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Paul A. LeBel
Florida State University

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The Stewardship of Lawyering: Lessons from a Visit to Wendell Berry's Port William

Paul A. LeBel*

This Article examines the intersection of two strands of thought—stewardship and lawyering—in a particular literary location: the works of Wendell Berry. The central idea is stewardship, which, at the outset, is sufficiently understood as a notion of responsibility for the exercise of one's talents for the benefit of something in addition to self-interest. The notion of stewardship will be brought to bear on professional engagement with law and legal matters,¹ not from a technical or a lawyer's ethics perspective, but rather with an eye toward the opportunities and obligations to engage with the world in ways that allow room for a morally fulfilling life. The literary location of the intersection between stewardship and lawyering is the fictional town of Port William, the creation of Wendell Berry, a prolific and impassioned author from Kentucky.

I. WENDELL BERRY'S SENSE OF PLACE

Since his first book appeared in 1960, Wendell Berry has published fifteen volumes of poetry, thirteen collections of essays and nonfiction, and a body of fiction that includes six novels and five volumes of shorter works. A thematic consistency runs throughout Berry's writing, stressing the values of ecology and community. Although the fiction

* Professor of Law, Florida State University. Portions of this Article were delivered as the 2002–2003 Lecture on Law and Literature at Loyola University Chicago School of Law, on October 3, 2002. I am grateful for the generosity of the dean and faculty of Loyola Chicago for extending the invitation to deliver the lecture. I also wish to thank Rob Atkinson, Meg Baldwin, David Busch, Eric Freyfogle, and Elizabeth Gemmette, who shared with me their helpful insights on earlier drafts of this Article.

1. "Lawyering" in the title of this Article refers to the engagement with law, not with the law itself. In this respect, the distinction drawn recently by Professor Jack Sammons is relevant:

Lawyering is not "the law." It is not an exercise of the principalities and power of the state but a restraint upon them, and it is such on both sides of all disputes. Thought of as a *craft* or as an *art*, lawyering is thoroughly distinct from the issues of the state

Jack L. Sammons, *Four Concerns*, 53 *MERCER L. REV.* 1159, 1166 (2002) (emphasis added). Professor Sammons also refers to lawyering as a practice or a community of discourse. *Id.* at 1159.

will be the focus of this Article, the ideas that will be developed might almost as readily be derived from, and grounded in, the essays and the poems as they are in the novels and short stories.² One critic has noted the intricate relationship among the works in the different genres, observing that Berry's "poetry, fiction and essays . . . complement[] and illuminate[] one another."³

A. *A Fiction Grounded in Port William*

The consistency in Berry's writing could be explained by the fact that Wendell Berry is himself such a grounded author, in multiple usages of that term. One of Berry's passions is conservation, or *preserving* the ground. In addition to his writing and teaching, Berry lives and farms in the Kentucky River Valley, so he *works* the ground. Furthermore, the location of his novels and short stories is a precise place, the center of which is the fictional town of Port William, Kentucky, so he has *created* a particular patch of ground.

Berry's fiction unfolds the history of that particular place and its people over the course of the twentieth century. Eric Freyfogle, who has drawn more richly from Berry's work than anyone in the legal academy, has said of Berry: "His terrain as [a] writer is the human heart and mind, the ways that people imagine and inhabit the land, the ways that people and land come together."⁴ Wallace Stegner, who was one of Berry's teachers in a graduate program at Stanford University in the late 1950s,⁵ expressed the role of place in Berry's work thus: "[Berry's] province is not the wilderness where the individual makes contact with the universe, but the farm, the neighborhood, the community, the town, the memory of the past and the hope of the future—everything that is subsumed for [him] under the word 'place.'"⁶

2. The author of a recent study of Berry's work identifies five roles, or "selves," that appear in his fiction, poetry, and non-fiction: autobiographer, poet, farmer, prophet, and neighbor. JANET GOODRICH, *THE UNFORESEEN SELF IN THE WORKS OF WENDELL BERRY* 2 (2001).

3. Michael Hamburger, *The Writings of Wendell Berry: An Introduction*, in WENDELL BERRY 81, 82 (Paul Merchant ed., 1991).

4. Eric T. Freyfogle, *The Dilemma of Wendell Berry*, 1994 U. ILL. L. REV. 363, 365 [hereinafter Freyfogle, *Dilemma*]. Freyfogle continues his exploration of Berry's work in two forthcoming works: a chapter, "The Owner and the Land Community," in ERIC T. FREYFOGLE, *THE LAND WE SHARE: PRIVATE PROPERTY AND THE COMMON GOOD* (forthcoming 2003), and *Conservation and the Four Faces of Resistance*, in RECONSTRUCTING CONSERVATION (forthcoming 2003).

