TBI research to make these axiological and economic structures radically visible and introduces one remedy.

Normative pressures should be understood in this essay as commonly accepted traditions and behaviors that structure behavior and that are difficult to challenge without critical reflection. In the conclusion, this paper calls for a reflexive turn in TBI research to make these axiological and economic structures radically visible and introduces one remedy.

Representations of Values in Britain and America

The concept of malingering resulted from nineteenth-century social and economic contexts in Britain and America. Suspicions of poverty were high. Relations between employer and employee were changing. Industrial accidents that caused traumatic injuries fell into a grey area of jurisprudence as new workers compensation laws took shape in statutes, torts, and contract negotiations.[16] Lawyers for plaintiffs brought actions in the nineteenth century. Employers resorted to a common defense that emphasized the "contributory negligence of the employee, assumption of risk, and common employment."[17] Was the victim blameless, a question which meant that the plaintiff's character, associations, and legitimacy deserved investigation.[18] Whether the injured patient was a hereditary defective was also considered a legitimate question. Malingering filled these special rabbit holes. As historian Roger Cooter has shown, malingering became a medical and psychological problem during the First World War,[19] yet the malingerer emerged as a category of social existence from the mid-nineteenth century.

Inevitably occupational injuries implied head injuries and brain injuries. TBIs brought immediate incapacities and potentially worrying longer impacts.[20] Nineteenth-century medical publications and public information made this clear from the mid nineteenth-century on. Personal character and contributory negligence were always central issue. How injuries occurred and to whom heightened the importance of

The Journal of Law, Medicine & Ethics, 49 (2021): 365-371. © 2021 The Author(s)
https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press

context decisively.[21] The context mattered for assessing prognosis and claims of permanent disability. Doctors' roles in providing those diagnoses and prognoses implied vast powers. Doctors increasingly made decisions about legitimacy that mattered materially in patients' futures. Insurers, relying upon clinical judgment, appear to have felt themselves besieged by cases of subjective symptoms, fraud, and malingering. Payouts also corresponded often with what cynics called miraculous cures.[22]

Brain injury legitimacy and expertise occurred in contexts with normative class pressures (highly variable across Britain and America and generationally) and economic deployments that changed with industrialization and warfare. Stakeholders' interests in Britain and America were often finely tailored to accord with the letter of the law. In a quite significant sense, concussion in the courts was tantamount to the making of scientific knowledge throughout courtroom dramas, a fact that left an indelible mark on the science and medicine of TBI. While many clinicians and investigators sought to insulate themselves from those deep influences, each judgment that required expertise made concussion science and medicine that much more uncertain.

The Intersections of Traumatic Brain Injury: Class, Gender, and Stigma in the 19th Century

The spectacle of the malingerer evoked significant prejudice against chronic patients, and TBI made these intersections highly visible in the nineteenth century and after. Two instances suffice to illustrate the broad trend in nineteenth century Britain and America. Consider the August 1878 issue of *Pall Mall Gazette*, an evening newspaper published in London, which took up the troubling subject of the malingerer "or simulator of disease." Published under the ominous title "Sketches from Shady Places" the author described unpleasant figures at "common lodging-house," or on the "sick-list" of many a reputable employer, haunted London dens and preyed "on the public." The hospitals were altogether too pleasant, the author remarked. To "the man of soft and indolent disposition," the taste of "hospital life" provided the purest of temptations:

> … the demoralization is intense in proportion to the severity of the habitual labours of the individual. The coal-heaver or a dock-porter always makes a more inveterate malinger than a house-painter or bricklayer. Be his trade however what it may, the new developed malingerer is always hankering after the hospital and always maneuvering to retain his place therein.[23]

The malinger, the author stated, was a beggar, a corpulent fellow likely surviving on the labor "of his daughters — a pair of weak-looking girls, seamstresses", an indolent, and indeed the tendency ran "in the blood" for "hereditary paupers" formed a class in the workhouse populations "all of them inveterate malingers."[24]

