Person Under Investigation: Detecting Malingering and a Diagnostics of Suspicion in Fin-de-Siècle Britain

Lakshmi Krishnan

Keywords: Diagnosis, Malingering, Detection, Investigation, Forensic

Abstract: In 1889, The *British Medical Journal* published a piece titled, "Detective Medicine," which describes feats of medical detection performed by physicians attending malingering prisoners. Though simulating illness had a long history, the medicalization of malingering at the *fin de siècle* led to a proliferation of such case histories and cheerful records of pathological feigners thwarted.

An 1897 watercolor by H.S. Robert shows two physicians — one lean and mustachioed, another plump and bald, scrutinizing a chamber pot. It reads: "Deux princes de la science furent chargés à leur tour de se rendre exactement compte ... de ... l'état de l'illustre malade ..." and "The Panama Canal: to determine whether he was fit to be extradited, two eminent physicians examine the stools of Dr Cornelius Herz, who had fled France to escape the results of his mismanagement of the canal's financing."[1] The Compagnie Universelle du Canal Interocéanique (French Panama Canal Company) collapsed in 1889, and a few years later a judicial inquiry unearthed bribery, extortion, and government complicity. Among its chief figures was Paris-trained physician and businessman Cornélius Herz (1845-1898), who liaised between the company and fraudulent government officials. Hounded by detectives, Herz fled to England and fought France's persistent attempts at extradition by claiming that his advanced diabetes was life-limiting. Sequestered in the seaside town of Bournemouth, he soon transitioned from being the poster child for corruption to one for malingering, as jaundiced and antisemitic portrayals in the European press turned his medico-legal struggles into a *cause célèbre*. Robert's eleven-watercolor series, titled "Un diabétique," embraces various aspects of Herz's alleged medical con-artistry, including: "An English doctor takes Dr Herz's pulse to see if he is seriously ill" and "Dr Cornelius Herz escapes extradition on the ground that he has a terminal illness, and lives happily in Bournemouth for fifteen years," augmented by the caption "Ils ne lui donnèrent que quelques heures à vivre et ... il y a 15 ans de cela ... on n'en parle plus. Mystère !!! ..."[2] These glib

Lakshmi Krishnan, M.D., Ph.D., *is is the Faculty Director of the Medical Humanities Initiative at Georgetown, and Assistant Professor of Medicine and Affiliate Joint Faculty in English.*

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)
DOI: https://doi.org/10.1017/jme.2021.53

portraits aside, numerous medical practitioners examined Herz to assess his state of health and condition for prosecution. In 1893, Paris physicians Jean-Martin Charcot and Paul Brouardel visited upon the request of the French government and pronounced him too ill for extradition.[3] Though Brouardel returned with Paul Georges Dieulafoy later that year and judged the patient much improved, he was never transported.[4] In 1896, the Home Office commissioned British neurologists Thomas Barr and Thomas Buzzard to re-evaluate him. Practically all specialists agreed that Herz was too ill to travel, even to nearby London, and — in contrast to popular media — British clinical accounts were uncharacteristically sympathetic, whether due to inflamed anti-French sentiment or because they were dealing with a fellow physician.[5] Herz died in 1898, long before the fifteen-year period archly predicted.

Centering the detection of malingering in Britain from the late nineteenth- to early twentieth-centuries, this paper argues that malingering not only secured distinctly clinical attachments in the fin de siècle, but that those operated *in conjunction* with its ongoing social and cultural connotations. The Herz case exemplifies this, sitting at the crossroads of medico-legal and forensic issues, and suturing the private and public spheres.

The case of Cornélius Herz is an illuminating episode in *fin-de-siècle* approaches to malingering, one which highlights the period's fascination with the meta-diagnosis of the condition, for to expose a malingerer was not only to diagnose along the continuum of illness and health, but to refine individual symptoms and signs into an understanding of how they cohered, organically or artificially. Malingering reverberates through the classical and historical lore: from Odysseus to King David and Hamlet, and military recruits to the working poor, the act of feigning illness to avoid obligations, disrupt boundaries, and unsettle social structures has persisted in the cultural and political realm.[6] But a transformation occurred in Western Europe and Britain in the nineteenth century, when malingering came under the purview of the physician, a bio-political power we see evidenced in the procession of eminent doctors who visited Herz. This "medicalization of malingering," to use Simon Wessely's phrase, had broad effects upon the cognitive and professional roles of medical practitioners and the diagnostic episteme itself, an effect that I argue has had downstream impact on clinical relationships and health and social policies surrounding diagnosis even today.[7] Detecting malingering entered a new forensic and investigative space, and became a way of ordering the social through the clinical.[8]

Centering the detection of malingering in Britain from the late nineteenth- to early twentieth-centuries, this paper argues that malingering not only secured distinctly clinical attachments in the fin de siècle, but that those operated *in conjunction* with its ongoing social and cultural connotations. The Herz case exemplifies this, sitting at the crossroads of medico-legal and forensic issues, and suturing the private and public spheres.[9] Though feigning illness had a long history, this period witnessed a proliferation in the clinical literature: of sensational case histories and cheerful records of pathological feigners thwarted. Malingering also assumed significance as a node for thinking about diagnosis writ large. Drawing from popular media, fiction, and clinical reports, this paper traces two key prototypes. It shows how the detection of malingering became part of a methodology ascribed to a particular sort of physician: the "malingering detective," a role bound up with diagnostic proficiency and practitioner skill, existing debates on generalists versus specialists, and the physician investigator model on the rise since the early part of the century.[10] Malingering was a whetstone. It sharpened competency. Consequently, it bolstered professional authority.[11] At the same time, it generated a secondary phenomenon: as a clinical appraisal, it also informed clinical humility. Diagnosing malingering proved one's mettle or exposed one's deficiencies, and shaped constructions of the ideal physician: a clinical, investigative, and ethical being.[12] To identify it was not only to hone diagnostic technique, but to pit one's knowledge of the more "subtle signs of disease" against an ingenious adversary, against whom one might readily fail.

Yet it was not all down to investigator skill. If disease was traditionally cast as the criminal, in cases of malingering the patient — especially those viewed as prone to degeneracy such as the incarcerated, working class, neurasthenic, and foreign — was definitively

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

https://doi.org/10.1017/jme.2021.53 Published online by Cambridge University Press

culpable, a "person under investigation." As such, malingering implanted itself among the "new social diseases" of the end of the century, including contagious and public health threats, neuroses, and childhood ailments, problems which put medical expertise front and center at the intersection of health and policy.[13] Out of these interactions emerged a diagnostics of suspicion: distinguishing "legitimate" from "feigned" illness informed not only the identification of so-called fakers, but also the very act of diagnosis even as it pertained to non-factitious disorders. In doing so, it generated debates about practitioner roles and clinical ethics, and produced unease about where clinicians sat in an emergent medico-legal framework. In these fin-de-siècle formations of diagnosis, malingering was central to physicians' place in a new regime aligning diagnosis with detection and aiming it not merely toward therapeutic discovery, but suspicious surveillance.

The Malingering Detective

The case of Cornélius Herz consumed the Anglo-American imagination. Debates about whether he was malingering were parleyed in the UK Parliament, splashed across newspapers from New York to New Zealand, parodied in cartoon, and scrutinized in medical journals.[14] Himself a highly skilled physician, Herz was believed to be singularly capable of feigning illness, turning his repeated medical evaluations into a "whodunit" that played out on the public stage. His pathography became the object of collective curiosity, and introduced malingering as a site where medical, criminal, and legal structures intersected on an individual and societal level. In her study on the masculine body, Joanna Bourke argues that it was during World War I that doctors began to assume the overt role of detectives, policing the bodies and behavior of shirking servicemen. She cites an army surgeon's response when asked if he was a doctor: "No…I am a detective," as well as Dr. Henry Cohen's "admission that it was 'tempting to compare the methods of diagnosis with those of crime detection.'"[15] I locate this triad of malingering, detection, and diagnosis earlier in the mid-nineteenth century, especially during the fin de siècle where it becomes more fevered. Arising from this moment is a literary example notable for a malingering detective and an exploration of malingering's clinical, investigative, and cultural facets.

