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### Professionalism and Matthew Shardlake

Alex B. Long

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**Professionalism and Matthew Shardlake**

**Alex B. Long**

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## Professionalism and Matthew Shardlake

Alex B. Long



### ABSTRACT

This Essay/Book Review examines the Matthew Shardlake series by C.J. Sansom. In particular, it examines the question of whether the sixteenth-century fictional lawyer Shardlake can serve as a role model for twenty-first-century lawyers, both in terms of his ethics and his professionalism. An examination of the Shardlake series as a whole yields some uncertain answers, both as to Shardlake and as to what it means to be an ethical and professional lawyer. This is ultimately part of what makes the series so enjoyable for lawyers.

### AUTHOR

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INTRODUCTION  
("ARE YOU ONE OF THOSE LAWYERS WHO LIKES  
FERRETING ABOUT AFTER PUZZLES AND MYSTERIES?"<sup>1</sup>)

Matthew Shardlake is a fictional lawyer at Lincoln's Inn in sixteenth-century London. He is also a first-rate detective who reluctantly attempts to unravel some of the most important mysteries of the time while navigating the treacherous political waters of Tudor England. Shardlake is the brainchild of British lawyer-turned-author C.J. Sansom. Through a series of five novels, readers have watched as Shardlake takes the qualities that make him a successful lawyer and employs them in the task of solving crimes.

The Shardlake series began with *Dissolution*, a murder mystery set against the backdrop of King Henry VIII's dissolution of British monasteries in the first half of the sixteenth century.<sup>2</sup> In each subsequent installment of the series, Shardlake reluctantly undertakes to solve a new mystery. The second novel, *Dark Fire*, was the first to feature any real insight into Shardlake's law practice. There, readers got to see Shardlake do battle in court with Stephen Bealknap, "a false and greedy rogue."<sup>3</sup> The subsequent novels, including the most recent, *Heartstone*, have provided readers with greater insight into Shardlake's practice of law. Sansom views his creation as a person of honesty and integrity.<sup>4</sup> Indeed, as one reads the series, it becomes clear that Shardlake is meant to serve as the embodiment of many of the most cherished ideals of the legal profession. In other words, Sansom views Shardlake as a symbol of professionalism.

"Professionalism" has become a buzzword in the legal profession over the past few decades. However, there is considerable debate as to what exactly the concept entails and how it applies. There can be little doubt that Shardlake is fundamentally a decent and honest person and an outstanding lawyer. And at a time when the legal profession craves role models—real or fictional—it stands to reason that as the series gains popularity, more will point to the

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1. C.J. SANSOM, SOVEREIGN 71 (2006).

2. C.J. SANSOM, DISSOLUTION (2003).

3. C.J. SANSOM, DARK FIRE 1 (2004).

4. *Reading Guide: Dissolution*, PENGUIN BOOK CLUB, <http://us.penguingroup.com/static/rguides/us/dissolution.html> (last visited Nov. 9, 2011).

sixteenth-century Shardlake as a role model and symbol of professionalism for twenty-first-century lawyers.<sup>5</sup>

Yet, we also live in a time when it is difficult to retain one's status as a role model: Witness the numerous revisionist articles questioning the actions of beloved fictional hero Atticus Finch, an inspiration to many lawyers.<sup>6</sup> If Shardlake is to serve as a symbol of the core values of the legal profession, he must withstand similar scrutiny.<sup>7</sup> A close examination of Shardlake's actions, however, produces mixed results in terms of his status as a role model for twenty-first-century lawyers. But more importantly, the series illustrates the difficulties in crafting a coherent definition of professionalism. Ultimately, the dilemmas Shardlake faces and his responses to those dilemmas provide lawyers with the opportunity to reflect upon the ethical conundrums present in modern practice and the varying conceptions of professionalism within the legal field.

#### I. "I PRESENT MASTER MATTHEW SHARDLAKE, THE SHARPEST HUNCHBACK IN THE COURTS OF ENGLAND"<sup>8</sup>

Longtime readers of the Shardlake series have had five novels to get to know Shardlake. They have seen Shardlake solve a murder in a monastery, seek out a sixteenth-century weapon of mass destruction, get thrown in the Tower of London, and track down a serial killer. However, readers new to the series are likely to find Shardlake accessible, particularly if they are lawyers themselves.

Shardlake is primarily a property lawyer. Originally a true believer in the Reformist cause that led to King Henry VIII's schism with the Roman Catholic

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5. See generally James Grimmelmann, *Summer Reading Rave: C.J. Sansom*, CONCURRING OPINIONS (May 19, 2008, 11:18 AM), [http://www.concurringopinions.com/archives/2008/05/summer\\_reading.html](http://www.concurringopinions.com/archives/2008/05/summer_reading.html) (referring to Shardlake as a "wholly credible lawyer").
  6. See Judy M. Cornett, *Atticus Finch: Christian or Civic Hero? A Response to Professor McMillian*, 77 TENN. L. REV. 723 (2010) (noting criticism of Atticus Finch by legal ethicists Monroe Freedman and Steven Lubet). More recently, Malcolm Gladwell's criticism of Finch in a *New Yorker* piece attracted national attention. Malcolm Gladwell, *The Courthouse Ring*, NEW YORKER, Aug. 10, 2009, [http://www.newyorker.com/reporting/2009/08/10/090810fa\\_fact\\_gladwell](http://www.newyorker.com/reporting/2009/08/10/090810fa_fact_gladwell). The case against Finch representing the values of the legal profession stems largely from his failure to voluntarily use his legal skills and training "to make the slightest change in the pervasive social injustice [institutionalized racism] of his own town." Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473, 481 (1994); see also Lance McMillian, *Atticus Finch as Racial Accommodator: Answering Malcolm Gladwell*, 77 TENN. L. REV. 701, 704–06 (2010) (discussing Gladwell's criticisms).
  7. See W. Bradley Wendel, *Our Love-Hate Relationship With Heroic Lawyers*, 13 WIDENER L.J. 1, 5 (2003) (stating that if Atticus Finch "remains central to our pantheon of lawyer heroes, it should at least be after his character has survived critical examination").
  8. SANSOM, DISSOLUTION, *supra* note 2, at 3.

Church, Shardlake begins to lose his fervor by the end of the first novel, and he increasingly encounters questions of faith more generally as the series progresses. However, much of his success as a lawyer is due to his Reformist connections, a fact those in power sometimes exploit to pressure Shardlake into doing their bidding. By the beginning of the fourth novel in the series, Shardlake has advanced from barrister to serjeant, the highest rank of lawyers and the class from which judges are selected.<sup>9</sup> By the end of the fourth novel, Shardlake has the patronage of none other than Queen Catherine Parr.

Many of the jokes Shardlake hears about lawyers are the same that modern lawyers are accustomed to, and his tolerance for such jokes is about as limited as that of many modern lawyers.<sup>10</sup> Although he is sometimes mocked by others for being an idealist,<sup>11</sup> Shardlake is more than a little cynical when it comes to the law and its practice. For example, he is not particularly fond of London during Reform because it is filled with “fanatics and cozeners . . . [a]nd my profession has enough of both.”<sup>12</sup> In darker moments, his cynicism extends to the law itself. For example, when one of Shardlake’s assistants suggests that the truth will prevail in a matter, Shardlake responds, “[Y]ou have not spent a lifetime around His Majesty’s courts to say that.”<sup>13</sup> However, despite his sometimes melancholy nature, Shardlake occasionally manages to profess a belief in the power of the law to bring about justice. He enjoys “using the law to right wrongs. Where one can.”<sup>14</sup>

Among Shardlake’s other traits are his intelligence and doggedness. Other characters often remark on Shardlake’s cleverness and his ability to untangle complicated puzzles. However, Shardlake’s talents in this area are as often the result of hard work and determinedness as they are of innate intelligence.