> Perhaps the most singular form of malingering — which takes almost every form — is that which puts on the appearance of insanity. I have seen one such instance — that of a soldier charged with a serious offense — who, taking a hint from a comrade, assumed the mask of a lunatic, and wore it so naturally as to escape all the consequences of his misdeed. I have good reason to believe that the same sort of thing is much more frequent than most people would be inclined to suspect. I know that a good many people designedly work for the reputation of being "a little cracked," because it is an admirable excuse for all sorts of follies and most vices. I know, too, that a good many look upon the lunatic asylum as rather a pleasant sort of retreat, whence all care for the morrow is excluded.[25]

The source shows a whole worldview manufactured in an instance. It displays resentments typifying class relations in British and American industrialization, a time when with hindsight it should be recalled that: "Social insurance was unknown. Local poor relief was cruel, sporadic, and pinchpenny. Institutions for the helpless were indescribably filthy and heartless … the whole system was shot through with … an inordinate fear of the spread of idleness and a perverse notion that pauperism generally arose out of the moral failings of the poor."[26] But the argument I am offering is that these representations would be as familiar now as they would become in that period, and that far from being accurate, they signal prejudices that shape structures determining clinical and legal encounters. Laziness, poverty, obesity, sinful licentiousness, mentally illness, and cowardice — all pointed to the conclusion that it was easy to feign sickness for monetary reward.

Women TBI patients experienced these matters in similar ways.[27] Consider this second source. In 1886 a case history in the United States appeared in the *Boston Medical and Surgical Journal*. The source points to the way normative attitudes could result in self-injurious behaviors. The author Arthur H. Nicols recounted how in 1884 a freight train flipped over tracks and tumbling over brought up against this house, knocking a hole in the side-wall of the kitchen where Louisa Russell "was at the time engaged in her ordinary housework."[28] The box car did not destroy

The Journal of Law, Medicine & Ethics, 49 (2021): 365-371. © 2021 The Author(s)

https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press

the house. Nicols noted that Russell had "not been thrown down, rendered unconscious, or even nauseated" which indicated that "the blow received was not of great severity." Indeed "there was no satisfactory evidence to show whether she was in reality struck on the head."

> For the period of about a fortnight after the accident she appears to have been dressed and about the house each day. Though doing no housework, she was able to attend to the adjustment of the award for damage to the house ... It will thus be understood that when at a subsequent date, having in the meantime felt aggrieved at the same sum awarded by the referees on account of damage to the house, she preferred a claim for personal injury, it was not unnatural that her allegation should be viewed by the corporation with suspicion and held to be an after-thought.[29]

Nicols explained that the chief symptom complained of and seen by her personal physician "sixty-five" times was headache. The suspicions of others are certainly noteworthy. Nichols wrote: "The exercise involved in hanging out clothes must be pronounced at least injudicious, if there existed, as it assumed, any lesion of the brain. To interpret, however, this indiscretion as evidence of fraud or exaggeration, would indicate an imperfect knowledge of the eccentricities of the patient."[30] Nicols explained that the case appeared to be "concussion of the brain." The cause of the patient's long term problems was that "the real nature of the trouble was not for a time suspected, and consequently absolute rest, the essential element in the treatment of such lesions, was not enjoined." It would be impossible, Nicols said, "to assume this to be a case of malingering" because "stimulation of organic brain trouble is not admitted as within the range of possibility by any treatise on malingering."[31]

These two cases reflect schematically, as I have shown elsewhere with more detail, a commonplace reality that shaped personal injury law, workplace compensation, insurance claims, and after World War I public policy on psychiatric and psychological injuries suffered during warfare. These coincidently often overlapped with the burden of traumatic brain injury that had left no visible mark on the soldier. The case of Louisa Russell personalizes rather sharply the way that the expectation of the suffering individual was that they would carry-on in their houses but that also the fact of their continued efforts could result in worsening of symptoms and suspicion of exaggeration. Public and private worlds made such distinctions. TBI patients routinely encountered a limiting argument in court that if they had the capacity to argue and advocate for themselves then the conclusion could only be that they were better than they believed. Those unable to advocate for themselves or those seen contributing effort to their households thus confounded the sick role — the expectation that people who are sick will be sick in ways that confirm illness meant the TBI patient with persistent symptoms fit no specific category of invalidism.