"Malingering is a subject upon which I have sometimes thought of writing a monograph," remarks Sherlock Holmes after a successful run at it in "The Adventure of the Dying Detective" (1913, *His Last Bow*). Published twenty years after "The Final Problem," where the Baker Street sleuth fakes his own death ("The Final Problem," 1893), "The Dying Detective" bares the ligaments between clinical diagnosis, criminal detection, and malingering. The narrative is reflexive and promiscuously fascinated with these entanglements: a physician (Arthur Conan Doyle) fictionalizes a physician playing detective (John Watson), diagnosing a malingering detective (Holmes), who malingers in order to entrap a criminal (Culverton Smith). At the story's outset the reader is invited to inhabit the role of the skeptical but baffled Watson, worried physician friend. We are summoned to the bedside of a dying Holmes. The case is plausible. Stigmata are present: "His eyes had the brightness of fever, there was a hectic flush upon either cheek, and dark crusts clung to his lips; the thin hands upon the coverlet twitched incessantly, his voice was croaking and spasmodic." So alarming is his appearance that his landlady Mrs. Hudson consults Watson ("For three days he has been sinking, and I doubt if he will last the day"). But what Watson sees at a respectable contagious distance is exactly what Holmes wants him to see: a very good piece of method acting. Holmes' adversary, a British Sumatran planter named Culverton Smith, is equally fooled and — overconfident — confesses his crimes to someone he believes is dying. After duping Smith, Holmes describes his scheme to a shocked Watson: "With vaseline upon one's forehead, belladonna in one's eyes, rouge over the cheek-bones, and crusts of beeswax round one's lips, a very satisfying effect can be produced…A little occasional talk about half-crowns, oysters, or any other extraneous subject produces a pleasing effect of delirium."[16]

"The Dying Detective" is an unusual Sherlock Holmes adventure. It disrupts the genre formula Conan Doyle burnished, and which his *Strand* readership had come to expect, opening with the consultation of a doctor, rather than a client approaching the detective. The detective himself, a paragon of stoic vigor, is seemingly debilitated. It is one of the few where the solution turns on a medical diagnosis, even though diagnostic epistemologies are baked into Holmes' methods via Conan Doyle's medical training and homage to his professors (i.e. Joseph Bell).[17] At the same time, it represents a malingering apotheosis. Throughout his repertoire, Holmes establishes himself as a master of disguise and trickery, assuming and shedding identities as varied as sailors, clergymen, and elderly women, and ultimately counterfeiting his own death. Police inspector Athelney Jones tells him in *The Sign of Four* (1890), "you would have made an actor, and a rare one"; the skill is also bidirectional, with Holmes remarking, "the first quality of a criminal investigator [is] that he should see through a disguise" (*The Hound of the Baskervilles*, 1901). "The Dying

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

Detective" seems almost inevitable when considering the epidemic of feigning in the rest of the Holmes canon.[18]

Just as the investigator prides himself on being able to "see through a disguise," a fin-de-siècle physician might view the clinical guise of malingering as a test of diagnostic acumen. "The Dying Detective" is rare in its focus upon Watson's skill as a doctor, not merely as trusty sidekick, loyal friend, or foil for Holmes' brilliance. Of chief importance are the twin questions of clinical expertise and ethics — here, where the usual roles are reversed and Holmes is incapacitated, is Watson's field. The bedside is his stage, just as the consulting room is Holmes.' Yet when Watson tries to examine him, an apparently delirious Holmes entreats him to keep his distance due to his ailment, "a coolie disease from Sumatra … infallibly deadly and horribly contagious." Spurred on by a sense of responsibility as both physician and friend, Watson insists: "Do you suppose that such a consideration weighs with me of an instant? It would not affect me in the case of a stranger. Do you imagine it would prevent me from doing my duty to so old a friend?" When threats of contagion fail, and Watson advances undeterred, Holmes turns caustic, undermining his clinical abilities: "If I am to have a doctor whether I will or not, let me at least have someone in whom I have confidence." Mocking him as a mere generalist — "you are only a general practitioner with very limited experience and mediocre qualifications" — he cites esoteric medical knowledge: "what do you know, pray, of Tapanuli fever? What do you know of black Formosa corruption?" "Shall I demonstrate to you your own ignorance?" he asks brusquely. "There are many problems of disease, many strange pathological possibilities, in the East … I have learned so much during some recent researches which have a medico-criminal aspect." Holmes identifies himself as a medico-criminal expert, a specialist in contrast to Watson's humble generalist. Watson knows domestic and quotidian disease; Holmes researches "foreign" and outlandish afflictions, a clear alignment of the consulting detective and the medical specialist.[19] Despite Holmes' stinging remarks, Watson offers to seek out tropical disease experts, a convincing example of the character's subordination of ego to virtue. Later, Holmes tells Watson that he kept him at a distance *because of* his clinical skills, certain that he would intercept his performance and stymie Culverton Smith's capture: "Do you imagine that I have no respect for your medical talents? Could I fancy that your astute judgment would pass a dying man who, however weak, had no rise of pulse or temperature?" At the end of this episode, Watson comes through the crucible of malingering as an idealized physician detective: clinically astute (Holmes' insults notwithstanding), upstanding, and humble. Yet it is Holmes who, as a forensic specialist, intends to write a monograph on the topic.

The traits which Conan Doyle lionizes in "The Dying Detective" appear in contemporary clinical literature about malingering. The word itself appears in 268 *Lancet* articles between 1800 and 1900. The first time it appears in a title is 1885. Notably, many of the malingering descriptions take the form of a "strange" or "curious" case, highlighting their kinship to the detective genre.[20] Malingerers are often cast as having criminal intelligence, or in many instances, being criminals themselves, with the doctor diagnostician serving as super sleuth. This is exhibited in an 1889 article "Detective Medicine," reporting from Her Majesty's Convict Prisons:

> There can be no doubt that the variety and multiplicity of devices resorted to by the more confirmed exponents of this imposing art show a remarkable degree of ingenuity, perverted, it is true, and cases arise where special opportunity of gaining knowledge of the more subtle signs of disease have been found, and fully and intelligently turned to account.[21]

It describes feats of medical detection performed by physicians attending malingering prisoners.[22] By exercising their "diagnostic powers," they familiarize themselves with the "infinite varieties of physical malingering" and "many forms of assumed insanity."[23] They develop a comprehensive nosology of disease across a continuum of legitimate and fictitious, gaining knowledge with each encounter and standing up their expertise against the "expert class of malingerers."[24] Framing these encounters as competing forms of prowess and virtuosity, the *British Medical Journal* indexes clinical authority to rooting out malingering and announces an adversarial relationship between physician and patient, where the patient's body and mind become loci of suspicion. Physicians caution each other to remain vigilant and on multi-sensory alert, aware that penetrating the disguises of malingering indicates superior skill. Writing on feigned insanity, Henry Wentworth Acland (1815-1900) argues that, "if masters of our art, we ought always to detect an imitation of this disease."[25] Specialists also staked their expertise upon being able to identify malingering within their exclusive ambit, as when English dermatologist F. Parkes Weber (1863-1962) comments on malingerers presenting with esoteric skin conditions, or New Jersey surgeon B.A. Watson discusses central nervous system concussions and lesions.[26] Such differ-

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

entiation was also viewed as critical to general medical education, wherein the diagnosis of malingering served as a doppelgänger to the diagnosis of legitimate illness, testing the same skills but through inversion. Acland wrote that malingering examples should be presented to advanced medical students, "if a case of supposed feint were offered to him for diagnosis."[27] Outwitting such tactics was not initially considered part of a garden-variety medical education, nor part of the ethos of a physician, as when Holmes explains why he couldn't share his secret with Watson: "among your many talents dissimulation finds no place."

As the century turned, medico-legal pedagogy reinforced unraveling patient artifice and detecting malingering as tricky, yet necessary challenges. For with malingering one was not merely contending with natural histories of disease, but the evasions of the investigated subject themselves. Whether these feints were the "normal" and understandable behavior of "normal" individuals under extraordinary circumstances (as in the case of prisoners of war), the normal and calculated behavior of allegedly abnormal individuals (the avaricious, criminal, or cowardly), or the abnormal behavior of the assuredly and involuntarily abnormal (the insane or otherwise pathological), was a matter of iterative debate and a cardinal feature of the clinical literature.[28] Coterminous with emergent social theories such as Emile Durkheim's differentiation of the normal and pathological (in *The Rules of Sociological Method*, 1895), which postulated that even something that seemed intuitively "abnormal," such as crime, was indisputably "normal" given its presence and frequency in society across numerous contexts, malingering problematized traditional categories of well and ill, suggesting the contingency of the normal and pathological in a way that Canguilhem would articulate some years later. For the "genuine" was not necessarily normal, nor was the counterfeit necessarily pathological.[29] Irreducibly contextual and phenomenological, the "normal" counterfeiter and the "pathological" genuine sufferer could not be reduced to binary heuristics, but existed along a continuum. Indeed, the upending of these categories of illness and wellness was part of what made malingering so epistemologically and affectively challenging for practitioners, and their dissolution triggered uneasiness about how and where physicians ought to intervene, as well as more existential questions about the rightness of such interventions.[30]