5. ANDREW J. ANGYAL, WENDELL BERRY 15 (1995).

6. Wallace Stegner, *A Letter to Wendell Berry*, in WENDELL BERRY, *supra* note 3, at 47, 49.

An understanding of the importance of place, and of the priority of place over idea, is critical to an understanding of Berry's fiction.⁷ As Berry once stated in an interview, "If a thing is fully imagined—as opposed to conceptualized or thought up—it will be just to the real complexity of experience."⁸ In the words of Berry's most overtly philosophical character, the eponymous Jayber Crow of Berry's latest novel published in 2000, "No more can I think of Port William and the United States in the same thought. A nation is an idea, and Port William is not. Maybe there is no live connection between a little place and a big idea. I think there is not."⁹

B. *The Perspective of a Visitor*

I propose to take us on an exploration of an unpretentious idea of stewardship, of the relationship between that idea and the professional work in which lawyers engage, and of the fully imagined little place of Port William. A warning, however, is necessary, albeit more for the author than for the reader of this Article: It is not without some risk that one ventures into the literary territory around Port William. The chronicler of Port William has issued the following warning at the beginning of his latest novel:

7. A review of the most recent collection of Berry's essays stated that, "[f]or Berry, the cultivation of land and the cultivation of thought are intimately and mysteriously conjoined" and that Berry's cultural criticism is harsh because of his "solidarity not only with the earth but also with a particular swatch of soil, a solidarity that few in North America can now experience." Stephen Bede Scharper, *Rooted in Place*, AMERICA, Sept. 30, 2002, at 27 (reviewing *THE ART OF THE COMMONPLACE: THE AGRARIAN ESSAYS OF WENDELL BERRY* (Norman Wirzba ed., 2002)).

8. Mindy Weinreb, *A Question a Day: A Written Conversation with Wendell Berry*, in *WENDELL BERRY*, *supra* note 3, at 27, 34.

9. WENDELL BERRY, *JAYBER CROW: THE LIFE STORY OF JAYBER CROW, BARBER, OF THE PORT WILLIAM MEMBERSHIP, AS WRITTEN BY HIMSELF* 143 (2000) [hereinafter *BERRY, JAYBER CROW*]. The idea expressed by the fictional character also is found in Berry's essays, most particularly in the title essay of the collection *Sex, Economy, Freedom, and Community*. In that essay, Berry wrote:

If the word *community* is to mean or amount to anything, it must refer to a place (in its natural integrity) and its people. It must refer to a placed people. Since there obviously can be no cultural relationship that is uniform between a nation and a continent, "community" must mean a people locally placed and a people, moreover, not too numerous to have a common knowledge of themselves and of their place. Because places differ from one another and because people will differ somewhat according to the characters of their places, if we think of a nation as an assemblage of many communities, we are necessarily thinking of some sort of pluralism.

WENDELL BERRY, *Sex, Economy, Freedom, and Community*, in *SEX, ECONOMY, FREEDOM AND COMMUNITY* 117, 168 (1993).

NOTICE

Persons attempting to find a “text” in this book will be prosecuted; persons attempting to find a “subtext” in it will be banished; persons attempting to explain, interpret, explicate, analyze, deconstruct, or otherwise “understand” it will be exiled to a desert island in the company of only other explainers.

BY ORDER OF THE AUTHOR¹⁰

Thus writes an author who has suffered from the attention of at least one too many literary critics.¹¹

Whatever fleeting and ornery temptation there might be to respect the words and ignore the spirit of Berry’s cautionary note—a temptation to claim, for instance, that we are merely unpacking the paratext or massaging the metatext—we want to honor the spirit in which Berry has made his fictional world accessible to us. Accordingly, we will neither endeavor to explicate nor dare to deconstruct the world of Port William. Instead, I extend an invitation to join me on a visit to Port William and to listen to its characters. For, setting aside the irony and contrariness of Berry’s notice to his readers, he reminds us of an important point. We come to literature not to understand *it*, but to understand *ourselves*. As Berry put it in an interview, literature is “our memory, our delight, our faithful source of guidance and consolation.”¹² This is especially true for the enterprise of law and literature. For those whose professional engagement is with law, it is to the realm of law that we bring our obligations and our talents of explanation, explication, analysis, and, yes, even deconstruction so that we can better understand the law and, in whatever small way is open to us, make the world better because of that understanding.

