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# Tensions Of Violence, Social Harm, And Profit: An Examination Of The National Football League

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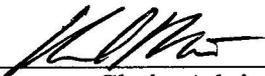
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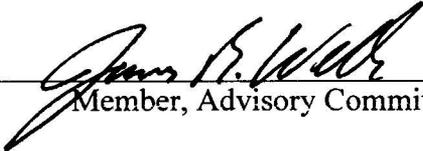
TENSIONS OF VIOLENCE, SOCIAL HARM, AND PROFIT: AN EXAMINATION  
OF THE NATIONAL FOOTBALL LEAGUE

By

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TENSIONS OF VIOLENCE, SOCIAL HARM, AND PROFIT: AN EXAMINATION  
OF THE NATIONAL FOOTBALL LEAGUE

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in partial fulfillment of the requirements  
for the degree of  
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## DEDICATION

This thesis is dedicated to my parents, granny, and my future wife  
John and Debbie Felden, Sara Burress, and Kara Kleinhans  
for their support and love

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I would like to thank Dr. Kevin Minor for his hard work and dedication. Without his guidance and patience there is no way this thesis would even be close to the product it is today. He is truly an exceptional professor and mentor. He inspires me greatly. I would also like to thank my committee members, Dr. James Wells and Tyler Wall for their comments, suggestions, and critiques. Furthermore, I would also like to thank my friends Jennifer Tilley, Craig Jankowski, and Jessica Palumbo for their time and help throughout this process. It has been a long ride and I needed you all to get through this journey.

## ABSTRACT

The subject of sport and leisure is prominently uncharted territory within criminology. The National Football League provides a unique opportunity for scholarly exploration as the sport is predicated on violence and preserves existing systems of inequality. Stemming from the defining late modern characteristics of risk management and actuarial justice, the topics of injury and harm within the sport have been brought to light by lawsuits against the league claiming that the corporation knew of the dangers of mild traumatic brain injuries (MTBI) and actively attempted to subvert this knowledge. This paper employs an amalgamation of theories and research to comprehensively clarify and examine the controversies surrounding the National Football League and their societal implications. This examination illuminates issues of mental, physical, and overarching social harm inflicted by the corporation while accounting for the necessity to balance the tension between violence and social sentiments. The theoretical works of Pierre Bourdieu, Loic Wacquant, Norbert Elias, Theodor Adorno, Max Horkheimer, and Harry Braverman employed in order to explain the dynamic and tentative relationship between power, profit and culture within the socioeconomic and political climate of contemporary society. In addition, this thesis features an inquiry and legalistic review of the role of violence within leisure activities, along with an analysis of the NFL's history and current methods of obtaining profitability. There are numerous tensions at play that have spawned from historical contradictions within the economic order of capitalism. These issues have been exacerbated by the birth and development of the logics of neoliberalism and the characteristics of late modernity. The paper aims to account for the social, cultural, and symbolic significance of the National Football League and its role in placating the masses while perpetuating systems of disparity that define neoliberal capitalistic society. The exploration of this topic is navigated by the creation of a heuristic model that functions to simplify the complex relationships between diverse sociopolitical variables. The NFL must secure and expand modes of profit surrounding football while simultaneously managing cultural sentiments by assuaging apprehension and downplaying concerns surrounding an inherently dangerous sport. The alternative is to risk fading out of public grace and falling into mediocrity and cultural irrelevance.

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## CHAPTER 1

### INTRODUCTION

Sport and leisure are under-studied topics in the field of criminology. What might be considered the criminology of sport has had no process of formation. One might find this surprising in view of the amount of harm, violence, and potential crime that occurs in sports and leisure. What is perhaps more unanticipated is the lack of criminological attention and discussion regarding the legality of violence that occurs weekly during the football season. This violence is concealed within rules of the game, our culture's perceptions of the game, and the presentation of the spectacle. It takes a blatantly violent event before one discovers the parameters of their cultural sensibilities surrounding football violence.

Just such an event occurred in 2012, with the discovery that a National Football League (NFL) team, the New Orleans Saints, was conducting an incentive based bounty program. This program was conducted by the New Orleans defense and involved paying players bonuses for delivering injuries and harm to opposing players. This event stirred a media lead inquisition into the role of violence in football in terms of consent and intent. But the event dubbed Bounty-Gate proved to only be a precursor to the much larger questions and implications of violence and harm within the sport.

On August 7<sup>th</sup>, 2011, seven former players and their families filed the first of several federal lawsuits against the league (Wong, 2012). The grounds of this litigation

were a claim that the NFL fraudulently obscured and suppressed information regarding the prolonged effects of head trauma resulting from extended exposure to playing professional football. This lawsuit proved to be the commencement of a series of lawsuits against the league that may threaten to irreparably damage the reputation of the NFL and perhaps threaten the profitability of the multibillion dollar corporation. As of the beginning of 2013, over 4,000 former NFL players had filed legal action on similar claims that the NFL “deliberately ignored and actively concealed the information” and neglected risk for players returning from injury during games (Moisse, 2013, para. 4). The plaintiffs also assert that the league glorified and promoted the game’s inherent violence and falsified a body of research on the effects of violence. Many of the former players involved in the lawsuits exhibit debilitating mental and physical injuries including depression, dementia, limited mental capabilities and brain function, wrongful death and a slew of additional afflictions stemming from repeated blows when playing the game. The progressive mental disease known as chronic traumatic encephalopathy (CTE) is amongst the most harmful repercussions of playing football. CTE has been found in former players including elite player Junior Seau who joined other former players in perpetrating suicide post career (Fainaru-Wada & Avila, 2013). The issues of concussions and mild traumatic brain injuries (MTBI) associated with playing football have become a hot button topic amongst sports fans and media outlets. The lawsuits have placed the league in a delicate position in which it must ensure the safety and legitimacy of the sport while ensuring that the violent essence of its product is not compromised.

This paper will raise and explore questions of social harm that stem from the NFL’s predicament. This requires a thorough assessment of the lawsuits and an

abbreviated exploration of the history of the National Football League in order to understand how it became America's most watched sporting spectacle. I will examine the claims of the league and utilize criminological and sociological theory to conceptualize the possible social harms stemming from the league's actions. The lawsuits, and to a lesser extent Bounty-Gate, illuminate the themes of violence, neoliberalism, late modernity, as well as the sensibilities and mentalities that can be found within crime and criminal justice studies, sociology, and state crime literatures. This paper will also address more macro-oriented questions pertaining to the importance of culture, work and contemporary economics via the works of Harry Braverman, Loic Wacquant, Pierre Bourdieu, Thomas Adorno, and Max Horkheimer. Critical theory will be applied to the NFL so as to understand the decisions and actions of the bureaucratic corporation and how its product perpetuates systems of economic inequality.

This paper has predominately two goals. First, the thesis is an argument for the validity and importance of sports and leisure activities as objects criminological inquiry. This paper will explore the undeniable and pervasive social harm stemming from the realm of sport. Second, this paper aims to focus explicitly on the injuries and harm caused by the NFL towards its players, their families, and potentially millions of followers and fans of the sport all in the name of profitability. Additionally, this paper addresses the NFL's management of the issues via denial and obfuscation.

### Theoretical Context

Edwin Sutherland's (1949) notion that a definition of crime should consider an action's social harm instead of a purely legalistic approach is a prerequisite required to

examine the actions of the National Football League within crime and criminal justice studies. While numerous actions of the league constitute legal infractions and tort violations under the traditional legalistic conception of offending, other overarching and more theoretical arguments depend on a conception of crime that does not necessarily cross the precipice of legality. While the traditional criminological paradigm adopts the state's legal definition of crime, other scholars have a wider conception of what constitutes a crime. Within the realm of critical and corporate criminology, some academics have supported the idea that social harm or injurious action is appropriate for criminological inquiry (Michalowski, 2009). Criminologist Raymond Michalowski defines analogous social injuries as, "legally permissible acts or sets of conditions whose consequences are similar to those of illegal acts," (Michalowski, 1985, p. 317). An activity predicated on violence and the potentiality of harm, such as football, can be argued to fall under this definition. The alleged actions of the league, including suppressing and actively denying potential risks to its employees, will be considered harmful actions throughout this thesis. This theoretical approach will help to examine violence and aggression within the sport of football and illumine its exclusionary attributes pertaining to harm.

Just about every hit that happens on a football field would be considered illegal if it happened anywhere else barring the realm of sport. Outside the dominion of sports, the behavior of running into a person at full speed with the intent of knocking him/her down would constitute assault. It is estimated that two professional football players running full speed at 20 miles per hour can generate 1,800 pounds of force during a head-on collision (Avila, 2012). According to a study measuring the amount of force produced by boxer's

punches, the hardest punch measured in the experiment was 1,205 lbs. or 5,358 Newtons (Pierce et al., 2006). This is almost 600 pounds of force less than the possible force of an open field NFL tackle. NFL football attracts the biggest, fastest, and strongest athletes in the world. It is not unusual for tacklers to weigh in over 240 lbs. and linemen to be tipping the scale at over 300 lbs. As a result of their sheer size, great amounts of force are created via every crushing tackle. What is interesting is how this violent and potentially dangerous sport has risen to prominence since its inception. There is something about the game that deeply satisfies the American populous' desire for entertainment.

Within the NFL, the rules might be perceived as a means to sanitize and contain the violence within the game. Just about everything a coach teaches a player to do would be illegal outside the sport's arena. The reason that tackles and hits can occur on the field and not be defined as illegal violence is due to consent from those subjected to the physical blows, which is the essence of criminal law. For a criminal action to occur, one must have had mens rea (a guilty mind) and attempted to carry out a criminal act. The reason the intent requirement is not met within the game of football is due to consent. Questions of the limitations and extent of consent must be posited in order to fully appreciate the merits of the lawsuits and harms within the game. Some of these legal answers involving intent can be found through the work of Jeffery Standen's work *The manly sports: The problematic use of criminal law to regulate sports violence* (Standen, 2009). Issues pertaining to consent will be presented in greater detail later in this paper.

In the United States, football operates under a status of exceptionalism. Football is deeply interwoven into American culture to the extent that its role and function borders on hegemonic. The violence that inflicts grievous injuries is traditionally not scrutinized,

nor really even often recognized, much less the potentiality of devious gradual injury risks that are much less observable. The issues of violence and harm caused are only recognized by the American public in extreme examples such as the mass filing of lawsuits by former players, Bounty-Gate, or when a player is grievously injured. It is when the consciousness is shocked that the harm becomes transparent. Often it takes shock of the consciousness to create a pulse that brings one's conception of morality out from the hegemonic precipice.

David Garland's (2001) work provides a possible avenue for one to understand the cultural role of sensibilities and mentalities. Norbert Elias' (1978) work, upon which Garland draws in his analysis, can be of assistance when attempting to understand football's role in society as well. Elias discusses the role of sport in more civilized societies by describing how society's feelings, norms and behaviors have changed throughout time. He explains that today's modern sensibilities are part of a long term process that is leading towards a society that promotes more refined behavior and lower levels of aggression. If the NFL is able to assure the public that the sport is conducted by trained professionals, officials, coaches, and players and is overall safe, perhaps the sport will be able to remain within the parameters of American culture's sensibilities. If not, the pain inflicted and witnessed by the sport of football may one day exceed our culture's threshold for tolerating violence.

This thesis draws upon works of Garland, Elias, and others to explain the phenomenon related to the issues of violence and injury in sport, society's desire for innocuous ferocity, and to gain a better perspective of where football falls within the parameters of American sensibilities and mentalities. It is vital to explain the role of these

desires and feelings for they provide the driving mechanism that steers the NFL to extraordinary profits. As evidenced by the shifts in the rules of the game and the sport's focus on a safer football league, the NFL is attempting to maintain its validity as a sport, rather than an archaic antiquated practice of violence and injury. These practices are in order to avoid litigation and to stay within the public's perception of what constitutes a legitimate and relatively safe form of leisure.

The sport of football is uniquely positioned to deliver a desired product of violence to the masses without appearing overly barbaric and uncivilized. Football provides an expression of legitimate violence outside of the monopoly of violence enjoyed by the state. Within late modern society, the state is usually the sole legitimate welder of violence within a society that is obsessed with safety and regulation. Related to the issues of safety and sensibilities is a discussion of late modernity. According to late modernist thinking, society has shifted culturally and structurally (Kraska, 2004). Our culture has become more obsessed with safety and risk control by placing an emphasis on risk management, prevention, safety, and efficiency. Based on these doctrines, it is easy to understand why the injuries inherent in football would affront the character of late modern society, as well as why the lawsuits have been filed. It might be assumed that in a society that is based around the minimization of risks and safety, a sport which is predicated on violence and risk of injury would find itself a target of ridicule. The façade of safety within football is exposed by the fact that players were critically or mortally injured by playing the game. There is no doubt a clash between the desire for safety and the essence of a violent sport that produces massive profit. The tenets and ideas of late

modern theory provide an insight into understanding the issues of injury and litigation that surround the league and will be discussed within the confines of this thesis.

The litigation by the former players and Bounty-Gate forced a truth to manifest. This truth is that there is uncontrollable violence and risk within the game, violence that cannot be fully controlled. Regardless of the rule changes that are supposed to promote safety, the sport is inherently dangerous, and there is always the possibility for harm. The events of Bounty-Gate and the filing of litigation against the league raises stimulating queries of intent, risk, and profit and suggests examining these issues from the standpoint of criminal justice studies.

#### Significance of Topic and Statement of Purpose

There is minimum criminal justice literature addressing social harms within the game of football. I argue that this topic represents a viable subject for inquiry within criminology. The possible harms within the game, which may leave a person's mental and physical capabilities eviscerated, deserve examination, as does the potential repercussions of these harms for the sport. As the NFL is the premier league in selling the product of American football, the position the league takes towards injury and violence in the game has repercussions on all levels of football including college, high school, and even youth football. Occasions of grievous injury and potential long term harm are innate within NFL football's current state. This paper is not aimed towards discussing the relatively minor pains, aches, and bruises that come along with any contact sport. Instead, the focus is on serious injury, as evidenced by the lawsuits. The development of concussion medical research and the league's response to these advancements are examined. This includes chronic traumatic encephalopathy, the destructive ailment

known as CTE. CTE is a neurodegenerative disease that has been linked to dementia, memory loss, mild cognitive impairment and depression. The disease stems from repeated physical blows to the brain and has been found posthumously within former NFL players (Small et. al., 2012). This analysis will draw upon medical reports detailing the status and history of these ailments, sports media reports, and legal reports in order to garner a holistic understanding of the situation. Case studies highlighting the possible effects of playing the game will also be incorporated. Claims by the plaintiffs' lawsuits that the league knowingly suppressed knowledge pertaining to possible brain trauma will be examined.

Using the theoretical lens of structural and dialectical Marxism, an argument will be formulated that conceptualizes the lawsuits and Bounty-Gate in terms of conflict between capital and labor to grasp how the risks of playing a dangerous game are ideologically sanitized to the point of obscurity. The analysis will survey how the injured players produce the product of football without being privy to information detailing the risks of the game in order to harness their raw labor for great profit. A neoliberal analysis of cultural fondness for violence vis-à-vis the concepts of safety obsessions and fears will also provide theoretical understanding to the subject. Utilizing Wacquant's (2010) conception of neoliberalism, a more intricate and rich understanding of effects of the shift from a Fordist-Keynesian welfare approach of governance to the current neoliberal economic and social system will provide a route to better understanding the phenomenon. Wacquant's theory is vital to positioning the NFL into contemporary society and understanding the league's logics, strategies and responses to possible threats of legitimacy. Although the league has altered rules and claims to be

“evolving”, the fact remains that it is a sport predicated on substantial contact and risk of injury; to have it otherwise would risk profit. An overarching Marxist argument will be deployed to investigate roles of labor and ownership and the exploitation that is systemic within a capitalistic system. The work of Harry Braverman will build on this argument by providing conceptual and theoretical richness of the shifting function of labor and its management in society. Finally, the product of the NFL is argued to be a contributory factor to a system of economic dominance and inequality. To achieve this argument, the NFL is processed through the cultural theories of Adorno, Horkheimer, and Bourdieu. The spectacle of the NFL as an influential cultural product that placates masses of citizens is examined.

Both the NFL business model and its cultural importance will be analyzed. The league sells itself as a masculine sport that is representative of American values of resilience, toughness, and dedication.. Anyone who has ever strapped on a helmet understands that only the most masculine and testosterone-driven actions are looked upon with glory in the sport. Both the monetary rewards and the intangible loots of pride and confirmation of masculinity play a role in understanding why injuries occur within the game. The androcentric pride that comes with playing hurt or injured in football has also been a key contributor to the injuries within the game. The NFL is a business that thrives on providing regulated violence for the masses. In a society that demands regulated physical expressions of violence that comport with cultural sentiments, the NFL provides a ready outlet. The state garners a monopoly on legalistic violence. This leaves a shortage of legal expression of violence that the NFL provides a considerable financial cost to consumers and an immense physical cost to players.

The masses are willing to pay for the product of football as long as the true potential for injury is disguised within the rules of the game and the way this potential is represented ideologically. There is a great potential for ignoring and downplaying grievous injury when the realities of acts of corporations, such as the NFL, are not scrutinized outside of the hegemonic discourse which construes football as replacing baseball for the title of America's favorite game. This is especially true when the actions of the league may cause future generations of young adults and children untold damages by concealing the dangers and violence that is inherent in the game of football. Violence is an essential part of the game that until recently received little attention from the public and academe as well. This somewhat implicates the criminal justice apparatus for not discussing or critiquing the great harms that can occur in the sport of football. The potential repercussions of these lawsuits are not just monetarily damning for the league. Not even the mighty shield of the NFL is impervious to the potential litigation and shifting sentiments and increased sensitization towards the effects of violence. Without radical shifts within the rules and/or equipment utilized within the game and careful ideological work, the NFL may become a sport deemed too violent and barbaric for an enlightened society.

## CHAPTER 2

### HISTORY, EVOLUTION, AND CURRENT STATUS

The National Football League provides a lucrative product predicated on violence. This product exists in a state of tension with the league's need to maintain legitimacy. As such, an understanding of the product itself is in order. The National Football League has as rich history from its development out of a hybrid of the sports of rugby and soccer to its modern status atop the American sports pedestal. Since the sport's origins in the late 1800's, there has been a constant flux of rule modifications, profitability models, players and managerial roles, and other modes of operation. In relation to player safety and profitability, the NFL has thus far managed to increase in profitability while maintaining the ideology of being a contact oriented game with provisions to protect players. This chapter will examine how the product of NFL football has become a colossal commercial enterprise in contemporary society.

The chapter is divided into four key sections. The first section presents a brief history of the National Football League. Rather than being comprehensive, this section highlights important milestones in the history of the game that have helped form the product that exists today. The second section will describe the business model of the National Football League. This section delves into a financial analysis of salaries, tickets, merchandise, television contracts, and other measures that ensure the monetary success of the league. This section illustrates the vast profitability of the league and will serve as a

lens into understanding the scope of the product's immersion into American society. The third section discusses the league's efforts to appeal to concerns over player safety and the state of injuries within the National Football League. By following the league's development pertaining to rules and equipment, an argument will be formulated that explains how these alternations were meant to ensure that the NFL product fitted into the culture's sensibilities without voiding the essence of the game. The final section of the chapter will be dedicated to understanding the lawsuits filed on behalf of the players and an understanding of the current state of medical knowledge pertaining to injuries that are inherent within the product. This information will be gathered from media reports and medical research to ascertain knowledge of the medical risks inherent within the product of NFL football.

### Basic Rules and History of the Game

For those uninitiated to the game of NFL football, a summary of the rules can be of assistance. The sport of American football (also called gridiron football) stems from the nineteenth century and developed from variations to the rules of the sports of European football (soccer) and rugby. Some of the ways that the sport differs from soccer is that gridiron football allows touching, throwing, or carrying the ball with the hands, and it differs from rugby in that there are alternating possessions between teams. The sport involves passing, running, kicking, and is known for violent collisions, athleticism, and drama, all in an attempt for one team to move a ball into the other team's goal (Oriard, 2013). The NFL field, called a gridiron because of the vertical yard line markings on a rectangular field, is 120 yards length-wise and 53.33 yards wide (Oriard, 2013). There are eleven players on the field from each team during play, as one team

attempts to move the ball into their opponent's goal while the other team attempts to stop offensive progress. Each team on offense has four chances to reach a "first down" by advancing the ball 10 yards in four downs or less in an attempt to maintain possession. The offense maintains possession until progress is impeded by the defense taking possession of the ball via a fumble or pass interception, the offense punting (kicking on fourth down), or the offense scoring. The defense attempts to stop the offense's progress towards the goal by tackling the ball carrier by bringing him to the ground, causing a turnover (fumble or interception), or batting a pass down. Points are awarded for crossing the opponent's goal (a touchdown, followed by an extra point attempt from the kicker) or kicking it over the opponent's crossbar in between goal posts (a field goal). Six points are awarded for a "touchdown" (seven including the extra point) and three points are awarded for a "field goal". If at the end of a play, the ball lies within one's own goal line, then a safety is awarded resulting in two points. Whenever a player commits a rule infraction, a penalty may result in a loss of yardage or potentially field position progression for the opposition. There are over one hundred actions that can result in a rule infraction causing a yardage penalty (NFL rulebook). These penalties encompass rule violations for delaying the game, illegal passing or running motions, illegal substitutions and motions before and during play, exceedingly violent or dangerous blocks or tackles to players deemed defenseless, as well, as numerous other actions seen as unfair or unsportsmanlike.

NFL football developed into its current state from drastic changes installed concurrently to manage the violent nature of the game for legitimacy purposes and to sell the game more effectively by adjusting the pace and essence of the product to match

popular sentiment. Professional football has a precursory history stemming from early in the 1800's, with the term "football" referring to a loosely defined game in which the goal was to cross the ball past the opponent's team. The game was often no more than just an excuse to brawl; the game was seen as a rite of passage for college freshman (Gutowski, 2006). Due to the unregulated carnage and violence on the field, "football" was banned from a number of colleges until it reemerged with modified rules from the London Football Association. This "football" resembled the contemporary game of soccer, as players could not run or throw the ball. Though, unlike soccer, players could bat the ball around with open fist and hands (Gutowski, 2006). The first of these contests was a match between Rutgers and Princeton in 1869, and over the next decade, the game developed more closely to the sport of rugby. In 1876, representatives from Harvard, Yale, Princeton and Columbia formed the Intercollegiate Football Association based heavily on Rugby (Oriard, 2013). Under the influence of Walter Camp, who is considered to be the "Father of American Football", the game went through drastic rule changes and reform including the development of a gridiron field, the creation of downs and a line of scrimmage, creation of the quarterback position, and numerous other changes that crafted the game closer to its modern form (Oriard, 2013).

Even in its earliest state, the legitimacy of football was constantly threatened by the violence and potentially injurious nature inherent in it. An example demonstrating the ruthless nature of the sport in the early 1890s was a rule banning projecting nails or iron plates in shoes and metal substances on the player's person. The tension between what is deemed laissez-faire violent contact ("letting them play") and impermissible action has driven the shifts in regulations for football throughout the years. The brutality

of early football is reflected by the fact that over the course of the 1905 season, 18 men died of injuries as a result of playing the game (Oriard, 2013). There was such concern that football might be banned due to its savage nature that President Theodore Roosevelt summoned collegiate representatives from Yale, Harvard and Princeton to the White House to urge shifts in the rules of the game. This was in response to a growing movement to ban the game, as its legitimacy as a sport was called into dispute (Greene, 2012). Before the end of the year, there was the formation of the Intercollegiate Athletic Association of the United States, which became the National Collegiate Athletic Association (NCAA) in 1910. The association would focus on reducing injury by increasing the yardage for a first down to ten yards (which curbed dangerous play in which teams would create mass formations of players to attack the opposition), the requirement of seven men at the line of scrimmage, and the implementation of the forward pass. Such changes effectively altered football closer to its modern form. More importantly, these developments radically altered the perceived barbaric nature of football at the time, thus revolutionizing football as a sport and establishing the stage for financial profit.

The National Football league was organized in 1920 as the American Professional Football Association before changing the organization's name in 1922. Before this time, non-collegiate football was conducted in the capacity of athletic clubs and small town professional teams. Ever since 1892, former and sporadically current, college star players were paid for their services by these athletic organizations (Oriard, 2013). The league's formative years were not successful in terms of garnering a national appreciation for the sport. League membership oscillated between 8 and 22 teams during the 1920's and the

early 1930s. The idea of playing a predominately collegiate game professionally held a stigma as professionalism was deemed a threat to college football. The NFL, as a product, failed to garner a national appreciation because the sport had difficulty thriving outside of communities where franchises existed (Oriard, 2013). Franchises held little monetary value, as evidenced by Tim Mara and Billy Gibson purchasing the New York Giants in 1925 for \$500. In 1933, teams were reorganized into two divisions that would play for a championship title, which was a precursor to the extraordinarily profitable and popular Super Bowl in contemporary society. The league also established a set of regulations that differentiated professional football from the college game that it emulated until then. Professional football was largely viewed as a working-class spectator's sport that failed to match the legitimacy and admiration that the college game demanded. Nevertheless, professional football's popularity grew in NFL cities. This was especially true in markets where there was not a dominant collegiate presence to garner the community's loyalty, such as New York (Oriard, 2013).