The Intersections of Traumatic Brain Injury: Gender, Sport and Stigma in the 20th Century

Sport plays a peculiar role in the history of TBI and stigma, because the frequency of presumed mild brain injuries shapes these constructs but the dangers of sports are equally worsened by normative assumptions about the ability of people, mainly men, to take punishment with their bodies. These facts are seen clearly in the entangled history of TBI and sport in twentieth century Britain and America. As Bachynski has beautifully noted in her study of boys and American football, the pressures to discipline the body to survive and play through its pain is packaged by domestic understandings about gender roles in American society in which boys are meant to differentiate themselves from girls through pain and militaristic pageantry.[32] The same pressures existed in Britain during the period of Bachynski's analysis in rugby and soccer, but they have a longer history, dating from the nineteenth century when the absence of fathers off on colonial pursuits demarcated that sports would teach boys to be men.[33]

Collision sports proved remarkably adept for heightening the ability for people to deny the consequences of injuries they deemed minor. A degree of manly apathy and chumminess in collision sports about these injuries inculcated in sports playing men stoicism and reticence about the seriousness of the injuries, and as these young men came of professional age, it seems likely that more than a few viewed similar injuries suffered in other contexts with similar apathy and bravado. In other words, reticence about injury created a culture in which playing through pain in sport taught stoicism about injury wherever and however it occurred.

Two chapters in a 1969 volume entitled *The Late Effects of Head Injury b*rings these matters into the open.[34] One study by John B. Cook explored the effects of minor head injury sustained in sports resulting in postconcussion syndrome, a collection of persistent, often debilitating, symptoms following longer after a head injury than would normally be expected. Cook reported that something akin to postconcussion symptoms were seen in head injured sports players

The Journal of Law, Medicine & Ethics, 49 (2021): 365-371. © 2021 The Author(s)

https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press

but noted that they were "shortlived" and "absence from work is only occasional and is not prolonged." Cook's conclusion from this study was that it implied that hospitalization of non-sports cases could result in poor recovery and lead to an unshakeable conviction of unfitness for work. He concluded: "The postconcussional syndrome with its stereotyped and persistent symptoms relates neither to concussion or brain injury, nor possibly even to the frightening aspect of the accident; its existence depends upon by whose hand the injury was caused." Blame avariciousness, he moralized.

It is important to see that Cook's argument could not have been viewed as farfetched. Injuries in sport were so common that whole books devoted to the prevention of athletic injuries had already been published for decades by the time he elaborated his argument. He was also toiling familiar British soil, pointing for example to neurologist Henry Miller's coinage of "accident neuroses" as a pithy means of situating patients who allegedly could not be as hurt as they imagined or purported.[35] Yet some thought about the way that British sports had evolved by the 1960s would make it fairly easy to see that the coercive pressures on sportsmen were vastly larger than those on other populations. In this sense, Cook was unable to see through the limitations of his own cultural preferences. From the adulation of fans and families, to the pressures to represent national and working cultures, to the love of teammates in a martial sense, and indeed to the threat of being replaced by a younger player, the average elite athlete in the 1960s and after had good reasons to play through injuries and to deny the seriousness of neurological symptoms hidden from view by the skull. Footballer's migraine might have been annoying, but it was not necessary to tell anyone about it and it could be treated with narcotics. Who would know?