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9. C.J. SANSOM, *REVELATION 7* (2008); *see also* J.H. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 133, 135 (2d ed. 1975); PAUL BRAND, *THE MAKING OF THE COMMON LAW* 135–68 (1992).

10. *See, e.g.*, SANSOM, *DARK FIRE*, *supra* note 3, at 76 (“[Y]ou’re a lawyer and everyone knows you have to keep an eye on lawyers.”); SANSOM, *SOVEREIGN*, *supra* note 1, at 148 (“Lawyers ever had good memories for papers, that they may quote them to ordinary men to puzzle them.”). When one character makes a joke about lawyers, Shardlake responds tersely, “There have been jokes against lawyers time out of mind. . . . They become tiring.” *Id.*

11. *See* SANSOM, *DARK FIRE*, *supra* note 3, at 299 (“You’re a simpler man that I thought if you believe that [the law can bring about justice].”); SANSOM, *DISSOLUTION*, *supra* note 2, at 363 (“There is no justice or order in this world, as you would see if you were not so blind.”); *see also* SANSOM, *SOVEREIGN*, *supra* note 1, at 339 (“Jesu, sir, you are a righteous prig. I wish I could afford your scruples.”).

12. SANSOM, *DARK FIRE*, *supra* note 3, at 19.

13. SANSOM, *DISSOLUTION*, *supra* note 2, at 67.

14. SANSOM, *DARK FIRE*, *supra* note 3, at 496.

Shardlake is a bulldog. In *Dissolution*, for example, Shardlake tells the story of a former evidence teacher: He had a saying. “In any investigation, what are the most relevant circumstances? *None*,” he would bark in reply. “*All* the circumstances are relevant, *everything* must be examined from *every* angle.”<sup>15</sup> Shardlake’s investigative techniques are guided accordingly. This doggedness and attention to detail also characterizes Shardlake’s approach to the practice of law: “Lawyers must spend their time adumbrating details, however sordid,”<sup>16</sup> Shardlake advises, and they must base their decisions on “detachment [and] reason,” not instinct.<sup>17</sup>

Shardlake’s defining characteristic, however, is his kyphosis; Shardlake is, in his own words, a “hunchback.”<sup>18</sup> Shardlake developed the condition at an early age and was subjected to taunts and abuse from other children. These taunts and abuse follow Shardlake into adulthood, and he is routinely subjected to insults about his physical impairment throughout the series.<sup>19</sup> Indeed, in *Sovereign*, Shardlake is subject to public mockery for his impairment by none other than Henry VIII himself.<sup>20</sup>

Sansom has stated that he wanted his protagonist to be “‘apart’ from his time,” so as to better serve as an interpreter of the sixteenth century for the modern reader.<sup>21</sup> After a lifetime of abuse, Shardlake has low self-esteem and is highly conscious of his physical impairment. However, Shardlake’s disability has had other, more positive effects. Knowing “only too well what it was like to be a despised outsider,” Shardlake has a kind heart and a strong desire bordering on need to assist the less fortunate. This trait also helps define Shardlake as a lawyer. Throughout the series, Shardlake frequently devotes some of his practice to assisting poor or otherwise disadvantaged clients.<sup>22</sup>

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15. SANSOM, DISSOLUTION, *supra* note 2, at 85.

16. *Id.* at 90.

17. SANSOM, DARK FIRE, *supra* note 3, at 29.

18. *Id.* at 3.

19. *Id.* at 24 (“[C]rook backed bloodsucker”); *id.* at 253 (“Black-robed, stinking, bent lawyer”); SANSOM, SOVEREIGN, *supra* note 1, at 219 (“[S]crabbling bitter hunchback”).

20. SANSOM, SOVEREIGN, *supra* note 1, at 215. The King refers to Shardlake as “a poor bent bottled spider” in comparison with another man. *Id.*

21. *Reading Guide: Dissolution*, *supra* note 4. Shardlake’s hunch is a particularly distancing trait in that it is viewed by some as a sign of bad luck or evil nature. SANSOM, DARK FIRE, *supra* note 3, at 321; SANSOM, DISSOLUTION, *supra* note 2, at 30; SANSOM, REVELATION, *supra* note 9, at 522; SANSOM, SOVEREIGN, *supra* note 1, at 118, 162. Physical impairments are more generally viewed with suspicion and fear in the series. For example, in *Revelation*, Shardlake notes that some regarded his friend’s “falling sickness” as “evidence of possession by an evil spirit.” *Id.*

22. For example, in *Heartstone*, Shardlake assists an orphan upon Queen Catherine Parr’s request and also takes it upon himself to delve into the history of a female acquaintance confined to Bedlam for lunacy. C.J. SANSOM, HEARTSTONE 47, 70 (2010). By the start of the fourth



## II. “ENGLAND’S LAW IS A RACK IN A CELLAR!”<sup>23</sup>

Although Sansom has said he is unsure why he gave Shardlake a hunchback, he has speculated that “perhaps it symbolizes the weight he carries as a person of integrity in that grim time.”<sup>24</sup> To fully appraise Shardlake’s professional integrity, one must put the practice of law during Shardlake’s time in context. Although the lawyers of Shardlake’s time were subject to a number of external regulations, the pressure to conform to the prevailing norms of the legal profession were at least as powerful. In this respect, modern lawyers should find a ready parallel. However, the series also depicts Shardlake and his colleagues facing the challenge of practicing law in an age when the rule of law had little meaning to many in power.

### A. Formal Regulation of the Legal Profession

The lawyers of Shardlake’s time were subject to a number of forms of external regulation. By virtue of their inherent authority over the court system, judges could impose discipline upon lawyers for misconduct.<sup>25</sup> In addition, Shardlake and his brethren were subject to a number of statutes regulating the legal profession.

The first significant regulation of the legal profession in England was the Statute of Westminster of 1275.<sup>26</sup> The statute as a whole addressed a variety of litigation abuses by court officials and lawyers.<sup>27</sup> Most notably, Chapter 29 prohibited a lawyer from engaging in “any manner of deceit or collusion” and made the offense punishable by imprisonment and prohibition from ever appearing again in the court in question.<sup>28</sup> The term “deceit” was construed broadly to cover not simply common law fraud, but false statements to the

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novel, *Revelation*, Shardlake has assumed a post at the Court of Requests, “where poor men’s pleas were heard.” SANSOM, *REVELATION*, *supra* note 9, at 7.

23. SANSOM, *DISSOLUTION*, *supra* note 2, at 359.

24. *Reading Guide: Dissolution*, *supra* note 4.

25. Jonathan Rose, *The Legal Profession in Medieval England: A History of Regulation*, 48 SYRACUSE L. REV. 1, 50 (1998).

26. Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1394 (2004).