The advent of the television is largely responsible for the meteoric rise in the popularity and commercial success of the NFL. As television became increasingly common, lucrative television contracts ensured profitability, while bringing the once community oriented product to national spotlight. An early example of the importance of television to the sport was the effort by NFL commissioner Bert Bell to blackout television coverage in the cities where the games were being played. This early move in the 1950s, guaranteed maximum attendance within all of the league's 12 team cities without neglecting a growing television market (Oriard, 2013). A then NFL record crowd of 102,368 witnessed a contest between the San Francisco 49ers and the Los Angeles

Rams in 1956. In response to the league's growth, the NFL Players' Association was founded in 1956 as a representative body for the players in the league. In 1959, Pete Rozelle became the league's commissioner. Under his reign, the league became a behemoth commercial organization starting with the formation of NFL Properties, Inc. in 1962. The NFL licensing arm would grow to become a multi-billion dollar revenue producer for the league, while simultaneously growing the popularity of the game (Oriard, 2013). Also during that year, the league entered into a single network agreement with the CBS for the telecasting of all regular season games for 4.65 million dollars. This amount would grow to a staggering 500 million per year by the time of Rozelle's retirement in 1989 (Oriard, 2013). In other words, before a single ticket was bought, every club was guaranteed 17 million dollars from the television contracts alone.

An influential milestone achieved by Rozelle was his administration's persuasion of Congress to grant exemptions to the NFL from the Sherman Antitrust Act. This allowed franchises to be legally defined as single entities enabling each club to share league generated revenue. The value of franchises grew from an estimated 1 million dollars net worth in 1960 to over 100 million dollars individually by his retirement. As a result of this business model, franchise values would exceed \$500 million by the end of the 20<sup>th</sup> century. The popularity of the sport spawned the powerful rival of the NFL, the American Football League, in 1960. The eight team rival league was pass- oriented and garnered a lucrative contract with NBC. In 1966, the AFL merged with the NFL and the first Super Bowl (named the AFL-NFL World Championship Game) was played between the Green Bay Packers and the Kansas City Chiefs. The game attracted 40% of American television sets at the time. The percentage of Super Bowl viewers would never fall below

36% (Oriard, 2013). The Super Bowl may be considered an unofficial annual holiday in the United States, and the game attracts high viewership ratings and enormous revenues stemming from commercials. For a company to advertise during 2013's Super Bowl, the price was over 4 million dollars for a 30 second spot (Konrad, 2013). Super Bowls account for 22 of the most-watched programs in total audience in US history, including a record 164.1 million people who watched the 2012-2013 season's Super Bowl (Zurawik, 2013). The league's popularity and influence grew as the league successfully managed increasingly wealthy television and media contracts over the next couple decades. During the 1990s and 2000s, the league would eventually expand to encompass 32 teams featuring four separate divisions within the National Football Conference and the American Football Conference.

### Business Model

As evidenced by repeated fan polls, the NFL's popularity has been increasing. A Harris survey demonstrated that 41% of Americans chose football as their favorite sport, while baseball was chosen by 38% of the sample size in 1965. Similar polls demonstrated that in 1978 football was followed by 70% of the population, compared to 54% of the population following baseball. The sport gained more traction in the minds of Americans during the 1980s. A CBS-New York Times poll in 1981 demonstrated that 48% of sports fans chose football as their favorite sport ("Chronology of Professional", 2014). NFL football has polled number one in every single Harris poll ever since 1985. Currently, the sport is polled as America's favorite sport; 36% of sports fans chose football as their favorite sport beating baseball, basketball, tennis, auto racing, college football, and many other games.

The National Football League is consumed by the masses regardless of their annual income and other forms of capital. The game of football, as a cultural product, has mass appeal in the United States, and the NFL seemingly has appeal to people regardless of their socioeconomic status. The average ticket price of an NFL game for the 2013 season was \$81.54 and \$ 247.85 for premium tickets (“Team Marketing Report”, 2013). Tickets can become extremely expensive for the average Americans, as evidence by the NFL’s 2014 Superbowl tickets being valued at an average of \$3,552 a piece (Isidore, 2014). The NFL’s product is accessible regardless of one’s income. Although the average NFL ticket to attend games may fall outside of the price range of many fans, they are permitted to consume the product from their couches, from their smartphones, tablets, computers, radios, and other forms of media which they pay for. The NFL’s appeal and commodification has expanded to appeal to the most casual fan who may only watch the game to witness the spectacle of the event, all the way to the most dedicated of spectators. The game is notorious for providing currency for the gambling industry and now is depended upon by over 33.5 million fantasy football players in a multi-billion dollar industry (Subramanian, 2013).

The popularity of the game in conjunction with the financial savvy of the NFL business, has translated into vast profits throughout the years. The NFL is considered to be “one of America’s best-run businesses,” according to *Business Week* (Fisher, 2010). An article in *The Economist* stated that, “[the NFL] remains the most popular of the four big American sports on almost every measure, from opinion polls to television ratings” (Fisher, 2010). The average NFL team is worth over a billion dollars, and revenues approached 9.5 billion dollars for the 2012 season (Plunkett, 2014). The average game

during the 2011 campaign drew over 67,000 spectators, which is approximately 37,000 more fans than the average MLB baseball game. In 2011, four television networks, ESPN, CBS FOX, and NBC, reached a nine year agreement to air NFL games within their programming (Badenhausen, 2011). According to *Forbes*, ESPN will pay 1.9 billion dollars a year for the rights, while the other three networks pay a combined total of approximately USD 3 billion (27 billion in total over the nine-year contract). Current NFL Commissioner Roger Goodell sees the sport becoming radically more profitable; he indicated in 2010 that he believes the NFL will have a revenue goal of \$25 billion dollars by 2027( Kaplan, 2010). It is clear that the NFL leads all American sports industries as the business grosses the highest revenue, income, and value of all American professional sports. How exactly does the league achieve its monetary success? This answer lies in the league's unique business model and the creation and maintenance of spectator driven demand.

It might be surprising to most that the National Football League is technically a non-profit organization. The league is classified as an unincorporated nonprofit (c) (6) association, meaning that the league is not subject to income tax because it does not make a profit. Of course, the league is vastly profitable and can declare this tax status by declaring that the NFL constitutes a trade association comprised of 32 individual teams. The league benefits from this status not just in terms of income tax savings, but also from the fact that the NFL can potentially sell hundreds of millions of dollars in bonds at a reduced rate. These are then borrowed at cut rates to teams building new stadiums (Wilson, 2008). The league is overseen by a commissioner who has immeasurable influence within the league. The commissioner selects the league secretary and treasury

officer, and the three constitute the officers of the league. As the league's chief officer, the commissioner is responsible for managing disputes between all parties associated with the league while negotiating media contracts and hiring league employees. He may be seen as the judge, jury, and executioner of the league. He may levy punishments such as the imposition of monetary fines and draft-choice forfeitures, suspension of persons involved in unfair acts, the reversal of a game's result or the rescheduling of a game if the contest was held under illegal contexts, and even file for the permanent banning of players ("NFL Rulebook", 2014). These powers are especially relevant to the issue of player injury and violence in the game. Punishments for illegal or exceedingly aggressive play and the issue of league integrity (such as Bounty-Gate) fall principally into his jurisdiction.

The NFL business model is unique within the corporate world of sports. According to public releases pertaining to the business model of the NFL, teams within the league operate under a 60-40% model, meaning that 60% of revenue is generated nationally while 40% is locally created (Fisher, 2011). The 60% is split amongst the 32 clubs, which ensures parity and economics in the black all around. In accordance with this profit sharing model, television and media contracts, NFL merchandising, and NFL licensing profits are also equally fragmented between the franchises. This ensures that teams are profitable regardless of the product the team provides for its consumers. By utilizing a model dependent upon nationally generated revenue, the National Football League operates to ensure and maintain its unprecedented profits and demand through three main ways.

First, through its consolidation of power based upon a central model, the National Football league exercises far reaching control over the methods by which its product may be distributed (Fisher, 2011). Unlike other popular American sports, every single NFL game is broadcasted to the public. Capitalizing on its popularity and consumer demand, the NFL contracts deal with few networks, meaning that the NFL has more leverage to construct the public image and narrative of the sport. The NFL, exercising its power based upon corporate relations with media outlet providers, may dictate what commercials and advertisements are associated with the product, dictate programming based upon the sport (including sport news broadcasts and pundit-based sports programming) and chose who may air footage and highlights of events (Fisher, 2011). Since the monetary stakes are so high, the NFL holds ultimate leverage in the media portrayal of the sport. The NFL even owns and operates its own television network, The NFL Network, further increasing demand and brand recognition.

Through fastidious and strict licensing of merchandise primarily through a centralized apparatus, additional governance is achieved. Consent to use any team image or name, or consent for any product to be associated with the game, must pass strict pre-qualified standards and terms. Some of the stipulations for a team to obtain a license from NFL Properties LLC include: a minimum of three years business experience; ability “to pay 100% of minimum royalty guarantee upon execution of a license agreement (typically about \$100,000 per year)” ;“the ability to generate sales sufficient to meet the minimum royalty guarantee on a yearly basis”; obtaining insurance in the amount of \$3,000,000 per occurrence and \$6,000,000 in aggregate, a highly detail oriented completed pre-qualification information form; and a plethora of other qualifiers

(“Licensing Pre-qualification Terms”, 2014). It is clear then that the NFL practices immense calculation and authority in its quest for image management and profit.

A second benefit of utilizing the NFL’s centrally oriented business model is the corporation’s unique ability to allocate risk amongst the 32 franchises. This is extremely beneficial in allowing the league to conduct riskier business ventures such as internal development of the product, the growth of business in new markets, and the construction of luxurious stadiums. The construction of a modern stadium can be a wildly expensive undertaking, which is partially alleviated by the NFL’s stadium construction program consisting of over a billion dollar fund jointly funded by all 32 teams (Fisher, 2011). One project that was partially funded by this fund was the construction of Cowboy’s Stadium. The “Palace at Dallas”, an 85,000 capacity stadium featuring extravagant modern amenities and even a 60 yard wide television, garnered 150 million dollars from the fund, partially paying off the stadium’s billion dollar cost. Colossal projects of this nature increase the visibility of the game, as the projects reify the league’s popularity success and clout. By dividing risk amongst the league, further expansion of the product is possible with the potential for massive upside.

The third benefit of the league’s unique centrally driven marketing approach is its contribution to economic and competitive parity throughout the league. Economic parity is achieved for all 32 teams as a result of the even division of 60% of league revenue. This leaves only 40% possible variance between the teams in the manner in which team financial business is conducted. A significant focus of individual teams is deciding on how much to charge fans to attend the games. Since the majority of profits are split evenly across the 32 teams, teams must be vigilant when deciding on gate prices as this

variable is a significant part of each team's profit margin. According to a study conducted at Colorado College, NFL teams are extremely efficient at the maximization of profits (Brunkhorst & Fenn, 2010). According to Brunkhorst and Fenn, 80% of NFL teams set ticket prices in a manner consistent with the maximization of profits. It is important to note that even amongst gate prices, parity is achieved, as 40% of gate receipts are also split evenly amongst all clubs. The National Football League holds the distinction of having the greatest economic parity amongst its teams (Fisher, 2011). Since 60% of revenue is split between all teams, the NFL's teams have more equality than the other major sports leagues (Major League Baseball, National Basketball Association, and National Hockey League) that do not have a similar business model.

Something influencing this parity is the fact that the NFL operates with a hard salary cap. This means that unlike other sports leagues, every team is bounded on how much they may spend on player salaries by an economic cap set by the league, whether the teams come from traditionally large markets or smaller markets. This economic parity has translated into the competitive realm as well. Utilizing statistical calculations, Fisher (2011) found that the league was lowest amongst sports leagues in terms of team revenue rank and success at winning football games. This translates into the possibility that many teams may be able to compete for a chance at the playoffs and the blissfully desired Super Bowl Lombardi Trophy (awarded to the winning team of the Super Bowl annually). With more parity comes more excitement, as spectators and advertisers in even smaller markets will be more likely to support the NFL.

Most teams are privately owned and are under no obligation to report financials publicly. An exception to the trend of private ownership is the community-owned team

the Green Bay Packers. By breaking down the public financial records of the team, a clear understanding of how a team operates commercially can be obtained. The Green Bay Packers is one of the most storied franchises in the NFL. Operating with the same name and place as the team's founding in 1919, the Green Bay Packers have called the NFL home since 1921 when the team officially joined the National Football League ("History", 2013). There are 352,427 individuals who claim ownership of Packers' common stock, but these owners do not receive dividends as a result of stock ownership. During the 2011 fiscal year, a season when the Packer's won the Super Bowl, the team earned approximately 302 million in revenue (Walker, 2012). Of this amount, 130.4 million dollars was earned at the local level, which leaves 171.6 million in earnings stemming from the league shared monetary pool. Local revenue sources include home ticket receipts, private boxes, parking, concessions, local marketing, sponsorships, and media deals (Fisher, 2011). Like all NFL teams, the nationally shared pool consists of NFL merchandise, road team gate receipts, and television and media contracts including a 102.5 million share for the team from league wide television agreements alone. This means that Packers receive an amount close to 80% of local earnings from their share of the television contract alone.

These earnings are consistent with the league wide 60-40 community to local revenue split; approximately 57% of the team's revenue was nationally generated. The Packer's organization yields more revenue than the majority of the NFL teams or this percentage would even be closer to the 60-40% threshold. A valuation by *Forbes* concluded that the team was valued at over 1.1 billion dollars and grossed 54.3 million in operating income ("Oakland Raiders", 2014). During this time, the Oakland Raiders held

the distinction of being the least valuable team with an assessed value of 825 million and brought in 19.1 million in operating income. Although the Packer's franchise was exponentially more profitable, both teams share NFL profits as a result of the league's economic policies. The league's reputation and mantra is predicated on traditional displays of American nationalism, with each game featuring the national anthem, displays of the Star Spangled Banner, and often featuring service men and fly overs by military aircraft. All this is encased in the American narrative of hard work and toughness reflected by the game's players. It is therefore ironic that, unlike all other popular American sports, the NFL chooses an economic model reflective of the ideology of socialism with revenue sharing between all organizations. It is clear that the NFL has achieved unprecedented financial success with its unique business model based upon selling an enormously contact oriented and violent product.

### Player Safety and Injury

Throughout NFL history, the league has found itself in constant need of altering standards and regulations in effort of precipitating a safer game. While many of these rules changes were created as a necessity to facilitate the play of the game, there has been some effort by the league to curb unnecessary violence and to protect player safety in theory. While the game has no doubt evolved over the last century, at its core the essence of the game has always revolved around stringent contact and physical play. Ostensibly, the game cannot exist without one man trying to stop the other man from advancing through bone shattering tackles and aggressive tactics. Perhaps it should be no surprise that the average NFL player's career only lasts 3.8 years in this contact heavy arena (Quinn, 2012). The violence intrinsic within NFL football is part of the allure of the

game, but one should consider what is protecting a player from the contact driven by these world class athletes.

A player, barring optional attire and accessories, must rely solely on a helmet equipped with a facemask (bars protecting the player's face) and chin strap, shoulder pads, and hip and thigh pads for shielding the physical blows ("NFL Rulebook", 2014). Players may wear rib protectors (flak jackets) or eye shields if they are inclined. Over the last few years, under the reign of Commissioner Roger Goodell, there has been an active dialogue by the league to improve player safety.

At the center of the lawsuits and issues pertaining to player safety are concerns over player concussions and brain trauma emanating from playing the game. A major factor in determining whether brain injury will occur is the presence of the helmet. The helmet became mandatory attire during the 1943 season and has remained the primary preventative measure in halting brain injuries. A glance at the NFL's rule book reveals a great effort by the league to control player appearance and attire in non-injury critical areas. The league dictates the brand and color of eligible shoes, stockings, pants, gloves, jerseys, and other articles of equipment that players wear. It is clear that most of these non-injury rules are aimed towards ensuring uniformity of the players and the fulfillment of corporate contracts between attire manufacturers, as there are numerous rules dictating the display of logos and other forms of commercial identification. While the league tenaciously polices how much white may be displayed and the length of socks, the type of helmet a player wears is essentially unregulated. The NFL does not mandate or even recommend what helmet models shall be worn in spite of evidence of more technologically advanced and safer models being available. The only stipulation on what

separates a player's head from physical contact is that the helmet is certified by the National Operating Committee on Standards for Athletic Equipment and that if a helmet logo is brandished, it says Riddell in accordance to the league's 23-year partnership with the company (Borden, 2012). This certification leaves broad discretion to the players who may choose helmets simply by their comfort and aesthetic qualities and disregard information pertaining to safety tests on the helmets.

The NFL claims that the game and product of professional gridiron football has "evolved" throughout the years in order to ensure player safety. Funding and operating the website [www.nflevolution.com](http://www.nflevolution.com), the NFL is visibly attempting to demonstrate its shifts in the rules and regulations pertaining to player safety throughout the years. While there had been developments in equipment and regulations previously, it was not until the 1950s that the NFL began to implement rules designed to protect players and limit unnecessary violence in the game (Roser-Jones, 2013). Some of these rules included banning the grasping of facemasks, whistling a play dead when the runner on the ground is touched by a defensive player, and modifying what is deemed an illegal block or tackle ("NFL Evolution", 2014). In 1974, rules were altered and adjusted, not for player safety, but instead to increase the tempo of the games and the action on the field (Jewell, 2011). During the 1979-1980 season in response to the league having "bigger, faster people banging into each other more often," rules pertaining to player conduct and personal fouls were adapted (Roser-Jones, 2013, p. 30). Some of these rules included banning behavior deemed to be unnecessary roughness and unsportsmanlike in nature in an attempt to curtail injury and blatantly obvious intra-player violence.

Although there were modifications and expansions of current rules before, it was during late 2000s that the modern era of player safety regulation began. Roughly during the time of Bounty-Gate and the filing of lawsuits pertaining to player safety, the league announced major shifts in the way that game would be conducted. Citing empirical evidence of football related injuries and the insight that the game was being played by stronger, faster, and more violent players, the league released a press statement outlining intent to curtail player injury through new regulations and aggressive implementation of penalties for player infractions. The number of rule changes for the 2010 campaign quadrupled the amount of the prior two decades (Roser-Jones, 2013; Jewell, 2011). Despite the unprecedented rule modifications, the 2010 season was one of the most injurious on record, with 46 head injuries occurring by the 6<sup>th</sup> week of play (Roser-Jones, 2013; Jewell, 2011).

It can be argued that the league's current model of self-regulation has failed to limit player injuries (Roser-Jones, 2013). The NFL is its own judge, jury, and executioner when it comes to the issue of player conduct and the management of injuries. The fines and suspensions for player conduct may not exist strictly for player deterrence. The league mandates fines or suspensions for behavior that violates the league's regulations. While the fines may be equal in amount for similar infractions, the system is far from egalitarian in nature. The arguable deterrent effect on egregious violent acts varies significantly by the player's salary; the fines are not assessed in terms of the percentage of player salary. Since player salaries vary from \$5,700 a game for a practice squad player all the way up to 20 million dollar annual contracts for elite players, there is wide variance in how much deterrent value threat of a fine may have for a particular player.

An example displaying this discrepancy occurred when New England Patriots safety Brandon Meriweather and Atlanta Falcons cornerback Dunta Robinson both were levied with a \$50,000 fine for an illegal hit. While the fine was roughly 9% of Robinson's yearly salary, the fine only left Meriweather with .42% of his salary garnished (Jewell, 2011). This system essentially provides free reign for violent play from the league's better paid players as long as they do not commit suspension worthy infractions. These fines may provide benefits for aggressive tactics and play including intimidating opposing players, profiting from increased fan and player popularity for building a reputation as a hard hitting and tough player, and harming and/or disabling opponents to the point of them not being able to continue play (Roser-Jones, 2013). The game thus sells an intrinsically violent product that garners mass appeal.

It is important, then, to address the question of what the cost of this product is in terms of injuries for those willing to don an NFL uniform. Injuries are a dominant feature of any National Football League season. The NFL holds the distinction of having the highest number of injuries per player throughout a season of play, with the average player accumulating 1.5 injuries per season (Wendel, 2011). Over six seasons of NFL football (2002-2009), a total of 16,552 injuries were recorded. These injuries vary in location and severity and often require weeks of recovery time; the average time lost per injury is 23.7 days. From 2007 to 2011, nearly 50% of player injuries were orthopedic in nature affecting knees, ankles, hips and shoulders (Jenkins, 2013). Over nine percent of injuries require surgery for players, and there is a 1 in 7 probability that any player will require surgery to assuage an injury during a season (Wendel, 2011). The most prevalent location

wounded is the legs, which may be expected in a sport predicated on quick movements and leverage from a low center of gravity.

Former NFL players often find life difficult upon retirement due to physical and psychological ailments. The average NFL player retires at the age of 30.2 and often former players apply for disability post career. Between the years 2002-2009, 29% of players filed for disability as a result of playing in the NFL (Wendel, 2011). Of the 705 claims, 354 were approved. Golightly et al. (2009) found that the rate of contracting arthritis is three times more prevalent for former players less than 60 years old, compared to the general population (Golightly, 2009). Golightly et al. (2009) also concluded that players who suffered from severe joint injuries were 60-70% more likely to develop arthritis. According to an article featured in *The Washington Post*, between 2002 and 2011, there were more than 30,000 injuries in the NFL (Jenkins, 2013).

A survey of former players conducted by *The Washington Post*, provides an intimate perspective on injuries in the NFL. Almost half of those surveyed (47 percent of the 500 respondents) stated that they believe that team doctors prioritize team interests over the health of individual players. Only 13 percent of believed that said their health was given priority, and 36 percent stated that their health and the team's well-being were prioritized equally. The article also found that "Nearly four in 10 players (38 percent) sought medical advice outside of team doctors and trainers during their careers, while nearly three in ten (29 percent) said their teams discouraged them from seeking out those second opinions" (Jenkins, 2013, para. 8). The same survey exposed that nine out of ten former players were concussed during their career. Also, 83% of former NFL players stated that they had undergone orthopedic surgery to remedy injuries. Paradoxically, 9 in

10 players stated that they were happy that they played; but less than half wanted their children to play football. Mirroring a returning soldier's mentality of sacrificing the body for future generations and glory, many ex-players want a less painful and dangerous future for their children.

#### MTIB, CTE, Bounty-Gate, Image Management, and Litigation

Anyone with a familiarity with the game of football recognizes that injuries are integral to the game. The bruises, torn ligaments, broken bones, and blood shed that come from playing the game are testaments reifying the toughness and masculinity purported in the narrative of the product. What is an unfortunately more obscure reality of National Football League contests, at least until the filing of the lawsuits, is the high amount of more dangerous injuries plaguing the spine, neck and head. The Center for Disease Control estimates that 1.6-3.8 million traumatic brain injuries occur each year due to sports-related injuries (Small et. al, 2012). Fifteen percent of total player injuries occur within this region (Wendel, 2011). The most prevalent injury of this region is that of a mild traumatic brain injury (MTBI), what is commonly referred to as a concussion. Concussion symptoms include losing consciousness, blurred or altered vision, nausea, and confusion (Barrett, 2013). Repeated incidents of MTBI may result in chronic behavioral shifts, changes in mood, and cognitive issues. According to Small et al. (2012), NFL players demonstrate heightened rates of personality, behavioral, mood disturbances (including depression, irritability, and impulsiveness), mild cognitive impairment (MCI), and rates of dementia compared with control groups. NFL players suffering more than three concussions during their careers are five times more likely to be diagnosed with mild cognitive impairment and three times more likely to be depressed

(Small et. al, 2012). The matter of player concussions and more severe brain injuries is essential to the discussion of violence and social harm within the game. Where qualities of toughness, strength, masculinity, and loyalty to the team are held with such high esteem, missing time for “getting your bell rung” by a tackle is seen as a form of weakness. As Sean Morey, a member of the NFLPA’s executive committee, stated regarding player head injuries: “Football players want to do right by their teammates, try to stick it out” (Wendel, 2011). The lawsuits against the league claim that the league knew (or at least should have known) the debilitating damage and suffering deriving from head injuries and did not provide proper due diligence to warn or prevent the injuries.