Sport thus shaped the representation of non-sport injuries by ignoring the way in which sport created, celebrated, and concealed self-harm. This fact became a source of stigma non-sport TBI patients, particularly in the courtroom. The second chapter investigated here was by Sir Frederick Lawton titled "An English Judge's View of Some Medical Problems to be Met in the Courts" explored the various claims made by workers and others in accidents — symptoms like headaches, inability to concentrate, decreased libido and the like.[36] Lawton appears to have been beyond contemptuous of such claims. He complained about clinicians' courtroom testimony, remarking: "Need you accept as often as you do what the patient tells you?"[37] His suspicions, he noted, were shared by the infamous British neurologist F. M. R. Walshe, who had often asked rhetorically in court in defense testimony, who "has ever come across functional disorder without clinical signs of lesion in jockeys or professional footballers" who "frequently have knocks on the head while following their employments."[38] In this way, then, masculinity in sport became a structural determinant of health and healthiness in non-athletes. The fact that normal people in their normal lives had little in common with young, strong, and coerced athletes became a reason for distrusting them rather than distrusting the atmosphere of sport in which the downplaying of harm implied a gender identity.

Stigma about malingers in normal population worked its magic on sport too. The familiar tone that Lawton and Cook adopted became a significant means of questioning athletes' pain. Consider one contemporaneous American example from a profile of American footballer and fullback Jim Brown published in *Ebony Magazine* in 1964. Reflecting on Brown's stoicism, club house director Morris Kono stated "He never asks for thing. On a cold day you have to give him a coat. I don't even know if he wants it. He never takes a sip of water during a game. You never know if he's hurt. He doesn't complain. The guy was a Spartan the day he showed up and he's exactly the same now."[39] Brown's wiliness to work was noted by the reporter who then described a moment when Brown "suffered a brain concussion in a pileup and spent one quarter on the bench." In that circumstance, Brown recalled that his "coach hinted he was gold-bricking." Brown remembered that he couldn't remember the plays and recognized after the fact that his coach basically "didn't seem to care if you lived or died, so long as you played."[40]

The ability to even recall this episode could well have been deemed evidence that Brown was malingering, another word for goldbricking. More likely, however, is that this anecdote captures a whole different world in a moment. It makes clear that athletes are reexposed to harm by sports doctors, coaches, trainers, and other responsible authorities downplaying that harm and by intimating a comparison with the shadowy figure of the malingerer or simulator. In 1969 two clinicians suggested that such malingers were familiar to high school coaches and usually took the form of a boy who was scared to play but under peer and parental pressure to do so. In such instances, they argued, the nice thing to do was pretend with the boy that he was so injured it was necessary to retire from sport forever.[41] Athletes who did not or could not take the pain were considered too frail for the sport. No one challenged the notion that it was the sport that was in the wrong.

It is essential to see that in all of these situations a moral economy prefigured what Dominic Malcolm

The Journal of Law, Medicine & Ethics, 49 (2021): 365-371. © 2021 The Author(s)
https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press

calls an axiological question.[42] The sporting world, a martial morality, required a particular kind of body calibrated for spectacle and its economic impacts, all of which were predicated on erotic desire, violence, and heroism. In the medical world, a morality of healthiness and stoicism, required a body that desired its own health and denied a place for itself as a burden on others and called this quality of life.[43] In the legal domain, the existence of these bodies pointed to virtues of stoicism and healthiness that framed economic realities of necessity, responsibility, liability, and settlements. Sloth and greed were moral hazards faced by all in all of these domains. To look at this with competency, it should be clear that the structures of this practice of stigma promoted self-harm by making people overwork themselves at the demand of others or by downplaying the harm they had experienced for the reward of not living up to the stigma itself. In order to see these harms, it is necessary to name and understand these stigmas.

What to do? A Proposal to Aid Structural Competency on TBI in Sport and Beyond

In this short essay I have sought to explore the ways stigma, traumatic brain injury, and sport compound and unify risks across several social and professional domains. Structural competency in brain injury research requires recognizing that these long histories of courtroom battles, cultural concern about fakers, shirkers, and effeminacy, and economic resentments created through the compensability of workplace injuries, place large burdens on TBI patients to prove their own clinical and legal legitimacy. Many of them end up trapped in two ways. They are either too injured to address the burden and cannot. Or they possess the personal wherewithal or support structures to call attention to their difficulties but by so doing make experts question whether they are as bad as they report. In this area of clinical care and law, working at the least to make these social contexts and social pathologies structured in the clinical and legal system visible for all is good social medicine, not least because it invites clinicians particularly to question their own assumptions about what sick people might have to do in order to survive in a society with scant resources dedicated to chronic patients daily needs and support.