27. Rose, *supra* note 25, at 50. *See generally* JOHN FRASER MACQUEEN, *A LECTURE ON THE EARLY HISTORY AND ACADEMIC DISCIPLINE OF THE INNS OF COURT AND CHANCERY* 6–7 (1851) (describing the “corruption and venality” that existed in the legal system during this general period).

28. EDWARD COKE, *THE SECOND PART OF THE INSTITUTES OF THE LAWS OF ENGLAND*, cap. XXIX (1817).

court, overzealousness, conflicts of interest, and breaches of client confidentiality as well.<sup>29</sup> According to Jonathan Rose's exhaustive study, sanctions imposed under Chapter 29 "varied from disbarment and imprisonment for a year and a day, to imprisonment only, a shorter imprisonment, temporary suspensions of different lengths, or a fine."<sup>30</sup>

A lawyer practicing in London during Shardlake's time may also have been subject to the London Ordinance of 1280. The Ordinance regulated the right of serjeants to appear in the London courts by excluding those who "do not reasonably understand their profession."<sup>31</sup> The Ordinance also contained specific prohibitions on misconduct, including representing a client whose interests were adverse to a former client in the same matter<sup>32</sup> and champerty and maintenance.<sup>33</sup> Another statute, Statute 4 Henry IV, Chapter 18 (1402), applied to all royal courts.<sup>34</sup> According to Rose, the statute "focused primarily on regulating attorney admission, although it also dealt with their misconduct."<sup>35</sup> Given the number of "falsifications, deceits and nullifications" by lawyers and the number of lawyers who had "learned little or nothing of the law," the statute required that attorneys pass a judicial examination.<sup>36</sup>

Attorneys also took the following oath under the 1402 Act:

You shall doe no Falsehood nor consent to any to be done in the Office of Pleas of this court wherein you are admitted an Attorney. And if you shall know of any to be done you shall give Knowledge thereof to the Lord Chief Baron or other his Brethren that it may be reformed you shall Delay no Man for lucre Gain or Malice you shall increase no fee but you shall be contented with the old Fee accustomed. And further you shall use your self in the Office of Attorney in the said office of Pleas in this Court according to your best learning and discretion. So help you God.<sup>37</sup>

Especially noteworthy is the fact that, in addition to swearing to avoid falsehoods, a lawyer swore to make a report of another attorney's falsehoods. Thus, lawyers of the time had a reporting obligation at least somewhat

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29. Andrews, *supra* note 26, at 1395; Rose, *supra* note 25, at 61.

30. Rose, *supra* note 25, at 61.

31. *Id.* at 63–64 (quoting Ordinance).

32. *Id.* at 65.

33. *Id.* at 66.

34. *Id.* at 99.

35. *Id.* at 95.

36. *Id.* at 96.

37. Andrews, *supra* note 26, at 1404.

comparable to American Bar Association (ABA) Model Rule 8.3(a)'s requirement that a lawyer who knows of another lawyer's serious misconduct inform the appropriate disciplinary authorities. Indeed, these positive expressions of a lawyer's ethical obligations suggest that lawyers of Shardlake's age were subject to duties that, at least on the surface, are similar to those of twenty-first-century lawyers.

### B. The Inns of Court and the Legal Profession of the Time

In addition to formal regulation of the legal profession, lawyers in Shardlake's time were subject to the prevailing norms and unwritten rules within the profession. For British lawyers in the sixteenth century, these norms were driven in large measure by the culture of the Inns of Court.<sup>38</sup> The collegial nature of the present-day Inns has been described as "providing a 'powerful deterrent' against deviations from barristers' standards of professionalism."<sup>39</sup> Given the more insular nature of the Inns and the legal profession during Shardlake's time, one can only surmise that the Inns had an even greater deterrent effect on conduct deemed to be inconsistent with the then-prevailing norms of the legal profession.<sup>40</sup>

The Inns served a number of functions, including qualifying their members to practice in court.<sup>41</sup> Although aspiring lawyers certainly learned the law at the Inns,<sup>42</sup> Wilfrid R. Prest has argued that the Inns were not "educational institutions first and foremost."<sup>43</sup> Described by one author as part club, part college, and part trade union,<sup>44</sup> the Inns shaped lawyers' sense of professionalism—and hierarchy—in various ways. Members and students

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38. See generally Donald K. Hill, *Law School, Legal Education, and the Black Law Student*, 12 T. MARSHALL L. REV. 457, 467 (1987) ("[Students] were expected to learn to behave as their teachers and associates behaved at the Bar. They were expected to discipline themselves in the manner and demeanor reflective of those they wanted to emulate."). For a history of Shardlake's Lincoln's Inn, see RONALD ROXBURGH, *THE ORIGINS OF LINCOLN'S INN* (1963).

39. Elliot L. Bien, *Toward a Community of Professionalism*, 3 J. APP. PRAC. & PROCESS 475, 483 (2001).

40. For example, one study estimates that in 1574, there were only 169 members at Shardlake's Lincoln's Inn. WILFRID R. PREST, *THE INNS OF COURT UNDER ELIZABETH I AND THE EARLY STUARTS: 1590–1640*, at 7 (1972).

41. ROXBURGH, *supra* note 38, at 35.

42. See 2 W.S. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 506–08 (1924) (describing the educational curriculum).

43. PREST, *supra* note 40, at 115.

44. *Id.* (citing Frederic W. Maitland).

resided at the Inns<sup>45</sup> and ate meals in a hall at tables ordered by rank: The benchers, the senior members who actually ruled the house,<sup>46</sup> were served first, followed by the barristers, and finally the students.<sup>47</sup>

The benchers were responsible for maintaining discipline.<sup>48</sup> There were rules regulating numerous aspects of life in the Inn, including proper dress, the wearing of beards, and the appropriate length of hair.<sup>49</sup> Although there was relatively little attempt by the benchers to regulate the personal lives of their subordinates during Shardlake's time, the benchers did insist upon a proper showing of deference.<sup>50</sup> One of the more frequently punished offenses was "insolence."<sup>51</sup> In *Dark Fire*, for example, one of Shardlake's brethren faces the prospect of a heavy fine and disbarment for breaking "all the rules of courtesy" by engaging in a public disagreement with the Duke of Norfolk at a formal gathering at Lincoln's Inn.<sup>52</sup> Deference was also expected of a barrister in his professional life. According to Prest, "no barrister could appear in court against a bencher of his own inn" without permission.<sup>53</sup>

As portrayed in the Shardlake series, this devotion to professional courtesies extended beyond mere politeness and illustrates what James Moliterno has referred to as the "'take care of one another before all other interests' [moral] understanding that naturally results from the sort of in-breeding that once dominated the profession."<sup>54</sup> For example, when Shardlake represents a client in a landlord-tenant dispute against his nemesis Bealknap, who has acted as the sixteenth-century equivalent of a slumlord, Bealknap expresses outrage at the idea that Shardlake would "take a fellow barrister to court!"<sup>55</sup> Shardlake winds up being shunned by some of his fellow lawyers at Lincoln's Inn for offending "professional solidarity" in bringing the action against Bealknap. Part of Bealknap's incredulity at being sued stems from his belief that "professional

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45. *Id.* at 7.