Perhaps the most damning consequence of playing NFL football is the possibility of contracting CTE. CTE (chronic traumatic encephalopathy) is a neurodegenerative disease that has been found in brains of former NFL players during autopsies. The ailment is known to stem from repeated physical blows to the brain (Small et al., 2012). A variant of CTE is what people are referring to when someone is deemed “punch drunk”. The disease includes “mood, personality, cognitive, and behavioral changes (e.g., suicidality), and motor symptoms (e.g., abnormal gait, tremors) associated with a wide range of autopsy findings, particularly widespread accumulation of phosphorylated tau protein as neurofibrillary tangles, astrocytic tangles, neuritis, diffuse axonal injury, white matter abnormalities, inflammation, and immune pro-inflammatory cytokine responses in traumatized brain regions” (Small et al., 2012, p.139). In other words, the disease debilitates the body physically and mentality in a way similar to that of Alzheimer’s disease. Small et al. (2012), using positron emission tomography (PET) scans, compared the brains of five former players with histories of mood and cognitive symptoms with

those of a control group with similar ages, years of education, BMIs, and family health histories. The results demonstrated that former NFL players garnered higher signals in various parts of the brain than the control groups. Their scans were consistent with the autopsies of former players in which CTE was discovered. While there is little agreement over how much contact is required for a player to exhibit the effects of CTE, it is clear that damage to the brain generally occurs when the brain collides against the skull (Saulle & Greenwald, 2012). The mood and behavioral problems associated with the disease may be devastating to the point that they lead to suicide. Former players Dave Duerson, Andre Waters, and Junior Seau all committed suicide and while suffering from the neurodegenerative disease. Before shooting himself fatally in the chest, Duerson reportedly left text messages strongly implying that his brain be studied for damage (Schwarz, 2011). Former star linebacker Junior Seau's son and wife reported behavioral shifts including insomnia, forgetfulness, irrationality and wild mood swings before his suicide in 2012 (Wilner, 2013). The potential for heart wrenching injuries is at the center of the lawsuits against the league claiming that the league knew of the harmful potential of playing the game and withheld evidence.

As of February 22, 2013, there were 4,127 named player-plaintiffs in the 214 concussion-related lawsuits against the league. If one includes the player's spouses and family, there are over 5,500 plaintiffs to date. The amended master long form complaint against the league states, "This case seeks a declaration of liability, injunctive relief, medical monitoring, and financial compensation for the long-term chronic injuries, financial losses, expenses, and intangible losses suffered by the Plaintiffs and Plaintiffs' Spouses as a result of the Defendants' intentional tortious misconduct, including fraud,

intentional misrepresentation, and negligence” (Plaintiffs v. NFL, 2012, p.1). The lawsuit claims that the league knew of the risks involved by participating in the NFL and suppressed and ignored medical research in an effort to control the league in a monopolistic manner. The complaint also claims that the medical community knew of the possible risks of concussions since the 1970s and that there was scientific consensus on the dangers of MTBIs since the 1990s.

There was an article published in a 1978 issue of *Sports Illustrated* warning: “As football injuries mount, lawsuits increase, and insurance rates soar, the game is headed toward a crisis” (Barrett, 2013). In 1994, *Sports Illustrative* wrote about “disturbing statistical and anecdotal evidence that concussions are the silent epidemic of football” (Barrett, 2013). In an effort to quell the possible scientific evidence linking brain injuries and professional football, the league created the Mild Traumatic Brain Injury Committee. This committee was supposed to study the long term effects of brain injuries. The plaintiffs claim that the board was operating with a conflict of interests and was fraudulent in that it denied and challenged independent research relating to the effects of brain injuries (Lisk, 2012). Committee Chairman Elliott Pellman, speaking to the issue of players returning to the game after suffering from a concussion, stated that returning to the action “does not involve significant risk of a second injury either during the same game or same season” (Lisk, 2012, para. 12). The league’s attitude towards the possible relationship between brain injuries and playing professional football is summed up well in a 2007 pamphlet asserting that, “current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems if each

injury is managed properly. It is important to understand that there is no magic number for how many concussions is too many,” (Barrett, 2013, para. 13).

From 2003 to 2009, members of the MTIB committee inserted the board into the academia and medical research journals by writing in a series of scientific papers denying any link between the sport and long-term brain damage (Fainaru, 2012). In the player’s master complaint, there is a claim that when the league inserted itself into the scientific community they were attempting to obfuscate the truth on the matter of concussions. One such publication occurred in *Neurosurgery* (the official journal of the Congress of Neurological Surgeons) in which the league claims that “Professional football players do not sustain frequent repetitive blows to the brain on a regular basis” (Fainaru, 2012). The league’s response that it did not know of the injurious nature of repeated blows to the head is undermined by the fact that the league granted disability to Hall of Fame center Mike Webster in 1999. Directly conflicting with the league’s official response to the state of head injuries, Webster was awarded disability for repeated blows to the head that left him totally disabled. This claim is evidenced by a letter to Webster’s lawyer, Bob Fitzsimmons, from the director of the NFL’s retirement plan in 2000 stating that medical reports “indicate that this disability is the result of head injuries he suffered as a football player with the Pittsburgh Steelers and Kansas City Chiefs” (Fainaru, 2012, para. 12). An autopsy of Webster upon his death did confirm the presence of CTE within his brain, the first amongst former NFL players. Before his death, it was said that Webster suffered from Ritalin addiction and severe mental and physical health issues and pain to the point that he would knock himself out regularly with mail-ordered stun guns to assuage his pain (Fainaru, 2012).

It would not be until 2010 that the league began to dictate new rules pertaining to player concussion protocol and head injuries. Even a cursory glance at the lawsuits yields the conclusion that the lawsuits may have some merit. Oral arguments began in April 2013 and it seemed as if this complex and multifaceted dispute would not find a solution for quite some time. This turned out not to be the case as the lawsuit seemed to reach of a settlement in late August 2013. The parties tentatively agreed to settle the lawsuit for \$765 million dollars, which was to be used to compensate those suing, underwrite research, and fund medical examinations. Under the conditions of the lawsuit, the league would have to have officially admit no wrong doing in denying the dangers of the game and simultaneously allow for the league's commissioner to state that he told the league's lawyers to "do the right thing for the game and men who played it" (Oriard, 2013). According to the lead plaintiffs' lawyer Christopher Seeger, the settlement would have capped individual awards at \$5 million for those afflicted with Alzheimer's disease, \$4 million for those diagnosed posthumously with CTE, and \$3 million for those suffering from dementia. The settlement would have allowed for any of the approximately 20,000 former NFL players to be eligible for these conditions. It does not take a doctorate in mathematics to beg the question of whether \$725 million, a relative drop in the bucket for the NFL, would be sufficient to fully fund the potentially staggering costs of awards stemming from injuries. For example, the entirety of the lawsuits reward would be depleted if only 153 former players contracted Alzheimer's disease and were eligible for the \$5 million dollar award under the conditions of the settlement. Concerns over whether the monetary settlement would be sufficient to fulfill the conditions of the agreement triggered a judge to halt the settlement in January 2014.

U.S District Judge Anita Brody paused the settlement citing that she did not believe the paltry settlement set aside enough funding to settle the dispute for all the league's former players and also rejected the settlement because of a lack of data supporting the settlement's economic assumptions (McCann, 2014). Her decision was probably partially influenced by the fact that more than 70 former players were not pleased with the conditions of the settlement and filed concussion related lawsuits against the league after the initial agreement between the parties. If the retired players do not believe that the settlement adequately represents their views, they could potentially drop out of the main lawsuit and file their own litigation at a later time. As of April 2014, the main dispute has not been fully settled, and there are a few probable possible outcomes. Either the league will provide adequate data demonstrating that the award amount is sufficient, consider raising the award amount, or the settlement will falter and there will be additional legal action. Regardless of the eventual outcome, the issues of player safety and the legitimacy of sport in contemporary society have been issued. If the settlement is eventually allowed to be processed, there would assuredly be no official admittance of wrong doing pertaining to either covering up the risk factors of the playing the game or any negligence on the part of the league.

The events of Bounty-Gate opened the flood gates of awareness of what was actually occurring during NFL play. There was true intent to maim and injure players largely for the intentions of garnering a competitive advantage and for profit. On March 2, 2012, the results of a NFL investigation pertaining to the New Orleans Saints were announced. The investigation found that the Saints were operating a bounty program in which players were paid bonuses for purposely injuring opposing players. An

investigation into the manner by the NFL found that bounty money pools reached \$50,000 or more during the controversy's height. Players collected \$1,500 for a "knockout" while forcing a player to be carted off yielded a payout of \$1,000 (Cariello, 2014). The probe found that the program had taken place from 2009 to 2011. During this time, the Saints won the Super Bowl and became a symbol for hope spawning from the destruction caused by Hurricane Katrina. Between 22 and 27 players participated in the program as former Saints defensive coordinator Gregg Williams pooled player's money and paid out the bounties. The investigation found that the bounty program was known to exist all throughout the organization, including Head Coach Sean Payton and General Manager Mickey Loomis. On March 21, 2012, the league's commission Roger Goodell distributed punishment upon the program. Gregg Williams was suspended indefinitely, Sean Payton was suspended one year without pay, Mickey Loomis was suspended without pay for the first eight games of the 2012 season, and the Saint's organization was stripped of two second round picks and fined \$500,000. The discovery of this program occurred after the league had changed rules and enacted stiffer penalties towards the goal of improving player safety. It was clear that the league clearly meant to send that message that these actions were to be condemned.

The filing of the lawsuits occurred roughly during this time, further highlighting the injurious nature of the game and threatening the league's future as the product currently exists. This threatening occurs not just via monetary concerns, but also by precipitating a national discussion of what may be seen as an appropriate product for the masses to consume. President Barack Obama declared in an interview, "I'm a big football fan, but I have to tell you, if I had a son I'd have to think long and hard before I'd let him play

football.”... “those of us who love the sport are going to have to wrestle with the fact that it will probably change gradually to try to reduce some of the violence” (Foer & Hughes, 2013, para.50). The issues surrounding MTIB, and to a lesser extent Bounty-Gate, threatened the legitimacy of the nation’s most popular game. Contemporary society is blessed with the qualities of being litigious and obsessed with safety, neither of which bode well for a sport predicated on violence. The league’s response to the lawsuits, and the active attempt of the league to curb popular sentiment away from deeming the game too dangerous for society, may fit within the theoretical frameworks discussed within crime and criminal justice studies. It is apparent that the game must adapt to changes in public sentiment calling for a safer league or convince the consumers that the league is evolving, while in reality, it is still selling violence in a form of a fundamentally injurious product. If the league cannot shift focus away from the violent nature of the game, and a counter-narrative does not prevail, then the sport may go the way of professional boxing and fade to mediocre popularity viewed by many as barbaric and consumed by profit objectives.

The league’s goal, then, becomes that of image management to preserve legitimacy and profits. If the league can convince the public that the game is relatively safe and does indeed align with contemporary sentiments, then the public relations harm caused via the lawsuits will be minimized. One of these websites is NFLevolution.com, which sports the tagline “Forever Forward Forever Football.” At this site, one is immediately presented with headlines such as “See How the Game has Changed, NFL Talks to Change Locker Room Culture, and Patriots Host More than 300 Moms at Clinic.” Similar headlines and stories may be found on nflrush.com which features the

league's NFL Play 60 campaign. This media campaign is intended to highlight the league's community service catered towards child physical wellness. Not surprisingly, the webpage's first article features the Carolina Panther's hosting a "mom's clinic" on the game of football. Indeed, commercials featuring NFL players and children are commonplace during sport's television broadcasts. There seems to be a concerted effort on the league's part to advertise events featuring children and mothers pertaining to football. The subtext and symbols in the commercials suggest that the league might be concerned about the future of its game including the need to preserve both a future fan-base and an ample supply of players. If parents do not allow their children to play the game in pee-wee leagues and through school programs, it is easy to surmise that the league would suffer a substantial dip in talented individuals and fans. This would directly affect the product of NFL Football, and by implication, league profits.

Regardless of how much the league "evolves" to become safer in its given state, as claimed in commercials and their websites, the game of football will involve a risk of injury. To substantially minimize player risk would require considerable changes in the game which may directly strip the game of its physical nature and deny spectators the allure of violence and excitement. The question raised by the lawsuits are of an ethical nature, as they claimed that the league knew of the dangerous of brain injury and mislead and suppressed this information. Chris Nowinski, a co-founder of the non-profit Sports Legacy Institute, which is dedicated to solving the matter of concussions, stated in an interview with CBS News that, "Football is a constantly evolving game, we're asking it to evolve again," (Castillo, 2013, para. 2). Nowinski's organization partnered with the Boston University School of Medicine in 2008 and formed the Center for the Study of

Traumatic Encephalopathy at Boston University. The Center for the Study of Traumatic Encephalopathy has examined 54 brains of former NFL players, of which, 52 had signs of brain injuries stemming from repeated concussions (Castillo, 2013). He also stated in the interview that he believed that “the care that players received before recent years was not appropriate based on what was known medically, and they wouldn't have had all this brain damage had the sport been following real medical advice,” (Castillo, 2013, para. 7). Since the league did not value the current medical research stated on the issues and actively denied the truth, the league must now convince the public of its legitimacy.

Since the filing of the lawsuits, the league has pledged millions of dollars to medical research facilities. Of these pledges, there was a \$30 million pledge to the Foundation for the National Institutes of Health (FNIH) and a compassionate gift of a \$100 million grant to Harvard Medical School to fund a 10 year initiative by the NFL Players Association (Fainaru & Fainaru-Wada, 2014). Unfortunately, this grant actually turned out to resemble more of a contract with the league, or as NFLPA spokesman George Atallah claimed, “The landscape has changed slightly,” (Fainaru & Fainaru-Wada, 2014). Apparently, the “grant” was a public relation calculation that actually predicated funding on performance and availability. The NFLPA believed that the NFL would contribute to the gift, but instead refused to contribute with the Player’s Association. Although one will find numerous stories on the league’s website about philanthropic causes by the league, this story is noticeably absent.

This chapter aimed to explore a terse history of the league and how it has changed to become the business it is today. An exploration of the NFL's business model is necessary to understand how the league operates and achieves rising levels of profitability. This chapter delved into the issues of player injury, MTBI, CTE, as well as the controversies of Bounty-Gate and the lawsuits that surround the league. This chapter also focused on the NFL's attempts to control the narrative surrounding its product via public relations campaigns and through philanthropic efforts. There is now a growing tension between: (a) the desire of the league to simultaneously sell a game that is inherently violent and injurious while maintaining legitimacy and (b) the risk averse sensibilities of late contemporary society. Whether this battle will be settled in the court room or in the realm of public opinion is yet to be seen. The next chapter will focus on issues of sport violence and consent in terms of legality and terminology.

## CHAPTER 3

### VIOLENCE AND LEGALITY

This chapter presents an exploration of the legalistic issues at hand in this thesis. It provides a foundation for explication of theories that will be applied to this thesis in subsequent chapters. Central to a theoretical model is the tension between the NFL's responsibility for grievous harm and the corporation's efforts to achieve profit. Hence, the first section of this chapter explores how violence, aggression, and injury are discussed within academics. This allows better understanding of the conception and meaning surrounding issues pertaining to this thesis. Focus is then shifted to examining tort and criminal law in the context of violence, injury and harm within sport. This section places the controversies surrounding the issue of violence in football into a legal analysis of the violence within the sport. Finally, the important issue of consent is analyzed. This concept is central to the analysis of the NFL, player and spectator responses to the issues of violence, injury, and litigation engulfing the issues.

In the criminal justice and sociological literature dedicated to exploring issues surrounding sport, violence, aggression and injury are common themes. Although not the primary focus of this thesis, this academic literature provides definitional clarity and additional guidance when approaching key notions intertwined within this chapter. Violence is a key construct required to examine the profit/social harm dynamic discussed in this literature.

The terms “violence” and “aggression” elicit varied connotations used to describe anything from verbal disputes to slamming a person to the ground. As Smith notes, “almost any forceful, vigorous, assertive, exploitive, volatile, or injurious behavior may come under either heading,” (Smith, 1983, p. 1). It is possible to define violence narrowly as "the threat or exertion of physical force which could cause bodily injury" or more broadly as "any violation of the human rights of a person" (p.1) It has even been described as, “extensive and radical changes within a short interval of time produced by given forces in the qualities and structures of anything” (Gotesky,1974, p.146). Depending on the author’s goals and theoretical orientation, the term can be applied to an abundance of methods. Although commonly used interchangeably with the term violence, aggression is usually regarded as the more generic concept encapsulating an abundance of behaviors designed to injure a person, psychologically or physically. Coakley (2010) demarcates the analogous terms by stating that the aggression is imbued with intention to dominate, control or harm via physical or verbal actions. This differs from his definition of violence which he defines as “the use of excessive physical force, which causes or has obvious potential to cause harm or destruction” (p. 196). This conception of violence offers the potential for violent acts to not necessarily be malicious or unsanctioned in nature. The word “violence” may trigger a negative sentiment when it is directed towards actions of those who are deemed to be under-conforming or violating accepted social norms. According to Coakley (2010), “when violence occurs in connection with enforcing norms, protecting people and property, or over-conforming to widely accepted norms, it may be approved and even lauded as necessary to preserve order, reaffirm important social values, or entertain spectators” (p. 196). Therefore, one’s

resonance of violence is dictated by the social norms the individual holds dear. The nuance involved in defining the term “violence” is vital in a discussion of football where ideas of intentions, outcome, legitimacy and social norms are intimately connected to the sport.

The traditional connotations of the terms violence and aggression are even further obfuscated within the parameters of sport. This is especially true during a NFL game in which harsh interpersonal contact is expected. Michael Smith (1983) provides guidance to understanding violence in his book *Violence and Sport*. Smith proposes a seminal typology of sports violence (Atkinson & Young, 2008). Smith’s typology is divided into two separate categories: *relatively legitimate violence* and *relatively illegitimate violence*. Relatively legitimate violence includes the subcategories of *brutal body contact* and *borderline violence*. Brutal body contact includes violent actions that are included in the official rules of the game and laws of the land. Football is defined by this type of violence, including everything from a wrap up tackle to vicious mid-air collisions between receivers and linebackers occurring when a receiver is attempting to catch a pass. This type of contact is relatively non-controversial as it is included within the confines of the game’s rules and largely delineates what is expected during play. Such contact is inherent in football, and the probability of such contact is taken for granted whenever a player agrees to participate in such a contact oriented contest. Brutal body contact will almost certainly result in minor injury and has the potential to cause devastating injury. Germane to this thesis is the potential for brutal body contact to degenerate into unpalatable and untenable violence when risks and injuries exceed the public’s threshold. Smith refers to this degeneration as a devolvement into *brutality*.

According to Smith, a sport's potential fall into the realm of brutality follows a pattern: "Rising toll of injuries and deaths, followed by public expressions of alarm, then demands for reform, typically signal this condition" (Smith, 1983, p. 10). It is clear with the controversy surrounding the player injury lawsuits and Bounty-Gate that alarms of public decry and expression have already been pulled. Regardless of the potentiality for serious injury, this violence is rarely seen as controversial or a legal matter as a result of players consenting to this violence. The issue of consent is intertwined within the idea of violence in sport and will be discussed in greater detail below.

The other type of relatively legitimate sports violence is what Smith refers to as borderline violence. This type of violence includes actions that often violate the official rules of the sport, but nevertheless, do not violate what is incorporated within player norms and expectations of what may happen on the field. Examples of this type of violence can be witnessed in most sports such as the bean ball (intentionally hitting a batter with a pitch in a retaliatory manner) in baseball, vicious elbows to the face of defenders in basketball and soccer, low blows in boxing, fights in hockey, and numerous kicks, scratches, punches, knees, and bites at the bottom of a dog pile (players stacked on each other contending for a loose football) in gridiron football. These violations of the rules of the game usually do not garner any sanction exceeding a fine or perhaps a suspension if sufficiently egregious. Borderline violence is illegal under civil law, as the U.S. *Restatement of Torts* reads:

Taking part in a game manifests a willingness to submit to such bodily contacts or restrictions of liberty as are permitted by its rules or usages. Participating in such a game does not manifest consent to contacts which are prohibited by rules or

usages of the game if such rules or usages are designed to protect the participants and not merely to secure the better playing of the game as a test of skill. This is true although the player knows that those with or against whom he is playing are habitual violators of such rules.

According to this ruling, player actions that violate rules set in order “to protect participants” are liable to civil recourse, but actions that are to “secure the better playing of the game” fall outside the jurisdiction of civil liability. This differentiation between safety rules and rules designed for the better play of the game create a murky environment that depends on the interpretation of intention for legal recourse. Regardless of the illegality of actions that may be construed as borderline violence, civil and criminal lawsuits are rare in sport. Borderline violence is tolerated and justified by various apologists’ arguments and rationales. One of the most common rationales excusing this type of sports violence is the claim that although these actions are technically in violation of the game, they are indeed still a “part of the game”. Smith (1983) explains that this argument is commonly deployed by those who deem that these actions are legitimate because they are a vital component of the sport. In fact, most spectators would not recognize these potentially injurious actions as violent in nature as they do not cross the threshold of actions that are sensitized as legitimate within the sport. Other arguments excusing this type of violence maneuver pseudoscientific and folk theories to vindicate borderline violence. This includes rationales that state that these actions are security regulators for channeling aggression and frustration that accumulates during a sporting contest. Due to the physicality of contact oriented sports such as football, frustration is built up due to the intensive nature of the game. These actions function as a safer method

of releasing such pent up angers and aggression than potentially more injurious actions such as striking a defenseless player with one's helmet or body. This logic is precarious to the health of the players and is unstable as it attributes frustrations to causing aggressive and violent action, which is not completely supported by research (Smith, 1983). This attribution ignores the potential competitive advantages of injuring opposing players and is erroneous in the assumption that aggressive and violent behavior is not learned or shaped by one's culture.

Smith's final two categories of sport's violence include actions that are considered relatively illegal. The first type of violence deemed relatively illegal is quasi-criminal violence. These actions violate the rules of the game, laws of the land, and largely fall outside of accepted informal player norms of the sport. Smith explains that these actions often result, or could have resulted, in severe injuries. Public commotion and the involvement of top league officials is a common consequence stemming from this type of violence. Flagrant punches and hits, severe contact after the play, sucker punches and a myriad of other illegal violent actions may be considered quasi-criminal in nature. These actions may bring about civil or potentially criminal action, although both are rare (Smith, 1983). These actions do not usually warrant legal recourse because pursuing justice and recourse through the courts is portrayed as a violation of the unwritten code of the players. Richard B. Horrow (1980) determines that player disputes tend to be settled outside of the courtroom and are considered to be a private matter that should be remedied on the field (Horrow, 1980) Smith, utilizing the work of Horrow, posits that, "Team management does not appreciate "troublemakers" who go "outside the family" (i.e., the league) for justice, and contract difficulties or worse probably await such

individuals; that the sheer disruptiveness of litigation can ruin careers” (Smith, 1983, p.18). Therefore, it is considered risky to pursue justice in the criminal or civil justice apparatuses whenever one is violated by quasi-criminal violent actions.

Matters pertaining to sport violence are seldom pursued in criminal court because criminal officials may believe that quasi-criminal sports violence is frivolous and should not be prioritized over traditional criminal matters. Horrow (1980) came to this conclusion based on information gathered from county prosecutors located in jurisdictions of professional sports teams. Responses from criminal attorneys pertaining to why sport’s violence is not usually a matter of criminal courts stated that “they believe that they have more important things to do, like prosecuting "real" criminals; that the leagues themselves can more efficiently and effectively control player misbehaviour; that civil law proceedings are better suited than criminal for dealing with an injured player's grievances; that most lawyers do not have the expertise to handle sports violence cases and that it is almost impossible to get a guilty verdict anyway” ( Smith, 1983 p. 18).

There are other possibilities of why sport’s violence manners often go unprosecuted as well. Smith proposes that these matters may not receive prosecutorial attention because of the community subgroup rationale. This is the idea that potentially illegal actions are so widespread amongst a certain group that law enforcement implicitly does not pursue the manner as criminal. Furthermore, it would be unfair and capricious to charge individuals for these actions when they are so widespread amongst members of the subculture. Smith further postulates that criminal proceedings maybe neglected as a result of the continuing relationship rationale. This concept is rooted in the idea that bringing forth criminal actions may further strain a relationship between two parties and

potentially escalate violence. Since athletes will more than likely face the same opponent that performed the violent act once again, the logic states that criminal action will only exacerbate the potential for further violent acts between players. The rivalries between players and teams formed from this animosity may then be advertised and sold to the masses in order to fuel television ratings and stadium attendance with the promise of true “hatred” between opposing parties.