When we spend time in the so creatively imagined world around Port William, we do so as visitors. As such, we lack the insight that comes from what H.L.A. Hart refers to as an internal point of view.¹³ If our

10. BERRY, JAYBER CROW, *supra* note 9, at NOTICE.

11. Eric Freyfogle pointed out to me the parallel to the “notice” at the beginning of *Huckleberry Finn*: “Persons attempting to find a motive in this narrative will be prosecuted; persons attempting to find a moral in it will be banished; persons attempting to find a plot in it will be shot.” MARK TWAIN, *ADVENTURES OF HUCKLEBERRY FINN* 5 (Shelley Fisher Fishkin ed., The Oxford Mark Twain 1996) (1885). Berry’s appreciation of Twain’s novel is described in WENDELL BERRY, *Writer and Region*, in *WHAT ARE PEOPLE FOR?* 71 (1990).

12. Weinreb, *supra* note 8, at 30.

13. H.L.A. HART, *THE CONCEPT OF LAW* 56 (2d ed. 1972). Hart speaks of the internal aspect of rules as involving “a critical reflective attitude to certain patterns of behavior as a common standard,” displayed as “criticism . . . , demands for conformity, and . . . acknowledgements that such criticism and demands are justified.” *Id.* at 57. As visitors to Port William, we are more in

visit is successful, however, we may find that we return to our world and our lives enriched by the wisdom of the inhabitants of Port William, strengthened by their courage, and humbled by their perseverance in the face of “Magnanimous Despair,” the phrase that Berry used in the epigraph to *Jayber Crow*.¹⁴

This will be a limited-purpose visit to Port William, one that is particularly attentive to the two parts of the title—stewardship and lawyering. I do not want to strain to impose a rational construct on Berry’s novels and stories, nor do I want to stretch too far to connect a conception of stewardship with a notion of professional behavior.¹⁵ Again trying to be faithful to the spirit of Berry’s fictional world, there is value in letting the ideas naturally emerge and merge.

The conception of stewardship that is formed in this way will have the central characteristic of service to a community, but it has two other qualities as well. One of those characteristics can be referred to as “availability,” drawing from the work of the psychologist Robert Wicks.¹⁶ The other quality I would attribute to stewardship is “awareness”—awareness of oneself and, just as important, awareness of the separateness of the other. The awareness dimension of stewardship is illustrated by a passage in the Pastoral Letter on Stewardship of the United States Conference of Catholic Bishops speaking of what needs to “come before the practice of stewardship. . . . [Stewards] need a flash of insight—a certain way of *seeing*—by which they view the world and their relationship to it in a fresh new light.”¹⁷ One can derive the vitality of those features of stewardship from a consideration of the lives and the words of the people of Port William.

the position of the external observer who “without accepting the rules . . . assert[s] that the group accepts the rules, and thus may from outside refer to the way in which *they* are concerned with them from the internal point of view.” *Id.* at 89.

14. BERRY, *JAYBER CROW*, *supra* note 9 (appearing in unpaginated material before the text of the book begins). The quotation in the epigraph is from Andrew Marvell’s poem “The Definition of Love.” *THE NEW OXFORD BOOK OF SEVENTEENTH CENTURY VERSE* 589 (Alastair Fowler ed., 1991).

15. One literary critic has suggested that “Berry sets up his literary practice as a form of cultural stewardship . . . clarifying the life-enhancing values of good literature, good work, ‘kindly use’ of the land, neighborliness (sharing stories, tools, work, advice, joy, grief), and staying in place.” Carl D. Esbjornson, *Remembering and Home Defense*, in WENDELL BERRY, *supra* note 3, at 155, 155.

16. ROBERT J. WICKS, *AVAILABILITY: THE SPIRITUAL JOY OF HELPING OTHERS* (2000). Professor Wicks describes availability as the “freedom to be present when needed,” and as “an opportunity . . . to be open to relationship in the deepest, most elegant sense of the term.” *Id.* at 1.

17. NAT’L CONFERENCE OF CATHOLIC BISHOPS, *STEWARDSHIP: A DISCIPLE’S RESPONSE: A PASTORAL LETTER ON STEWARDSHIP* 41 (1993).

C. *Port William and Its People*

Perhaps the best way to begin a visit to Berry's fictional world is to describe the geography and the population of Port William, a small town in northern Kentucky, a short distance south of where the Kentucky River flows into the Ohio River. As the fictional Port William is patterned closely enough after the real town of Port Royal, Kentucky,¹⁸ we could supplement the mental images created by Berry's words with the impressions gathered from a tour of Port Royal.