46. Shardlake is himself a bencher. SANSOM, DARK FIRE, *supra* note 3, at 121.

47. PREST, *supra* note 40, at 47-48.

48. HOLDSWORTH, *supra* note 42, at 264; PREST, *supra* note 40, at 48, 91.

49. HOLDSWORTH, *supra* note 42, at 264; PREST, *supra* note 40, at 93.

50. See PREST, *supra* note 40, at 92 (noting the difficulty starting in the 1530s of regulating the private lives of members and the eventual cessation of such attempts by the second half of the sixteenth century); *id.* at 91 (noting that as the benchers took control from 1490 to 1530, they sought to "instill respect for their own authority").

51. *Id.* at 91.

52. SANSOM, DARK FIRE, *supra* note 3, at 348.

53. *Id.* at 84.

54. James E. Moliterno, *Lawyer Creeds and Moral Seismography*, 32 WAKE FOREST L. REV. 781, 809 (1997).

55. SANSOM, DARK FIRE, *supra* note 3, at 481.

solidarity” works to the interest of all lawyers: “The system works to all our advantage and there is much gold to be made with little effort if one chooses the easy path.”<sup>56</sup>

Obviously, if helping a client sue a fellow lawyer amounted to a breach of professionalism in the eyes of some lawyers during Shardlake’s time, reporting a fellow lawyer’s professional misconduct is hard to imagine, despite the formal ethical obligation to do so. For instance, Bealknap has a paid “ring of compurgators” who provide false declarations at Bealknap’s request. Bealknap’s “sideline was well known throughout Lincoln’s Inn, but no barrister would ever inform against another member of the profession.”<sup>57</sup> Shardlake eventually threatens to report Bealknap’s sideline, despite the fact it would mean that his “name [would] stink in Lincoln’s Inn” since “[l]awyers aren’t supposed to report each other.”<sup>58</sup>

Over time, the Inns developed their own disciplinary systems for dealing with professional misconduct.<sup>59</sup> There is some suggestion in the Shardlake series that the benchers at Lincoln’s Inn responded to complaints of professional misconduct as well as transgressions of professional courtesies and codes of conduct within the houses. For example, in *Dark Fire*, Shardlake threatens to bring Bealknap “up before the secretary” at Lincoln’s Inn for maintaining his ring of compurgators.<sup>60</sup> But the historical descriptions of the disciplinary system of the Inns during Shardlake’s time tend to focus almost exclusively on misconduct within the Inns themselves and other violations of professional courtesies.<sup>61</sup> Thus, the evidence suggests that the benchers were more heavily

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56. *Id.*

57. *Id.* at 42.

58. *Id.* at 288.

59. See John Leubsdorf, *Legal Ethics Falls Apart*, 57 BUFF. L. REV. 959, 964 (2009) (describing the evolution of professional discipline in the British system); see also *People ex rel. Karlin v. Culkin*, 162 N.E. 487, 490 (N.Y. 1928) (noting that there was “little occasion for controversies as to discipline to be brought before the judges” because the benchers investigated and dealt with such controversies); ROBERT RICHARD PEARCE, *A HISTORY OF THE INNS OF COURT AND CHANCERY* 412–14 (1848) (describing the disbarment of a barrister charged with various forms of professional misconduct).

60. SANSOM, *DARK FIRE*, *supra* note 3, at 42; *id.* at 288.

61. See Andrews, *supra* note 26, at 1401 n.127 (“The reported cases of discipline by the Inns tend to relate to misconduct in the Inns themselves, more of the nature of school boy infractions than professional misconduct.”). Indeed, the stereotype of life at the Inns during this time involves “student delinquency, ignorance and laziness” and various forms of rakish behavior. Wilfrid Prest, *Legal Education of the Gentry at the Inns of Court 1560–1640*, 38 PAST & PRESENT, no.1, 1967 at 20, 26.

focused on enforcing good behavior and the behavioral norms of the profession than they were on standards of professional conduct.<sup>62</sup>

### C. The Culture of the Time and Its Impact on the Law

Finally, one must also consider Shardlake's actions within the climate of the reign of Henry VIII. Throughout the series, King Henry and his advisors show little regard for the truth or due process of law. Wives are dispensed with as the King desires, and political opponents are locked up and tortured under false pretenses. Shardlake is himself falsely imprisoned and tortured in the Tower of London based on a false oath procured by a politically powerful official.<sup>63</sup> All the while, King Henry vacillates on the subject of religion while religious extremism prospers, causing much cynicism among the common people.<sup>64</sup>

The Shardlake series depicts life during this period as exceedingly harsh. Therefore, it is hardly surprising that there is a general lack of respect for the law and its institutions in Shardlake's world. Judicial corruption appears to simply be an unpleasant reality with which lawyers must contend.<sup>65</sup> In *Heartstone*, for example, the systemic corruption of the Court of Wards is central to the plot. Shardlake is advised early on to be prepared to pay bribes in his dealings with the court, and the clerk of the court is actually bold enough to inform Shardlake as to the going rate for a particular form of assistance.<sup>66</sup> In *Dark Fire*, Shardlake's case against Bealknap is heard by Judge Heslop, "a lazy-minded fellow" with "a poor reputation for honesty," who arguably has a conflict of interest in the matter and whom Shardlake suspects of having been bribed.<sup>67</sup> Yet, Shardlake is left simply to curse his luck that he "had drawn a low card in the gamble of the law" after he loses.<sup>68</sup>

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62. See Leubsdorf, *supra* note 59, at 964 n.13 (summarizing Prest's work as "illustrating that benchers enforced good behavior within the Inns, not professional conduct").

63. See SANSOM, SOVEREIGN, *supra* note 1, at 485.

64. See SANSOM, REVELATION, *supra* note 9, at 12 (noting the rise of "hot gospellers" and King Henry's retreat from Reformism "back to the old forms of religion, a sort of Catholicism without the Pope").

65. See generally MACQUEEN, *supra* note 27, at 6–7 (reporting that in 1292, all but two judges presiding in the Courts of Westminster were convicted of taking bribes and falsifying records).

66. SANSOM, HEARTSTONE, *supra* note 22, at 64–66.

67. SANSOM, DARK FIRE, *supra* note 3, at 210.

68. *Id.* at 204, 207. Shardlake later learns that his suspicions were correct. *Id.* at 407. Shardlake himself is the beneficiary of a bribe when Lord Thomas Cromwell, the King's vicar general and one of the most powerful men in the country, bribes the judge in a murder case to give Shardlake two weeks to investigate his client's case after the judge had summarily ordered his client, the

There is a general cynicism concerning the legal system among lawyers and non-lawyers alike in the series. Shardlake's primary adversary, Bealknap, at one point remarks, "The world is a battleground, predators and prey. The rules and conventions of the law only disguise the fact."<sup>69</sup> Less detestable characters—both lawyers and non-lawyers—express similar sentiments about the law and its ability to bring justice in such a world. Toward the end of *Dissolution*, one character accurately sums up the depressing state of the law as depicted in the Shardlake series: "England's law is a rack in a cellar!"<sup>70</sup>

Present-day lawyers are certainly familiar with this type of cynicism toward the law and its practice. Every lawyer knows a colleague with a view of the legal profession like that of Bealknap's. But the level of cynicism and corruption that Shardlake confronts is also undoubtedly greater than that faced by present-day attorneys. Indeed, this is part of what makes Shardlake's struggle throughout the series to remain an individual of personal and professional integrity so entertaining for lawyers in particular.