Another rationale for not pursuing criminal sanctions against a violent player lies in the principle of legal individualism. This premise states that an individual must be wholly responsible for his/her actions, which can be difficult to demonstrate in a team oriented sport (Smith, 1983). A main question that is proposed is whether the individual, team, or sport should be held responsible for violent actions. This ambiguity pertaining to responsibility was tackled head on in the landmark case of *State v. Forbes*. In this case, a Minnesota grand jury charged NHL (National Hockey League) player David Forbes with aggravated assault with a deadly weapon. Forbes, after trading verbal insults with opposing player Henry Boucha, skated up behind Boucha and struck him with the butt end of his hockey stick. While Boucha was on the ground, Forbes grabbed Boucha head and repeatedly smashed it against the ice. The jury could not agree to a unanimous decision, and a mistrial was declared. This event demonstrated the difficulty in obtaining a criminal conviction when sports are involved. It was difficult to ascertain if Forbes was working in the capacity of “enforcer” for the benefit of his team, or was solely responsible for his violent actions.

The final type of violence that Smith proposes is criminal violence. Actions that fall under this title are clearly outside the realm of what could be considered part of the

game and are rejected by the overwhelming majority of players, coaches, and spectators alike. Criminal actions violate the laws of land, rules of the game, and norms of the players. Serious injury is likely, and death may be a possible outcome to these actions (Smith, 1983). Some possible criminal actions would be fights that occur after a sporting contest and possibly fights during games that appear to be calculated and could theoretically result in devastating and possibly fatal casualties (Smith, 1983; Coakley 2010). A prime example of this type of violence occurred during the “malice at the palace” in a basketball game between the Detroit Pistons and Indiana Pacers. During this controversial and violent event, player Ron Artest (currently named Metta World Peace) entered the stands and punched a fan for throwing a cup of liquid at him during a brawl between the players. This event made international news and is clearly outside the realm of expectations and player norms expected within the sport. This type of violence has potential to overlap with quasi-criminal violence, since standards of malice, intentionality, and premeditation might be matters of interpretation and debate. The typology may be critiqued, as while it is useful as a general typology, the lines separating the four types of violence are prone to change over time and location depending on societal norms and standards. The typology also falters in addressing where violence comes from, its relation to the commercialization of sports, and gender ideology (Coakley, 2010). Nevertheless, Smith’s typology is vital to enlightening one to the various differentials and nuances involved in sport’s violence.

### Consent and Football’s Role in Adjudication

Issues surrounding consent are numerous and imperative to consider when discussing culpability and risk management issues for the game of football. Whenever a

football player steps on the field, there exists an agreement to the inescapability of contact ensuing during the game. There is an understanding that minor injury is probable during an NFL contest and that there exists potential for a devastating injury to occur. Traditionally, the distinction between a sports violence incident being a civil or criminal matters has boiled down to a question of intent. In terms of criminal law, one must have mens rea (a guilty mind), meaning that the accused meant to inflict harm or use force upon another person. Instances of extreme violence in football have not been a matter for the courts in the past. If the laws were the same on the football field as in public, every single play drawn up by a coach could be deemed conspiratorial and illegal. The reason the intent requirement is not met is an issue of consent. Players consent to the risk of injury from those hits before the game starts. They consent to commit acts that would be considered assaults outside of football, as well as bear the brunt of these actions. Nevertheless, no player may consent to be injured *intentionally* (Smith, 1983). It is here that we encounter fundamental conceptual difficulty.

The work of Jeffery Standen (2009) is useful in understanding football's legality in a criminal capacity. Within his article, "*The manly sports: The problematic use of criminal law to regulate sports violence*", the interaction between the violent sports and criminal law is discussed. Standen opens his article with the observation that athletes have the same rights as other citizens until they step upon the field. When on the field, acts of extreme violence are considered part of the game and do not warrant legal attention. This is because of consent, but consent is not that easy to define. Standen explains that even if people are willing to participate in certain sporting activities that risk life and limb, true consent cannot be given. This type of consent refers to legality, which

is why one cannot legally start a fight club. More commonly, consent also refers to the automatic, “presumed consent” that a participant impliedly gives upon agreeing to play a particular sport (Standen, 2009, p. 621). Standen explains that contact oriented sports, such as prize fighting, were originally illegal because they did not serve a utilitarian purpose. This stance eventually softened, and modern violence during sports is justified as long as the actions are not “overly violent”. In the 1976 case *People v. Freer*, the court held that “an athletic participant could not legally consent to overly violent activity” (p. 626). This ruling came from a football game in which a ball carrier punched a defensive player back after a tackle. The defendant was not able to use a defense of consent because the victim did not consent to this “overly violent” attack.

The court’s decision in the more modern case 1997’s *State v. Shelley*, also complicates any possible legal prosecution. In this decision the court decided that one could not use the rules of the game in order to argue a matter of consent and violence. This means that even if a player performed an act on the football field that was so obviously outside the rules, what Smith (1983) refers to as quasi-criminal and criminal violent acts, it would be difficult to argue that the act was not a “reasonably foreseeable hazard” (Standen, 2009, p. 632). The reasonably foreseeable hazard stipulation is drafted within the Model Penal Code to comment on the exceptional nature of sports in terms of consent. The Model Penal Code states in section 2.11 relating to consent in sporting contests:

When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if: (a) the bodily harm consented to is not serious; or (b) the conduct and the harm

are reasonable foreseeable hazards of joint participation in the lawful athletic contest or competitive sport.

Part (B) above provides ideological legitimacy to sports by stating that consent may be given as long as it is within “reasonable foreseeable hazards” of the sport. The question then becomes which acts are reasonably foreseeable during a sporting event. Acts that would qualify as criminal violence or quasi-criminal violence, according to Smith’s typology, would arguably fall outside the purview of what is to be expected during play.

An approach to understanding liability through civil law is especially pertinent to the player lawsuits. Under traditional civil law pertaining to battery torts, the requirement to display intent would just mean that one intended to touch another without permission. This is not the case under matters pertaining to sport because the individuals agree to compete in a sport where contact is inevitable; therefore, they agree tacitly to being touched during the commission of the game. Under the legal standard *volenti non fit injuria* (to one who consents no injury is done), assault and battery torts are difficult to prove if the player fully understands the risks of playing in a sporting contest (Smith, 1983). Within the civil arena, a player may sue based on “the theory of intentional tort, assault or battery, or based on an unintentional tort, reckless or negligence” (Roser-Jones, 2013, p. 7). There is also the potential for an employer to be sued based on the concept of vicarious liability. That is, an employer can be held “vicariously liable for a negligent or intentional tort committed by one of its employees when the act arises in the scope of employment” (p. 8).

In a defining ruling pertaining to the topic of player injury in the NFL, the case of *Hackbart v. Cincinnati Bengals* is considered a landmark decision. The lawsuit arose when Dale Hackbart, a Cincinnati Bengals defensive player, was severely injured during a traditionally non-football oriented play. Hackbart was charged with the duty of defending Charles Clark, a running back for the Denver Broncos, when Clark approached the end zone in an attempt to catch a pass. During the play, Hackbart's teammate Billy Thompson stepped in front of the pass and intercepted the football. This charged Hackbart with the duty of attempting to block Clark from impeding to the progress of ball carrier Billy Thompson. While attempting to block Clark, Hackbart fell to the ground. While on one knee watching Thompson run down the field, Clark struck Hackbart with a violent attack to the back of the head with his forearm with enough force that both players fell to the ground. Referees did not witness the blow, and there was no penalty called upon the attack. The forearm, a manifestation of the frustration that Clark felt as a result of the interception, culminated in a career ending fracture in Hackbart's neck. Hackbart then filed suit upon Clark on the theories of negligence and recklessness (Roser-Jones, 2013). A district court ruled against Hackbart with the rationale that a professional football player owes no duty of care to an opponent who voluntarily gave consent to play the game. Upon appeal, the United States Court of Appeals of the Tenth Circuit rejected the lower court's decision and stated that while "it is a general rule that one who participates in a sport assumes the risks which are inherent in it," one's assumption of risk does not incorporate every possible risk that could happen on the field. While certain rule violations and penalties may be anticipated and assumed during the course of a football game, actions that are exceedingly outside the parameters of

expectations of what constitutes a football play are eligible for civil action. This case is relevant to the lawsuits as it establishes precedent that not every action on the field that results in severe injury can be dismissed under the defense that a player understands the risk of playing the game.

A common argument posited by those critical of the NFL player lawsuits is that the plaintiffs knew the risk of injury from playing in the NFL. This will possibly be a key argument for the NFL if the lawsuits do result in a trial. Some claim that the lawsuits are frivolous and amount to no more than a cash grab for former players. A cursory glance at any online article regarding the lawsuits will have comments such as “It's called, "Whoops, I spent all my money! Is there any way I can weasel a little extra?”, “Problem is this little game they're playing can cripple America's number one sport” or “I hope this judge understands the legal principle known as "assumption of risk." You think that when someone decides to play football they might understand that their head may get knocked around” (Gbajabiamil, 2013).

There is a sentiment surrounding the lawsuits, and to a lesser degree Bounty-Gate, that players are compensated very well for their services and know the risks of injury and agree to play the game nevertheless. Although there are over 4000 former players and family members involved in these lawsuits, this does not mean that everyone who has ever donned a uniform is eager and willing to sue. There certainly exists a contention amongst some players that the rewards outweigh the risks of playing the game. Current Detroit Lion's center, Dominic Raiola, reflects a certain sentiment shared amongst the players. According to Dave Birkett of the Detroit Free Press, Raiola detailed “It's

common knowledge that people [NFL players] are going to suffer. Memory loss is going to come”. It is totally worth it...when I’m at home in my rocking chair at 40, I don’t think I’m going to be thinking about suing the NFL” (Birkett, 2012).

The logic surrounding this argument is not sound if the lawsuit’s contention that the league knew of issues of concussions and other forms of brain trauma is valid. One cannot agree to consent to an activity of which he/she does not understand the risks beforehand. Unfortunately for the plaintiffs suing the league, they may have never been given the full details of the dangers involved in the game before agreeing to possibly losing their memories, disrupting or destroying relationships with loved ones, not being able to walk or use their limbs properly, faulting in ability to control their emotions and tempers, and potentially disinheriting any semblance of what made the person who they were.

While torn muscles and broken bones might be considered a workplace hazard for any NFL player, there have been cases of excessive violence on the field that did not fit within the expected parameters of the game. *Hackbart v. Cincinnati Bengals* and the incidents surrounding Bounty-Gate certainly qualify as events that fall outside of the parameter of common *brutal body contact* experienced in every NFL contest. While the sentiment of numerous former and current players is that they consent to violence and possible injury of working for the NFL, some actions have historically been outside the scope of what is to be expected on the field. One such example involved a late hit (a tackle or blow occurring after the whistle signaling the end of play) on former Chicago Bears’ quarterback Jim McMahon. During the 1987 season, Green Bay Packer Charles Martin lifted McMahon and slung his body to the ground. This action occurred after the

whistle while McMahon was walking back to the sideline. It has been argued that the assault was deliberate and held the intent of disabling McMahon by harming him severely. There is evidence to support this sentiment, as there was a towel tucked in Martin's waist with MacMahon and four other offensive Bear's players' names (Roser-Jones, 2013). Martin would only serve a two-game suspension for his actions. McMahon missed the remainder of the season and would forever be plagued by shoulder complications resulting from the hit.

Another more recent example occurred during the 2006 NFL season. In perhaps the most notorious case of excessive violence, defensive tackle Albert Haynesworth stomped and kicked opponent Andre Gurode after a Dallas Cowboy touchdown. Gurode was on his back with his helmet off as the 300 pound plus Haynesworth crashed down upon his face while wearing metal cleats. Gurode required 30 stitches to his face in order to assuage the cuts caused by the incident. While there was talk of pursuing Haynesworth in criminal court, Gurode deferred to the NFL for sanctioning. Haynesworth was served with a five game suspension for his actions and was universally condemned by football enthusiasts.

These incidents involving Hackbart, McMahon, and Gurode all challenge the notion that these players understand the risks when they agree to play in an NFL game. In none of these cases were the violent actions on the field persecuted in a criminal court. This is seemingly because the product of professional football is deemed to be a breeding ground of physicality that mostly falls outside the purview of traditional justice apparatuses. The violent and, in any other context, criminal actions all shed light on the fact that the NFL is largely its own deregulated judicial body in cases of player injury.

The NFL is a lucrative business at its core and will perform in the best interests of the league. With the medical knowledge on MTBI and cognitive injury exponentially growing alongside technological ability to test the effects of playing the game, the NFL is seemingly approaching a critical decision. Should the NFL keep “evolving” to the point that its main selling point of violence is relegated in order to appease medical concerns, which could considerably lessen fan interests and profits? Perhaps the NFL will attempt to downplay, challenge, or deny the brain-injury linkage as it once did. When profitably collides with public sentiment what will be the result? In order to garner a comprehensive understanding of the processes involved on an economic, political and sentimental level, the central NFL tension should be grounded in theory.

## CHAPTER 4

### THEORETICAL FRAMEWORK

#### Introduction

This chapter lays out the theoretical framework of the thesis by focusing on the political, economic and cultural aspects of the topic. The theoretical framework will be applied to the topic in the subsequent chapter. The theories covered in this chapter provide insight into understanding the central tension faced by the NFL between responsibilities for grievous harm on one hand and the corporation's efforts to achieve profit on the other.

The first section of this chapter provides insight to the Marxist foundation upon which many of the theories build. This section delves into some of the main ideas and concepts of Marxist thought in order to establish a theoretical starting point for the discussions of exploitation, capital, and work which are expanded upon throughout the chapter. The following section explores the issues surrounding the NFL and the corporation's responses in an economic, historical, and political context. The work of Loic Wacquant (2010) is used to understand the climate of neoliberal society and how the logics and modes of operation of the neoliberal state mirror the NFL's rejoinders. Wacquant's conception of neoliberalism uniquely provides the essential elements that characterize modern bureaucracies and corporations in their pursuit of profits. A discussion of the neoliberal climate is also bolstered by Pierre Bourdieu's (1986)

conception of the forms of capital and the notion of bureaucratic fields. This section will be utilized in the next chapter to understand the NFL's denial of the potential MTBI (mild traumatic brain injury) risks involved in playing the game and to comment on the role of corporations and labor in contemporary society. Harry Braverman (1974) brings an examination of the protean nature of labor and management into the mix. His unique insights are mandatory to uncovering systems of power present in the NFL.

The succeeding section investigates culture's contribution to the logics and function of the National Football League in American society. The works of Horkheimer and Adorno (1944) and Pierre Bourdieu critique popular culture and provide the intellectual ammunition required to discuss the conspicuous consumption that allows the NFL to be financially viable.

The next segment of this chapter provides theoretical guidance in examining the shift in contemporary cultural sentiments towards violence in sport. Theories examining late modernity and cultural sentiments will provide guidance towards explaining societal shifts in the perceptions of the game. Eric Dunning (1989) and Norbert Elias' (1986) works on sports and the civilizing process will provide the ammunition required to understand the mechanisms driving society's ideas on what is deemed appropriate behavior within the confines of society and sport. These insights will help to clarify why the issues of violence, injury, and risk management are currently unraveling into controversies and tension in present-day civilization. This work leads to a theoretical model that will be offered to clarify the interplay between the variables in order to holistically explain the issues surrounding the NFL. This model functions as a heuristic

tool that intends to illuminate the thesis' propositions, and theory application and will be featured in the next chapter.

### Marxist Foundations

Marxist literature allows for one to uncover the ideological facades and socioeconomic underpinnings and processes of modern society. The essential propositions of this thesis are steeped within the conceptual stream of Marxist thought. As such fundamental understanding of Marxism is required to form the theoretical foundation of this thesis. The majority of the scholarship used to create a theory encompassing the NFL situation is heavily influenced by Marxism. Although this paper does not claim to fully explore the richness and depth of Marxist literature, the main components of Marxism shall be described.

The Marxist analysis of ideology stems primarily from the *The German Ideology* (1846) which was a reactionary piece written in response to the Young Hegelians, a group immersed deeply in the philosophy of Georg Wilhelm Hegel. The Young Hegelians believed that humanity's historical progress was the result of humankind achieving self-understanding and that revolutions of liberty and freedom were achievable through transcendental and idealistic reflection. Karl Marx and Friedrich Engels, architects of the *German Ideology*, deviated from the Young Hegelian ideology in that they believed that freedom and equality are not rooted in ideas and existential philosophy, but instead in the concrete material conditions of society.

Some of the most fundamental concepts of the Marxist perspective are the notions of materialism and modes of production. It is an inconspicuous truth that if men and

women wish to survive in society that they must engage society's dominant mode of production. The mode of production includes the physical resources and means of production, the methods and technology utilized during production, and the one's social relation to these means. Material economic conditions of life drive historical and social developments. History has been characterized by an evolution of productive modes. Marx believed that different historical periods typically have a dominant mode of production, which is a method of organizing an economy. Marxist thought purports that societies chronologically transition from slavery, to feudalism, to capitalism, to socialism, and culminate with the utopian notion of communism. The mode chosen forms the basis of society, and everything else is shaped by this base in the form of the superstructure. Within this metaphor, the superstructure includes politics, law, religion, education and other social institutions. The base and the superstructure have a reciprocal relationship in which they both work to support each other.

Amongst the most important superstructure components is ideology, a set of beliefs that legitimate particular arrangements and courses of action. It is through ideology that practices seem legitimate and exploitation is hidden. Highlighting the importance of ideology, Marx and Engels state, "The ideas of the ruling class are in every epoch the ruling idea, i.e. the class which is the ruling material forces of society, is at the same time its ruling intellectual force. The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it" (C. J. Arthur, 1972, p. 64). Therefore, the pervading

ideology of the ruling class is a powerful weapon that is utilized to control the behavior and beliefs of the populous.

According to Marx, all through history there has been conflict between classes as a result of contradiction in mode of production. There are inherent conflicts within a capitalistic economy between the owners of the means of production and the workers who are paid for their labor (Lanier & Henry, 2010). The owners and elites of society are called the bourgeoisie, and the workers are called the proletariat. There is a mutual antagonism built in within capitalism. This refers to the fact that for one group's interest to be met, the other group cannot benefit fully. Exploitation is a function of the discrepancy between the worth of a worker's product and how much he/she is paid. Exploitation of the worker is necessary to achieve a surplus for the bourgeoisie, which comes from this discrepancy. Surplus is a primary constituent for any form of capitalism as it provides a catalyst for profit and expenses. Through this exploitation, those who own the means of production benefit, and the proletariat is exploited. To ensure that an abundance of laborers will work for less than their labor is worth, unemployment and sub-employment is functional for the bourgeoisie. To keep unemployment and sub-employment (jobs with lesser benefits and economic interest) at optimal levels, there will be an exploitation of immigrant workers who work for less, outsourcing, checking and breaking of unions, and technological displacement workers. A surplus population guarantees that there will be a continual supply of workers willing to work for less than their worth. This class of surplus population is what Marx calls the lumpen proletariat. In order to live, some members of this excess population resort to begging, prostitution, gambling, and theft. This is what makes up the street criminal class that is ideologically

framed as a threat to capitalism and public safety (Lanier & Henry, 2010), when in fact greater threats to safety and welfare are posed by actions of the bourgeoisie.

The masses generally do not rise up against the bourgeoisie because of the prevailing ideology. Through ideologies, the truth of the social relations is masked, and the workers hold a false consciousness about the true nature and worth of labor. These ideologies are constructed from the values and beliefs of the class to which one belongs. The state apparatus exists as a sentinel of the ruling class and provides functional power for expounding the ideology of the elites. The state includes the law, police, courts, army, and prisons which all serve a repressive function controlling the working class and ensuring the smooth operation of capitalism. Law protects people from the dangerous criminal classes and cases of extreme excesses of exploitation created within the capitalistic system (Lanier & Henry, 2010). By limiting extreme and obvious exploitation, the ideology is not questioned and the system is legitimated and thereby sustained.

The capitalistic system is criminogenic as a result of alienation. Alienation refers to the way the capitalistic system isolates people from the results of their work. This is because of the division of labor held within the production process. Since the worker does not see the results of his/her work, he/she does not feel any connection with their work. This denies any way of satisfying the innate desire for people to create. As a result of this alienation, men and women begin to view each other as enemies vying for their own interest instead of members of a social group.

Engels viewed crime as a phenomenon that emerges from the strains and pressures of capitalism. From alienation a feeling of worthlessness takes over the laboring class. He also stated that people turn to crime as a result of the competition for limited jobs and resources allowed by the capitalistic system. Crime also serves those who live parasitically off the criminal justice apparatus. As a result of crime, there are police, judges, professors and even criminal justice master students writing term papers.

The ideas of Marx and Engels were expanded on by Willem Bonger. Bonger focused on explaining crime at all levels within society. He viewed crime as a result of acting out criminal thought formed from egoism over altruism. People are treated as commodities, and emotion and empathy is denied for one's fellow man. Egoism promotes a hedonistic view of humanity, in which everyone prioritizes his/her own welfare.

Traditional Marxist thought can be broken down into three different perspectives. The first is the instrumental perspective. Instrumentalists view the law as a tool of a relatively unified ruling class to pressure and further its interests. The political process and laws serve the interest of the elite classes. The criminal justice system is utilized to promote the interests of the dominant capitalistic elite.

The structural Marxists see the government as less monolithically constructed, but at base, as still operating in the interests of capitalism. There are competing interests within the upper echelon of society that vie for their securities. Structural Marxists believe that sometimes laws will be passed for the good of the ruled classes. They argue that if laws were solely for the interests of the elites, the lower classes would revolt and false consciousness would fail. But on matters of fundamental importance to the

continuation of the economic base, the law will work to the benefit of capitalism as a mode of production.

There is also a dialectical Marxism, which is demonstrated by Chambliss' (1993) structural contradictions model. This model is an off shoot of structural Marxism, but is distinct in some of its propositions. Chambliss believes that there are structural contradictions within any mode of production. These contradictions lead to conflicts and dilemmas that are tackled by lawmakers and government. The government offers surface level resolutions instead of addressing underlying the conflicts and dilemmas. These resolutions are surface level in that they do not address the true underlying problems, which stem from the mode of production. These solutions will lead to more anger and eventually cause more conflicts and dilemmas because inherent contradictions remain unaddressed. This process will continue in a cyclical pattern because the government cannot solve the problems without changing the mode of production. This is will not happen because the state will always side with the interests promoting capital in fundamental matters. This brief account of Marxism is useful for understanding the propositions and processes that have come to define contemporary society's neoliberal climate.

### The Neoliberal Climate

Loic Wacquant's book (2009) *Punishing the Poor* and the article *Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity* (2010) provide conceptual tools for understanding the political and economic climate that defines contemporary civilization. Over the past quarter century, there have been dramatic changes in the

political realm involving conceptions of the responsibilities of the state in providing welfare for its citizens, the prevalence and role of the criminal justice apparatus, and the expectations and realities of the economy. During this time, the penal arm of the criminal justice system has grown exponentially. According to Wacquant, the burgeoning criminal justice apparatus was both facilitated and shaped by the political and economic shift towards a neoliberal society. The criminal justice appendage of the state attempts to assuage the social insecurities that stem from shattering of the welfare safety net, the failures of wage labor to facilitate a substantive lifestyle, and shifts of the ethnic pecking order (Wacquant, 2010). Contemporary society is characterized by rising social insecurity and anxiety as much of the citizenry attempts to position into a neoliberal order.

The use of the criminal justice apparatus is at the heart of suppression and is an extension of the neoliberal state. According to Wacquant, the modern police state exists not just to enforce the laws of the land or to protect and serve the community. The modern police state serves an expressive function that simultaneously reinforces the sovereignty and authority of the state and suppresses populations that fail to fall into the modern neoliberal economics. This occurs as part of what Wacquant calls *prisonfare*, which refers to the state's usage of the criminal justice apparatus to contain undesired conditions and populations that do not contribute to the neoliberal order (Wacquant, 2010). While these insights about the criminal justice apparatus are central to Wacquant's thesis, they are not the main focus of this paper. Instead of focusing on the criminal justice apparatus and role in the degradation of minority and poor classes, my focus is on those who are the beneficiaries of neoliberalism. This conceptual framework is vital to

understanding broad economic, sociological and political shifts in society that are of relevance to the decisions and reactions of the NFL.

During the reconfiguration of the state towards a more neoliberal agenda, the ethos of the Fordism-Keynesian era economics and welfare decayed and were replaced by a more penal state that aims towards loosening regulation at the top of the socioeconomic hierarchy while suppressing and/or oppressing the bottom. As such, understanding of what is meant by Fordism-Keynesian economics is required to understand neoliberal economics and the internal logic it possesses. Fordism refers to the processes and ideology stemming from the assembly line factories of Henry Ford that defined industrialization. Some of the basic tenets of Fordism are that mass production is necessary, and the parts of the product and the laborers should be interchangeable. The routinized and often manual intensive labor of this era worked in conjunction with the mass desire for consumerism to work towards economic equilibrium. Working under the assumption that, "men work for only two reasons: one is for wages, and one is for fear of losing their jobs," Ford raised wages for workers, a philosophy that was eventually echoed by other factories and modes of production during this era (Thompson, 2014). Workers agreed to work often monotonous and grueling specialized labor in return for substantive economic and social assurance for themselves and their families. As long as one was willing to labor, he/she was guaranteed to have the opportunity to build a substantive life.