I would acknowledge that, in principle, such a visit is dangerous to the work. Some baseball purists, for example, would claim that the experience of listening to a radio broadcast is superior to watching a game on television. The imagined scenes are much more richly evocative to a knowledgeable fan than the constricted view that the camera is able to convey. In the same way, there is a risk that driving through Port Royal could detract from the vividness of the imagery of Port William. Although that is a risk in the abstract, such a drive turns out not to have that effect in this instance because the land itself is such a significant character in Berry's fiction. The longer one spends with the Port William novels and stories, the more at home one becomes with the geography in and around Port William. Passing references to the view from a ridge in one novel, for example, can resonate when the reverse view upward toward that ridgeline is mentioned in another. An exposure to the ridges and valleys of the area around Port Royal can deepen the reader's sense of familiarity with the geography and topography of Port William.

1. The Responsibility of Farming

The people of Port William are, almost without exception, farm families. For Berry, that is much more than a statement of their occupation. It is rather an acknowledgement of their vocation. Farm work is inextricable from the fabric of their lives. The obligations of that work—relentless daily obligations¹⁹—are understood and accepted by the people who live those lives.

In that regard, a visit to Port William provides an encounter with the first characteristic of the concept of stewardship. One of the hallmarks of stewardship is a diminished significance of the notion of ownership.

18. See, e.g., Freyfogle, *Dilemma*, *supra* note 4, at 369 ("Berry's hometown of Port Royal appears thinly disguised as Port William in his many novels and short stories.").

19. Illustrating another instance of the integrated vision of Berry's life and work, the poet Donald Hall has noted the "dailyness" of Berry's poetry. Donald Hall, *His Dailyness*, in WENDELL BERRY, *supra* note 3, at 171, 171.

In the consciousness of one who is faithful to the intergenerational obligation of the steward, the notion is not so much ownership *of* as it is ownership *for*. In the context of the obligation of the small farmer, stewardship has a meaning that is an important part of the environmental and ecological movement of the last three or four decades.²⁰ Stewardship in this sense connotes an obligation to the land and to the generations that will come to and depend on it and, to some degree, own it. Thus, preservation is part of stewardship, though only a minimal demand, as the “Parable of the Talents” would remind us.²¹ A strong conception of stewardship entails enriching that which is held in trust.

The consistency of theme across the range of Berry’s writings, as noted above,²² is very apparent in this notion of stewardship. Sense of obligation is the dominant message of Berry’s essays, but one of its most poignant expressions occurs in the poem “Sabbaths 1988,” which includes these lines: “To destroy that which we were given / in trust: how will we bear it?”²³

Among the most responsible of the agricultural stewards in Port William are the Feltners, one of the main families in Berry’s fiction. Mat Feltner²⁴ had two children, a daughter, Bess, who married the principal lawyer character in the stories of Port William,²⁵ and a son, Virgil, who was reported missing in action in World War II.²⁶ Mat also has a cousin, Roger Merchant, whose alcoholism and general lack of good sense combine to make him incapable of managing the land that had been in the Merchant family, coming close to destroying “that

20. See Daniel Cornell, *A Vision of Stewardship: Wendell Berry’s Ecological Ethic*, 12 LITERATURE AND BELIEF 13 (1992) (locating Berry’s ecological ethic in a Biblical principle of stewardship). From Berry’s writing, Cornell draws three ecological principles that are necessary to stewardship: humility, kindly use, and community. *Id.* at 15.

21. *Matthew 25:14–31* (telling the parable of two stewards who were rewarded for investing what they had been given to double their holdings, while another steward who had buried his portion and simply had returned it on the demand of his master was condemned).

22. See *supra* notes 2–3 and accompanying text (explaining the thematic consistency in Berry’s poetry, essays, non-fiction, and fiction).

23. WENDELL BERRY, *A TIMBERED CHOIR: THE SABBATH POEMS 1979–1997*, at 98 (1998).

24. See Jack Hicks, *Wendell Berry’s Husband to the World: A Place on Earth*, in WENDELL BERRY, *supra* note 3, at 118 (describing Mat Feltner as “the ideal husband to the world, a striving upward in the flesh, back toward unity with the natural world”).

25. See *infra* Part II (discussing Wheeler Catlett, the central lawyer character in Berry’s fiction).

26. WENDELL BERRY, *A PLACE ON EARTH 6–10* (1983) [hereinafter BERRY, *A PLACE ON EARTH*].

which [he] w[as] given / in trust."²⁷ After Roger's physical collapse brings the situation to a crisis point, Mat Feltner makes arrangements to care for Roger's land in addition to Mat's own farm, having himself appointed "overseer," as Mat refers to his role.²⁸ Mat's understanding of his relationship to the Merchant land is captured in a passage that occurs soon after news of Virgil's disappearance reaches him:

But a few days ago, if [Mat Feltner] had considered expending time and bother on [the Merchant] land, he would have considered also the possibility that he might later be able to buy it. But now Virgil is missing, and Mat needs no more land for himself. He is too old now to need it—if he ever did. This new work must be done for the sake of the land itself—and for the sake of no one he can foresee, someone who will come later, who will depend then on what is done now.²⁹