### III. THE PROFESSIONALISM OF THE "SHARPEST HUNCHBACK IN THE COURTS OF ENGLAND"<sup>71</sup>

There can be little doubt that C.J. Sansom views his fictional hero as a role model for twenty-first-century lawyers. Throughout the series, Shardlake is at odds with the prevailing norms of the legal profession, and it is clear that the reader is meant to take Shardlake's side in the dispute. Shardlake is unquestionably a person of integrity, and this fact undoubtedly makes the series as a whole more appealing to lawyers.

But what ultimately makes the Shardlake series so intriguing for lawyers is Sansom's ability to use the sixteenth-century Shardlake as a mirror for the practice of law in the twenty-first century. For example, for most modern American lawyers, the Tower of London holds little meaning. But the words "Guantanamo Bay" and "torture memos" can trigger heated debate about the role lawyers may properly play in assisting clients. Therefore, modern lawyers can hardly avoid the moral and ethical ambiguity present when, in *Sovereign*, Shardlake does

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accused, to be "pressed" without trial. *Id.* at 48–49. Shardlake explains that "pressing," or *peine forte et dure*, is the process by which the condemned is "laid in chains on the floor. They will put a sharp stone under her back and a board on top of her. They will put weights on the board." Each day, more weights are added until, eventually, her spine breaks. *Id.* at 12.

69. SANSOM, REVELATION, *supra* note 9, at 392.

70. SANSOM, DISSOLUTION, *supra* note 2, at 359.

71. *Id.* at 3.

the bidding of the King's advisors and helps transport a political prisoner to the Tower of London to be tortured for information.

The Shardlake series deals with fundamental issues of what it means to be an ethical and professional lawyer that have bedeviled the legal profession for centuries. Shardlake's ethical dilemmas invite modern lawyers to stand, however briefly, in his shoes and consider their own response. In the process, the series helps illustrate the considerable debate within the legal profession as to how these issues should be resolved given the ambiguity inherent in the term "professionalism" as applied to the legal profession.

### A. Defining Professionalism

"Professionalism" is an elusive concept.<sup>72</sup> The term is intended to convey something beyond mere compliance with the disciplinary rules to which all lawyers are subject. The professionalism movement gained prominence as part of a response to the perception that too many lawyers engage in a form of win-at-all-costs, overzealous lawyering, including the use of "Rambo-style litigation tactics" and general incivility.<sup>73</sup> Thus, rather than offering a concrete meaning, the term is in some ways almost the anti-definition of a particular form of objectionable lawyering.

Supporters of the professionalism movement have attempted to provide at least some independent definition of the term, however. In the litigation context, for example, one author has suggested that to "conduct litigation 'professionally' . . . means to abide by the rules and ideals of the adversarial system."<sup>74</sup> Synthesizing various statements of the principles of professionalism, another author defines professionalism, in part, as striving to realize "the core values and ideals of the legal profession."<sup>75</sup> Of course, this begs the question of what those ideals are and whether there is, in fact, agreement about them. At a broad level of generality, there is agreement as to the core values of the legal profession, such as competence, loyalty to clients, maintaining client confidentiality, and serving the public good.<sup>76</sup>

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72. See, e.g., Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 270–71 (1995).

73. See generally Allen K. Harris, *The Professionalism Crisis—The 'Z' Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549, 568–71 (2002) (discussing the growth of the professionalism movement).

74. Bien, *supra* note 39, at 475.

75. Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW., no. 4, 2008 at 4, 5, 11.

76. *Id.* at 8, 11.



However, as discussed in greater detail in the following Subpart, critics have charged that the professionalism movement overlooks the reality that there are competing conceptions as to how these values should be applied.<sup>77</sup> Critics have also argued that the professionalism movement's focus on civility undermines the legitimate and fundamental value of zeal on behalf of a client.<sup>78</sup> They further charge that the professionalism movement seeks a "return" to a fictitious and idealized era in the legal profession in which nearly all lawyers were principled, competent, and courteous.<sup>79</sup>

## B. Shardlake as a Model of Professionalism

Compliance with ethical standards is intertwined with the concept of professionalism. To at least some extent, however, the question of whether Shardlake is a model of ethical lawyering raises a question separate and apart from whether Shardlake embodies the values of the legal profession. An examination of the Shardlake series yields some uncertain answers, both as to Shardlake and as to what it means to be an ethical and professional lawyer.

### 1. Shardlake as an Ethical Role Model

Throughout the series, Shardlake engages in a number of ethically questionable courses of action. While this fact alone most likely precludes Shardlake from being offered as a model of an ethical lawyer for today's time, one must put his actions in context. Unlike Atticus Finch, Shardlake is the hero of a mystery series, a genre that permits and sometimes requires its heroes to engage in limited forms of deceit. Thus, some of Shardlake's ethical transgressions (such as breaking and entering during the course of an investigation<sup>80</sup>) are of the type readers expect from their fictional detectives; without them, the

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77. See Atkinson, *supra* note 72, at 317 (arguing that the professionalism movement has failed "to acknowledge . . . the multiplicity of conscientious models of lawyering").

78. See MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYERS' ETHICS 123 (2004) ("One of the serious attacks on the traditional ethic of zeal goes under the deceptively benign banner of increasing civility, courtesy, and professionalism among lawyers.")

79. See Moliterno, *supra* note 54, at 809 ("[T]he lost form of civility from that earlier age is too closely associated with the bar's serious sins, and was not given to all.")

80. For example, in *Dark Fire*, Shardlake has his assistant, Barak, pick a lock so that the two can trespass onto another's property in an attempt to uncover evidence in a case. SANSOM, DARK FIRE, *supra* note 3, at 181–82, 265. Under modern standards, these actions would probably violate American Bar Association (ABA) Model Rules 4.4(a) (using methods of obtaining evidence that violate the legal rights of others) and 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

plot could not develop. For another, for virtually every one of his possible ethical transgressions, Shardlake makes a correct (and sometimes difficult) ethical choice, such as resisting the pressure of a powerful official to file a false report in a homicide investigation.<sup>81</sup> Finally, Shardlake's actions must be considered within the context of his time.<sup>82</sup> For example, in *Heartstone*, Shardlake bribes the clerk of the Court of Wards in order to gain his help in the wardship matter. By modern standards, Shardlake's actions would be considered outrageous. Yet the reality for Shardlake is that corruption in the court is not only widespread, but intertwined with procedures of the court. As depicted, a lawyer simply could not function if he were not willing to pay the occasional bribe.

Some of Shardlake's ethical missteps, however, involve more complicated questions of professional conduct and force readers to examine their own views as to what it means to be an ethical person and lawyer. For example, in *Heartstone*, Shardlake lies to authorities about the discovery of evidence in order to reopen an investigation into a cold homicide. As his assistant Barak points out, Shardlake's actions amount to perjury.<sup>83</sup> Admittedly, Shardlake is motivated by a desire to assist an individual confined in Bedlam, the London mental hospital, and to see the truth come out concerning a murder that he suspects involves an elaborate conspiracy of silence. But does this excuse the clear ethical violation? There is considerable disagreement within the legal profession as to whether the use of deception is ever ethically permissible in the course of an investigation in order to gather evidence that would be difficult to uncover otherwise.<sup>84</sup> Modern lawyers have faced professional discipline for engaging in rule violations in an attempt to bring about what is clearly a public good.<sup>85</sup> And modern lawyers continue to argue about whether it should be ethically permissible for a lawyer to elicit perjured testimony while representing a

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81. SANSOM, SOVEREIGN, *supra* note 1, at 72.