The Keynesian portion of the Fordism-Keynesian compact refers to the predominately economic philosophy that fueled American capitalism from the end of the Great Depression until the rise of neoliberalism in the second half of the 20<sup>th</sup> century.

Keynesian economics is based on the theories of economist John Maynard Keynes, as featured in his text *The General Theory of Employment, Interest and Money* (1936). While the particulars of Keynesian economics are numerous and not especially pertinent to this thesis, there are some basic ideas that came to define this era. Keynesian policies took hold as a possible solution to the Great Depression. One of the main tenets of Keynesian economics is the idea that economic output is influenced by the total spending of the economy when factors are variable (such as a recession). Keynesian theory holds that there are an abundance of factors that influence the economic landscape and that the market may act erratically (Blinder, 2013). Specifically, Keynesian economics is critical of a laissez-faire approach to economics and the inevitability of functional economic cycles that are marked with recessions, recoveries and peaks without occasional interference. In order to maintain economic vitality, sometimes the public sector must intervene, with the government attempting to smooth out blemishes caused by the private sector. Keynesian theory focuses on minimizing unemployment and excessive savings in order to promote economic success. Keynesians philosophy dictates that prices are somewhat rigid and that in times of economic crisis, the best course of action is to focus on fluctuations in the components of spending whether it be investment, consumption or government expenditures (Blinder, 2013).

During the Fordist-Keynesian era, which lasted approximately until the 1970s, there was an implicit compact between the government and its citizenry for the welfare of the public. The state had the obligation to provide for the welfare of the citizenry in terms of health care, education, and the necessities of life including food and housing, in exchange for the citizenry's labor and obedience to the sovereignty of the state. When

one fell upon harsh times and struggles, the state provided welfare to assist one to bounce back towards a successful life. During the neoliberal age, there has been a shift away from the government assisted social programs such as John F. Kennedy's New Frontier, Franklin D. Roosevelt's New Deal, and Lyndon B. Johnson's Great Society that worked to assist citizens with necessities. Instead, neoliberalism is marked by legislation such as the 1996 Welfare Reform Act which eliminated the Aids to Families with Dependent Children Act (AFDC), a 60 year old program that provided cash aid mostly for single mother households (DeParle, 2009). During the years 1992-2002, there was a 60% reduction in welfare recipients, many of whom were reenrolled in forms of workfare holding various stipulations related to labor in order to qualify for assistance. Contrary to popular conservative political ideology, Wacquant argues that the government is becoming more stingy when it comes to providing welfare and more generous when it comes to opening a path to prison. The heavy hand of regulation punishes those at the bottom rung of society, while a light hand of de-regulation pervades the upper echelon.

Wacquant wishes to explore the idea that the remaking of the state after the evisceration of the Fordist-Keynesian compact can be defined as more than just renewed activity aimed at fostering international competitiveness, technological innovation, and labor flexibility. The neoliberal reconstruction of the state is characterized by "fragmented labor, hypermobile capital, and sharpening social inequities and anxieties," (Wacquant, 2010, p.202). Wacquant holds that neoliberalism should be considered a *transnational political project* that aims at remaking the "nexus of market, state and citizenship from above," (p.213). The architects of this project are those who benefit the greatest from the neoliberal order, including transnational firms and organizations, high

ranking politicians, state managers, and cultural-technical experts. The dominant ideological principle of neoliberalism holds that the government is “too big” and must be contracted so as to provide ideal efficiency and productivity. The neoliberal narrative claims that the Keynesian state was overgrown and ineffective. It had to be replaced with a “lean and nimble workfare state, which “invests” in human capital and “activates” communal springs and individual appetites for work and civic participation through “partnerships” stressing self-reliance, commitment to paid work, and managerialism”, (p. 214). Of course this is not what actually took place during the neoliberal age. Instead, the top of the social ladder has embraced the laissez-fair approach that voids limitations on capital and obscures responsibility. Those not fortunate enough to be part of the top are stricken with intense authoritative directives that work towards minimizing damage caused by the social turbulence of the shift towards neoliberalism. Instead of providing the citizenry with a viable assistance in substantive living or employment within the neoliberal climate, “workfare” and “prisonfare” have worked in conjunction as a double form of oppression. By the term workfare, Wacquant is referring to the replacement of the welfare obligations of the state towards its citizenry. Instead of providing assistance for those in need, those who wish to gather public assistance are required to work often menial dead-end jobs and are often demonized under the philosophy of moral behaviorism that attaches work with morality. Neoliberalism, in short, transformed the state into not only a “lean” machine but also a “fighting” one.

Wacquant (2010) argues that there are four institutional logics that guide the neoliberal agenda. The first of these logics is *economic deregulation*. Wacquant defines the process of economic deregulation as shifts in regulation aimed at promoting “the

market or “market-like mechanisms” as the finest instrument to guide corporate decisions and economic transactions in terms of maximizing stock share values. In addition, economic deregulation guides an abundance of human actions, including the private delivery of public goods in what is deemed the most efficient manner. The next logic works to accomplish *welfare state devolution, retraction, and recomposition*. This course of action works to intensify commodification and to “submit reticent individuals to desocialized wage labor” (p.213). By utilizing methods of workfare, lower class individuals are thrust into a compact with the state that demands certain obligations and conditions in order to be provided continued public assistance. In effect, this logic is focused on dissolving the last remnants of the Keynesian state’s compact with the citizenry. Wacquant states that the third institutional logic of Neoliberalism is the articulation of *an expansive, intrusive, and proactive penal apparatus*. This logic encompasses Wacquant’s ideas of prisonfare which utilize the criminal justice apparatus’ arsenal to quell the disarray stemming from the burgeoning inequality and social insecurity caused by the neoliberal shifts. The threat of prison and the increased reliance on it as a tool for suppressing the losers of the neoliberal shift, cast a ubiquitous cloud that strengthens the sovereignty of the state. The final institutional logic stated by Wacquant deals with *the cultural trope of individual responsibility*. Within contemporary society, there is an ever present cultural narrative that purports that morality is entwined with one’s ability to contribute to society via work regardless of his/her individual circumstances. In a culture that highlights individual agency and views one’s structural source as no more than a speed bump impeding one to achieving the American Dream, everyone is modeled as an entrepreneur participating in an egalitarian market. This

narrative is at odds with the realities of contemporary society where there is a perpetually expanding fissure between the upper and lower socioeconomic strata of society. The obscuration of this reality permits the spread of new markets and uneven competition, while assisting in the circumvention of corporate and state responsibility.

In his analysis, Wacquant expounds on the work of Pierre Bourdieu to explain the morphing political and economic landscape. Bourdieu's notion of the *bureaucratic field* is the heuristic that Wacquant utilizes as the foundation to his analysis of neoliberal society. Wacquant (2010) states that this single concept can explain the move toward the new age of increased punitive social policy directed at the working class, the growing discrepancy between socioeconomic classes, and other shifts towards the neoliberal age in the political and economic sphere. Therefore, it is relevant to explore some of Bourdieu's ideas in order to properly facilitate an understanding of the climate and chronological timing of the NFL's conundrum.

Contemporary society is defined primarily by its relationship to capitalism and the desire of individuals and groups to achieve economic success. When Adam Smith explained the goals and value of a free market capitalistic system, he believed that capitalism was a means of achieving the natural rights of men to liberty and the pursuit of substantiate life for one's family. He believed that the successes and failures of one's monetary prosperity are a direct result of the efforts and determination of individuals in the system of free market capitalism. State interference in the market was deemed unsavory as it would only impede the natural forces of the market. Unfortunately, capitalism is not a pure meritocracy and in actuality, social mobility is difficult to achieve and social stratification is a reality.

Individuals, groups, and corporations vie for power and control within what Bourdieu calls *fields*. Fields are spaces where struggles for power and capital are “played out”. Similar to a game of football, each field has distinct rules, players, goals, and struggles between opposing factions. Within the parameter of the field, the players may be seen as individuals, groups, organizations, or corporations. Instead of hash marks and end zones, the field is “delineated by networks or sets of connections among objective positions” (Allen, 2011, p. 176). The players who occupy this space should be viewed in terms of their relationships between and amid each other, rather than focusing on the agents within the field. Although there may be similarities between the constitutive members of a field in terms of characteristics, life experiences, interests, and goals, it is through relationships between entities that the field is born. One such field is classified as the bureaucratic field. Within the parameters of the bureaucratic field lie, “the set of impersonal public institutions officially devoted to serving the citizenry and laying claim to authoritative nomination and classification,” (Wacquant, 2010, p.8).

Within the bureaucratic field, there are currently two skirmishes underway. The first battle is between the higher state nobility of law and policy architects that demand the promotion of market-orientated reforms of neoliberalism, and the lower state nobility that wants to tend to the classic roles and demands of the government (Wacquant, 2010). The modern state may be conceptualized as the Hobbesian Leviathan, a metaphorical beast that represents the need for a strong sovereign state defined by the necessity of a secure social contract between the citizenry and the state. Bourdieu theorizes that it is within the boundaries of this metaphor that a second fight occurs. This battle stresses a battle between the symbolic left and right hand of the Leviathan. The left hand of the

Leviathan is said to be feminist in nature and is concerned with the social welfare of those devoid of the resources to ensure necessary health care, labor laws, and housing while serving social function (Wacquant, 2010). The right hand of the Leviathan is considered the masculine side of the creature and is the enforcer of the new economic order with ammunition in the form of deregulation, financial incentives, and budget and austerity measures. Wacquant works off of this model when he pronounces the contemporary state as a centaur-like in appearance. Those at the top of the social order, those who benefit the most from the neoliberal directive, are treated in a beneficent benevolent manner. Those placed in the basal position of the social hierarchy are prone to the malevolent paternalistic teeth of the neoliberal machine. Wacquant observes that this precipitates “radically different faces at the two ends of the social hierarchy: a comely, and caring visage toward the middle and upper classes, and a fearsome and frowning mug toward the lower class” (p. 217).

Wacquant’s work, while not Marxist in a classic manner, is imbued with the philosophy and conceptual richness of Marxist theory. Wacquant deems neoliberalism, “revolution from above” and points to a pseudo-structural Marxist analysis in which the beneficiaries of the economic shift attempt to contain and suppress those on the lower end of the socioeconomic rung. While his work does seem to point to an element of intentional architecture found an instrumental interpretation of Marxism, he clearly states that liberal paternalism on the bottom of the social structure and the laizze-faire approach on the top is “not proceeding according to some master scheme concocted by omniscient rulers” (p. 217). Nor is Wacquant’s theory strictly structural, as he claims that the processes are not pushed forth mechanically from “systemic necessities of some grand

structure such as late capitalism, racism or panoticism”, which are common themes in other critical approaches to studying contemporary processes (pg. 214). Instead, it is the tension and conflict between participants in the bureaucratic field that matters, an insight that lands Wacquant closer to dialectical Marxism. The logics, priorities, and goals deemed worthy of dissemination to the masses are battled for within the bureaucratic field arena. The bureaucratic institutions of the state compete with organizations from the public sector to claim authority over which discourse and courses of action will be utilized to define and solve social issues.

### Braverman’s Insights on the Nature of Work

Any theory pursuing an examination of the changing nature of labor, including that in professional sport, is obligated to include the work of Harry Braverman. Braverman’s book *Labor and Monopoly: The Degradation of Work in the Twentieth Century* masterfully articulates the role and developing functions of labor within contemporary society via the tools and vision provided largely by Karl Marx. Braverman’s work is unique in that it focuses on the meaning of work in terms of production and organization for the laborer and management within a capitalist society by following the transformation of capital. Much has changed in terms of labor since the industrial age when Marx generated his texts. The logics and characteristics of capitalism have gone global and the workplace has become defined by bureaucracy, rationalization, and automation. Macro swings in the economy have driven away the physical production of goods toward a service sector economy. The governing technology employed at an interval is not a matter of simple determinism defined by a society’s stage in the progression to the Marxist utopian stage of communism. Marx argued that technology is

dialectical as it creates social relations while also being a product of the social relation represented by capital (Braverman, 1974). Although there have been vast progressions in technology via the advent and development of the computer, transportation and other indicators of evolution within our current epoch, the fact remains that the manner in which labor is organized and executed is a product of the social relations under capitalism. Braverman states “Capitalism, a social form, when it exists in time, space, population, and history, weaves a web of myriad threads; the conditions of its existence form a complex network each of which presupposes others,”(Braverman, 1974, p.15). This gives capitalism its perpetual characteristic that appears to be natural and invariable. Capitalism’s form has progressed over time from the mere exchange of surplus during mercantile capital, to the production of commodities occurring during industrial capitalism, towards its latest form of monopoly capital.

Braverman wrote his seminal work as a reaction to a contradiction featured in the formal and informal literature on the topic of occupations. Pertaining to the subject of occupation scholarship, Braverman explicates, “On the one hand, it is emphasized that modern work, as a result of the scientific-technical revolution and “automation”, requires ever higher levels of education, training, the greater exercise of intelligence and mental effort in general” (p. 3). Seemingly at odds with this reality is the fact that work has become ever more tedious and mindless. The logics of labor have become progressively more subdivided into specific tasks that do not engage the worker intellectually nor physically. Capitalistic reason dictates that the laborer, who functions analogous to an interchangeable cog within a machine, sells his labor power to capitalists when agreeing to perform a job. Braverman (1974) explains, “What the worker sells, and what the

capitalist buys, is not an agreed amount of labor, but the power to labor over an agreed period of time,” (p. 37). The worker agrees to sell his mental acumen and physical prowess, both of which are naturally inalienable from the person as a whole, to an employer for a wage.

The workings of capitalism require exchange relations, commodities, and money, but what makes capitalism unique, something Braverman deems *differentia specifica*, is the purchase and transferal of labor power. When labor power is transmitted from the worker to the employer, scientific management dictates that it is the duty of management to ensure that the optimum quantity of labor is performed by the worker. When the worker sells labor power, he/she tacitly agrees to toil under the aegis of the employer for the purpose of expanding the employer’s unit of capital. This is a necessity for the worker as the conditions of society have left no other means of livelihood other than agreeing to a contract to transfer labor power. Since what the employer purchases is not labor but potential labor via labor power, the realization of this potential may be limited by “the subjective state of the workers, by their previous history, by the general social conditions under which they work as well as the particular conditions of the enterprise, and by the technical setting of labor,” (p. 39).

Management then becomes a device whose central function is that of control. As Braverman articulates, “Like a rider who uses reins, bridle, spurs, carrot, whip and training from birth to impose his will, the capitalist strives, through management, to *control*,” ( p. 47). For the majority of workers, control is vital as most labor is deeply unsatisfying and non-creatively. Braverman posits that during the progression of capitalism, work has become divided and subdivided following the rationale of

capitalism's defining tool, the division of labor. While trade and craft specializations precede capitalism, the notion of dividing labor into minute functions to the extent that the worker does not ascertain the knowledge or skills to create the finished product is unique to the mass manufacturing division of labor under capitalism. Not only are operations of an occupation divided and disjointed, these distinct tasks are performed by different workers. Following the formulas and logics of the scientific-technical revolution, the manufacturing division of labor is more cost efficient to the employer. This fact stems from the reality that society is based upon the purchase and sale of labor power, which garners the greatest profit when the craft is divided into individual parts (Braverman, 1974).

This division results in the extinguishing of creative desires and the denial of potential for the worker. The worker becomes alienated from his labor and the time spent at work does not fulfill the natural desire for creativity. This is why it is not uncommon for one to perceive time away from work as "free time" and perceive much time at work as wasted. This reality in conjunction with the degraded value of the laborer, as people function as a mere interchangeable accessory in the labor apparatus, has led a polarization and degradation of work. By degradation, Braverman is not insisting that the average level of skill in society is declining, or is this degradation to be conceptualized as simply "deskilling". Instead, Braverman recognizes that with progression of scientific knowledge and technology, "the average scientific, technological, and in that sense "skill" content of these labor processes is much greater now than in the past," (p.294). He insists that progress in these terms neglects the vital truth that there has been a polarization in what work means, with workers on one side of the paradigm and

managers and engineers on the other. While the managers and owners benefit from these developments in technology, the employee suffers a degradation of his ability to execute crafts and traditional abilities and from the datum that there is a burgeoning fissure between knowledge of the production and functioning of the process and the worker. Braverman surmises, “The more science is incorporated into the labor process, the less the worker understands of the process; the more sophisticated an intellectual product the machine becomes, the less control and comprehension of the machine the worker has” (p. 294).

In our modern age of capitalism, the production of goods falters to produce solely to meet demand. Indeed, the contemporary service sector oriented market operates principally in the jurisdiction of a mounting economic surplus. This stage has been referred to as late capitalism, finance capitalism, and in the case of Braverman’s text, monopoly capital. Drawing from Paul Baran and Paul M. Sweezy’s (1966) *Monopoly Capital*, Braverman examines how economic surplus is absorbed in monopoly capital and how this process affects the worker. The prime operatives of monopoly capitalism are stated by Braverman to include, “the increase of monopolistic organizations within each capitalist country, the internationalization of capital, the international division of labor, and changes in the structure of state power,” (p.175). These developments of monopoly capitalism result in alterations in the working class and new categories and practices of labor with an aversion to the manufacturing of goods and cultivation of agriculture. This has resulted in a shift in the product of capitalism as well as a movement in labor and value. The majority of work has shifted to what Baran and Sweezy refer to as branches of nonproduction. This is where “entire industries and large sectors of existing industries

whose only function is the struggle over the allocation of the social surplus among the various sectors of the capitalist class and its dependents,” (p.177). There are currently less technical jobs available to be performed as a vast proportion of the market has moved towards routinized technical or unskilled clerical jobs. The modern corporation has changed immensely as it is currently operated by managers and administrators tasked with ensuring the smooth functioning of a plethora of different departments and subdivisions which perform unique utilities within the conglomerate. Sporting corporations, such as the NFL organization, are not immune to this trend.

Advertising and marketing take on a more dynamic and vital role for the modern corporation, given the need to promote consumption. Marketing attempts to pacify the dynamic independent character of demand into a more constant variable with an induced characteristic. By telling the buyer what he/she needs and desires i.e., by stimulating demand, the fluctuations of demand may be minimized. This logic has led to a vigorous intensification in the importance of marketing as “the marketing organization becomes second in size only to the production organization in manufacturing corporation, and other types of corporations come into existence whose entire purpose and activity is marketing,” (p.184). Indeed, a product’s inception and development is based on what the customer demands and expects in terms of style and design. Marketing functions to create and shift expectations and demands of the customer via the creation and perpetuation of culture. It is within this environment that the professional athlete becomes a controlled worker. The athlete is the property of management and is advertised and sold to meet and create consumptive demands. Thus, to fully explore the importance and function of

culture in contemporary society, the theories of Theodor Adorno and Max Horkheimer are of the utmost importance.

### Culture's Contribution

Culture is the stitch of societal fabric that connects the individual to the social world. Culture provides a basis for one's ideology and is a key component of an individual's identity and what makes us human. Therefore, the role of mass culture must be accounted for when discussing the National Football League's importance and function in modern society. Footballs' undeniable popularity, especially in the United States, provides a common means of connection and self-identification throughout the public sphere. During the NFL season, millions of people witness their preferred teams and players compete in the spectacle of football via television, internet, radio or even their mobile device. The masses evoke strong emotions of joy and despair observing the games, often while wearing a replica jersey of their most beloved NFL competitor as well as potentially shorts, socks, shirts, watches, hats, undergarments, and numerous other costly articles of clothing and accessories highlighting a NFL team's logo or team name.

Theodor Adorno and Max Horkheimer's critique of popular culture, and their description of popular culture's function, is useful when examining the importance of the NFL in a cultural sense. Their work provides an understanding of how culture feeds off and obfuscates the contradictions and exploitation inherent in a capitalist society. Culture provides a means of pacification by simultaneously legitimating the status quo and reproducing means of economic and structural domination. Working from the Frankfurt School of thought, which critiqued the notion of progress in the Enlightenment via

Marxist theory, Adorno and Horkheimer (1972) wrote their seminal piece *Dialectic of Enlightenment*. Within *Dialectic of Enlightenment*, is a chapter featuring a caustic criticism of mass culture and entitled *The Culture Industry*.

Adorno and Horkheimer's seminal piece stems from the proposition that contemporary society is characterized by unequal structures of power and wealth. Similar to the production of physical products via machines and factories, popular culture is manufactured for public consumption. Originally written in 1944, Adorno and Horkheimer condemn radio, film, and television producers as purveyors of a capitalist agenda that acts to pacify the masses and encourage consumption of standardized and rationalized cultural products. Drawing on Marxist theory, the authors argue the belief that all the forces of production are intertwined, and one's access to material resources is unequally distributed throughout society. One's relation to the means of production and his/her own oppression is obfuscated via mass culture. Writing on the theories and ideas of Adorno, sociologist David Gartman explains that for Adorno, "Modern culture is a mass culture, characterized by a socially imposed symbolic unity that obscures class differences of wealth and power behind a façade of leveled democracy," (Gartman, 2012, p. 42). The culture industry stems from the capitalist system in which social organization is based on mass economic production and consumption.

In order to appeal to the greatest potential number of consumers, mass culture must be commodified and standardized to the least common denominator. The culture industry sacrifices the high arts (with their aim of cerebral and emotional satisfaction through diversity) in favor of instant gratification that is achieved by homogenous cultural consumables. Adorno and Horkheimer cite the formulaic and derivative nature of

music and films as examples of how true creativity is suppressed in favor of mass produced culture similar to an assembly line. The culture industry encompasses all of society and masks the standardization of mass culture via superficial differences in products that claim to be drastically and competitively dissimilar. Adorno and Horkheimer write, “Marked differentiations such as those of A and B films, or of stories in magazines in different price ranges, depend not so much on subject matter as on classifying, organizing, and labeling consumers,” (p.2). The mass produced standardized culture is then sold to the workers in society in order to assuage the discontent caused from the alienation of their labor in the capitalist system. The corruption of true variation and creativity leads to a mass culture that demands instant gratification at the cost of sacrificing critical thinking and individuality. Irrespective of class standing or economic stress caused by their structural dominance, the standardized cultural products appease the masses and mystify the inherent contradictions of capitalism that function to reserve dominant power for bourgeois elites. The contentment and social passivity garnered from cultural products ensures that systemic social inequality is perpetuated, while simultaneously enabling substantial profit for the culture industry’s entities (e.g., NFL owners). The mass culture, the product of an imposed symbolic unity, lulls the populous into a situation where the oppressed fail to witness their oppression and pay the purchase price in the process.

In addition to Adorno and Horkheimer (1944), Pierre Bourdieu provides a theory of culture that is useful for understanding the NFL conundrum. Alongside Adorno, Bourdieu posits that culture perpetuates class inequalities while legitimating a structure of economic dominance. Yet, there are substantial differences in the explanation of how

this process occurs. Bourdieu's work featured the notion that capital depends on more than just hard work within an equal system. Instead, Bourdieu explained that there are different forms of capital that produce distinctions in class. Bourdieu states "It is in fact impossible to account for the structure and functioning of the social world unless one reintroduces capital in all its forms and not solely in the one form recognized by economic theory" (Bourdieu, 1986, p.46). Capital is more than just the traditional accumulation of wealth and material goods which hold monetary value, something Bourdieu refers to as economic capital. Social capital is another type of capital and refers to one's social standing in relation to other people. This capital is influenced by one's material economic capital but is exclusive in the sense that social networks may unintentionally be fabricated (Allen, 2011). Social capital is intimately intertwined with one's class as well. Capital also may be symbolic in nature. This type of capital is critical as it explains how symbols may create or congeal physical and social reality (Allen, 2011, p. 170). Bourdieu states that symbolic capital is the power of "world-making...the power to make groups...the power to impose and to inculcate a vision of divisions, that is, the power to make visible and explicit social divisions that are implicit, is political power par excellence" (p. 171). Symbolic capital equates to power in terms of its ability to create the narrative that defines the world around us, stratifies society, and filtrates and defines existential reality.

Stemming from symbolic capital is the final form of capital discussed by Bourdieu, a form called cultural capital. Cultural capital includes knowledge, skills, tastes, manners of speech, and habits that give a person social advantages and privileges (Allen, 2011). This cultural capital may be objectified, institutionalized, or embodied in

nature. Objectified cultural capital is referring to material goods that are expressions of class such as works of art. Institutional cultural capital demonstrates one's institutional achievements such as diplomas, certifications, and qualifications. Embodied cultural capital is referring to characteristics that are acquired over time through one's social skills, culture and traditions. This culture becomes part of the person's character and shapes how he/she perceives the world, as well how she/he is perceived.