Malingering narratives went hand in hand with other diagnostic narratives of this period, including those of early detection and systematic clinical approach. Practitioners needed to recognize the tempo and progression of illness and refine their diagnostic method. One could not hope for success without "an analytical mind" and a "carefully arranged system of examination."[31] In the case of infectious diseases in particular such vigilance would be rewarded, as Robert Farquharson, Rugby School medical officer offered in 1869: "to discriminate between trifling complaints and those of a more serious character is at all times desirable, but especially so when the slightest error of judgment may encourage the spread of contagion … " He argues that it is easy to be a good diagnostician when confronted with florid symptoms, "when the skin, and the throat, and the eyes, and the tongue tell their plain story." but that detecting subtlety "tries the skill of the most accomplished observer," and therefore the "value of premonitory symptoms stands in danger of being overlooked amid the more brilliant and exciting investigations of modern medicine." Unlike many other ailments, for which early detection offered little but a longer duration of illness (in a pre-therapeutic era), infectious diseases could actually be warded off through such attentiveness. The process of distinguishing between "trifling" and "serious" complaints suggests a linked program between the detection of malingering and apprehending infectious disease early, expressing that both crime and disease are epidemic, and that the same techniques which might expose malingering could also detect "the first entrance of infection into our system" and "enable us to state with absolute fidelity whether any group of phenomena indicates serious disease or superficial derangement."[32]

Above all, malingering offered an exercise in clinical humility. Tracts cautioning against overconfidence, bias, and prejudice come up more frequently with malingering than with non-factitious diagnoses. Some writers warned that such diagnostic hubris would abet the malingerer and reflected poorly upon the profession itself. Here, B.A. Watson: "it is unfortunately too frequently the case that a surgeon commences his examination in medico-legal contests after having fully formed an opinion, or at least a bias or prejudice… [a] serious defect frequently observed in the members of our profession, which sometimes has its origin in laziness, although occasionally in an inordinate greed, where the physician has been accustomed all his life to given an opinion to a patient without either an examination or thought … I have not yet reached the case of the malingerer; but I have thus far merely paid my respects to those who aid and assist the malingerer."[33] Another admonishes physicians to develop qualitative aptitudes: "opportunity, discretion, and tact." Doses of clinical humility delivered, many textbooks of medical jurisprudence and forensic medicine highlighted the juridical role of diagnosing malingering, devoting entire sections to its nosologies and the role of

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)
https://doi.org/10.1017/jme.2021.53 Published online by Cambridge University Press

the medical expert in transmitting these diagnoses to the extra-clinical/legal world, for without the medical jurist as a liaison, "avenues of fraud are opened up and capital, lawyers and courts are practically at the mercy of a clever malingerer."[34] Some viewed the diagnosis of malingering as merely a prelude to the physician's ethical obligation and an explicitly moral duty: the "task of inducing in such a creature the moral change which shall incline him to return to the ordinary course of the duties and customs of life around him," for this second, paramount phase tests the true character of a physician, the subtle skills that "no science taught in schools" can aid.[35] They associate a great responsibility with identifying a malingerer, or wrongly accusing an innocent person.

Conan Doyle was evidently preoccupied with contemporary debates on malingering as well, importing them not only into his fictional practice, but his clinical prose. Like Watson, a veteran of the Anglo-Afghan war, Conan Doyle's military experiences were formative. In 1900, he published on an outbreak of enteric fever during the Boer War, and singled malingering out as something he saw uncommonly among military recruits. Indeed, the piece devotes substantial effort to rescuing the reputation of soldiers, often maligned as "skulkers and shirkers." He writes, "of the courage and patience of soldiers in hospital it is impossible to speak too highly … I have not had more than two or three cases in my wards which bore a suspicion of malingering, and my colleagues say the same."[36] Catherine Wynne believes Doyle's South African experiences to have been determinative, shaping the ways in which Dr. Watson — post Boer War — becomes a more "primary investigative figure" in texts such as *The Hound of the Baskervilles* and "The Adventure of the Dying Detective."[37] What is clear is that malingering becomes a way for Conan Doyle to refract contemporary debates around physician authority and virtuosity, diagnostic acumen, vigilance, and surveillance, and draw a clear line from the Baker Street consultation and the medical practices of Harley Street to the specialized medicine practiced by a growing cadre of domestic and colonial physicians. Indeed, "The Dying Detective" pays homage to several such medics when Watson offers to consult them: tropical specialists Dr. Ainstree (an adaptation of William Francis Ainsworth (1807-96), surgeon, cholera specialist, traveler, editor, and one of the founders of the Royal Geographical Society) and Penrose Fisher, likely a portmanteau of a few doctors who trained at Edinburgh with Conan Doyle; even the police officer, Inspector Morton, may have been named for Charles J. Morton, an 1886 Edinburgh medical graduate).

Packing so many doctor investigators into a story about a malingering detective raises the question: what did it mean to be at the receiving end of such scrutiny? What did this generation of malingering detectives mean for patients?

Person Under Investigation

"The Adventure of the Dying Detective" is unorthodox precisely because the detective himself becomes the patient and subject of medical and criminal investigation.[38] As with Cornélius Herz, the expert becomes an object of study. The transformation of patient to person under investigation is a kind of cosmological shift not accounted for in Jewson's famous ontology of the sick-man, nor in his reappearance at the center of patient-centered medicine toward the end of the twentieth century.[39] David Armstrong has located the "rise of surveillance medicine" in the early twentieth century based on the reconnaissance of normal populations and an extra-corporeal spatialization of diagnosis, reconfiguring the relationship between symptom, sign, and illness into a series of health factors, an "infinite chain of risks."[40] Armstrong carves a sharp boundary between the nineteenth-century diagnostics of hospital medicine, with its lesion-centric pathological approach, and surveillance medicine's monitoring of healthy populations to "identify the precursors of future illness" and distribution of lifestyle factors. He sees this as medicine's entrance into the social sphere: no longer content to confine itself to the individual patient in a hospital bed, "medical surveillance would have to leave the hospital and penetrate into the wider population."[41] But I posit that these ideas root themselves in the nineteenth century, and that rather than the total dissolution of a somaticist and localizing structure giving way to chains of risk, diagnostic entities such as malingering took on especial relevance at the century's pivot, reflecting more fluid models integrating discourses of localization, risk and vulnerability, the individual and public, clinical and social. Nineteenth-century precursors like the diagnostics of suspicion as exercised in the work of malingering detectives prototype surveillance ways of thinking. For malingering existed in a liminal space between lesion and symptom, between organic pathology and presentation, and therefore taxed physicians in a very specific way. These continuities suggest that fin-de-siècle formations of diagnosis were negotiating illness semiology, pathological anatomy, and physiology while also veering toward the detection of the "normal," i.e. the healthy individual feigning illness, a behavior pathologized in association with specific traits, alleged predispositions and susceptibilities, and in many instances a perceived lack of moral and physical fitness.

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

Holmes' malingering is aided by the fact that he is mimicking not only a tropical ailment unknown to most European medical practitioners, but an entirely fictitious one. This creates an epistemic rift between himself and Watson. Not only is Holmes is acting, and Watson in earnest, but Holmes' behavior draws him closer to the marginalized classes and criminals he is devoted to ferreting out. It also associates him with many others, who in the mainstream view, were guilty of such pathological acts. Taxonomies stratifying risk for malingering cropped up around the turn of the century. This surveillance medicine tracked those who made a "career of imposture" versus the unwitting feigners or the mentally ill, and generated probabilities of guilt depending on individual and social factors. The "Detective Medicine" report argues that feigners are found more frequently amongst the "criminal classes," while in 1890 J.T. Eskridge classes malingerers as "the tramp, criminal, and mercenary." Unlike many of his colleagues, Eskridge believed that it was less important to generate a differential diagnosis of malingering than it was to classify the malingerer: the "tramp class" try to "'dead-beat' their way … to gain sustenance in hospitals, or to eke out a miserable existence by imposing upon the charitably inclined." The criminal malingerer "hope to escape their deserved punishment," while the mercenary "feign injury for the hope of gaining remuneration."[42] Such wariness only increased in the setting of the Workmen's Compensation Act (1898) and the growth of such workers' compensation schemes in industrializing nations, so that by the early 20th century clinicians across domains maintained a similar administrative roster of offenders: duplicitous workers, "soldiers, prisoners, schoolboys, conscripts … 'hospital birds,' hysterical young women, club patients, persons injured or supposed to be injured in railway accidents, and persons who have been accused of some crime," according to neurosurgeon Byron Bramwell (1847-1931), or as F. Parkes Weber attested, "young women with abnormal psychical states," and prisoners of war attempting to achieve repatriation.[43]

By inhabiting the role of a malingerer suffering from a mysterious tropical disease, Holmes occupies a pathologized identity, one associated with dock workers, global migrants, and colonial subjects. Mrs. Hudson tells Watson that Holmes had been in Southwark, "working at a case down at Rotherhithe, in an alley near the river, and he has brought this illness back with him," while Holmes himself calls it a "coolie disease from Sumatra."[44] Pablo Mukherjee views Holmes' malingering as confirmation of the "pathological proximity" between the detective responsible for "the defense of the imperial status quo" with the global laboring class — not only working class English but indigenous laborers everywhere. The allegations of laziness and the racialization of malingering amongst "coolies" (especially in the colonial context) is an "almost reflexive taxonomic move," harbored in the imperial archive of "official reports, plantation diaries, medical treatises, parliamentary debates, or private correspondences." Reading "The Dying Detective" through Freudian and Kristevan poetics, Mukherjee argues that Holmes' physical deterioration (albeit self-imposed) joins him with the abject bodies victimized by Culverton Smith's horrific medical experiments (collapsing Holmes' final illness with that of these indigenous subjects, Smith brutally says: "Yes, the coolies used to do some squealing towards the end"). In order to uphold British imperial stability and to contain threats, Holmes must himself become subversive and peripheral.[45]