This scene, which takes place in 1945, is one of the first premonitions that the stewardship practiced over the land is no longer likely to be for the benefit of subsequent generations of the same families,³⁰ but will instead be, in Mat Feltner's words, "for the sake of no one he can foresee."³¹ The complex relationship between agricultural stewardship and the passage of land out of the hands of the families, within which it had been held for generations, is an important theme that will be addressed below in the context of wills that were written for three other important characters who had been among the foremost practitioners of responsible farming of their own land.³²

2. The Blessing of Family

Family is a dominant feature of life in Port William. The history of the place through much of the twentieth century can be traced through three main families. In addition to the Feltners introduced in the preceding section, the Coulters and the Catletts are among the most

27. See *supra* note 23 (quoting THE SABBATH POEMS: "To destroy that which we were given / in trust: how will we bear it?").

28. BERRY, A PLACE ON EARTH, *supra* note 26, at 150. Although the novel was first published in 1967, Berry revised it to take account of people and events that were presented in later novels. The revision of this and other early works helps the reader compile a genealogy and a chronology of the life of Port William. The revision also removed some incidents that Berry considered to detract from the characters that he was developing. See GOODRICH, *supra* note 2, at 17.

29. BERRY, A PLACE ON EARTH, *supra* note 26, at 150.

30. See Hicks, *supra* note 24, at 125 ("It is as if the future of the town, its young life, is being amputated.").

31. BERRY, A PLACE ON EARTH, *supra* note 26, at 150.

32. See *infra* Part III (discussing Wheeler Catlett's professional service involving the preservation of farmland and the way of life of the small farmer in three crucial wills).

central characters in the life of the community and the preservation of its values.

The relationships among those three families are close and complex, differing from generation to generation. In 1912, Thad Coulter murdered his friend and neighbor Ben Feltner, the father of Mat Feltner.³³ In the next generation, Mat's daughter, Bess, married Wheeler Catlett, whose father is a first cousin of the Coulters.³⁴ In turn, Bess and Wheeler Catlett have two sons, Henry and Andy.³⁵ Andy Catlett is a significant figure in Berry's fiction, in part because he is Berry's alter ego in Port William.³⁶ They were born in the same year, 1934.³⁷ The fathers of both Berry and Andy Catlett were lawyers with similar careers. Their own professional lives have taken them from farm boyhoods out into the wider world and back again. Moreover, Andy Catlett is the most polemical of the characters, expressing the same deeply ingrained hostility to the views of modern agribusiness experts that are at the core of much of Berry's nonfiction work. So, when Andy Catlett speaks in the fiction of Port William, the reader would do well to listen carefully; Berry's voice in that character is as unfiltered as we are likely to get.

In a story called *Pray Without Ceasing*, from the collection *Fidelity: Five Stories*, Andy Catlett learns in 1990 more of the details of the 1912 shooting of Ben Feltner.³⁸ On the day that Ben was murdered, the men of the community gathered at his home and proposed to seize and kill the murderer as a form of vigilante justice.³⁹ Although Mat Feltner was deeply affected and grieving, he asserted his moral standing as the son of the victim to cut off any talk of revenge.⁴⁰ The climax of the story of the events surrounding the shooting displays the remarkable strength of the then-young Mat Feltner in refusing to allow his neighbors to respond to the killing with more violence. Three-quarters of a century

33. WENDELL BERRY, *Pray Without Ceasing*, in *FIDELITY: FIVE STORIES* 3, 29–30 (1992) [hereinafter BERRY, *Pray Without Ceasing*].

34. *Id.* at 57–58.

35. See WENDELL BERRY, *A WORLD LOST* 3 (1996) (looking at the domestic life of the Catlett family through a narration by Andy Catlett, who mentions his brother, Henry) [hereinafter BERRY, *A WORLD LOST*].

36. See Freyfogle, *Dilemma*, *supra* note 4, at 372 (Catlett “resembles Berry in age, family, setting, and disciplined disposition”).

37. BERRY, *A WORLD LOST*, *supra* note 35, at 3 (describing Andy Catlett as “nine, nearly ten,” in the summer of 1944); ANGYAL, *supra* note 5, at 1 (stating Wendell Berry's birth date as August 5, 1934).

38. BERRY, *Pray Without Ceasing*, *supra* note 33, at 3.

39. *Id.* at 56.