This form of cultural capital is intimately related to Bourdieu's conception of *habitus*. Habitus may be defined as, "The durable organization of the body and its deployment in the world" (p.172). Every method of using one's body including walking, eating, talking, and posture are all part of a person's habitus. People organize their perceptions and interpretations of other's behavior as well as their own behavior according to their habitus (Allan, 2011). Patterns of thought, dispositions, tastes, sensibilities, and what one perceives as normal is a result of his/her habitus. Habitus works at a subconscious level and defines how one "feels" towards the world and defines our day to day interpretation of our surroundings. These interpretations, feelings, as well as cognitions are critically influenced by surrounding sociopolitical, demographic, and political social systems. Education and "distance from necessity" (i.e., the distance from the basic biological requirements of life) are both defining factors in the production of habitus (Allen, 2011). The further one is from worrying about basic questions of survival, the more one may freely think abstractly about the world. Hobbies, interests, and leisurely activities such as sport demonstrate a greater degree of freedom and distance from the basal conditions of survival. This freedom, in conjunction with one's level of education, will define one's interpretation of the world.

Gartman (2012) focuses on the theoretical similarities and differences between Adorno and Bourdieu's conception of culture. Unlike Adorno, Bourdieu does not posit that that culture is commodified and sold as a means of obfuscating class inequalities under the auspices of a level democracy. Bourdieu sees cultural products as a means of displaying symbolic differences in the classes. While products of the working class are generally consumed for their pragmatic functionality, the upper class purchases cultural products as a means of flaunting their supposed superiority. Gartman (2012) explains, "Only the bourgeoisie has sufficient economic capital to instill a habitus conditioning a taste for freedom, that is, cultural goods that show a distance from necessity by a concern for aesthetic form or appearance," (p.50). Unlike Adorno, Bourdieu does not believe that the shared superficial pleasure stemming from homogenous cultural products is a main mechanism of legitimation. Instead culture legitimates class inequalities by, "symbolically displaying them in such a way as to make some seem deserving of their unequal reward," (p.51). Those with means may purchase and display products that transcend the basic need for survival and pragmatism displayed by the popular culture. This idea aligns with the conception of habitus when considering that one's consumption of the NFL product will parallel their class. Football becomes a means for the working class to flaunt their distance from the necessity and consume consistently with their class.

#### Late Modern Cultural Sensibilities and Mentalities

While it does seem that the financial motive and its accompanying motif of leniency for the top and paternalism for the bottom is a main driving mechanism responsible for today's political and economic climate, this does not mean that the ideas of literature on late modern culture are bunk. This literature casts light on how late

modern society approaches risk management and legality. The framework of this thesis bridges the political-economic climate of neoliberal society with the effects of late modernity culture. While Wacquant disagrees with some of the characteristics of late modernity literature, there is much overlap on the issue of economic shifts. Late modern scholars, such as sociologist David Garland, recognize the shifts in economic policies and in the socio-political realm. The difference from Wacquant's work and late modern thinkers is the question of whether neoliberalism is the proverbial forest or merely a tree. Late modernist thinkers situate shifts in the neoliberal state as a characteristic of late modernity and its discontents, while Wacquant faults neoliberalism as the burgeoning catalyst of transformation that defines the modern socioeconomic and political landscape. Regardless of the scholarly paradigm to which one subscribes, it is clear that there have been drastic economic, political, legal, and social shifts in how issues are perceived and approached.

It is important to understand why many consumers and non-consumers of the NFL's product are now questioning the role of violence and potentiality of injury in the game. Literature on late modernity is useful in explaining shifts in the American consciousness. Late modernity may be defined as the time when "the modern era went into hyper drive, resulting in a series of changes that altered society culturally and structurally" (Kraska, 2004, p. 290). Our society became more deindustrialized, globalized, obsessed with safety and security, and oriented towards seeking answers in the free market. Before the late modern period, there was the era of modernity. Modernity valued the ideas and reason that came from the Enlightenment. The modern era held an emphasis on empirical science, medicine, industry, large scale societies with a high level

of division of labor, human reason, and a government that provided social welfare and security for its citizens (Kraska, 2004). This was a sharp change from pre-modern society that was marked by belief in religion, mechanical solidarity, reliance on agriculture, and a lack of science or high technology. The change from a pre-modern to a modern society was centuries in the making, encompassing eras of human development including the Dark Ages and the Renaissance as a precursor to Enlightened thought. Some of the main themes of late modernity include a socially exclusive society, an obsession over safety and actuarial justice, and the decline of state sovereignty and neoliberalism (Kraska, 2004). Actuarial justice is a form of justice that places an emphasis on risk management, prevention, safety, and efficiency. The actuarial rationale places emphasis on: the collection of qualitative data and analysis, considering people to be statistical aggregates, basing decisions on statistics, and constant assessment of risk and danger (Kraska, 2004).

Similar to Wacquant's conception, issues of culpability are of the utmost importance in assigning contempt towards certain populations. Garland's (2001) article *Crime Control and Social Order* provides an invaluable discussion of late modernity. Garland's theoretical framework states that the social and cultural shifts that accompany late modernity, in conjunction with free market neo-conservatism and politics, have created a culture of control. The move to late modernity occurred as part of a large scale macro shift in society during which our society has grown more risk obsessive and more exclusive. Neoliberalism dictates that welfare measures are problematic, the cause of economic stagnation and lack of citizen responsibility. Neoliberalism dictates that the free market should be regulated as little as possible, and should be seen as a model for social order. The government is the problem, and the solution can be found in the free

market. This reality is reflected in the changes in the criminal justices apparatus with “the rapid growth of the private sector security, a preoccupation with actuarialism and risk management, the decline of the rehabilitative ideal, and the emergence of punitive and just deserts penalties” (Kraska, 2004, p.294). Similar to Wacquant’s work, this ideology has led to a condition in which there are more rules and legislation affecting and regulating the poor and relatively few implemented measures regulating the free market. This has meant an increase in tax cuts for the wealthy, deregulation of the finance sector, and increasing trends toward privatization. This has created a situation in which the upper and middle classes can thrive, and those without means are marginalized. Now there are laws that are aimed at confining and condemning those who are not beneficiaries of the neoliberal ideology.

The themes of neoliberalism work in sync with the late modern ideology that people are independently responsible for their actions and situations in life. The market freedom of 80s and the social freedom of the 60’s are now responsible for the social control and penal repression of today. The decade of the 50’s through the 70’s brought more freedom in civilization. This was during the time of the human rights engagements such as the Civil Rights, Women’s, and Prisoner Rights Movements. Some believe that this has caused a moral decline in our society. In order to fix this, some people think we need to “put the lid” back on our society and “fix” our moral breakdown (Garland, 2001). This meshes well with the idea of the “otherization” of our culture in which those that do not look similar and/or live in a similar socioeconomic stratus are perceived as threatening.

Drawing from the works of Norbert Elias, Garland (1990) speaks to the nature of culture sensibilities and mentalities in shaping definitions of and reactions to social harms. Garland uses the term sensibilities to encapsulate culturally-based emotions. These emotions are socially constructed and taught through cultural norms. Garland explains that these sensibilities help define the boundaries of what a society tolerates. When an event is out of bounds with cultural sensibilities, it is seen as offensive and morally objectionable. Garland uses the term mentalities to explain cultural thinking about issues. Through cultural mentalities, a society defines what actions are to be deemed appropriate and tolerable. Mentalities and sensibilities' are intimately related. How one feels about a subject will no doubt reflect what he or she thinks about that subject and vice versa. Garland is using these terms to explain how emotion and perception influence evaluations of social actions and circumstances. These insights are vital to fully grasp the developments and ideology surrounding the NFL predicament.

The pursuit of profit for corporations is characterized by cold rationality and attempting to predict and control risky variables and liabilities. The concept of rationalization stems from the writings of Max Weber's *The Protestant Ethic and the Spirit of Capitalism*. Weber treated social action as a unit of analysis. Weber uses the notion of *verstehen* to describe how the meanings of social actions are open to interpretation thereby defining norms. Norms set up the perceived appropriate behavior and expectations in different situations. The way our society behaves and what it tolerates stem from what the norms deem correct. For the duration of late modernity, our norms have put a premium on efficiency and predictability that is more pronounced than during previous periods. These ideas of efficiency and predictability flow nicely with the

concept of actuarial justice. Our society craves safety and risk control, and operating in the most efficient rational manner. But it also values risks with the potential for rewards. Weber refers to the idea of society being captured by the demand for efficiency, control, and predictability as the iron cage of rationality. Rationality culminates into a society that demands people to operate like cogs in a machine. This is the essence of bureaucratization. When bureaucratization takes hold, the norms are altered in order to ensure the survival and growth of the entity. This type of thinking has serious implications to those who threaten the smooth operation of the machine. Given obsession with of rationality and efficiency, the element of humanity can become neglected. Instead of dealing with the unfortunate and deprived of our society, we deem them as a risk and attempt to control and punish them for their inefficiency and complications. This control allows for more proper calculability and ensures that risk is minimized. Emotionality and sympathy are downplayed in order to ensure optimal efficiency. This can lead to business that is far less interested in ensuring the social welfare of its employees than in maintaining control of the operations of the business as well as framing the narrative over what should be perceived as safe or injurious. What is at issue is the precise definition of what constitutes risk and holds the responsibility for the outcomes associated with it. It is not the case that the emotionality is obliterated in this narrative. It is instead concealed and left to play out in a state of bureaucratic rationality.

The work of sociologist Norbert Elias (1978) is useful for understanding football's role in society. Elias describes how cultural sentiments, norms and behaviors have changed throughout time. Modern sensibilities promote more refined behavior and curtailed levels of aggression and open suffering throughout society. Since medieval

times, Elias argues, there has been a modification and shift in social norms and values; restraint and control of instincts have become more desired. This process has affected the growth of regulation of sports violence. Sports became shaped by what Elias calls “‘a dampening of angriffslust’ (lust for attacking) which included ‘lowering the threshold of repugnance’ and an internalization of what is seen as offensive,” (Brent & Kraska, 2013, p.361). Elias posits that in accordance with the greater external and internal controls by the state over behavior, sport would follow suit. Brent and Kraska (2013), examining the civilizing process within the context of mixed martial arts, state that “modern sports represent an acceleration of these civilizing tendencies that advanced through the eighteenth century; that is, refined social standards led to sporting activities that were increasingly rule-bound and less violent” (p. 361). Through the years, sporting activities have increasingly become more explicitly rule oriented, rationalized, and controlled in an effort to provide equality. The National Football League has ostensibly followed this pattern as the rules and regulations of the game have increased in quantity and severity over time. This, of course, would only happen if the pain and violence manifests and is perceived as uncivilized. With the increase of ex-players claiming injury related to football, as well as the increase of concussions throughout the league, need was created for the sport to reassure the public that the sport is civilized and under control. In *Quest for Excitement: Sport and Leisure in the Civilizing Process*, Elias (1986) speaks to the role of sport in societies farther in the civilizing process “Where people in great numbers and almost worldwide enjoy, as actors or spectators, physical contests between individual people or teams of people and the tensions, the excitement engendered by these contests under conditions where no blood flows, no serious harm is done to each other by

contestants” (p. 20). This theory is stating that perhaps one day, the civilizing process might reach a point in which violence is completely simulated and injurious activities might be a thing of the past. This is not the case within contemporary sports such as football. Eric Dunning (1999) states that sport performs a de-routinization function through the de-controlling of emotional control within a society. It is within sport, both playing and spectating, that raw emotion is more freely expressed. This display of emotion must nevertheless be harnessed to some extent in order to meet the norms, rules and expectations of what is deemed civilized behavior. Concurrently, the rules and regulations featured in sport must not become too routinized, or boredom and a lack of interest may “corrupt” the sport. This situates sporting activities such as football in a precarious position where the emotional appeal stemming from violence must be retained, while the rules and regulations do not become too lax, potentially leading “to behavior which transcends the bounds of what is regarded as civilized” (Dunning, 1999, p. 30).

This chapter has laid out the theoretical framework of this thesis. These theories will be applied in the following chapter in an effort to understand the NFL conundrum. There is a tension between the need to keep the observable effects of violence contained and a requirement to keep the game of football exciting, risky, and profitable. The tension is between risk and the effects thereof versus risk management/control. If there is not enough “risk” in the sport in the form of spontaneity and violence, then the sport vis-à-vis its profit margins will suffer. Concurrently, if risk control is endangered, the sport’s legitimacy is threatened. How, then, can this central tension be theorized? That is the subject of the next chapter.

## CHAPTER 5

### THEORETICAL APPLICATION

This chapter applies the previously described theories to account for the NFL conundrum by placing it in a modern sociopolitical environment while simultaneously explaining the role of football in society. This is achieved with the assistance of a heuristic model that simplifies the complex relationships between the diverse variables. There are numerous tensions at play that have spawned from historical contradictions within the economic order of capitalism. These have been exacerbated by the birth and growth of the logics of neoliberalism and the characteristics of late modernity. The work of Loic Wacquant (2010) is relevant to exploring these concepts. A discussion of his theory and an application of his conception and characteristics of neoliberalism will contribute to an understanding of the sociopolitical and economic logics that define contemporary society. Harry Braverman's (1974) ideas provide a unique perspective on the shifting nature of labor and management and an avenue for exploration of the tactics and processes of the NFL and the benefactors in this paradigm.

The succeeding section investigates culture's contribution to the logics and function of the National Football League in American society. Horkheimer and Adorno (1944) and Pierre Bourdieu's (1986) critique of popular culture address rationalized cultural products that permit the NFL to be financially viable and contribute to social passivity which enables class based systems of inequality. The shifts in contemporary

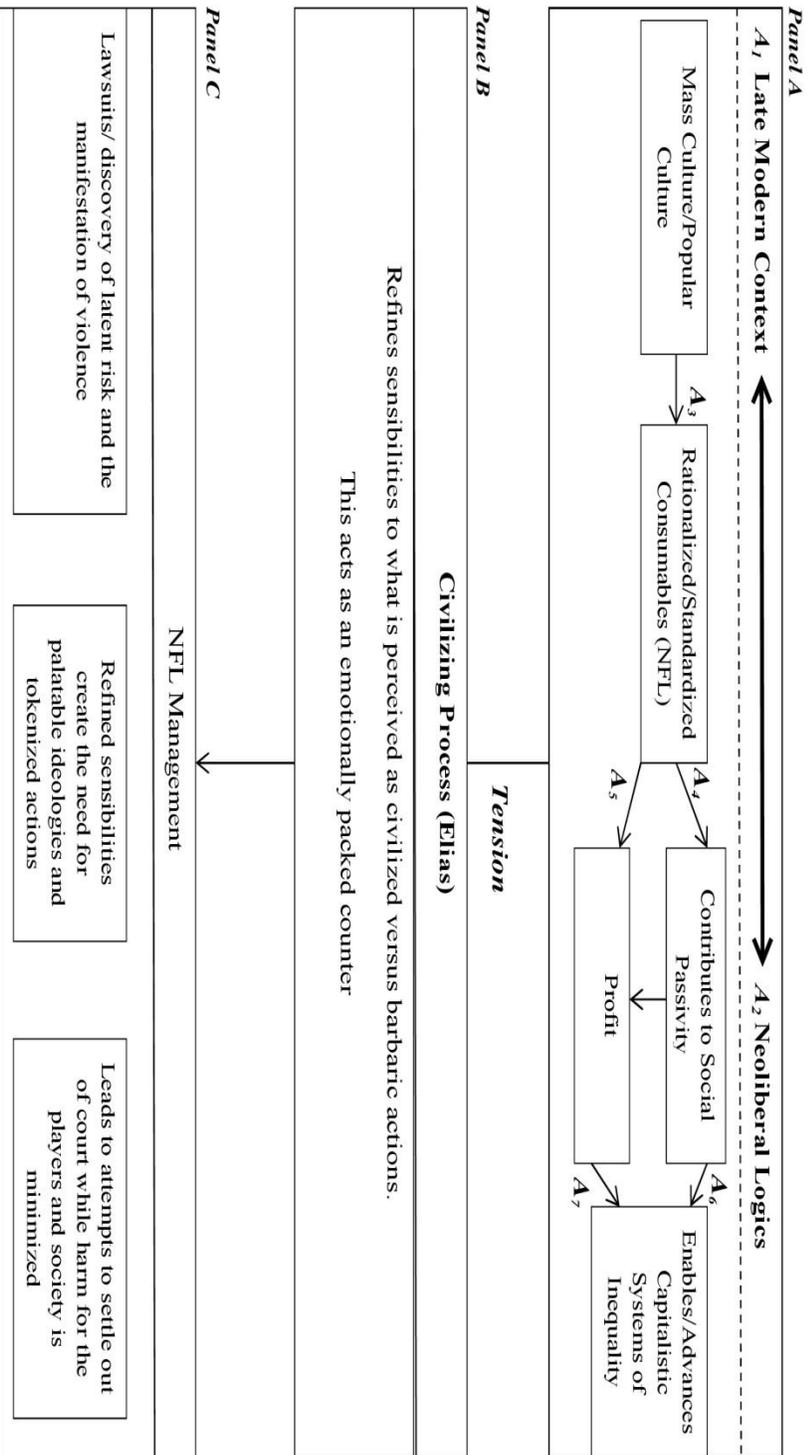
cultural sentiments towards violence in sport will be explained via Eric Dunning (1989) and Norbert Elias' (1986) literature on sports and the civilizing process. The model is helpful in understanding the lawsuits against the league and how these brought the fundamental contradictions in the game to the national consciousness.

A comprehensive application of the theories is necessary to discuss the central tension identified in this thesis: the profitability of risk versus the legitimating role of risk control/management ideology and practices. One of the National Football League's dominant allures is the element of risk involved in the game. Risk is profitable for the NFL because the product's spontaneity, excitement, and unique attraction of violence is predicated on risk. Risk of pain and of injury is essential to the hits and plays that stimulate the most excitement and passion from the fan base. If the element of risk diminishes, so does the potential for profit. Concurrently, if the artifice of risk control suffers, then legitimacy is threatened. The fundamental tension for the NFL is to provide an exciting product predicated on risk laden violence versus our culture's sensibilities and desire for risk containment.

#### Theoretical Model

The heuristic model presented in Figure 5.1 illustrates the relationship between the variables and theories discussed in chapter 4. Since there are numerous parts required to apply theory to the NFL's situation, the model has been labeled (Panel A-C) for the purpose of elucidation on page 101. The relationships between these parts are illustrated via arrows. Some of these arrows are linked up with numerous components. Therefore, each divergent path has been assigned a numerical value to distinguish each relationship

discussed below. Each of these lanes features an application of how the theories apply to the NFL conundrum, the NFL as a business, and/or the cultural and economic significance of the game to its fan base. This model accounts for the different processes that shape, define, and infuse reality.



**Figure 5.1. Theoretical Model Explaining the NFL Situation**

## Panel A

*Pathway A<sub>1</sub>*. The theoretical model begins with a discussion of the macro sociopolitical, economic, and historic context surrounding and defining contemporary society. An application of the late modern literature infused with the logics and tenets of neoliberalism (*Pathway A<sub>2</sub>*) are required to account for the NFL enigma. A solid starting line for this discussion is to link the rise of the popularity of NFL football (Chapter 2) with macro processes and theories featured in Chapter 4. Chapter 2 provided an account of the growth of The National Football League from a hybrid of rugby and soccer to its modern status atop the American sports pedestal. The popularity and profitability of the sport surged from a club and college oriented phenomenon to the most lucrative sport league in the world (Burke, 2013).

Stemming from television and media contracts, sales, sponsorships, merchandise, other endeavors, and the fact that the league has a hard salary cap on the wages of players, the profit margins of the NFL are bolstering to the point that League Commissioner Roger Goodell states that 25 billion in annual revenue by 2027 is a realistic goal (Burke, 2013). This would mean that the NFL would have more income than the gross domestic products of some small countries and would be in the same financial realm as global brands such as McDonald's, Nike and Goodyear Tire, each of which garners \$21 to \$28 billion annually (Schrotenboer, 2014). This exorbitant goal is a far cry from the league's humble beginnings and mediocre popularity and fledgling profitability throughout its early stages. Over recent decades, the NFL has grown exponentially in terms of popularity. The NFL's national television rights matured 80-fold since 1970 and the League will take in \$4 billion annually in TV rights alone (Quinn,

2012). In fact, over the last couple decades, the league's annual revenue has grown from \$943 million to an estimated \$10 billion for 2014.

The timing of this expansion of the league in terms of profitability and popularity correlates with the age of late modernity and the free market neoliberal political economy. Late modern scholarship accounts for massive shifts in attitudes, rationalities, and the economic landscape around the popularity boom of the NFL. Featured in Chapter 4 was a discussion of some of the characteristics of late modernity. One of the most commonly discussed features of late modern society is that of actuarial justice and our cultures obsession with safety. Actuarial justice is a form of justice that places an emphasis on risk management, prevention, safety, and efficiency. The actuarial rationale places emphasis on: the collection of quantitative data and analysis, considering people to be statistical aggregates, basing decisions on statistics, and constant assessment of risk and danger (Kraska, 2004). Of course the assessment and management of risk presumes its real or imagined existence, something NFL football supplies.

This idea of actuarial justice and risk management is a theme in Jonathan Simon's (2003) *Governing through Crime: How the War on Crime Transformed American Democracy*. Simon goes into great depth over the changes in the criminal justice system during late modernity. Our society is now "treating every imaginable source of harm as crime" (Loader, 2008, p.399). This comes as a result of our society becoming obsessed with risk management and safety. Actions that would traditionally be seen as accidents or not safety issues at all are now seen as criminal. Instead of relying on the sovereignty and welfare role of the state, the United States government now governs through crime and fear. Simon believes that as a backlash from the demise of New Deal

liberal programs and ideology, politicians began to frame crime as the number one problem of the government. Now instead of being a welfare state, we have become a penal state. The job of government shifted from welfare provision to risk protection and management. Conceptions of crime were expanded to encompass risk. Governing is now done by a self-regulating activity in which crime prevention and control have pervaded the social institutions and minds of America. The government is now captivated with the logic of crime. There is a focus on safety in the schools, hospitals, workplaces, households, and even in the arena of sports. Considering the shifting perception of risk and the desire to manage it effectively, it is no astonishment that the NFL might encounter difficulty with litigation.

It is unsurprising that late modern society might experience some discomfort with a game predicated on risk of injury. With the sport's numerous uncertainties in terms of injury potential, it may even make sense that the NFL would be in decline in terms of popularity. Of course, this is not the case, and instead of falling into a state of decline, the NFL instead is hindered with what amounts to a public relations issue. It is the argument of this thesis that the increasing spectatorship and rising profit margins makes absolute sense with the literature on late modernity and its actuarial milieu.

The NFL's attractiveness to its adoring fans is multifaceted. Many Americans are born and grow up in communities with the game of football being played every Friday evening during the fall. For many communities, the sport provides a sense of identity and pride, particularly in rural areas where post industrialism has drained wealth and resources. The heroes of the gridiron become the heroes of the community, and there is attractiveness and solidarity to the prospect of helping "us" win. The sense of local pride

and identity is present in the modern sport fan and is often transferred to the realm of collegiate and professional sports. The game is thoroughly engrained in lower and middle class American culture and pride, as it is often defined as a “blue collar” game. It is obvious that the game is supposed to represent American values and virtue from the weekly singing of the National Anthem to the jet flyovers that occur in the NFL arena. Often servicemen and women are honored, and the American flag is on full display. A still frame of any NFL game could be considered as a microcosm of the nation and society at large. The game’s appeal also rests in what makes it unique and exciting, namely its sense of risk and potentially ruthless violence. The risk in the game is the source of the spontaneity and excitement that comes from the sport. Similar to other sports, interest stems from the strategy of the game, the speed and physical prowess of the athletes, and the suspense driven by the game’s uncertain outcome. What makes the NFL unique, though, is its distinctive flair for controlled violence and guarantee of heavy physical interaction. Every week during the NFL season, there will be brutal tackles with pain and injuries flowing from those hits. It is the risk in the game during play and violence and the risk for injury that works to provide the onlookers something that has been suppressed through the actuarial logic, bureaucratization, and rationalization so prevalent in contemporary society. While the ethos of contemporary society is a call for risk management, the public still clamors for a game predicated on violence.

The timing of the lawsuits and issues of Bounty-Gate parallel our society’s obsession with risk management and increasingly punitive attitudes stating that people are independently responsible for their actions and situations in life. Featured in Chapter 4’s discussion of late modernity is the notion that these shifts stem from a reaction to the

market freedom of the 1980s onward and, in turn, the social freedom movements of the 60s. The social revolutions and movements of the 1960s created a moral void and a view that things need to be the way “things used to be”. This refraction back towards the “old ways” may hold some value to understanding some of the negative reaction from the fan base when the lawsuits were announced. This era is laced with the twin themes of personal responsibility and excess regulation. Consequently, it makes perfect sense that some fans might object to the lawsuits, believing that the player’s should be held responsible for their mental and physical anguish, regardless if they were fully informed of the dangers of MTBI or CTE. Paradoxically, this call for responsibility would also contribute to a backlash against the league, except corporations are often perceived differently in this age.