Despite being insulated by wealth, education, professional status, and Euro-American caché, Cornélius Herz did not fare much better as a person under investigation, his Jewish heritage making him a ready target in a structurally racist society. A full century later some historians still associate his name with malingering, and his English tenure as a ploy "sheltered under the cloak of invalidism."[46] Accounts of his financial speculations and corruption, dosed with antisemitism, bled into his medical assessment, and it is hard to separate where one begins and the other ends. In the Robert caricatures as well as French political cartoons depicting then Prime Minister Georges Clemenceau as his puppet (or "L'ex copain de Cornelius Herz"), Herz is shown as a "a stereotyped Jewish figure" with a large nose and swarthy features, juggling money bags and tweaking marionette strings.[47] Edouard Drumont's *Le Libre Parole* is exemplary even among the generally skewed French press for its antisemitism, leveraging the Panama Scandal (Cornelius Herz and Baron Jacques Reinach) and *l'affaire Dreyfus* of 1894-1906 (Alfred Dreyfus), both featuring prominent Jewish protagonists, toward a surge of French nationalism and religious intolerance.[48] As the medico-legal literature suggested qua malingerers, Herz's criminal intelligence, Jewishness, and foreignness, were thought to enhance his expert counterfeiting. Per Eskridge's taxonomy, he would exist somewhere between the criminal and the mercenary.

Herz's reception in England, while still skeptical, was tempered. British physicians, in particular, were more supportive than was their wont. The same qualities undergirding French characterizations of his "pathological proximity" to criminality became their authenticating arguments. They defended Herz as a colleague, an Anglophile (who had spent time in both

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

England and America), and a cosmopolitan global citizen. His status as a French exile fueled more fervent advocacy, as when *The British Medical Journal* avowed "the French press have never ceased to ridicule the reality of the illness, have published the most fanciful accounts of the patient's outdoor doings, and generally the most indecent misrepresentations and charges against the patient and his physicians."[49] These accusations of malingering were viewed as an attack on the professional guild itself, for they were dually directed against a fellow practitioner and the acumen of his examining physicians. The media coverage of Herz was also deemed an ethical violation: *The Lancet* remarked that the intersection of the private, clinical sphere and the politically exigent showed how "the first principle of social ethics may be overborne," and that this treatment was not only immoral, but dangerous:

> The unfortunate object of this legal persecution has been for the past two years confined to his bed by a mortal illness, which has been gradually advancing towards its inevitable termination; and yet during the whole time he has been kept under police surveillance and has been practically condemned unheard. Surely no course could be better calculated to hasten the end of a sufferer from advanced cardiac disease complicated with diabetes.[50]

Similarly, angina specialist Lauder Brunton (1844-1916) wrote after examining Herz that "unless the strain which is at present weighing upon him is diminished, and his worry and anxiety lessened, the cardiac disease will progress and lead to an utter and irremediable ruin of his health, or even to death itself."[51] These characterizations of Herz as a desperately unwell man, condemned "unheard" through ill will and unable to defend himself, a victim of "legal persecution" under a panoptic regime of surveillance, mark him as both person under investigation and martyr to malingering rhetoric. Unlike the anonymous malingerers distributed across contemporary clinical literature, he is regarded with sympathy. I would argue that this operates in tandem with the ideal of the "malingering detective" we have seen elaborated in both medical and cultural sources — a clinically astute, skeptical, and virtuous being. The conjunction of testimonies from well-regarded specialists, iterative clinical examinations, congratulatory rhetoric on the superiority of English good will and ethics, all operate to reconfigure and uplift this professional ideal in response to Herz's malingering case. As such, the British medical establishment largely viewed the accusations leveled against Herz as violating these principles. When Herz died, *The Lancet* published a brief but compassionate obituary, remarkable for its eagerness to vindicate British physicians while subtly denouncing colleagues across the Channel: "his death was due to angina pectoris and in its mode of onset sufficiently justified the opinion of the well-known English physicians who refused to take the responsibility of saying that he was in a fit state to appear at the Extradition Court"[52]

Many also critiqued the ways in which Herz's body and suffering were put on display; the cynical disbelief of his symptoms and scrutiny of every physical sign presented on the European stage. As one writer noted, "we have always regretted that it should have been ever deemed necessary to parade before the public the particular details of the malady of Dr. Herz."[53] Legal proceedings in Paris provoked further outcry across the Channel, as repeated attempts at extradition countervailed what was considered impeccable English medical guidance. In response to this, Malcolm MacDonald McHardy (1852-1913), along with a number of other practitioners who examined Herz, sent "authenticated" clinical impressions to the Cour d'Appel in Paris and the Home Office in London and replicated them in the pages of *The Lancet*, pointing to the "cruel hardship of the situation," and the "falseness and indecency of the comments in the lay press of France [which] are as disgraceful as incredible."[54]

Despite these calls for privacy and decency, however, even sympathetic British accounts of Herz's ailments were cast in an explicitly investigative light. In their enthusiasm to refute the malingering allegations, respected medical journals offered competing "authentic statements" upon the "case of Dr. Cornelius Herz." Thomas Barlow described his visit with Thomas Buzzard: "It is fair to state that Dr Herz bore our investigation of one and a quarter hour's duration extremely well. We were told by those present that he was at his best and that at previous investigations he had acquitted himself with great success, but that he had suffered much afterwards."[55] Lauder Brunton conducted and publicized a meticulous physical exam, including cardiac auscultation, splenic palpation, and urinoscopic analysis.[56] These bedside case histories were arduous and detailed, and evidently taxing for the patient. Because they were iterative, the slightest changes or improvements were noted and tabulated, affixing tiny shifts in constitutional symptom (appetite, weight, fatigue) or sign (auscultation, palpation) to the legal apparatus awaiting Herz.

When Brouardel and Dieulafoy visited Herz, a few months after Brouardel's initial exam with Char-

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

cot, they noted that their subject was significantly improved, notably "dans la plénitude de ses facultés intellectuelles. Il n'est plus l'homme anémié el amaigri du mois de juin; iln'est plus l'homme tombant d'inanition et de faiblesse," and that as a result he could be extradited.[57] For the French press, this was further evidence of a "faux Cornelius Herz," "montré aux médecins experts lors de leur mission, le vrai, le seul, jouant au crocket, voyageant en France." When the British raised an outcry, the French responded on medical grounds: "Il semblait que l'on n'avait ja mais vu un malade atteint de diabète, d'albuminurie ou d'affection du cœur, avoir une rémission dans la marche de sa maladie."[58] Perhaps their British counterparts were simply unfamiliar with the natural histories of diabetes and cardiac disease, and not so skilled at detecting malingerers, after all.

A Diagnostics of Suspicion

When Paul Ricœur characterized a "hermeneutics of suspicion" distinguished by skeptical reading, circumventing obvious meanings in favor of occult or unflattering truths, he triggered a half-century debate in literary and historical criticism.[59] For isn't this self-evident? Are we not always panning for meaning amidst the dross? The same can be said for diagnosis; housed in its very etymology is the praxis of sifting truth from appearances. In her landmark study of medical narratology, Kathryn Montgomery identifies a "diagnostic circle" akin to Heidegger's hermeneutic circle, an iterative process of interpretation where multiple narratives intersect, scaffolding clinical thought and relationships and centering the physician as reader and interpreter.[60] Diagnostician and critic share this fascination for the concealed — unearthing profound meanings and mapping relationships between surface and depth — a genealogy of suspicious reading. Diagnosis is also socially constructed, and as Charles Rosenberg famously described, it "structures practice, confers social approval on particular sickness roles, and legitimates bureaucratic relations."[61] In this regard, it informs a number of policy frameworks. What then is the meaning of a diagnostics of suspicion, and what ramifications might this have for contemporary social policy?

Dwelling upon the late nineteenth and early twentieth centuries, this paper has made the case that during this period, malingering transforms into an entity around which the medico-legal establishment constructed an entire clinical, epistemological, and ethical structure. It fixes the fictional and historical case studies of Sherlock Holmes and Cornélius Herz in the broader context of malingering. Framing malingering as an act of detection, its diagnosis becomes part of a methodology ascribed to a certain sort of physician — the "malingering detective" — a figure characterized by clinical acuity, ethical rigor, and a broad forensic sphere of influence bridging the clinic and the courtroom. Alongside we witness the mutation of the patient into a person under investigation, a term which still carries epidemiological heft, signaling both contagious danger and medicalized surveillance in recent outbreaks from Ebola (2014-2016) to the ongoing SARS-CoV-2 pandemic (2019-).[62] As such, it is even attached to diagnostic and billing codes, as when the Centers for Disease Control updated ICD-10 taxonomies to reflect the category of COVID-19 "PUI."[63] This interaction between diagnosis in the clinic, classificatory schemes, public health policy, and business and legal apparatus mirror the networks of malingering in the fin de siècle.