40. *Id.* at 57.

later, Andy Catlett comes to an insight about the effect of that choice not to indulge in vengeance:

Though Coulters still abound in Port William, no Feltner of the name is left. But the Feltner line continues, joined to the Coulter line, in me, and I am here. I am blood kin to both sides of that moment when Ben Feltner turned to face Thad Coulter in the road and Thad pulled the trigger. The two families, sundered in the ruin of a friendship, were united again first in new friendship and then in marriage. My grandfather made a peace here that joined many who would otherwise have been divided. I am the child of his forgiveness.⁴¹

3. The Grace of Membership

Almost as strong as the family connections in Berry's world are the ties that form a central dimension of life in Port William: the concept of *membership*. Indeed, the short story collections are often subtitled as "Stories of the Port William Membership." On first approaching the Berry fiction, one might suspect that the term "membership" is going to be a reference to participation in the religious life of the community, but that is decidedly not the case. Membership is, instead, a way of identifying a community in which the obligation of stewardship most acutely might be realized.

Organized religion is presented in a very unsympathetic light in Port William;⁴² that light is unsympathetic precisely for the reason that the relationship between the preachers and the community reflects something other than stewardship. The local ministers, whom we see

41. *Id.* at 58–59. The shooting of Ben Feltner is not the only murder in Andy Catlett's family history. Andy's namesake, Wheeler's brother Andrew, was also a murder victim, evoking the same restraint and refusal to take revenge in Wheeler that Mat Feltner had displayed a generation earlier. The story of Andrew's life and murder is told in BERRY, *A WORLD LOST*, *supra* note 35, at 3.

42. The other major social institution—government—is almost absent from the life of Port William. Andy Catlett's "remembering" in the novel of that title takes place around a speaking engagement in San Francisco at which he is able to display and criticize the agribusiness views espoused by Department of Agriculture officials. WENDELL BERRY, *REMEMBERING* 42 (1988) [hereinafter BERRY, *REMEMBERING*]. State government, in the form of a gubernatorial inauguration, is the target of Berry's most Faulknerian story, *The Discovery of Kentucky*. See WENDELL BERRY, *THE DISCOVERY OF KENTUCKY* 10 (1991). The theme of the official inaugural parade in the state capital, Frankfort, is the history of Kentucky, leading to this observation by Port William's Jayber Crow: "Word got around that we were going to be part of an authentic reenactment of history that was going to be put on at Frankfort. As if Frankfort's business were not the reenactment of history." *Id.* The most overtly political sentiments in Berry's fiction are the populist expressions of Sam Hanks, who refuses to participate in the parade, saying in response to a reference to the "duly elected governor," "Elected's ass! Auctioned! A governor gets the money to get elected by auctioning hisself off. Governors don't govern Kentucky—*companies* govern Kentucky." *Id.* at 16.

most often visiting homes after deaths or conducting funeral or burial services, are consistently unable to connect with the people of Port William. Brother Preston is the minister into whom we are given the clearest insight:

[Brother Preston] came away from the Feltner household grieved by the imperfection of his visit. It was not, as he had hoped it would be, a conversation. It was a sermon. This is the history of his life in Port William. The Word, in his speaking it, fails to be made flesh. . . . He belongs to the governance of those he ministers to without belonging to their knowledge, the bringer of the Word preserved from flesh.⁴³

The representatives of religion in Port William do not understand—perhaps they are incapable of understanding—the people. To invoke Berry's own terms, the ministers treat their congregations as if the congregations were only "conceptualized or thought up."⁴⁴

The deepest understanding of the religious gathering of the people of Port William is provided by the title character of the novel *Jayber Crow*, who works part-time as a caretaker of the local church.⁴⁵ In speaking of the congregation joining together in religious services, Jayber Crow implicitly sketches out a role that the ministers are able to fill imperfectly, if at all:

I thought that some of the hymns bespoke the true religion of the place. The people didn't really want to be saints of self-deprivation and hatred of the world. They knew that the world would sooner or later deprive them of all it had given them, but still they liked it. What they came together for was to acknowledge, just by coming, their losses and failures and sorrows, their need for comfort, their faith always needing to be greater, their wish (in spite of all words and acts to the contrary) to love another and to forgive and be forgiven, their need for one another's help and company and divine gifts, their hope (and experience) of love surpassing death, their gratitude.⁴⁶

The organized religion of Port William plays a diminished role because its ministers fail to recognize that need, leaving the gap to be filled by

43. BERRY, *A PLACE ON EARTH*, *supra* note 26, at 97.

44. See *supra* text accompanying note 8 (discussing a statement by Berry in an interview).

45. The character is the barber in Port William, which creates a focal point for the stories of the men in the community. For the reader who might think of a barber as a subservient role in society, one might reflect on a comment that Janet Goodrich reports Wendell Berry making during a visit he paid to the seminar on his works that she was teaching:

I'll bet you've all been told you're meant to be leaders. . . . It's nonsense. The truth is, not all of us can be leaders. Leaders make up the minority. But what's left for the rest of us? The opposite of being a leader isn't being a sheep; the opposite of being a leader isn't being a follower. It's being a *member*.