82. "Presentism is the attempt to explain historical phenomena from a contemporary perspective, thus failing to appreciate considerations that were important at the time but are not today." Eli Wald, *The Other Legal Profession and the Orthodox View of the Bar: The Rise of Colorado's Elite Law Firms*, 80 U. COLO. L. REV. 605, 667 n.341 (2009).

83. *Id.*

84. *See* Apple Corps Ltd. v. Int'l Collectors Soc'y, 15 F. Supp. 2d 456, 475–76 (D.N.J. 1998) (concluding that some forms of deception in the course of investigation into violations of law are ethically permissible, "especially where it would be difficult to discover the violations by other means"); *In re Gatti*, 8 P.3d 966 (Or. 2000) (reprimanding a lawyer who made various misrepresentations to an insurance company in an attempt to uncover evidence of conspiracy).

85. *See In re Pautler*, 47 P.3d 1175 (Colo. 2002) (disciplining a deputy district attorney who posed as a public defender while speaking on the telephone to a confessed murderer who was still at large in an attempt to effectuate the murderer's surrender).

criminal defendant.<sup>86</sup> Ultimately, Shardlake serves not so much as an ethical role model, but as a device to force readers—and particularly readers who happen to be lawyers—to reflect on what it means to be an ethical lawyer and to consider that “ethics” is not always simply a matter of looking to the disciplinary rules governing lawyers.

## 2. Shardlake as a Model of Professionalism

More interesting than the question of whether Shardlake can serve as an ethical role model, however, is the question of whether Shardlake can be held up as a symbol of *professionalism* when judged by modern standards. Of course, ethics cannot be divorced from professionalism. But the concept of professionalism involves more than compliance with the ethical standards of the profession. Shardlake certainly embodies some of the core values of the legal profession: He is willing to represent those who cannot afford legal representation;<sup>87</sup> he is willing to represent those who are the targets of public scorn;<sup>88</sup> he is highly competent;<sup>89</sup> and he is clever and (more importantly) diligent.<sup>90</sup>

Like many supporters of the professionalism movement, Shardlake detests those lawyers who make their way “by bullying and bluff.”<sup>91</sup> Through the first four novels, Shardlake’s frequent nemesis, Bealknap, serves to embody the type of overly combative lawyer that modern-day civility codes seek to address. In *Heartstone*, Shardlake’s courtroom opponent, Vincent Dyrick, serves that same role. Shardlake describes Dyrick as one “who knows no other way of being other

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86. See Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966) (arguing that a criminal defense lawyer should be permitted to present a client’s perjured testimony); Stephen Gillers, *Monroe Freedman’s Solution to the Criminal Defense Lawyer’s Trilemma Is Wrong as a Matter of Policy and Constitutional Law*, 34 HOFSTRA L. REV. 821 (2006).

87. See MODEL RULES OF PROF’L CONDUCT R. 1.2 cmt. 5 (2010) (“Legal representation should not be denied to people who are unable to afford legal services . . .”); *supra* note 76 and accompanying text. Serjeants of the era had an ethical obligation to provide legal services to the poor. Andrews, *supra* note 26, at 1405.

88. See MODEL RULES OF PROF’L CONDUCT R. 1.2 cmt. 5 (“Legal representation should not be denied to people . . . whose cause is controversial or the subject of popular disapproval.”).

89. See *id.* R. 1.1 (stating a lawyer’s duty of competence); Hamilton, *supra* note 75, at 11.

90. See MODEL RULES OF PROF’L CONDUCT R. 1.3 (stating a lawyer’s duty of diligent representation); Hamilton, *supra* note 75, at 11.

91. SANSOM, DISSOLUTION, *supra* note 2, at 85; see also SANSOM, DARK FIRE, *supra* note 3, at 2 (referring to Bealknap as “one of those maddening rogues whom lawyers encounter, who take perverse pleasure in spending time and money on uncertain cases rather than admitting and making proper remedy like civilized men”).

than aggression.”<sup>92</sup> Dyrick, the Rambo-type lawyer, views Shardlake’s sympathetic nature as a sign of weakness.<sup>93</sup> Yet, readers of the series know that Dyrick is mistaken and that Sansom has created a character in Shardlake who, although he may have a soft heart, will not back down in the pursuit of his client’s interests.

Thus, supporters of the professionalism movement might be expected to embrace Shardlake and to hold him up as an example for present-day lawyers. However, a full portrait of Shardlake is somewhat more complicated. Ultimately, some of Shardlake’s actions and the dilemmas he confronts illustrate the tensions inherent in any definition of “professionalism.”

#### a. Zealous Advocacy

Shardlake’s core professional value is placing his clients’ interests above the interests of others. Shardlake notes that fighting for his clients is his “life’s work.”<sup>94</sup> For Shardlake, loyalty to one’s clients equates to professional integrity, which he views as his “badge” and “identity” in “the often corrupt world of the law.”<sup>95</sup> Historically, the legal profession has treated loyalty to clients as a fundamental value; thus, to some, the essence of professionalism is for a lawyer to “zealously and competently use all lawful means to protect and advance the client’s lawful interests as the client determines those interests to be.”<sup>96</sup> Shardlake is a tireless advocate for his clients and is willing to endure great personal sacrifice—including torture in the Tower of London—on their behalf. Moreover, Shardlake adopts this client-centered approach to lawyering in the face of a legal profession that (in Shardlake’s semi-fictional world at least) is decidedly lawyer-centered and that looks after the interests of its own. Thus, Shardlake’s devotion to his clients is all the more impressive.

Yet, Shardlake’s devotion to zealous representation also illustrates some of the difficulties associated with the legal profession’s attempts to define the concept of professionalism. There is considerable debate as to whether a client-centered approach to lawyering *should* be the central component of

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92. SANSOM, HEARTSTONE, *supra* note 22, at 134.

93. *Id.* at 183.

94. SANSOM, DISSOLUTION, *supra* note 2, at 447.

95. *Id.* at 239.

96. See Monroe H. Freedman, *Professionalism in the American Adversary System*, 41 EMORY L.J. 467, 470 (1992); Fred Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303, 1315–18 (1995) (tracing the legal profession’s evolving views on client loyalty).

professionalism.<sup>97</sup> Critics have challenged the idea that a lawyer should use all lawful means to advance a client's interests no matter how objectionable or counterproductive those interests might ultimately be. This conception of lawyering, critics argue, has led to overzealous representation and the tendency for lawyers to think of themselves solely in terms of hired guns, thereby avoiding any of the difficult moral questions that their actions raise.<sup>98</sup> Commentators have raised concerns that the mantra of "zealous advocacy" has been used to justify dishonest and uncivil behavior in the litigation context and to justify lawyers' dubious advice to their clients on questionable courses of conduct.<sup>99</sup>

The Shardlake series reflects this tension as to the true meaning of professionalism. For example, in *Sovereign*, Shardlake refuses to drop a client's appeal despite receiving tremendous pressure from powerful figures to do so. Yet Shardlake himself eventually wonders whether his refusal is based on a desire to further his client's interests or a personal need to maintain his "badge" as an individual of integrity.<sup>100</sup> A similar theme emerges in *Heartstone* when Shardlake refuses to abandon a matter, despite receiving instructions to do so from the party who enlisted him. The party in this instance is no less a figure than the Queen of England.<sup>101</sup> As a result, the reader is left to wonder whether Shardlake's personal need to see justice done has interfered with his independent professional judgment. While Shardlake is certainly diligent, the episode illustrates the fine line between self-interest and devotion to one's client. As discussed below, at least two other episodes in the series highlight the legal profession's difficulties in settling on an acceptable formulation of "professionalism" and the complications in relying on Shardlake as a symbol of professionalism.