Dwelling upon the nineteenth and early twentieth century, this paper has made the case that during this period, malingering transforms into an entity around which the medico-legal establishment constructed an entire clinical, epistemological, and ethical structure. It fixes the fictional and historical case studies of Sherlock Holmes and Cornélius Herz in the broader context of malingering. Framing malingering as an act of detection, its diagnosis becomes part of a methodology ascribed to a certain sort of physician — the "malingering detective" — a figure characterized by clinical acuity, ethical rigor, and a broad forensic sphere of influence bridging the clinic and the courtroom.

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

https://doi.org/10.1017/jme.2021.53 Published online by Cambridge University Press

For the late Victorians, the person under investigation was often pathologized, racialized, and distanced from the investigator due to alleged predispositions and susceptibilities. Simultaneously, the practitioner developed a sense of social and ethical responsibility beyond the clinical, to address a condition thought to present risk to the population and medico-legal system at large. The interplay between these figures contributed, in turn, to a diagnostics of suspicion. In contemporary biomedicine on the individual and population health scale, such dynamics operate in subtle, but pervasive ways. Though malingering was expunged from the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-V) but remains a "V" code (a numeric code used for visits to a health care professional for purposes other than for illness), its afterlives continue and have ramifications for almost all forms of diagnosis. Doctors are coached to be skeptical of patients or to distrust their reports — before the advent of patient-centred medicine in the last few decades of the twentieth century, this was overt and endemic in published clinical literature, even as late as a 1979 *Journal of the American Medical Association* piece which counsels physicians to model themselves on the "detective prototype" in order to "detect deception on the part of a patient."[64] Such deception, writes the author, is not just deliberate malingering but anything that threatens the physician's authority, from subconscious undermining to non-compliance. Since the 1980s, a growing body of literature has addressed physician distrust of patients, including major works in the health humanities and bioethics, such as Jay Katz' *The Silent World of Doctor and Patient* (1984), Susan Sherwin's *No Longer Patient: Feminist Ethics and Health Care* (1992), and health communications and health equity scholarship addressing distrust mediated by racial, gender, and cultural bias.[65] Nevertheless, the legacy of the malingering detective endures in the medical "hidden curriculum," that cues trainees to doubt patients, though such language might never appear in overt form.[66] Such a diagnostics of suspicion is embedded even in the seemingly benign aspects of quotidian medicine, such as the conventional "SOAP" note (Subjective/Objective/Assessment/Plan) which assigns subjectivity to the patient's story and symptoms, but objectivity and primacy to diagnostic and laboratory data and physician impression. Medical care is billed according to this fault line, practically effacing the patient's account from the critical/billable portion of the chart. These social and cultural views of diagnosis therefore have substantive clinical, epidemiological, and policy effects, tied to diagnostic error and bias, insurance models and compensation, and global health outcomes.[67] This framing of doctors as suspicious readers and patients as evasive or untrustworthy subjects, whether actively cynical toward patient reports and motivations or more subtly undermining of them, carries forward from the long nineteenth century a consequential paradigm: that of virtuous doctor and unvirtuous patient. One to be believed and trusted, the other to be investigated.

Note

The author has no conflicts of interest to disclose.

References

1. "Two princes of science are charged in turn with providing an exact account…of…the state of the illustrious invalid," H.S. Robert, "The Panama Canal: To Determine Whether He was Fit to be Extradited, Two Eminent Physicians Examine the Stools of Dr Cornelius Herz, Who had Fled France to Escape the Results of his Mismanagement of the Canal's Financing," watercolour drawing, (ca. 1897), Wellcome Collection, *available at* <https://wellcomecollection.org/works/xre3xmfu> (last visited August 4, 2021).
2. H.S. Robert, "The Panama Canal: Dr Cornelius Herz, Having Fled to Bournemouth to Escape the Results of His Mismanagement of the Canal's Financing, Simulates Illness to Avoid Extradition to France," watercolour drawing (ca. 1897), wellcome Collection, *available at* <https://wellcomecollection.org/works/srfgf4zx> (last visited August 4, 2021); "They gave him only a few hours to live…that was 15 years ago…We don't talk about it anymore. A puzzle!"
3. E. Dete and Bertrand, "La Chambre de Cornélius Herz à Bournemouth," wood engraving, black and white, (Paris, 1893), National Library of Medicine, *available at* <http://resource.nlm.nih.gov/101459165> (last visited August 4, 2021); R. Hierons, "Charcot and His Visits to Britain," *BMJ* 307, no. 6919 (1993): 1589–1591, *available at* <https://doi.org/10.1136/bmj.307.6919.1589> (last visited August 4, 2021).
4. P. Brouardel, *Etat de santé de Cornélius Herz* (Paris: Baillière, 1893): at 2-3; *La Chronique Médicale* (Paris: Rédaction & Administration, 1898).
5. "The Case of Dr. Cornelius Herz," *British Medical Journal* 2, no. 1711 (1893): 858-859.
6. Odysseus may have been the first malingerer. Performing madness to avoid serving in the Trojan War, he tills an empty field with salt instead of seed; but he is ensnared by his countryman Palamedes, who tricks him into revealing the deception. He does not forget Palamedes' trick and is revenged upon him at Troy, when he forges a letter suggesting that he has betrayed Greece, invoking the wrath of Agamemnon, who has Palamedes stoned as a traitor. As related by Apollodorus and Hyginus, this tale of Odysseus' malingering and Palamedes' death becomes part of the classical and historical lore, but is also a cautionary tale of the consequences for those who divulge the deception. For more on the historical and bioscientific afterlives of Odysseus' malingering, see P. Kheirkhah, "Malingering: A Historical Perspective," in *Neurological Malingering* (Boca Raton, FL: CRC Press, 2018): at 1-6; A. Núñez, et al., "Pseudodementia, Malingering and Revenge in Ancient Greece: Odysseus and Palamedes," *Neurosciences and History* 4, no. 2 (2016): 47-50; H. M. Hackford, "Malingering: Representations of Feigned Disease in American History, 1800–1920," PhD. dissertation, American University (2004); L.D. Hankoff, "The Hero as Madman," *Journal of the History of the Behavioral Sciences* 11, no. 4 (1975): 315-333.
7. There is a continuous thread through the late nineteenth-century to early twenty-first century diagnostic literature, concentrated around particular entities: occupational injury, disability and social security assessments, military medicine, traumatic brain injury, neuropsychiatric disorders, pain,

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

forensic trauma, post-traumatic stress disorder, and illness deception (malingering/factitious disorder/Munchhausen's Syndrome) itself. Yet little has been written specifically about the epistemologies of malingering detection and diagnostic reasoning more generally, physician professionalization/identity formation, and medico-disciplinary power. The late twentieth-century and early twenty-first century clinical database reflects the empirical impulse, with a growing number of validated instruments and quantification tools: see G. Young, "Toward a Gold Standard in Malingering and Related Determinations," in *Malingering, Feigning, and Response Bias in Psychiatric/Psychological Injury* (Dordrecht: Springer, 2014): 53-87; R. Rogers, et al., "Standardized Assessment of Malingering: Validation of the Structured Interview of Reported Symptoms," *Psychological Assessment: A Journal of Consulting and Clinical Psychology* 3, no. 1 (1991): 89.

Secondary literature reveals a tension between sociolegal and biomedical analyses of malingering. For example, in their introduction to *Malingering as Illness Deception* (Oxford, 2003): 3-31, Peter Halligan, Christopher Bass, and David Oakley contest the prominent role that medicine and the biomedical model continue to play in "shaping and defining current discussions of illness deception," as this facilitates a merging of the "language of medicine" and the "language of morality." They reframe illness deception as a "volitional act" that can be conceptualized within a sociolegal framework, rather than a deterministic disease model, therefore foregrounding the human capacity for free will. Though their intervention attempts to free "illness deception" from its diagnostic and clinical moorings and physicians from their roles as gatekeepers, embedding malingering further in sociolegal and social responsibility frameworks still yokes the detection of malingering to morality.