GOODRICH, *supra* note 2, at 154.

46. BERRY, *JAYBER CROW*, *supra* note 9, at 162–63.

the critical part of the Port William experience—belonging to a membership.

Various characters in the Berry fiction describe the idea of membership. Hannah Coulter, the widow of Virgil Feltner, who was killed in World War II, speaks of “the membership of kin and friends that had held them always.”⁴⁷ Similarly, Mat Feltner, Hannah’s father-in-law, reflects at the end of his life on the sustaining quality of membership:

He is thinking of the membership of the fields that he has belonged to all his life, and will belong to while he breathes, and afterward. He is thinking of the living ones of that membership—at work today in the fields that the dead were at work in before them.

“I am blessed,” he thinks. “I am blessed.”⁴⁸

Andy Catlett contemplates how membership shapes its members, in a chapter called “A Long Choosing” in the novel *Remembering*:⁴⁹

That he is who he is and no one else is the result of a long choosing, chosen and chosen again. He thinks of the long dance of men and women behind him, most of whom he never knew, some he knew, two he yet knows, who, choosing one another, chose him. He thinks of the choices, too, by which he chose himself as he now is. How many choices, how much chance, how much error, how much hope have made that place and people that, in turn, made him? He does not know. He knows that some who might have left chose to stay, and that some who did leave chose to return, and he is one of them. Those choices have formed in time and place the pattern of a membership that chose him, yet left him free until he should choose it, which he did once, and now has done again.⁵⁰

Finally, in a passage from *Jayber Crow*, we get that novel’s title character’s contrast between the image of the religious congregation

47. WENDELL BERRY, *Fidelity*, in FIDELITY: FIVE STORIES, *supra* note 38, at 107, 153 [hereinafter BERRY, *Fidelity*]. Hannah subsequently married Nathan Coulter, bringing together the Feltner and Coulter lines. The courtship of Nathan and Hannah is set out in a verse play, *The Bringer of Water*, in WENDELL BERRY, FARMING: A HANDBOOK 66 (1970).

48. WENDELL BERRY, *The Boundary*, in THE WILD BIRDS: SIX STORIES OF THE PORT WILLIAM MEMBERSHIP 75, 96 (1986).

49. BERRY, REMEMBERING, *supra* note 42, at 60. The title of that novel hints at an etymologically interesting understanding of membership. It may not be too much of a stretch to hear in that title suggestions of a re-uniting of the living with the memories of those who came before them, a re-membering of a community, that is, a re-establishment of membership in a community. See Esbjornson, *supra* note 15, at 161 (“by re-membering, Andy [Catlett] gives himself back to Port William”). *Remembering* may be Berry’s most overtly “literary” novel. It has been characterized as “a retelling of Dante’s epic of spiritual dismemberment and healing. . . . It is a poet’s novel.” *Id.* at 156.

50. BERRY, REMEMBERING, *supra* note 42, at 60.

quoted above⁵¹ and his later-acquired understanding of the broader community:

My vision of the gathered church . . . had been replaced by a vision of the gathered community. What I saw now was the community imperfect and irresolute but held together by the frayed and always fraying, incomplete and yet ever-holding bonds of the various sorts of affection. . . . It was a community always disappointed in itself, disappointing its members, always trying to contain its divisions and gentle its meanness, always failing and yet always preserving a sort of goodwill toward goodwill. I knew that, in the midst of all the ignorance and error, this was a membership; it was the membership of Port William and of no other place on earth. My vision gathered the community as it never has been and never will be gathered in this world of time, for the community must always be marred by members who are indifferent to it or against it, who are nonetheless its members and maybe nonetheless essential to it. And yet I saw them all as somehow perfected, beyond time, by one another's love, compassion, and forgiveness, as it is said we may be perfected by grace.⁵²

There *is* a grace in the Port William notion of community, and an important part of that grace is the sense of responsibility that its members owe to each other and to the notion of membership itself. As one listens to Jayber Crow's new vision, one might hear the resonance of the image of the Catholic Bishops' Pastoral Letter on Stewardship, which described the preliminary stage of stewardship as "a certain way of seeing."⁵³ The passage just quoted is one in which Jayber Crow actually experiences what the Pastoral Letter refers to as "a fresh new light by which to view the world and one's relationship to it."⁵⁴

II. WHEELER CATLETT—BERRY'S LEGAL STEWARD

The concept of stewardship has no more committed an adherent than Wheeler Catlett, the central lawyer character in Berry's fiction. Although fictional lawyer characters are certainly not essential to the enterprise of law and literature, that enterprise can often be more satisfying to readers trained in law when there are lawyer characters in the literary works being studied.