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97. Aziz Rana, *Statesman or Scribe? Legal Independence and the Problem of Democratic Citizenship*, 77 *FORDHAM L. REV.* 1665, 1673 (2009).

98. Mitchell M. Simon, *Navigating Troubled Waters: Dealing With Personal Values When Representing Others*, 43 *BRANDEIS L.J.* 415, 419–20 (2005); Christopher J. Whelan, *Some Realism About Professionalism: Core Values, Legality, and Corporate Law Practice*, 54 *BUFF. L. REV.* 1067, 1069 (2007).

99. See, e.g., Lonnie T. Brown, Jr., *Racial Discrimination in Jury Selection: Professional Misconduct, Not Legitimate Advocacy*, 22 *REV. LITIG.* 209, 295–97 (2003); Harris, *supra* note 73, at 580–82; Paula Schaefer, *Harming Business Clients With Zealous Advocacy: Rethinking the Attorney Advisor's Touchstone*, 38 *FLA. ST. U. L. REV.* 251 (2011).

100. SANSOM, *SOVEREIGN*, *supra* note 1, at 239; *id.* at 447.

101. SANSOM, *HEARTSTONE*, *supra* note 22, at 502.

**b. The Bealknap Continuance Dilemma: Responding to a Request for an Extension of Time**

In *Revelation*, Shardlake is again set to face Bealknap in court, this time in an adverse possession matter in which Shardlake represents a squatter and Bealknap the landlord. Bealknap approaches Shardlake before court and confesses that he has not filed his client's required proof of title to the land because he lost the deeds; he asks Shardlake to adjourn the case until Bealknap is able to find the papers. In doing so, Bealknap makes a direct plea to Shardlake's sense of professional loyalty: "Assist me, Brother Shardlake," he whispered desperately. "Assist a fellow-lawyer." Shardlake responds by observing that "[m]any lawyers would have helped him for the sake of the fellowship of the bar; but I had always set my face against such arrangements at a client's expense."<sup>102</sup> Thus, Shardlake refuses, citing his duty to his client. Bealknap, being Bealknap, lies to the judge about why the papers were not filed, gets caught in the lie, and has his case dismissed.

On one hand, faithful readers of the series have little sympathy for Bealknap to begin with, and even less after he attempts to lie to the judge. But Bealknap had also been seriously ill prior to the events, a fact of which Shardlake was aware; therefore, Bealknap's failure to file may have been the result of excusable neglect. Moreover, by his own admission, Shardlake had only some "rather shadowy precedents" in support of his client's position.<sup>103</sup> There is no suggestion that Shardlake based his refusal on the fear that Bealknap might take the extra time to fabricate the deeds, nor does there appear to be any dispute that Bealknap's client, in fact, possessed the deeds to the property. In light of these facts, should Shardlake have agreed to postpone the matter and let the case be decided on the merits?

The answer might depend on one's view of professionalism. Shardlake's client-centered conception of the term involves placing a client's interest above "the fellowship of the bar." Obviously, it is or should be a fundamental value of the legal profession that lawyers should generally place the interests of their clients above the interests of others.<sup>104</sup> Yet some lawyers—perhaps not all even supporters of the professionalism movement—would argue that a lawyer in Shardlake's situation should accommodate the request of the other lawyer. Numerous jurisdictions and professional associations have adopted lawyer civility

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102. SANSOM, REVELATION, *supra* note 9, at 87.

103. *Id.* at 86.

104. Hamilton, *supra* note 75, at 8.

codes, some of which deal with issues related to obtaining dismissals and default judgments.<sup>105</sup> Many of these codes convey the idea that “[f]irst requests for reasonable extensions of time to respond to litigation deadlines . . . *should ordinarily be granted as a matter of courtesy* unless time is of the essence, or the client would be disadvantaged,” even if the other lawyer has refused to extend the same courtesy in the past.<sup>106</sup> Thus, lawyers striving to live up to the core values of the profession, when confronted with Shardlake’s Bealknap dilemma, may find themselves receiving conflicting messages as to what those values are.

The Bealknap dilemma also raises the question of whether a lawyer in Shardlake’s situation has the authority to grant such a request. Shardlake made the decision to deny Bealknap’s request without consulting his client. This was in keeping with the practice and values of the legal profession at the time. According to one account, European lawyers of Shardlake’s era “arrogated to themselves total control over many—if not all—of their clients’ legal decisions.”<sup>107</sup> Thus, Shardlake decided what was in the best interests of his client and acted accordingly in denying Bealknap’s request. Modern conceptions of the attorney–client relationship, of course, place much greater emphasis on client decisionmaking. Indeed, it is not a stretch to say that promoting informed client decisionmaking is itself a fundamental value of the legal profession.<sup>108</sup>

While clearly restating the value of client autonomy, ABA Model Rule 1.2(d) provides a somewhat ambiguous answer as to the appropriate course of action for a lawyer in Shardlake’s situation. Model Rule 1.2(d) explains that a lawyer “shall abide by a client’s decisions concerning the objectives of representation” and reasonably consult with the client concerning the means used to achieve those objectives.<sup>109</sup> The ABA’s older Model Code of Professional Responsibility provided that while a lawyer “must seek the lawful objectives of

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105. See Adam Owen Glist, *Enforcing Courtesy: Default Judgments and the Civility Movement*, 69 *FORDHAM L. REV.* 757, 760–61 (2000).

106. See, e.g., Boston Bar Association Civility Standards for Civil Litigation Preamble B, available at <https://bostonbarfoundation.org/prs/reports/civility.htm>; New Hampshire Bar Association Litigation Guidelines, available at <http://www.nhd.uscourts.gov/pdf/litguide.pdf>; see also ABA Sec. of Litig. Guidelines for Conduct, Lawyers’ Duties to Other Counsel ¶ 17 (1998), available at <http://www.abanet.org/litigation/conductguidelines/counsel.html> (providing that a lawyer should agree “to reasonable requests for extensions of time and for waiver of procedural formalities, provided [a] client’s legitimate rights will not be materially or adversely affected”).

107. Jason J. Kilborn, *Who’s in Charge Here?: Putting Clients in Their Place*, 37 *GA. L. REV.* 1, 6, 11–16 (2002) (discussing the allocation of decisionmaking authority up until the nineteenth century).

108. See generally Mark Spiegel, *Lawyering and Client Decisionmaking: Informed Consent and the Legal Profession*, 128 *U. PA. L. REV.* 41, 72–77 (1979) (arguing “for a presumption that all decisions belong to the client”).