In contemporary society, corporate responsibility for social harm is often dismissed or relegated to secondary status, as it is understood that corporations will naturally work to increase their profit margins. This is not to say that league’s actions of denial and suppression have not led some observers to question the league or think negatively about the corporation. Reflecting how corporations are treated in our society is the fact that regardless of the league’s actions, there has been little talk of any criminal charges. Other than a threat from Illinois Senator Dick Durbin to investigate the league post Bounty-Gate (which never came into fruition), the corporation has received little political pressure to change (Lambrecht, 2012). This circumstance makes sense and aligns perfectly with Loic Wacquant’s (2010) conception of neoliberalism and how the modern corporation is treated. While late modernity accounts for the cultural obsession over risk

control, the rapid ascent of the NFL is also contingent upon the neoliberal climate discussed by Loic Wacquant.

*Pathway A<sub>2</sub>*. Wacquant's work is useful for further exploring the logics of the modern corporation and the corporate society in which the NFL crisis plays out. The tensions and league reactions follow the logics of neoliberalism which Wacquant accounts for in his work. Featured in Chapter 4 was Wacquant's scholarship explaining how macro shifts in the economy and responsibilities of the state have precipitated substantial shifts in how businesses conduct business and how the modern corporation is treated in terms of regulation and oversight. Recall Wacquant's point holds that neoliberalism should be considered a transnational political project that aims at remaking the "nexus of market, state and citizenship from above," (Wacquant, 2010, p. 213).

Although late modern analyses might be deemed incongruent with neoliberal ones, this thesis does not see a necessity for competition. Late modern thought sees governance through risk management arising out of erosion of state welfare provision (Pathway A<sub>1</sub>). The state portrays the role of a protector of safety instead of a guardian of its constituent's welfare. As will be discussed throughout Pathway A<sub>2</sub>, the scholarship of neoliberalism also relegates citizen welfare to being the responsibility of the individual. The government's main function is to facilitate and support the economic market via deregulation. Those who cannot provide and profit in the age of neoliberalism are treated to a heavy handed protector state. These philosophies are not incompatible as they account for many of the same processes and ultimately similar conclusions. These ideas will be discussed more fully throughout this section.

Following the decay of the Fordist-Keynesian philosophy of economics was the rise of neoliberal order and post-industrialism. This shift triggered social insecurity and discontents in the citizenry, as benefits and social guarantees were replaced with narratives of personal responsibility and castigatory sentiment towards those who fail to contribute to the neoliberal order. These social insecurities and dissatisfactions are quelled by a burgeoning criminal justice apparatus which functions to punish those at the bottom of the class hierarchy who offend neoliberal sentiments and simultaneously reinforces state sovereignty. Insecurities are also lessened via sporting and leisure activities such as football. Substantive questions of labor and the right for one to earn and receive necessities for life may be suppressed via the spectacle of sport. The realm of sport becomes increasingly important to detract from issues of job loss and migration that has been the calling card of contemporary society's movement away from the promises of the Fordist-Keynesian compact. Small towns that were left behind in the macro-economic shifts towards a service sector economy may find their last respite of pride engrained within the local football team or perhaps their favorite college or NFL team.

The NFL predicament is being played out following the corporate playbook of the neoliberal order. One of the institutional logics of businesses in the neoliberal epoch discussed by Wacquant is the process of *economic deregulation*. Discussed in detail in Chapter 4, this logic principally deals with the idea of promoting market-like mechanisms that will guarantee maximum stock share values and worth. This has, of course, always been the engine of any business in a capitalist society. The difference between this age and "old school" philosophies is the manner in which rationality, bureaucracy, and

actuarial reasoning dictates. There is a stark contrast in the way corporations are treated compared to those without a stake in the neoliberal platform.

Wacquant represents this relationship by stating that the state is now centaur-like in appearance. The top of the social order is treated by government with benevolence and a laissez-faire approach towards business, while the basal position of the social hierarchy is dealt with in a heavy handed fashion, as they are perceived as constricting and threatening capital growth. With a philosophy focused on maximizing profits, minimizing regulation, and intensifying commodification, the NFL's actions in the early 1990s make sense. According to the lawsuit's claims, the NFL knowingly suppressed information relating to the risks of MTBI and long term effects of playing the game to its workforce. Similar to how the state has moved away from providing its citizenry with basic guarantees and welfare, a move legitimated by an ideology of individual responsibility, the NFL neglected the safety of its players which has resulted in devastating consequences for many of its ex-players and their families. Analogous phenomena of sacrificing welfare for profit via de-regulation can be witnessed in other dangerous fields and occupations such as coal mining or construction. The league performed these actions in a political economic field obsessed with expanding capital and minimizing regulation.

Another of Wacquant's institutional logics guiding the neoliberal agenda is *the cultural trope of personal responsibility*. Within contemporary society, there is a narrative that attaches one's self worth and morality to one's ability to contribute to society via work regardless of his/her individual conditions. Drawing from equalitarian illusions and the expectation of social mobility and financial success stemming from the American Dream, success is allegedly as simple as putting in the necessary time and

effort. Professional sports such as the NFL contribute to the spread of this platitude and are affected by it as well. The promise of upward mobility and the ability to live the American Dream is protected and reified as stories of players from poor communities “making it” are advertised in programs from sport media outlets such as ESPN. Although it is incredibly unlikely that one will play in the NFL, the idea that success can be achieved via hard work and discipline is propagated by these stories. Systems of inequality and social issues of race and class are veiled by the idea that all it takes for one to succeed is effort. African Americans are disproportionately represented in the National Football League. Sixty seven percent of the NFL’s players are African American, and it is not unusual to hear in interviews of the humble beginnings and difficulties that these players had to overcome to make it to the league (Schrotenboer, 2013). Sport keeps the grand ideological narratives of capitalism intact and perpetuates them with the “rags to riches” stories of professional athletes. Perhaps the reason for the discrepancy between the numbers of African Americans in sports compared to society is because sports such as football are analogous to lottery tickets for youths wishing to escape poverty and areas of poor opportunities. Opportunity is increasingly being presented as a consequence solely spawning from one’s own actions, and failure is seen as the individual’s fault in contemporary society. The cultural trope of personal responsibility also applies to the NFL in terms of injury. Since one “assumes” risk when he agrees to play the game, it is easy to fall into a narrative that assigns blame of injury primarily to the individual. Since risk is considered given in this era; personal choice becomes the variable in the equation. Although the lawsuits claim that the NFL suppressed and obfuscated vital medical knowledge pertaining to brain injury risk, it is easy to overlook these allegations when

the default mentality is to assign responsibility of welfare to the individual who opted to assure risk.

Currently, one of the league's main reasons for promoting player safety is the court of public opinion. Other than the league's desire to protect its assets (profitable star players) from injury which could possibly risk earnings, the league's attempt to dictate the narrative of public opinion is paramount. This has led to the various public relation campaigns, donations to medical research, inconsequential shifts in the rules of the games, and other reactions to improve legitimacy which will be discussed below when considering Panel C. The NFL as a business is far reaching and is continuing to expand through searches for new markets. This includes the league's attempts to increase global appeal with games being played in London, England and the now defunct NFL Europe, a 15 team league American football company located throughout Europe (NFL.com, 2007). Although, NFL Europe failed and there are currently few games played outside the United States, these moves demonstrate a desire by the league to become globalized during this neoliberal age. The league's attempt to control and dictate the narrative surrounding the issues of player safety and the risk involved in the game is conducted in the bureaucratic field. A conception more fully explored in the preceding chapter, fields are spaces in which the struggles for power and control are conducted. One such field is the bureaucratic field where "the set of impersonal public institutions officially devoted to serving the citizenry and laying claim to authoritative nomination and classification" exists (Wacquant, 2004, p.8). Similar to any successful corporation, the NFL is an entity comprised of bureaucratic channels and goals oriented toward achieving growth and perpetual monetary success. Within the bureaucratic field, the NFL attempts to control

and filter the narrative that surrounds the issue of the injurious violence within the sport. There is a desire by the league to retain the elements of entertainment that have made the NFL the dominant force it is today in popular culture.

A consideration of mass culture in relation to the National Football League is included within the bottom half of Panel A. The products of the NFL, both tangibly and in the form of entertainment, contribute to the league's profits and define segments of popular culture. The late modern/neoliberal context ( $A_1$  and  $A_2$ ) surrounds, defines, shapes and contributes to the mass culture. The socioeconomic and political context of late modern/ neoliberal society influences and is influenced by the culture. This is why a discussion of culture is included in this panel. However, the topic is unique and complex to a degree that disconnection from the top half of the panel is necessary. This delineation is marked by a dotted line separating the topics in Figure 5.1. This section will apply the theories of Bourdieu and Adorno and Horkheimer in order to account for the role and function of culture in the NFL situation. Utilizing their work, consideration of Panel A will culminate with the argument that the NFL simultaneously enables and advances capitalistic systems of inequality via the social passivity it bestows upon the masses as part of its cultural contributions in Pathway A7.

The "mass" or "popular" culture (depending on whether one is drawing upon Bourdieu or Adorno and Horkheimer's language) actively drives a factory style of production and is the starting point of this pathway. Featured within this pathway is a discussion of Bourdieu's types of capital and his notion of habitus. These terms highlight the importance of the NFL as a cultural phenomenon and gives meaning to the various products the corporation peddles. As discussed in more detail in Chapter 4, Bourdieu

states that there are four types of capital: economic, social, symbolic, and cultural. These types of capital produce class demarcation and account for the variance between individuals in a society. Although all of these types of capital are applicable to the NFL situation, only some terms and relationships are highlighted to explain the heuristic.

The link between the NFL and economic capital is fairly straightforward. Economic capital refers to the traditional accumulation of wealth and material goods which hold monetary value. The consumers of the NFL product must utilize this capital in order to access the cultural products of the NFL in the form of buying tickets to games, purchasing broadcasting packages from the media outlets that provide them, and buying the seemingly infinite physical products available to consume. One's access to these goods and services is predominately a result of one's class. Social capital allows for one to benefit from their social positions and access and transfer power and privileges as a result of belonging to certain networks and groups. Those consumers of the game privy to social capital are able to access the best seats in NFL arenas and may have exclusive opportunities to interact with NFL experience through their social standing. Symbolic capital equates to power in terms of its ability to create the narrative that defines the world around us, stratifies society, and filtrates and defines existential realities. Symbolic capital locates its power in signs and signifiers that are imbued the status of being considered excellent through its contextual meaning. There is immense symbolic capital in the expensive box seats and private booths where elites watch the football game and conduct business activities. There is also symbolic power in the ability for one to broadcast exclusive games on their televisions, or even in something as mundane as owning an authentic replica jersey and other NFL player memorabilia. Cultural capital

includes knowledge, skills, tastes, manners of speech, and habits that give a person social advantages and privileges (Allen, 2011). When someone follows NFL football they are privy to terminology, names of players, strategies, and an abundance of knowledge related to the game. This knowledge can translate into an esoteric language and a wealth of knowledge that further ingrains one into the NFL fan base. One's familiarity with the NFL and its numerous cultural products can even translate into social advantages, as it commonly a subject of discussion in American social circles. Football is so widely followed and part of our culture that if someone does not follow or understand the game, he/she might miss out on opportunities and access to social groups. This is especially relevant for males, who are supposed to understand, follow, and like the NFL. Is someone is not familiar with the game, he might find himself automatically relegated to stereotypes and assumptions solely because of his relation to the NFL. For many followers of the sport, football is very much part of their identity which influences relationships and translates to profit for the NFL.

The notion of habitus is intertwined deeply with this form of capital. Defined more thoroughly in chapter 4, habitus is the organization of the body and how it utilized throughout the world. The term encompasses patterns of thought, dispositions, sensibilities, as well as modifying one's proclivities. The habitus of the typical NFL fan is relevant in that it assists in accounting for the thirst for the product of the NFL. One's taste may determine his/her favorite team as well as interest in the sport as a whole. Driven by commodification, advertising, and public and media campaigns, it makes sense that a male in Kentucky may identify and favor the Dallas Cowboys, although he/she has no direct relation to that area. This is because the Cowboys are often presented as

“America’s team” and advertised heavily as such. Habitus is entrenched deeply within the social fabric and culture and determines to a degree what feelings and cognitions are spawned within a person’s mind. The taste for the NFL and its ingredients of physicality, sportsmanship, strategy, and violence is obviously palatable for the masses, as evidenced by the extreme and perhaps superfluous commodification and consumption of the product. Habitus guides behavior and modes of thought and provides a channel for symbolically and culturally defined power. With the filing of the lawsuits and the discovery of Bounty-Gate, perceptions and tastes towards the league were challenged. The league’s response has been to conduct a battle within the public domain for its legitimacy and to utilize its resources to shift the narrative away from the controversies via deniability, rule changes, fines and suspensions for those involved, media campaigns and donations to medical research (further discussed in Panel C).

There is a clear message broadcasted by those with access to advantaged cultural products and experience. This is that they are the “winners” in society, and they merit their privileged positions that they wear as badges signifying an increased distance from necessity. Simultaneously, these different levels of access to the product of the NFL are deemed desirable by popular culture. Those with access to the more elusive experiences and products are ostensibly more deserving, and the legitimacy of the economic structures that allow for these differences goes unexamined. A still shot of any NFL game demonstrates a means for spectators to flaunt their class standing. One’s position in the stadium and even the access to NFL merchandise is a means of flaunting one’s class differences. Class demarcation, via one’s access to different forms of capital, represents and legitimates one’s perceived superiority. Those with access to the best seats and

products of the NFL contribute to a cultural trope that equates one's access to material goods and cultural experiences to one's worth. This sentiment is characterized by the understanding that their access was earned through merit in a purported egalitarian system.

In the model above, there is an arrow linking mass/popular culture to rationalized and standardized consumables of the NFL. This is represented as A<sub>3</sub> in the model above. Although by no means unique to the NFL, the league distributes a cultural product via a factory style of production that resembles those processes that produce physical products. The production of culture in a manner akin to a factory's production of physical goods is a main tenant of Adorno and Horkheimer's (1944) *Dialectic of the Enlightenment*. Culture obfuscates the inherent contradictions and means of exploitation that are systemic in the capitalistic economic order. Issues of exploitation and alienation are discussed more thoroughly in the previous chapter under the section labeled *Marxist Foundations*. Issues of labor exploitation and structures that breed social and economic inequality are perpetuated via the products of culture, including the National Football League. Pacification through the consumption of the physical and intangible products of the NFL contributes to the legitimation and reproduction of these existing systems.

Explained above, Bourdieu states how cultural products such as the NFL contribute to this process with the legitimation of class demarcation via access to cultural products. The varying degrees of access to the products of the NFL mark individuals with ostensible superiority, as the products are a means to flaunt class differences. Both Adorno and Horkheimer and Bourdieu's works state that culture is a means of domination that simultaneously validates systems of inequity endemic to a capitalistic

society and reproduces the configurations that support them. Adorno and Horkheimer's work diverges from Bourdieu's on how this process occurs (Gartman, 2012). Adorno and Horkheimer look towards the symbolic unity created by the production of mass culture instead of the perceived differences in consumption between the classes, which is Bourdieu's focus. In some ways, NFL football is a "class connection" in that its appeal cuts across strata and all people from classes consume its products. It provides a basis for common identification. Mass produced cultural products are sold to the masses in order to assuage the discontent cases from the alienating and repressive nature of labor. Oppression is reconciled among the oppressed by culturally masking class differences through the manufacturing and distribution of homogenous consumables to the masses. Under a façade of democracy, class differences are waived by the mass culture's consumption of cultural products such as the National Football League.

What is often overlooked is how NFL games are relatively uniform in nature. Adorno and Horkheimer's claimed that the products of the culture industry are constructed to appeal to the greatest number of people via standardized commodification. Every game will have tackles, passes, runs, and maybe a few sacks and interceptions occurring over a sixty minute time period. Unique plays and novel strategies rarely have staying power in the NFL as they are quickly consolidated into other team's game plans and countered. Similar to Ritzer's conception of McDonaldization, the NFL's products are standardized and predictable (Ritzer, 1993). The appeal of the game may rest largely in the cultural importance of the NFL as a predictable product. Evidenced by the league's minimal international appeal and heavily skewed towards an American audience, the NFL is engrained in the culture. Often one's favorite team is defined by existing familial

structures, and the product of the game is replicated inter-generationally. Through the spectacle of presentation of the game, with its player interviews, replays, camera shots of the fans, and color commentary, it is easy to obscure the fact that only a small portion of the game's television coverage is dedicated to showing the game of football. During a typical 185 minute broadcast of an NFL game, only 11 minutes is spent actually witnessing players playing the game of football (Biderman, 2010). Regardless, the NFL product appeals to a mass audience and is embedded deeply within the American culture.

In the heuristic above, the rationalized/standardized consumables of the NFL are stated to provide a dualistic function. First and foremost, the consumables of the NFL are peddled for exuberant profit. This is represented in the model as Pathway A<sub>5</sub>. Simultaneously, the cultural products of the league contribute to social passivity (Pathway A<sub>4</sub>). This passivity helps assure profitability, which is demonstrated by an arrow leading to profit as well. Passivity is promoted by re-directing focus away from the concrete material conditions that serve as the catalyst for societal systems of oppression (e.g., laboring long hours). The profitability and prevailing force of social pacification enables and advances capitalistic systems of inequality.

In a society that is increasingly shifting towards a service sector economy and deindustrialized labor market, the role of mass culture and its products become all the more important. As the working environment shifts further in the neoliberal age, the nature of work has transformed. Characteristics of bureaucracy, rationalization, and automation have come to define the workplace. The progression of technology shifted the social relationships and organization of labor. Thus, a more thorough discussion of work and management is necessary to account for the importance of the NFL's lawsuits and

Bounty-Gate. Braverman's (1974) seminal book, *Labor and Monopoly: The Degradation of Work in the Twentieth Century*, provides the tools required to delve into the macro shifts and constricting nature of the modern labor environment. In addition to the cultural products of the mass/popular culture, it is a social form of capitalism that "exists in time, space, population, and history," that imbrues capitalism with its appearance of naturalness and invariability (Braverman, 1974, p.15) Braverman's insights and applications are located in Panel A and bolster the entire panel's applicability.

Within post-industrialized society, the National Football League's cultural product is depended upon for work in numerous markets beyond the player and coach dynamic on the field. The league provides innumerable jobs and directly supports communities and even regions featuring league teams. Communities surrounding NFL teams garner hotels, restaurants, transportation, parking complexes, tourist attractions, and countless other labor infrastructure benefits from the league. A search into the NFL's job opportunities yields numerous bureaucratic divisions including: communications, public affairs, finance, corporate development, human resources, information technology, administration, legal and media opportunities ("League Employment", 2014). In alignment with Braverman's argument, these divisions noticeably provide services and do not produce physical goods. In fact, consistent with Baran and Sweezy's (1966) analysis, the league has entire divisions dedicated to branches of nonproduction that function to allocate social surplus and market to the consumer. The nature of labor has become progressively more separated into specific tasks by the intensification of the division of labor. Higher degrees of training, education, and specialization are required if

one just wishes to work for a corporation and become an interchangeable cog in a corporate machine that carefully controls its labor.

As specialization increases, the alienation of the employee from his/her product is amplified, leading to discontent as the natural human desire for creativity is extinguished. This is a consequence of the degradation of work discussed by Braverman. The value of the individual worker has decreased with the scientific-technical revolution and movement towards the neoliberal age. Braverman did not claim that the average level of skill in society has diminished or that these shifts have led to “deskilling”. Instead, there is more technical and scientific knowledge required in the workplace than ever, but the worker suffers from a lack of access to this knowledge and therefore has less comprehension of the overall function, purpose, and risks of the workplace and his/her work within it. This coupled with the further subdivision of labor has drained the worker of his creativity to the point that only time away from work is truly “free time” for pacification. In this environment, a cultural product such as football can become increasingly important. In the United States, football is adored by a substantial fan base. Many men and women work all week at a job they despise, or are rather indifferent to, in order to survive in America. For football fans during the NFL season, football can serve as a motivator that keeps one going throughout the week. Football is such a beloved spectacle that some people will not question why they work at a job they hate as long as they can watch their favorite teams every Monday, Thursday, or Sunday. The conditions of their oppression that stem from the capitalistic economic base may never be brought to light as long as there is a tailgating party or friend and family get together centered around an NFL game; this reveals the commodification of social relations associated with

NFL products. Instigated by the oppression and alienation of the work environment, the creative void within the fan's soul and mind is occupied by the cultural phenomenon of football soothing one's malcontent.

When a laborer agrees to work for an employer, he or she is actually peddling potential labor power. For a price, the individual agrees to sell the body and mind to his employer for an agreed amount of time. The purchase and transfer of this labor power is what Braverman refers to as the *differentia specifica* of capitalism. This defining characteristic is intimately applicable to the NFL player who agrees to transfer his labor power via a contract with a team. Once under contract, the player is treated as an owned commodity that may be sold or traded at the employer's discretion within contractual parameters. Player labor is specialized to the degree that players are relegated to roles as specific as snapping a ball. Even that duty may be further divided between "long" snappers that hike the ball further distances than "short" snappers. This is where the role of management becomes exceptionally relevant.

According to Braverman, it is the central function of management to control the player and maximize the labor potential of the player. For the NFL, management may be considered beyond just coaches and coordinators. Trainers, nutritionists, talent scouts, publicists, doctors, ownership, and corporate employees all have a stake in maximizing the labor potential of individual players and the team as a whole. Advances in realms of science and technology have yielded numerous metrics that demonstrate a player's success and fulfillment of potential. Advanced statistics and metrics provide the parameters that supposedly measure past failure or success and gauge future potential. The body is scrutinized and tested at great lengths before the players even become part of

their teams and especially thereafter. The drafting process yields an excellent example of how the scientific-technological revolution has affected the game of football. During the combine (the precursory test to the player draft), the body is measured for possible labor potential by tests such as the 40 yard dash, cone and shuttle drills, the vertical and broad jump, and bench press, which function to measure the physical prowess of the potential laborer. Extensive interviews and the Wonderlic Cognitive Ability Test attempt to gauge the player's mental acumen and ability to withstand the pressures of the press and potential celebrity. When drafted or acquired via free agency or a trade, the player's labor is often relegated to perform a specific role on the team. Many of these athletes successfully played multiple positions in their high school and college playing careers and have an arsenal of skills in their repertoire. Often, entire skill sets and attributes are obfuscated and minimized as the player must now fit into highly specific schemes and coaching philosophies. This minimization leads a player to become specialized in a specific role and function in a process that mirrors the constricting and specialized labor market outside of the dominion of NFL football.

Preceding the lawsuits was the polemic event of Bounty-Gate (highlighted in chapter 2). Lifting the ironclad façade of safety and sportsmanship within the league, Bounty-Gate opened the floodgates of controversy as questions of violence and legitimacy drifted throughout the media outlets. Bounty-Gate was primarily a managerial issue that may be explained further by Braverman's work. In an effort to expand the employer's unit of capital, management's primary function is to control the laborer and maximize success. In an effort to maximize labor potential, former Rams defensive coordinator delivered the following speech:

“We don't \*\*\*\*(ing) apologize for how we're going to play....there may be better athletes, but not defensive football players that have to go into war tomorrow and play the way we \*\*\*\*in play...Kill the head and the body will die. Kill the head and the body will die. We've got to do everything in the world to make sure we kill Frank Gore's head. We want him running sideways. We want his head sideways....We hit \*\*\*\*(ing) (Alex) Smith right there. (Points to his chin).Remember me, I've got the first one. I've got the first one. (Williams rubs his fingers together to indicate he'll pay money for the hit)... kill the \*\*\*\*(ing) head. Every single one of you, before you get off the pile, affect the head. Early. Affect the head. Continue, touch and hit the head. The little wide receiver, No. 10 (Kyle Williams)...about his concussion. We need to\*\*\*\*(ing) put a lock on him right now...Need to decide whether Crabtree wants to be a fake ass prima donna, or he wants to be a tough guy. We need to find it out. He becomes human when we\*\*\*\*(ing) take out that outside ACL. We need to decide on how many times we can beat Frank Gore's head. We don't apologize” (Klopman, 2012, para. 2).

This speech successfully highlights the physicality and caustic volatility within the sport of football. In this case, management sought to maximize the success of winning, and expand profit margins, through injuring opposing players. There exists a wretched truth that injuring and immobilizing opposing players, especially star ones, is beneficial in terms of contributing to success. Of course, risk is inherent in the sport, and injury is always a potential outcome. What stirred public sentiment was the malice and intentionally implicated by this controversy.