Many of the central themes of this essay are extant broadly in the history of neurology. These concerns have revealed themselves periodically in the treatment of nervous diseases women, in the cultural understanding of post-traumatic stress disorder, and in the way that harm is downplayed in the manufacturing of uncertainty. In the world of traumatic brain injury they have evoked numerous stigmatizing labels over the years in psychology and medicine, from malingering to iatrogenic disease to miserable minorities. These characteristics of stigma in this context are that they remain structurally determining of health and well-being and produce unhealth in myriad ways, including public toleration of violence, acceptance of unnecessary exposure to head impacts, and an expectation that little about brain injuries will be discussed clearly and transparently.

How should researchers in social medicine respond to the challenge of the circularity of harm posed by the story elaborated above? In the essay that follows this contribution, a collection of authors adopt a position statement on consensus documents about sport concussion. They argue for person-centered and player-centered guidelines that adopt precautionary recommendations and use strong transparent languages about risk as a way of breaking this axiological cycle. Furthermore, the signatories call for a reflexive turn in evidentiary standards by arguing for strenuous disclosure of conflicts of interest, sources of bias and omission, and radical transparency about risk. In offering this position statement, the signatories seek not only to redress the harm that is baked into these decontextualized positions, but also to remedy a now century long collection of circumstances and facts that have culturally positioned these consensus guidelines and other documents like them in ways that deny the material circumstances in which elite and non-elite athletes play and the ways their experiences shape the lives of normal TBI patients. By asking researchers to confront their own values and preferences and sources of motivated bias, the essay that follows proposes that it is possible to break down axiological barriers that perpetuate harm across the whole traumatic brain injury space, including sports but transcending them as well.

Note

Dr. Casper reports personal fees from Shrader and Associates, personal fees from Zimmer Reed, other from Langfit and Gardner, and other from Rylands, outside the submitted work.

References

1. M.C. Dewan, A. Rattani, S. Gupta, R.E. Baticulon, Y.-C. Hung, M. Punchak, and A. Agrawal, et al., "Estimating the Global Incidence of Traumatic Brain Injury," *Journal of Neurosurgery* 130, no. 4 (2018): 1080–1097.
2. "Traumatic Brain Injury: Time to End the Silence," *Lancet Neurology* 9, no. 4 (2010): 331.
3. W.B. Barr, "Believers versus Deniers: The Radicalization of Sports Concussion and Chronic Traumatic Encephalopathy (CTE) Science," *Canadian Psychology/Psychologie Canadienne* 61, no. 2 (2020): 151–162; D. Malcolm, *The Concussion Crisis in Sport*. (Routledge, 2019).
4. S.J. Redpath, W.H. Williams, D. Hanna, M.A. Linden, P. Yates, and A. Harris, "Healthcare Professionals' Attitudes Towards Traumatic Brain Injury (TBI): The Influence of Profession,

The Journal of Law, Medicine & Ethics, 49 (2021): 365-371. © 2021 The Author(s)