Though there is a small body of ethics scholarship addressing the clinician's duties in cases of suspected malingering (via a bioethics/informed consent framework, cf. P. J. Candilis, "Ethics, Malingering, and a Lie-Detector at the Bedside," *Journal of Forensic Science* 43, no. 3 (1998): 609-612; J. D. Seward and D. J. Connor, "Ethical Issues in Assigning (or Withholding) a Diagnosis of Malingering," *Neuropsychology of Malingering Casebook* (New York: Psychology Press, 2008): 535-547, the necessary critique frequently comes from the humanities and social sciences, including C. E. Rosenberg, "The Tyranny of Diagnosis: Specific Entities and Individual Experience," *The Milbank Quarterly* 80, no. 2 (2002): 237-260 and L. Grubbs, "Lauren Slater and the Experts: Malingering, Masquerade, and the Disciplinary Control of Diagnosis," *Literature and Medicine* 33, no. 1 (2015): 23-51, and Ian Hacking's discussion in *Mad Travelers* (Cambridge: Harvard, 1998) on the politics of assigning diagnoses (distinguishing between hysteria and epilepsy in Charcot's time). Clearly the health humanities has something to say about this intersection of medical jurisprudence, diagnosis, power, and critique.

8. S. Wessely, "Malingering: Historical Perspectives," in *Malingering and Illness Deception* (New York: Oxford University Press, 2003): 31-42, at 36.
9. The historiography and health humanities scholarship on medical jurisprudence and forensic or legal medicine (an inversion and distinction that is itself worth exploring) is too vast to encompass in a single footnote or even this entire paper, but I am including some key sources which have informed my thinking for this article as well as a forthcoming book on diagnosis and detection. Most recently, work on forensic cultures (epistemologies, institutions, and technologies in conjunction with techniques and methods) featured in a special issue of *Studies in History and Philosophy of Science* (2013) and *Global Forensic Cultures*, ed. I. Burney and C. Hamlin (Johns Hopkins, 2019) have influenced my view of the diagnostic space as a forensic space, and textured the motif of "doctor as detective" into the cross-cutting figure of investigating professional, bridging clinic, courtroom, and culture. On the spatialization of diagnosis, see also G. Mooney, "Diagnostic Spaces: Workhouse, Hospital, and Home in Mid-Victorian London," *Social Science History* 33, no. 3 (2009): 357-390, and D. Armstrong, "Public Health Spaces and the Fabrication of Identity," *Sociology* 27, no. 3 (1993): 393–410.

   Foundational scholarship on legal medicine and views of the juridical/disciplinary apparatus, especially suturing the private and public spheres, include *Legal Medicine in History,* eds. M. Clark and C. Crawford (London: Cambridge, 1994), J. Goldstein's *Console and Classify: The French Psychiatric Profession in The Nineteenth Century* (Chicago: University of Chicago Press, 1987), and "Framing Discipline with Law: Problems and Promises of the Liberal State," *AHR,* 1993, and T. Golan's *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America* (Cambridge: Harvard, 2007), among others. I have also drawn from Simon Cole's *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Cambrdge: Harvard, 2001) particularly in the "Person Under Investigation" section which engages "criminal identity" more explicitly, ranging from the postcolony to the metropole. I am grateful to Mitra Sharafi and Samuel Scharff for generative conversations on forensic medicine, and their own work, including Sharafi's article, "The Imperial Serologist and Punitive Self-Harm: Bloodstains and Legal Pluralism in British India," in *Global Forensic Cultures: Making Fact and Justice in the Modern Era*, cited above, and Scharff's dissertation, "The Mask of Expertise: Hervey Cleckley, Psychiatry, and Law in 20th Century America," (Dissertation: Johns Hopkins University, 2021.)

   Finally, on co-production of scientific and social discourses, an assumption which undergirds much of this work: S. Jasanoff, *States of Knowledge: The Co-Production of Science and the Social Order* (New York: Routledge, 2004).
10. A paradigmatic model that weaves throughout clinical literature as a relatively unexamined assumption, see N. Y. Hoffman, "The Doctor and the Detective Story," *JAMA* 224, no. 1 (1973): 74-77; R. E. Peschel and E. Peschel, "What Physicians have in Common with Sherlock Holmes: Discussion Paper," *Journal of the Royal Society of Medicine* 82, no. 1 (1989): 33-36. Being a diagnostician is central to the physician's contemporary role, and detective methods are often used to promulgate and consolidate diagnostic reasoning. This is so ubiquitous that it appeared even in 21st century Medical Grand Rounds at the National Institutes of Health: diagnostician Faith Thayer Fitzgerald charged her clinical audience to read Sherlock Holmes because his fictional methods are archetypal of the diagnostic process (F. Fitzgerald, Clinical Center Grand Rounds, "Mysterious Cases," National Institutes of Health, 2002). Though the canonical doctor-detective motif is familiar to most humanists (vis-a-vis Sherlock Holmes and Joseph Bell, diagnosis and semiology, see also C. Ginzburg, "Clues: Roots of a Scientific Paradigm," *Theory and Society* 7, no. 3 (1979): 273-88; C. Ginzburg, "Morelli, Freud, and Sherlock Holmes: Clues and Scientific Method," *History Workshop Journal* 9, no. 1 (1980): 5–36; U. Eco and T. A. Sebeok, eds., *The Sign of Three: Dupin, Holmes, Peirce* (Bloomington: Indiana University Press, 1988), it has wider ramifications and points up a more fundamental forensic shift in clinical epistemology and professional identity formation.
11. An excellent analysis of clinical authority as it specifically pertains to medical jurisprudence and railway injury trials in the late nineteenth century in K. M. Odden, "Able and Intelligent Medical Men Meeting Together': The Victorian Railway Crash, Medical Jurisprudence, and the Rise of Medical Authority," *Journal of Victorian Culture* 8, no. 1 (2003): 33-54.
12. This construction was also explicitly gendered (masculine). For more on how the medical profession invoked visions of masculinity, heroism, and self-sacrifice, often through martial metaphors or explicitly military formulations, see M. Brown, "'Like a Devoted Army': Medicine, Heroic Masculinity, and the Military Paradigm in Victorian Britain," *Journal of British Studies* 49, no. 3 (2010): 592–622; M. J. D. Roberts, "The Politics of Professionalization: MPs, Medical Men, and the 1858 Medical Act," *Medical History* 53, no. 1 (2009): 37–56;

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

S.E.D. Shortt, "Physicians, Science, and Status: Issues in the Professionalization of Anglo-American Medicine in the Nineteenth Century," *Medical History* 27, no. 1 (1983): 51-68, and of course Joanna Bourke's work, cited below.