109. MODEL RULES OF PROF’L CONDUCT R. 1.2(a) (2010).

[a] client,” a lawyer does not violate the duty of zealous representation by “acceding to reasonable requests of opposing counsel which do not prejudice the rights of [the] client” or “by treating with courtesy and consideration all persons involved in the legal process.”<sup>110</sup> In that one passage, the Model Code emphasized three fundamental values of the legal profession: (1) zealous representation, (2) client autonomy, and (3) civility. But which value should prevail in the given situation? The Ethical Consideration (EC) accompanying the rule advises that:

In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer.<sup>111</sup>

As an example of decisions that are exclusively for the client, the EC lists the question of whether the client “will waive his right to plead an affirmative defense.”<sup>112</sup>

Surely, if the decision whether to assert an affirmative defense is ultimately for the client to decide, then the decision to force the purported owner of property in a property dispute to prove that he actually possesses title to the land is for the client as well. But, again, there is no suggestion in Shardlake’s situation that this fact was in dispute. And Bealknap’s failure to file the title with the court was perhaps the result of a serious illness that nearly killed him—a fact of which Shardlake was aware. Is a lawyer in Shardlake’s situation being paternalistic by making the decision without consulting the client?<sup>113</sup> Is this the kind of decision that is exclusively the client’s? If so, is that the outcome the legal profession wants? Ultimately, Shardlake’s dilemma illustrates the difficulty in reconciling some of the potentially conflicting core values of the legal profession and molding them into a coherent framework of “professionalism.”

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110. MODEL CODE OF PROF’L RESPONSIBILITY DR 7-101(A)(1) (1980). A comment to Model Rule 1.3 contains a similar idea. MODEL RULES OF PROF’L CONDUCT R. 1.3 cmt. 3 (“A lawyer’s duty to act with reasonable promptness . . . does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer’s client.”).

111. MODEL CODE OF PROF’L RESPONSIBILITY EC 7-7.

112. *Id.*

113. See Kilborn, *supra* note 107, at 37 (criticizing the paternalism of lawyers that justified lawyers deciding what is in a client’s best interest).



c. **The Bealknap Reporting Dilemma: Reporting the Misconduct of Another Lawyer**

Additionally, one must consider Shardlake's attempt to use the threat of professional discipline against a fellow lawyer to his advantage. In *Dark Fire*, Shardlake threatens to inform the disciplinary authorities at Lincoln's Inn of Bealknap's ring of compurgators if Bealknap does not cooperate with his investigation into a threat to England's security.<sup>114</sup> Bealknap's sideline is undoubtedly a crime and one that reflects adversely on his fitness as a lawyer. Under modern standards, Shardlake would have a duty to report Bealknap's misconduct to disciplinary authorities and would be subject to discipline for attempting to bargain away that duty.<sup>115</sup> Likewise, under the 1402 Act regulating the practice of law in the royal courts, Shardlake presumably swore an oath to give knowledge of another lawyer's falsehood to the appropriate authority.<sup>116</sup>

One facet of professionalism identified by numerous proponents is that lawyers must insist that other members of the profession comply with their own ethical obligations.<sup>117</sup> While reporting Bealknap may have been ethically required by official policy, reporting the misconduct of another lawyer was discouraged as matter of professional norms in Shardlake's fictional world.<sup>118</sup> In light of the numerous Inns of Court rules designed to encourage collegiality among lawyers of the time, it seems entirely plausible that this was indeed the norm among non-fictional lawyers of the time as well.

In this respect, Shardlake's willingness to risk his own professional standing by reporting a brother lawyer for serious misconduct seems particularly admirable. Yet, Shardlake's justification for the threat is not to cleanse the profession of the likes of Bealknap, but to put pressure on Bealknap for use in a completely unrelated matter. Thus, Shardlake is willing to defy convention and report another lawyer's serious professional misconduct (admirable), but only if the lawyer refuses to comply with Shardlake's threat (not so admirable).

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114. See *supra* note 58 and accompanying text.

115. MODEL RULES OF PROF'L CONDUCT R. 8.3(a); see also *In re Himmel*, 533 N.E.2d 790, 796 (Ill. 1988).

116. See *supra* note 37 and accompanying text.

117. See, e.g., Hamilton, *supra* note 75, at 8 (stating that professionalism means, in part, that lawyers agree "both to hold other lawyers accountable for meeting the minimum standards set forth in the Rules and encourage them to realize core values and ideals of the profession"); see also Nathan M. Crystal, *Professionalism and Reporting Misconduct by Other Lawyers*, S.C. LAW., June 2008, at 8 ("Professionalism has many aspects, but one of the central ideas is the duty to report misconduct by other lawyers and judges . . .").

118. See *supra* notes 57–58 and accompanying text.

Aside from calling into question Shardlake's status as a symbol of professionalism, the episode also highlights the twenty-first-century legal profession's somewhat ambiguous views on this facet of professionalism. The legal profession trumpets its commitment to self-regulation and memorializes that commitment in the form of ethical rules.<sup>119</sup> Yet, as is the case in Shardlake's world, the legal profession's actual commitment to this ideal is suspect. The reporting requirement of Model Rule 8.3(a) is structured narrowly so as to limit a lawyer's obligation to report a fellow lawyer, and lawyers routinely ignore the rule, even when applicable, for fear of being labeled a "rat."<sup>120</sup> Judges report a similar reluctance to refer lawyer misconduct to disciplinary authorities, despite being under a similar obligation.<sup>121</sup> And despite numerous examples of lawyers being fired by their employers for fulfilling their ethical obligations under the rule by reporting misconduct, the legal profession has failed to adopt ethical rules specifically prohibiting such retaliation, and common law protection for victims of such retaliation is spotty.<sup>122</sup>

Thus, Shardlake's response to Bealknap's clear misconduct is representative of the legal profession's difficulty in not only talking the talk of professionalism but actually walking the walk.

### CONCLUSION

The character of Matthew Shardlake serves not only as an interpreter of the sixteenth century for modern readers, but as a mirror for the practice of law in the twenty-first century. C.J. Sansom has created a semi-fictional world in which lawyers face many of the same dilemmas they do today. The fact that Shardlake—a character defined by his sense of integrity—arrives at decisions that are subject to question, both under the prevailing professional standards of his own time and those of the twenty-first century, says at least as much about the legal profession's conception of itself as it does the character of Shardlake. The series forces readers—and particularly lawyers—to confront their own conceptions of ethics and professionalism, while highlighting the moral and

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119. See *supra* note 115 and accompanying text.

120. CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 683–84 (1986); Lonnie T. Brown, Jr., *Ending Illegitimate Advocacy: Reinvigorating Rule 11 Through the Enhancement of the Ethical Duty to Report*, 62 OHIO ST. L.J. 1555, 1601–03 (2001).

121. Arthur F. Greenbaum, *Judicial Reporting of Lawyer Misconduct*, 77 UMKC L. REV. 537, 539–42 (2009).

122. See Alex B. Long, *Retaliatory Discharge and the Ethical Rules Governing Attorneys*, 79 U. COLO. L. REV. 1043 (2008) (discussing the ethical and legal rules governing such firings).

ethical ambiguity inherent in the decisions of its protagonist. While there is no doubt that Shardlake is a fictional character worthy of respect, the series stops short of presenting a one-dimensional role model. This is ultimately part of what makes the series so enjoyable and thought-provoking for lawyers.