https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press

Experience, Aetiology and Blame on Prejudice Towards Survivors of Brain Injury," *Brain Injury* 24, no. 6 (2010): 802–811.
5. S.M. Phelan, L.R. Bangerter, G. Friedemann-Sanchez, K.A. Lackore, M.A. Morris, C.H. Van Houtven, K.F. Carlson, M. van Ryn, K.J. Harden, and J.M. Griffin, "The Impact of Stigma on Community Reintegration of Veterans with Traumatic Brain Injury and the Well-Being of their Caregivers," *Archives of Physical Medicine and Rehabilitation* 99, no. 11 (2018): 2222–2229.
6. G. Simpson, R. Mohr, and A. Redman, "Cultural Variations in the Understanding of Traumatic Brain Injury and Brain Injury Rehabilitation," *Brain Injury* 14, no. 2 (2000): 125–140.
7. K.H. Leith, L. Phillips, and P.L. Sample, "Exploring the Service Needs and Experiences of Persons with TBI and their Families: The South Carolina Experience," *Brain Injury* 18, no. 12 (2004): 1191–1208.
8. E. Sandel, *The Shaken Brain: The Science, Care, and Treatment of Concussion* (Harvard University Press, Boston, 2020); T. F. Dagi, "The Management of Head Trauma," in S. H. Greenblatt, T. F. Dagi, and M. H. Epstein eds., *A History of Neurosurgery: In its Scientific and Professional Contexts* (Park Ridge, Illinois: American Association of Neurological Surgeons, 1997): 289–342
9. S.L. Blumenthal, *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture* (Cambridge: Harvard University Press, 2016); C. B. Courville, *Commotio Cerebri; Cerebral Concussion and the Postconcussion Syndrome in their Medical and Legal Aspects* (Los Angeles: San Lucas Press, 1953); M. R. Trimble, *Post-Traumatic Neurosis: From Railway Spine to the Whiplash* (London: John Wiley & Sons, 1981).
10. P.W. Halligan, D.A. Oakley, C.M. and Bass, *Malingering and Illness Deception* (New York: Oxford University Press, 2006).
11. M.S. Micale, P. Lerner, C. Jones, and C. Rosenberg, *Traumatic Pasts* (Cambridge, GBR: Cambridge University Press, 2011).
12. E.M. Caplan, "Trains, Brains, and Sprains: Railway Spine and the Origins of Psychoneuroses," *Bulletin of the History of Medicine* 69, no. 3 (1995): 387–419; R. Harrington, "On the Tracks of Trauma: Railway Spine Reconsidered," *Social History of Medicine* 16, no. 2 (2003): 209–223
13. J.M. Metzl and H. Hansen, "Structural Competency: Theorizing a New Medical Engagement with Stigma and Inequality," *Social Science & Medicine* 103 (2014): 126-133.
14. S.T. Casper and K. O'Donnell, "The Punch-Drunk Boxer and the Battered Wife: Gender and Brain Injury Research," *Social Science & Medicine* 245 (2020): 112688.
15. G. Weisz, *Chronic Disease in the Twentieth Century: A History* (Baltimore: John Hopkins University Press, 2014).
16. L.M. Friedman and J. Ladinsky, "Social Chance and the Law of Industrial Accidents," *Columbia Law Review* 67, no. 1 (1967): at 60.
17. R.A. Epstein, "The Historical Origins and Economic Structure of Workers' Compensation Law," *Georgia Law Review* 16, no. 4 (1982): 775–820.
18. This was especially the case in hearings in which insanity and crime came packaged together. See R. Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981): at 161–166.
19. R. Cooter, "Malingering in Modernity: Psychological Scripts and Adversarial Encounters During the First World War" in R. Cooter, M. Harrison, and S. Sturdy, eds. *War, Medicine and Modernity* (Stroud: Sutton Publishing, 1998): 125–148
20. S.T. Casper, "Concussion: A History of Science and Medicine, 1870 2005," *Headache: The Journal of Head and Face Pain* 58, no. 6 (2018): 795–810.