13. Almost thirty years ago, D. Armstrong argued that the "new social diseases" emerged in the early 20th century, generating novel targets for health care intervention and shifting from the lesion-based pathological medicine of the hospital to the extra-corporeal risk factors of surveillance medicine. But as I will demonstrate throughout this paper, I believe these shifts to have started much earlier and to be more fluid and contingent in the dynamic late nineteenth century. (See D. Armstrong, "The Rise of Surveillance Medicine," *Sociology of Health and Illness* 17 (1995): 393-404).
14. "Cornelius Herz Summoned in Paris," *New York Times*, March 13, 1895, at 7; "The Case of Dr. Cornelius Herz," *British Medical Journal* 2, no. 1711 (1893): 858-859; "DR. CORNELIUS HERZ," *Sacramento Daily Union*, June 3, 1898, at 1; "Dr. Cornelius Herz," Wanganui Herald, March 17, 1893, at 3; See Dr. Cornelius Herz, UK Commons, at Volume 28, debated on Tuesday, August 14, 1894 (statement by Mr. Scott Montagu and Mr. Asquith); "The Case of Dr. Cornelius Herz," *Lancet* 142, no. 3664 (1893): 1265.
15. J. Bourke, *Dismembering the Male: Men's Bodies, Britain, and the Great War* (University of Chicago Press, 1996).
16. A. Conan Doyle, "The Adventure of the Dying Detective," *His Last Bow: A Reminiscence of Sherlock Holmes* (New York: George H. Doran Company, 1917): 179-205, at 203. See as well A. Conan Doyle, "The Adventure of the Final Problem," *The Strand Magazine* 5, no. 12 (1893).
17. So effectively does Conan Doyle mimic the case report that several physicians have attempted to retrospectively diagnose Holmes' fictitious "Tapanuli fever" in medical journals (see Setu K. Vora,"Sherlock Holmes and a Biological Weapon," *Journal of the Royal Society of Medicine* 95, no. 2 (2002): 101–3; W.A. Sodeman, Jr., "Sherlock Holmes and Tropical Medicine: A Centennial Appraisal," *American Journal of Tropical Medicine and Hygene* 50, no. 1 (1994): 99-101; N.J. Ehrenkranz, "A. Conan Doyle, Sherlock Holmes, and Murder by Tropical Infection," *Reviews of Infectious Diseases* 9, no. 1 (1987): 222-225; See also: J. Bell, "A Note on Mr. Sherlock Holmes," Preface to *A Study in Scarlet* (London,1887); P. Accardo, *Diagnosis and Detection : The Medical Iconography of Sherlock Holmes* (London: Associated University Presses, 1987); E.P. Scarlett, "The Old Original: Notes on Dr. Joseph Bell Whose Personality and Peculiar Abilities Suggested the Creation of Sherlock Holmes," *Archives of Internal Medicine* 114, no. 5 (1964): 696–701; M. Boruch, "Diagnosis, Poetry, and the Burden of Mystery," *New England Review* 36, no. 2 (2015): 23-36.
18. See also B. Poore, "The Trickster, Remixed: Sherlock Holmes as Master of Disguise," in *Sherlock Holmes in Context*, ed. S. Naidu, Crime Files (London: Palgrave Macmillan UK, 2017): 83–100.
19. For more on medical specialization in the late nineteenth century Euro-American context, enabling both closer observation of a fewer number of cases and administrative shepherding, see G. Weisz's numerous articles: "The Emergence of Medical Specialization in the Nineteenth Century," *Bulletin of the History of Medicine* 77, no. 3 (2003): 536-575; "The Development of Medical Specialization in Nineteenth-Century Paris," *Clio Medicine* 25 (1994): 149-188; "Mapping Medical Specialization in Paris in the Nineteenth and Twentieth Centuries," *Social History of Medicine* 7, no. 2 (Aug 1994): 177-211; L. Premuda, "La Specializzazione in Medicina: Aspetti Storici e Considerazioni [Medical Specialization: Historical Aspects and Considerations]," *Medicina nei Secoli* 16, no. 2 (2004):219-36; D. Echenberg, "La Spéciatisation Médicate: Aussi Vieille Que l'Antiquité! Médecine Interne Générale: Perspective Canadienne [A History of Internal Medicine: Medical Specialization: As Old as Antiquity]," *Revue Médicale Suisse* 28, no. 3 (2007): 2737-2739.
20. For the casuistic disciplines — medicine, jurisprudence, ethics — "strange" or "peculiar" cases serve as a shared epistemic genre see G. Pomata, "The Medical Case Narrative: Distant Reading of an Epistemic Genre," *Literature and Medicine*, 32, no. 1 (2014): 1-23. I discuss this in detail in a forthcoming *Literature and Medicine* article with Iro Filippaki: "The Case of the Peculiar Story: Medical Investigation and the Detective in Edgar Allan Poe and Marguerite Duras." There is a robust humanities scholarship on the cross-pollination between literary/scientific case narratives ranging from Gothic literature to Realism, sensation, and speculative fiction. For more see J. Tougaw, *Strange Cases: The Medical Case History and the British Novel* (New York: Routledge, 2006); A. Stiles, *Popular Fiction and Brain Science in the Late Nineteenth Century* (London: Cambridge University Press, 2011); M. Coyer, *Literature and Medicine in the Nineteenth-Century Periodical Press: Blackwood's Edinburgh Magazine, 1817-1858* (Edinburgh: Edinburgh University Press, 2017); M. Kennedy, *Revising the Clinic: Vision and Representation in Victorian Medical Narrative and the Novel* (Columbus: Ohio State University Press, 2010).
21. "Detective Medicine," *British Medical Journal* 2, no. 1507 (889): 1108–17, at 1109.
22. For more see: A. E. Dembe, "The Medical Detection of Simulated Occupational Injuries: A Historical and Social Analysis," *International Journal of Health Services* 28, no. 2 (1998): 227-239.
23. See "Detective Medicine," *supra* note 21.
24. The psychopathology of malingerers sits in a broader literature of psychological development, criminality, and contemporary concerns about the porous boundaries between normal and pathological (see discussion of Canguilhem and Durkheim below). Around this period, heightened medical surveillance starts surveying not only the avowedly pathological — the monomaniac, neurasthenic, unstable, and criminal — but healthy populations (see Armstrong on surveillance medicine). The malingerer points up the precarity of the normal, and - continuous with other susceptibilities and pressure points — becomes a subject of exaggerated medical vigilance.
25. Anatomist, Fellow of the Royal Society, and Regius Professor of Medicine at Oxford, Acland was principally responsible for the University Museum at Oxford, and was also curator of university galleries and the Bodleian Library. He wrote a number of textbooks, including (with William Stokes) *A Treatise on the Diagnosis and Treatment of Diseases of the Chest,* Vol. 98, (New Sydenham Society, 1882), and accounts of cholera in Oxford: H. W.h Acland, *Memoir on the Cholera at Oxford, in the Year 1854: With Considerations Suggested by the Epidemic* (J. Churchill, 1856).
26. F. Parkes Weber, "Possible Pitfalls in Life Assurance Examination, and Remarks on Malingering," *British Medical Journal* 1, no. 2980 (1918): 167–169; B.A. Watson, *The Diagnosis of Traumatic Lesions in the Cerebro-Spinal Axis: And the Detection of Malingering Referred to this Centre* (New York, 1891).
27. H. W. Acland, *Feigned Insanity, How Most Usually Simulated, and How Best Detected: An Essay to Which Was Awarded the Gold Medal in the Class of Medical Jurisprudence in the University of Edinburgh, July, 1844* (London: R. Clay, 1844): at ix–xi.
28. J. Herold, *A Manual of Legal Medicine: For the Use of Practitioners and Students of Medicine and Law* (Philadelphia: JB Lippincott Company, 1898).
29. E. Durkheim, *Rules of Sociological Method* (New York: Simon and Schuster, 1982); G. Canguilhem, *On the Normal and the Pathological* (New York: Springer Science & Business Media, 2012).
30. A. M'Kendrick, *Malingering and its Detection Under the Workmen's Compensation and Other Acts* (Edinburgh: E. & S. Livingstone, 1912).
31. See Watson, *supra* note 26.
32. R. Farquharson, "On The Early Detection of Infectious Diseases," *The Lancet* 94, no. 2415 (1869): 798–800, at 798-800;

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

Eighteenth and nineteenth-century entanglements between hygiene, epidemic surveillance, and criminal detection (i.e. medical police, public health and sanitation regimes, and contact tracing) are beyond the scope of this paper, but notable is the introduction of malingering into this dyad — where the methodology of hypervigilance associated with curtailing early contagion (cf. Farquharson, before it spreads rapidly through the population) is applied to exposing feigners. See also P. E. Carroll, "Medical Police and the History of Public Health," *Medical History* 46, no. 4 (2002): 461–494; C. Hsien-Yu, "Colonial Medical Police and Postcolonial Medical Surveillance Systems in Taiwan, 1895-1950s," *Osiris* 13 (1998): 326-338; A. Bashford, ed. *Medicine at the Border* (London: Palgrave Macmillan, 2006).