A prospective reaction to this event and the potentiality of injury in the game may yield a collective response of “so what”. After all, these players are paid supposedly exorbitant salaries to basically play a game. What is ignored by this line of thinking is whether the players were fully informed of the risks and the fact that labor agreements between the players and management are often hard fought battles that involve more than just petulant and petty issues. There have been 5 labor stoppages via lockouts and strikes during the NFL’s history occurring in 1968, 1974, 1982, 1987, and most recently in 2011 (Bell, 2011). During these work stoppages, issues of labor and finance have yielded a situation in which the league’s players hold 55 percent of national media revenue, 45 percent of all NFL ventures revenue, and 40 percent of local club revenue (King, 2011).

The issue of players versus owners became an event ripe for Marxist analysis during the 2011 NFL lockout. There was much discussion about how much owners and players make by fans and media alike. Players argued that they deserved the lion’s share of revenue because they actually risked life and limb in order for the sport to exist. The owner’s claimed that they deserved more money because they were the ones risking their money in order to accommodate the sport. This was a battle between the proletariat (the players) and the bourgeoisie (owners). The players produce the necessary labor for the sport, and the owner’s own the means of production (the football stadiums and license of the NFL). When a resolution was achieved through the labor dispute, the players were paid 47% of the estimated 8.3 billion dollars generated through revenue (Bandenhausen, 2011).

While one might consider the nearly 50/50% split fair, this does not take in account the amount of players that share that sum. While the upper echelon players make

immense multimillion dollar salaries, many of the rank and file players of the NFL do not. During the work stoppage of 2011, it was found that 380 of the near 1,700 players live paycheck to paycheck (Briggs, 2011). For every Peyton Manning and quarterback with a multi-million dollar contract, there are hundreds of second and third string linemen and practice squad members making nowhere near that amount. For the owners, the overall revenue is shared to an extent between all 32 teams. There is a massive differential between player salaries and the owners who do not put on the pads for the games. By utilization of the NCAA, the NFL has acquired a continual channel for obtaining labor. There does not seem like there will ever be a shortage of individuals who wish to play in the NFL. This fact is not lost on the player who may decide to stay in when injured or after “having his bell rung” by a concussion inducing tackle. Laborers are, after all, expendable. With the average NFL career only lasting 3.8 years, there is risk of being replaced if one cannot produce to the standards required by his management.

#### Panel B

*The Civilizing Process.* This panel represents the countervailing forces in the equation. The civilizing process is the catalyst for the league’s attempts to control their situation and is a state of tension with the enablement and advancement of capitalistic systems supported by the cultural products of the mass/popular culture and the logics and context of post industrialized, late modern society (Panel A). There is a great deal of tension between the processes depicted in Panel A and the refined sentiments discussed in this section. Panel B is mainly constructed from Norbert Elias’ notion of a civilizing process in which people’s sensibilities are shifted and refined to what is perceived as civilized or barbaric actions. The civilizing process has developed slowly through a

multigenerational process. Stemming from the elite classes and trickling down toward the more popular classes, a sentiment has developed in society that is adverse to open displays of physical pain and suffering. The heuristic above mirrors and is modeled from Pieter Spierenburg's work discussed in Garland (1990). Spierenburg desired to find a mediating process between the changes in the social structure, in terms of economics (Marx) and power relations (Foucault), and the concrete shifts in the methods that society uses to punish offenders. He turned towards changes in cultural sensibilities instead of relying on a direct model stemming from the changes in the social structure to the methods of punishment. A direct model stemming from social structure to changes in punishment methods was seen as too overly deterministic and as not accounting for mass changes in how people emotionally feel towards overt violence and displays of pain and suffering. For this purpose, Spierenburg selected the concept of refined sensibility. The civilizing process acts similar to breaks on a car in that it slows down and counters systems of punishment and inequality that promote open displays of suffering. Relevant to this study, the civilizing process forces modifications in the NFL's image management for the sake of legitimacy (discussed in Panel C).

This section is dedicated to an examination of the cultural sentiments of the age that function as an emotionally packed counter to Panel A. Modern sensibilities have continued along the path towards a dampening of *anriffslust* (the lust for attacking) and have thereby decreased in the threshold of what is considered to be repugnant and offensive. As society moves further into the late modern age, which is characterized by risk aversion and a predilection towards safety, the physical nature of the game of football must battle and counter the civilizing process to maintain legitimacy. As our

society transforms into becoming more regulation bound and less violent, the realm of sport will follow.

According to Eric Dunning (1989), sports such as football function as a means of de-routinization by de-controlling emotions. Players and fans alike are permitted to express emotion during a football game. Bursts of celebratory cheers and cries of defeat are common occurrences by athletes and fans alike. This expansion of emotion should be considered cathartic as it is a means of expression for those alienated by their labor conditions. This form of expression still must remain within the confines of society's norms, or else risk being considered non-civilized. The distinction of what is considered barbaric versus civilized is necessary for consideration when analyzing the NFL crises. Until the revelation of Bounty-Gate and the subsequent lawsuits, the product of NFL football fit relatively well within our cultural parameters of civility. Although there were those who objected to the game's violence and perceived the game as virile and perhaps artless, the game's popularity and profitability blossomed. The discovery of the latent risk of concussions and the medical hazard of CTE jostled the league outside the favorable cultural sensibilities of late modern society.

As the league faces its concussion crisis, it is losing Pop Warner (youth football) players at an alarming rate. Pop Warner lost 23,612 players between the 2010-2012 seasons, the largest two-year decline since the organization started keeping participation records (Fainaru & Fainaru-Wada, 2013). Attempts to avoid litigation, and even efforts to settle legal disputes, have been unsuccessful despite league efforts. It appears as if the violence and incalculable risk involved in the game is at odds with the zeitgeist of contemporary society. Nevertheless, the league maintains popularity and exponential

growth despite these issues. This is because the game is still considered legitimate by the masses and provides a unique and readily consumable cultural product. What is clear at this time is that the NFL faces a worthy adversary in an attempt to quell medical and cultural obstacles. The alarms of trepidation have demanded a response by the league. The response must simultaneously address issues of risk and control while maintaining the excitement and physicality that has traditionally been responsible for the corporation's success.

### Panel C

*NFL Management.* This panel is dedicated to inserting the issues of player safety, lawsuits, and the NFL's responses into the model. Along with Bounty-Gate, the suppression and denial by the NFL claimed in the lawsuits yielded a predictable response from the National Football League. The heightened exposure of the violence and risk associated with playing the game, coupled with shifts in public sentiment associated with the civilizing process and late modernity, forced the league to change tactics to preserve legitimacy. This relationship is accounted for in the model by an arrow leading from Panel B to C. The league has taken steps to alleviate the tension spawned from providing a product predicated on violence and risk in an age of risk aversion. These changes include predominately symbolic rule changes and the issuing of stern sanctions for those involved in Bounty-Gate (discussed in chapter 2). These rules may be construed as tokenized measures by any skeptic of the league's intentions. Although the number of rule changes for the 2010 campaign quadrupled the amount of changes in the prior two decades, players were still plagued by 46 head injuries by just week 6 of the regular

season (Roser-Jones, 2013; Jewell, 2011). This reality stems from the fact that issues implicated in the lawsuits are inherent in a sport predicated on repeated blows involving the body and brain. Science and technology have not produced guaranteed solutions to this safety conundrum. The league's response has been an attempt to manage and alter public perceptions via commercials, websites, and donations to medical research which were discussed in detail in chapter 2. Instead of listening to the available medical research, the league chose to deny the links between brain injuries and football. As a result of not accepting responsibility for their abjuration and subjugation of the truth, the league was confronted by the public relations nightmare of these lawsuits. This is also represented by Panel C in the model.

In essence, the NFL's economic interests are preserved by manipulating and utilizing economic cultural, social, and symbolic capital to preserve legitimacy. The NFL attempts to dictate the narrative via a manipulation of other forms of symbolic capital through public relations campaigns, tokenized rule changes, and other means of convincing the populous of the games "evolution". The league's actions have predominately been a means to minimize the sins of their past and curtail the emotional resistance it has encountered stemming from the civilizing process. The manipulation of capital is enabled by the league's vast economic capital. With seemingly limitless growth potential and wealth, the league utilizes its existing economic capital in order to preserve its current and future economic capital. It is unclear what the future may hold for the NFL or even the game of football. As the civilizing process progresses, the league will continue to have to adjust its place in the American consciousness or risk being judged

too barbaric for cultural tastes. The final chapter will entail a discussion of the topics discussed throughout this thesis.

## CHAPTER SIX

### DISCUSSION AND CONCLUSION

#### Synopsis

The issue of proper definitions and scope for criminology has instigated deliberations and discussion since Edwin Sutherland's seminal debate with Sheldon and Eleanor Glueck (Laub & Sampson, 1991). Discussions pertaining to what topics should be considered worthy of criminological inquiry usually revolve around one's values, judgments, methodological approach, and subscribed paradigm. Specifically, the definition of crime varies depending on whether one perceives crime as purely a legalistic matter (Tappan, 1947) or if one believes issues of social harm (Sutherland, 1949) and human rights (Schwendinger & Schwendinger, 1970) should be considered. Those who subscribe to the traditional legalistic definition of crime believe that an act must violate the legal code in order to be considered criminal. This approach has value in that it supposedly limits potential political and moral academic entrepreneurship and provides a uniform standard to define criminal actions (Chambliss, 2011). At the same time, the traditional approach delimits what topics may be considered relevant to criminological inquiry. This may be considered valuable in that it provides a clear definitional standard and ensures that the field's inquiry does not cast too wide of a net. Of course, this approach also fails to account for limitless actions that may cause great harm but not

technically violate the law. This approach also does not consider the sociopolitical influences and systems of power that contribute to defining legality. Thus, the social harm standard is often utilized by criminologist studying topics outside the purview of strictly illegal actions. This methodology finds its origin in identifying what causes harm rather than what is deemed illegal. The social harm standard is necessary when considering the topics discussed throughout this thesis. The game of football is widely spectated and played throughout America. The issues of concussions, mild traumatic brain injuries, and CTE are clear social harms that potentially could affect millions of people.

In 2012, there was the discovery that a National Football League team, the New Orleans Saints, was conducting an incentive based bounty program. Members of the Saint's defensive core and the team's management were implicated in a program that paid players bonuses for delivering injuries and harm to opposing players. This event, dubbed Bounty-Gate, stirred a media lead examination that highlighted issues of violence, profit, and consent that would plague the league in the lawsuits that followed.

On August 7<sup>th</sup>, 2011, seven former players and their families filed the first of several federal lawsuits against the league (Wong, 2012). This number grew exponentially as former players and their families asserted that the NFL fraudulently obscured and suppressed information regarding the prolonged effects of head trauma resulting from extended exposure to playing professional football. Stemming from mild traumatic brain injuries (MTBI) accumulating over their careers, the player-plaintiffs exhibited debilitating mental and physical injuries including depression, dementia, limited mental capabilities and brain function, wrongful death, the progressive mental disease known as

chronic traumatic encephalopathy (CTE), and a slew of additional afflictions stemming from repeated blows when playing the game. The lawsuits, and to a lesser extent Bounty-Gate, illuminate the themes of violence, neoliberalism, late modernity, as well as the sensibilities and mentalities that were featured in Figure 5.1 and discussed throughout this thesis.

The NFL is both a sport and a business. The league has progressed from its humble beginnings as a club oriented sport to the multi-billion dollar industry it is today. Predicated on selling a product characterized by violence and risk of injury, the NFL has expanded via television and media contracts, merchandizing, licensing, and ticket sales to the point that it will attain an estimated \$10 billion in annual revenue for 2014. (Schrotenboer, 2014). As illustrated in the earlier discussion of MTBI, CTE, Bounty-Gate, and the lawsuits and their accusations, one of the NFL's dominant draws is the element of violent risk involved in the game. Risk is profitable for the NFL because the product's spontaneity, excitement, and unique attraction of violence.

Michael Smith (1983) contends that violence can be defined narrowly as, "the threat or exertion of physical force which could cause bodily injury" or more generally as "any violation of the human rights of a person," (Smith, 1983, p.1). Smith provides a typology for sports violence that separates violent actions into categories of either *relatively legitimate violence* or *relatively illegitimate violence*. As explained earlier, the NFL may feature all forms of violence and may risk raising public alarm and becoming unpalatable if football violence is perceived as degenerating into the realm of brutality. Mirroring the NFL's controversies, the stigma of brutality follows a pattern of "rising toll of injuries and deaths, followed by public expressions of alarm, then demands for

reform,”(Smith, 1983, p. 10). One may argue that players consent to risks and potential brutal violence when they sign their NFL contracts. However, this logic is unsound to the extent that players were not fully informed of the risk and potential destruction of their brains, bodies, and minds that the game might render.

The theoretical foundation of this thesis was offered to more fully explore the sociopolitical, cultural, and economic climate in which the NFL crises play out. The theories discussed provide insight into understanding the central tension faced by the NFL. Risk of injury is essential to the hits and plays that stimulate the most excitement and passion from the fan base. If the constituent of risk is moderated too much, the potential for profit for the league may be threatened. Conversely, if the artifice of control suffers, then legitimacy is threatened. The fundamental tension for the NFL, then, is to provide an exciting product predicated on violence and risk of injury vis-à-vis our culture's sensibilities and desire for risk management. This conflict's battleground exists in the age of late modernity where neoliberal logics dictate corporate strategy and action. Loic Wacquant's conception of neoliberalism was utilized in order to explore the essential elements that characterize modern bureaucracies and corporations. Pierre Bourdieu's work on fields, forms of capital, and habitus provided the necessary intellectual ammunition required to further explore the league's motivations and reactions. Harry Braverman's *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* delves into the protean nature of labor and management required to recognize and explore systems of power. Theodor Adorno and Max Horkheimer's critique of popular culture delivered insight into the conspicuous consumption that safeguards the smooth function of the league's engine of profitability. Questions over

sentimental shifts and perceptions of brutality in the sport were addressed using Eric Dunning and Norbert Elias' contributions.

The model presented in Chapter 5 is meant to simplify the various elements that exist concurrently to define contemporary reality. The NFL conundrum plays out in the political and socioeconomic contours of an arena defined as late modernity. The late modern environment is infused with the logics of neoliberalism, which contributes to an explanation of the league's actions and why they were deemed necessary in an age defined by risk management, prevention, safety, and efficiency. The NFL has simultaneously denied the wrongdoings of suppression and obfuscation alleged in the lawsuits and is currently attempting to shift the narrative located in the bureaucratic field. By waging a public relations campaign aimed at promoting the league's safety and "evolution", the NFL has attempted to assuage media, fan, and political pressure stemming from providing a big risk product in an age that expounds the antithesis of risk. The theoretical heuristic also conceptualizes the league as a cultural product, which has expanded exponentially with movement toward a service sector economy. The NFL holds immense cultural significance to the mass/popular culture, contributing to systems of economic inequality and perpetuating the capitalistic status quo. The NFL provides a means of symbolic unity with one's class via one's access to the NFL's consumables. One's access to the cultural products discussed in Chapter 5 also provides an avenue of expression demonstrating one's distance from necessity and one's habitus, while contributing to social passivity for the masses. Mirroring the famous saying of Karl Marx about religion, football is very much a modern opiate of the masses. The spectacle of football numbs the void caused by alienation and oppression that defines modern labor.

Shifts in management and the workspace are accounted for by the work of Harry Braverman. With the dissolution of the Fordist-Keynesian compact, football's importance, as a cultural product, progresses to become increasingly salient. Braverman's insights are also applicable to the modern NFL workplace where the scientific-technical revolution and shifts in management may be witnessed.

The suppression and denial claimed by the lawsuits, on the heels of Bounty-Gate, required a response from the National Football League. The manifestation of the violence and risk associated with playing the game, coupled with shifts in public sentiment and mentalities stemming from late modernity, forced the league to change tactics to account for refined public sentiment. The NFL controversies, coupled with refined sensibilities, create the need for palatable ideologies and actions in the form of mostly tokenized rule changes and public relations campaigns aimed at impression management. The NFL's management of the narrative and their crises are mediated by refined sensibilities stemming from the civilizing process discussed by Elias. Gradual shifts in what is perceived as barbaric and what summons revulsion act as a counter to the smooth functioning of the NFL blueprint for profit. While the violent actions and inherent risk involved in providing the game of football might not have raised apprehensions in the past, the nexus of the long term developing civilizing process with late modernity and neoliberalism has led to fan trepidation and a necessary response from the league.

### Critique

One limitation for this thesis is its macro-level orientation. This thesis attempts to locate and expound on the NFL crises and provide the historical, political, and

socioeconomic climate that defines this reality. Since the topic is relatively under-studied and has no body of literature per se to draw upon in criminology, a macro-theory was necessary. However, a macro conceptualization is not capable of fully exploring the issues of agency and individuality that would garner additional breadth and depth. The theoretical model featured in this paper could be deemed too broad in its attempt to explore the topic by those more focused on a micro or meso level of analysis. Also, there is a lack of quantitative data analyzed in this paper. This thesis's main aim is to explore a relatively unexplored topic via theory application and such does not explore all possible avenues for analysis including the potentially richness that such a quantitative oriented analysis could yield.

The heuristic created to account for the shifts described throughout the paper provides additional material for critique. The heuristic is selective in its choice of theories. When applying theory to an unchartered academic domain, there is potential for an abundance of other potential schools of thought and ideas to find applicability. Although this thesis' deployment and utilization of theory claims to properly account for the phenomenon, no claim is made the theories used are the only relevant tools of explanation. Additional theories could potentially yield a more focused approach that would reap supplementary coverage and perhaps a more narrow and parsimonious model. A more methodical approach with positivistic and quantitative evidence could bolster the arguments stated throughout.

There are theories and ideas featured in this thesis that may not be palatable if one subscribes too fully to a paradigm. This paper utilizes numerous theories that are Marxist in nature in order to fully explore the cultural products of the NFL and the systems that

ensure their profitability. If one does not accept assumptions of Marxist thought, there is a potential for disengagement for the reader. Marxist theory provides a necessary avenue to uncover the contradictions of capitalism and simultaneously deals with issues of labor, exploitation, and ideological legitimacy that are relevant to a discussion of the NFL crises. To an extent, this paper is further proof of how Karl Marx was right about the commodification of social relations and the shifting nature of exploitation via labor. By the same token, Marxist thought is by no means the only style of analysis that can be used to understand this topic.

Nevertheless, potential remains for disagreement between these approaches. An effort was made in Chapter 5 to find common ground between late modern and neoliberal approaches to analysis. The choice to utilize the particular theories featured here was deliberate as these theories are necessary to account for the numerous simultaneous processes that explain the NFL logics and the culture to which it caters. Simultaneously, late modern and neoliberal analyses emphasize distinct processes as having causal importance, and no claim is offered that they should be equated.

Additionally, there is the possibility of disagreement and perhaps disengagement if one draws rigid definitional limits for what should be studied in criminology. The topics discussed in this paper do not fit into the confines of a legalistic definition of crime. This thesis deals with social harm and the processes that create and perpetuate the harm. Although issues of violence and consent are broached, the thesis does not claim applicability for a strictly legalistic framework. Those who subscribe to such a framework may find this analysis problematic.

## Future Research Directions and Implications

Implications for future research stem logically from the limitations considered above. One implication is to expand inquiry by adding quantitative data. The data included in this analysis is predominately anecdotal and descriptive. As such, the lack of empirical data gathered from the use of established research methods constitutes a limitation in this work. Such data could aid in discovering and displaying shifts in the economic order and how those shifts affected the NFL's profitability. Data focused on players' pre-NFL socioeconomic statuses, demographics, and eventual instances of injury could provide illuminating insights about player motivations for assuming risk. Surveys and interviews could be conducted with former players, coaches, and management in order to gain a better understanding of the thought processes and rationales of why someone might play injured and what fuels their motivations. Archival data and field observations might also strengthen the content of this thesis. Observational methods might reveal how players, coaches, and medical staff deal with injuries. A more in-depth collection and analysis of player injuries throughout the history of the NFL would provide additional insights and a means to explore the number of incidents and perhaps shifting nature of the injuries.

Case studies and interviews with former players and medical staff would help hone the focus of this paper to a more agency and individual oriented analysis. This qualitative methodological approach could yield vital information pertaining to the player subculture of the NFL. For example, application of the various subcultural theories to the subject of violence and injury within football could help conceptualize the harm for players within the context of group norms and behaviors. Ray Lewis, an elite linebacker

in his playing days, explains, “We’d go into defensive meetings, and they were all about who was going to get that big hit” (Layden, 2012, p. 41). Lewis went on to explain that these hits were a way to instill fear in opposing players and gain respect from one’s teammates, a subcultural orientation not unlike that which governs interaction among prison inmates. An ability to instill fear in opponents is one of the main ways to gain admiration and respect from a teammate. The norms and values of players could account for why players might start or continue to play a game despite its risk.

Likewise, surveys and interviews with spectators of the sport on the topic of their consumption of NFL products could yield interesting findings about taste, habitus, and the cultural significance of the game. Likewise, the norms and motivations of managers would provide important information. A study pertaining to the importance of the game of football in a small town affected by extensive deindustrialization would be a worthy endeavor. Perhaps an analysis focused on the town’s socioeconomic climate in conjunction with interviews and observations with spectators, players, and coaches alike would provide data on the perceptions, motivations, and importance of football.

For still another angle, a gendered analysis of the masculinity involved in the game might be useful. Football is traditionally considered to be a masculine sport that values toughness, aggressiveness, and other androcentric qualities. The sport is usually played solely by males and features violence that supposedly purports ideals and actions of “manly men”. An application of gendered studies might lead to unique discoveries. Certainly a gendered analysis would be able to provide distinctive perspectives on what is deemed as important to players and fans and how masculinity might be implicated. A gendered perspective could enlighten the reader on how the game is sold to fans and

players via highlighting a form of masculinity. Questions of why injuries are tolerated and expected could be answered with this type of analysis. The definition of what constitutes social harm varies significantly by gender. For example, a male breaking another male's bones is not seen the same as when the break involves females.

The theoretical model of this thesis could be utilized to help understand other phenomena besides the NFL crises and responses. At a broader level, the theoretical perspective of this thesis aims to account for corporate logics and responses in contemporary society. While the NFL situation has some unique features in relationship to the civilizing process and mass/popular culture, one could use the heuristic to understand why certain corporate actions evoke emotions today, when they traditionally would not have done so. This thesis could also find great use when applied to other organized sports. One example would be the burgeoning sport of mixed martial arts, which is also predicated on violence. It will be interesting to see what happens to that sport if control is lost and legitimacy is threatened. Perhaps another topic that could find applicability with this thesis is with controversies of the FIFA (Fédération Internationale de Football Association). At the time of this writing, this organization finds itself in a precarious situation stemming from its assignment of the 2022 World Cup to Qatar. By allowing Qatar to host the event, literally thousands of migrant workers may die from building the requisite infrastructure (Nordland, 2014). A ruling by the International Labour Organization has condemned the country's kafala system, a structure in which foreign workers cannot change jobs or leave Qatar without permission from their sponsors. Also, there have been allegations of bribery implicating FIFA officials, which makes sense considering the temperature routinely reaches a dangerous 120 degrees

Fahrenheit and the choice makes little practical or common sense. This emotional uproar over conditions that are deemed barbaric and out of touch with modern sensibilities could be understood by applying a model similar to the one developed here.

### Conclusion

The social harm surrounding sport demonstrates the applicability of sport and leisure to the field of criminology. While our society is comfortable condemning actions such as Bounty-Gate, which are easily deemed devious, the more latent injury issues of MTBI and CTE do not insight the same furor. This is partially because the actions of Bounty-Gate involved clearly defined actors who ordered harm and injury for profit. This scenario was amendable to criminological discourse because our society has a criminological language to approach topics of harm that mirror the violence of everyday criminal actions such as Bounty-Gate. Bounty-Gate implicated management and players and affixed them the stigma of deviance as they issued and carried out orders to inflict harm through violence for their advantage. This topic was clearly outside the realm of what is to be expected in the sport as well as in society as a whole. The outcry from the controversy was too pronounced to deny or overlook by the league. Conveniently for the NFL, the turmoil was relatively simple to quell because there were clear isolated actors that could be condemned while the league was protected from further denunciation. By contrast, the issues of to CTE and MTBI are more problematic for the business of the NFL as they implicate the product of the NFL to the degree that the essence of the game is compromised. Therefore, the league's actions have dominantly been to deny, obfuscate, and downplay issues of player injury and the league's culpability. The

everyday violence and risk inflicted by businesses in the name of profitability is not something that is deemed deviant or illegal by most.

The field of criminology provides the theoretical and methodological tools required to unveil and critique the social harm of the league's actions. This is why one of this thesis' main conclusions is that these topics should be considered worthy for further criminological inquiry. In addition, this paper examined the tensions between late modern risk and social harm on the one hand, and deregulated violence and profitability in a neoliberal context on the other. A second main conclusion, then, is that such tensions are bound up closely with the civilizing process, thereby creating need for those with vested interests in violence and profit to preserve ideological legitimacy of arrangements benefitting them by normalizing social harm as a price of doing business.

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