21. Most scholars identify two books in the English-speaking world that epitomized this discourse. One deemed too credulous about injuries was J. E. Erichsen, *On Railway and Other Injuries of the Nervous System* (Philadelphia: Henry C. Lea, 1867). The other deemed too heartless was a response to Erichsen by H. Page, *Injuries of the Spine and Spinal Cord and Nervous Shock in their Surgical and Medico-Legal Aspects* (London: J. & A. Churchill, 1883).
22. An excellent review of matters made in the 1940s was published by Moses Keschner. See "The Medico-Legal Aspects of Injuries of the Brain and Spinal Cord and Their Coverings," in S. Brock ed. *Injuries of the Brain and Spinal Cord and Their Coverings: Neuro-Psychiatric, Surgical, and Medico-Legal Aspects* (Baltimore: The Williams & Wilkins Company, 1949).
23. All quotes above are from "Sketches from Shady Places: XVI – Malingering," in *Pall Mall Budget: Being a Weekly Collection of Articles Printed in the Pall Mall Gazette from Day to Day* August 30, 1878, at 14.
24. "Sketches from Shady Places: XVI – Malingering," in *Pall Mall Budget: Being a Weekly Collection of Articles Printed in the Pall Mall Gazette from Day to Day* (August 30, 1878): at 15.
25. "Sketches from Shady Places: XVI – Malingering," in *Pall Mall Budget: Being a Weekly Collection of Articles Printed in the Pall Mall Gazette from Day to Day* (August 30, 1878): at 15.
26. L.M. Friedman and J. Ladinsky, "Social Chance and the Law of Industrial Accidents," *Columbia Law Review* 67, no. 1 (1967): 57.
27. Albeit note that the outcome for women could be profoundly different. J. Oppenheim, *"Shattered Nerves": Doctors, Patients, and Depression in Victorian England* (Oxford: Oxford University Press, 1991).
28. A.H. Nichols, "Alleged Organic Disease of the Brain Following Moderate Concussion: Case of Louisa V. Russell vs. Boston and Lowell R. R. Co," *Boston Medical and Surgical Journal*, CXIV, 22 (1886): at 510.
29. *Id.*
30. *Id.*
31. A.H. Nichols, "Alleged Organic Disease of the Brain Following Moderate Concussion: Case of Louisa V. Russell vs. Boston and Lowell R. R. Co," *Boston Medical and Surgical Journal*, CXIV, 22 (1886): at 511.
32. K. Bachynski, *No Game for Boys to Play: The History of Youth Football and the Origins of a Public Health Crisis* (North Carolina: University of North Carolina Press Books, 2019).
33. V. Burstyn, *The Rites of Men: Manhood, Politics, and the Culture of Sport* (Toronto: University of Toronto Press, 1999).
34. A.E. Walker, W.F. Caveness, and M. Critchley,eds., *The Late Effects of Head Injury* (Springfield, Illinois: Charles C Thomas, 1969), xi.
35. H. Miller, "Accident Neurosis—Lecture I," *British Medical Journal* 1, no. 5230 (1961): 919–925; H. Miller, "Accident Neurosis—Lecture II," *British Medical Journal* 1, no. 5231 (1961): 992–998.
36. F. Lawton, "An English Judge's View of Some Medical Problems to be Met in the Courts," in Walker, A. E., Caveness, W. F. and Critchley, M. eds., *The Late Effects of Head Injury* (Springfield, Illinois: Charles C Thomas, 1969): 435.
37. *Id.*
38. F. Lawton, "An English Judge's View of Some Medical Problems to be Met in the Courts," in A.E. Walker, W. F. Caveness, and M. Critchley, eds., *The Late Effects of Head Injury* (Springfield, Illinois: Charles C Thomas, 1969): 437.
39. A. Poinsett, "Pro Football's Mightiest Player: Jim Brown Heads for Sixth Title, May Gain 2,000 yards," *Ebony*, January 1964, at 34.
40. *Id.* at 33.
41. R. Schneider and F. Kriss, "Decisions Concerning Cerebral Concussions in Football Players," *Medicine and Science in Sports* 1, no. 2 (1969): 112.
42. D. Malcolm, *The Concussion Crisis in Sport* (Routledge, 2019): 2.
43. J.C. Burnham, "The Death of the Sick Role," *Social History of Medicine* 25, no. 4 (2012): 761–776.

https://doi.org/10.1017/jme.2021.55 Published online by Cambridge University Press