33. See Watson, *supra* note 31.
34. See Herold, *supra* note 28; "Department of Medical Jurisprudence," *Chicago Law Times* 3, no. 1 (1889): 87–104.
35. See "Detective Medicine," *supra* note 23.
36. A. Conan Doyle, "The War In South Africa," *The British Medical Journal* 2, no. 2062 (1900): 49–53, at 49.
37. C. Wynne, "Sherlock Holmes and the Problems of War: Traumatic Detections," *English Literature in Transition, 1880-1920* 53, no. 1 (2010): 29–53, at 39.
38. Post-Conan Doyle, the trope of the detective as suspect or criminal recurs as a formal feature of the genre, i.e. in twentieth-century successors such as Agatha Christie (*The Murder of Roger Ackroyd,* 1926), Rudolph Fisher (*The Conjure Man Dies*, 1932), and Dorothy Sayers (*Clouds of Witness*, 1926) among others. Additionally, in *Curtain*, *The Conjure Man Dies*, and *Clouds of Witness,* feigning illness, debility, or death are central plot structures.
39. Jewson's prototype of Laboratory Medicine, while investigative, focuses on the methods of the natural sciences and the atomization of the patient into material/biological phenomena, rather than the person themselves as a direct object of study and surveillance; N. D. Jewson, "THE DISAPPEARANCE OF THE SICK-MAN FROM MEDICAL COSMOLOGY, 1770-1870," *Sociology* 10, no. 2 (1976): 225–244; S. Gillam, "The Reappearance of the Sick Man: A Landmark Publication Revisited," *The British Journal of General Practice* 66, no. 653 (2016): 616–617; D. Armstrong, "The Invention of Patient-Centred Medicine," *Social Theory & Health* 9, no. 4 (2011): 410–418.
40. D. Armstrong, "The Rise of Surveillance Medicine," *Sociology of Health & Illness* 17, no. 3 (1995): 393-404, at 400.
41. For more on contemporary connections between Armstrong's "surveillance medicine" and personalized medicine, self-monitoring, and the paradoxes of a health system that treats patients and enjoins patients to view themselves as composites of risk profiles, see S. Samerski, "Individuals on Alert: Digital Epidemiology and the Individualization of Surveillance," *Life Sciences, Society and Policy* 14, no. 13 (2018); See Armstrong, *supra* note 40, at 398.
42. J.T. Eskridge, *Some Points in the Diagnosis of Certain Simulated Mental and Nervous Diseases* (New York, 1890): at 2-3.
43. B. Bramwell, "Malingering: Discussion On," *Transactions: Medico-Chirurgical Society of Edinburgh* 32 (1913): 26–56; See Weber, *supra* note 26.
44. Rotherhithe is south of the Thames, a shorthand for shipyards, docks, and the port, telegraphing Holmes' proximity to the working classes "south of the river" as well as an influx of global migrants to the metropole; see C. Doyle, "The Adventure of the Dying Detective," *supra* note 16: at 180-182.
45. U. Pablo Mukherjee, "'Out-of-the-Way Asiatic Disease': Contagion, Malingering, and Sherlock's England," in *Literature of an Independent England: Revisions of England, Englishness, and English Literature*, ed. C. Westall and M. Gardiner (London: Palgrave Macmillan UK, 2013): 77–90.
46. F. Brown, *For the Soul of France: Culture Wars in the Age of Dreyfus* (New York: Anchor Books, 2011).
47. V. Lenepveu, "No. 10 L'ex copain de Cornelius Herz / Musée des Horreurs / Duke Digital Repository," 1899, Rubenstein Library, *available at* <https://idn.duke.edu/ark:/87924/r4w08wp59> (last visited August 4, 2021); D. R. Watson, "Clemenceau's Contacts with England," *Diplomacy & Statecraft* 17, no. 4 (2006): 715–730.
48. In 1894, French army captain Alfred Dreyfus was wrongly accused of transmitting military secrets to the Germans and subsequently of espionage and treason. The resultant scandal has become a watchword for nationalism and antisemitism in the Third Republic. Author Émile Zola's famous screed "J'accuse" was written to the President of the French Republic in an attempt to exonerate Dreyfus, and was instrumental in generating a public and global response. For more see: C. Forth, *The Dreyfus Affair and the Crisis of French Manhood* (Baltimore: Johns Hopkins University Press, 2006); E. Cahm, *The Dreyfus Affair in French Society and Politics* (New York: Routledge, 2014); R. Celestin and E. DalMolin, "Scandal and Innovation in the Third Republic (1871–1899)," in *France From 1851 to the Present: Universalism in Crisis*, ed. R. Celestin and E. DalMolin (New York: Palgrave Macmillan US, 2007): 89–126; H. Arendt, "From the Dreyfus Affair to France Today," *Jewish Social Studies* 4, no. 3 (1942): 195–240.
49. See "The Case of Dr. Cornelius Herz," *British Medical Journal*, *supra* note 14
50. "The Case of Dr. Cornelius Herz," *Lancet* 145, no. 3743 (May 25, 1895): 1328.
51. See *supra* note 49.
52. "Deadly Ice-Creams," *The Lancet* 152, no. 3907 (1898): 164.
53. See *supra* note 51.
54. See *supra* note 50.
55. T. Barlow, "Notes and Correspondence Relating to the Medical Examination of Dr Cornelius Herz, at Bournemouth," Wellcome Collection PP/BAR/F/4 (April 1896).
56. See *supra* note 53.
57. See Brouardel, *Etat de Santé de Cornélius Herz*; "… that he is in full possession of his intellectual faculties. He is no longer the anemic and emaciated man from June; he is no longer the man collapsing from weakness and starvation," at 3.
58. See *La Chronique Médicale*, "[the fake Cornelius Herz,] shown to the medical experts during their mission, while the real one, the only one, plays croquet, and travels in France;" "It would appear that they [the English physicians] had never seen a patient with diabetes, albuminuria, or cardiac afflictions experience a remission in the trajectory of his illness," at 480.
59. P. Ricoeur, *Freud and Philosophy: An Essay on Interpretation* (Yale University Press, 1970).
60. On the multiplicity of clinical narratives — phenomenological, written, and embodied — and a robust critique of biomedicine's refusal to acknowledge its hermeneutic self-understanding, see D. Leder, "Clinical Interpretation: the Hermeneutics of Medicine," *Theoretical Medicine and Bioethics* 11, no. 1 (1990): 9-24. For a historical and philosophical survey on Heidegger and hermeneutics structuring medical knowledge and practice see F. Svenaeus, *The Hermeneutics of Medicine and the Phenomenology of Health: Steps Towards a Philosophy of Medical Practice* (Dordrecht, The Netherlands: Kluwer, 2000); M. Heidegger, *Sein und Zeit* (Halle: M. Niemeyer, 1927); K. Montgomery Hunter, *Doctors' Stories: The Narrative Structure of Medical Knowledge* (Princeton: Princeton University Press, 1991).
61. P. Brown, "Naming and Framing: The Social Construction of Diagnosis and Illness," *Journal of Health and Social Behavior*, Extra Issue (1995): 34–52; C. Rosenberg, "The Tyranny of Diagnosis: Specific Entities and Individual Experience," *The Milbank Quarterly* 80, no. 2 (2002): 237–260.
62. For more on Ebola PUI, see M. C. Wadman et al., "Emergency Department Processes for the Evaluation and Management of Persons Under Investigation for Ebola Virus Disease," *Annals of Emergency Medicine* 66, no. 3 (2015): 306-314; H. Wu et al., "The Potential Ebola — Infected Patient in the Ambulatory Care Setting: Preparing for the Worst Without Compromising Care," *Annals of Internal Medicine* 162, no. 1 (2015): 66-67. COVID-19: A. J. Singer et al., "Cohort of Four Thousand Four

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)

Hundred Four Persons Under Investigation for COVID-19 in a New York Hospital and Predictors of ICU Care and Ventilation," *Annals of Emergency Medicine* 76, no. 4 (2020): 394-404. I am also influenced by Adia Benton's work on Ebola and public health surveillance: "Ebola at a Distance: A Pathographic Account of Anthropology's Relevance," *Anthropological Quarterly* (George Washington University Institute for Ethnographic Research) 90, no. 2 (2017), 495–524 and "International Political Economy and the 2014 West African Ebola Outbreak," *African Studies Review* 58, no. 1 (2015): 223-236. Thanks to Lorenzo Servitje for our conversations about "PUI" and clinical investigation from the individual to the scalar, as well as for his book *Medicine is War: The Martial Metaphor in Victorian Literature and Culture* (New York: State University of New York Press, 2021), which offers excellent paradigms and critiques of how metaphors structure medical epistemology.

63. "CDC Updates Criteria to Guide Evaluation of Persons Under Investigation for COVID-19, Provides ICD-10," American Trauma Society (February 28, 2020), *available at* <https://www.amtrauma.org/news/491215/CDC-Updates-Criteria-to-Guide-Evaluation-of-Persons-Under-Investigation-for-COVID-19-Provides-ICD-1.htm> (last visited August 4, 2021).
64. S. Vaisrub, "Monitoring for Mendacity," *JAMA* 241, no. 20 (1979): 2194.
65. One of the avowed aims of narrative medicine is to ameliorate these tensions, to "fortify health care with the capacity to skillfully receive the accounts persons give of themselves — to recognize, absorb, interpret, and be moved to action by the stories of others." See R. Charon, "Introduction," *The Principles and Practice of Narrative Medicine* (London: Oxford, 2016). The newer wave of critical medical humanities articulates a more incisive critique as well as an embrace of clinical and humanistic complexity (see W. Viney et al., "Critical Medical Humanities: Embracing Entanglement, Taking Risks," *Medical Humanities* 41 (2015): 2-7; See also S.D. Goold, "Trust, Distrust and Trustworthiness," *Journal of General Internal Medicine* 17, no. 1 (2002): 79-81; S. Peters et al, "What Do Patients Choose to Tell their Doctors? Qualitative Analysis of Potential Barriers to Reattributing Medically Unexplained Symptoms," *Journal of General Internal Medicine* 24, no. 4 (2009): 443 -449; W.A. Rogers, "Is There a Moral Duty for Doctors to Trust Patients?" *Journal of Medical Ethics* 28 (2002): 77-80; K. Hawley, "Trust and Distrust Between Patient and Doctor," *Journal of Evaluation in Clinical Practice* 21, no. 5 (2015): 798-801.
66. H. Lempp and C. Seale, "The Hidden Curriculum in Undergraduate Medical Education: Qualitative Study of Medical Students' Perceptions of Teaching," *British Medical Journal* 329 (2004): 770; J. Peng et al., "Uncovering Cynicism in Medical Training: A Qualitative Analysis of Medical Online Discussion Forums," *British Medical Journal Open* 8, no. 10 (2018): e022883; There is little literature extant on this topic, but this excellent op-ed by a medical trainee unravels the connections between perceived patient deceit, subjectivity, and the medical hidden curriculum: B. Saaquib, "Liars, Alcoholics, and Malingerers: Medicine's Hidden Curriculum," Op-Med Doximity Network, *available at* <https://opmed.doximity.com/articles/liars-alcoholics-and-malingerers-medicine-s-hidden-curriculum?_csrf_attempted=yes> (last visited August 2, 2021).
67. Engineering National Academies of Sciences, *Improving Diagnosis in Health Care*, 2015; H. Singh et al., "The Global Burden of Diagnostic Errors in Primary Care," *BMJ Quality & Safety* 26, no. 6 (2017): 484–494.

The Journal of Law, Medicine & Ethics, 49 (2021): 343-356. © 2021 The Author(s)