51. See *supra* text accompanying note 46 (quoting Crow speaking of the congregation joining together in religious services and sketching out the role that ministers imperfectly fill).

52. BERRY, JAYBER CROW, *supra* note 9, at 205.

53. See *supra* text accompanying note 17 (noting that the Pastoral Letter on Stewardship illustrates the awareness dimension of stewardship).

54. NAT'L CONFERENCE OF CATHOLIC BISHOPS, *supra* note 17, at 41.

A. *An Integrated Professional*

Berry's character, Wheeler Catlett, invites comparisons to Gavin Stevens, William Faulkner's principal lawyer in Yoknapatawpha Country,⁵⁵ but a more apt comparison would be to another Southern lawyer character, Atticus Finch, in *To Kill a Mockingbird*.⁵⁶ Faulkner's Stevens is sometimes a ridiculous figure;⁵⁷ Wheeler, on the other hand, has a weight and a presence, a gravitas.

There is a consistency at the core of Wheeler Catlett, most notably in the fully integrated relationship between his professional role and his personal life. In that respect, he brings to mind an attribute of Atticus Finch that is twice mentioned in *To Kill a Mockingbird*: he is the same person on the street as he is at home, that is, the same person in public and in private.⁵⁸

In Berry's novel, *A World Lost*, Wheeler's son, Andy, describes Wheeler's character as "not unaware of much. Demanding as he could be at times, when sympathy was needed he was generous, and he was good at finding the words."⁵⁹ The capacity to find the words is a positive feature of his character, rather than a derogatory sense that Richard Weisberg uses to present lawyers as subject to "the verbalizer's 'legalistic proclivity.'"⁶⁰ Although Wheeler has a facility for words and

55. The comparison of Berry and Faulkner is made in ANGYAL, *supra* note 5, at 29–30, and again in GOODRICH, *supra* note 2, at 21. Stevens appears in many of Faulkner's works, including most notably *Intruder in the Dust* (1948), *Knight's Gambit* (1949), *The Town* (1957), and *The Mansion* (1959). Stevens' role in Faulkner's fiction is treated at length in JAY WATSON, *FORENSIC FICTIONS: THE LAWYER FIGURE IN FAULKNER* (1993).

56. HARPER LEE, *TO KILL A MOCKINGBIRD* (1960). The scholarship on legal ethics and law and literature frequently, strongly express interpretations of, and attitudes toward, Atticus Finch. See, e.g., Rob Atkinson, *Liberating Lawyers: Divergent Parallels*, in *INTRUDER IN THE DUST and TO KILL A MOCKINGBIRD*, 49 DUKE L.J. 601 (1999); Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473 (1994); Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339 (1999); Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981).

57. See, e.g., CLEANTH BROOKS, *WILLIAM FAULKNER: THE YOKNAPATAWPHA COUNTRY* 194 (1963) (noting that in *The Town*, "not for the first time in Faulkner's fiction, [Stevens] is treated as a figure of fun—almost as the butt of the author's jokes. . . . Gavin again and again in the novel is made to play the fool. . . . [W]e are invited to smile at his follies").

58. LEE, *supra* note 56, at 51 ("Atticus Finch is the same in his house as he is on the public streets."); *id.* at 212 ("He's the same in the courtroom as he is on the public streets."). Professor Shaffer uses these passages as the focus of a recent work on Finch. See Thomas L. Shaffer, *On Living One Way in Town and Another Way at Home*, 31 VAL. U. L. REV. 879 (1997).

59. BERRY, *A WORLD LOST*, *supra* note 35, at 72.

60. RICHARD H. WEISBERG, *THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION* 4 (1984).

a “tendency toward self-consciousness,”⁶¹ he is described as someone who solves problems, who gets things done.

In the novel, *The Memory of Old Jack*, after the burial service for “Old Jack” Beechum, Wheeler Catlett waits to speak with Elton Penn, the beneficiary of Old Jack’s will.⁶² The narrative voice offers this observation of Wheeler as he waits:

Though he is alone, Wheeler has about him an air of alertness, of implicit haste; he seems to be not resting but poised in passage. It was this quality perhaps more than any other that endeared him to Old Jack. Wheeler could get things done, and Old Jack liked that.⁶³

Andy Catlett has a similar impression of his father, whom he describes as someone “who could not rest in the presence of a problem—who in fact was possessed by visions of solutions.”⁶⁴ Toward the end of his career, Wheeler himself provides an assessment of his professional role: “Wheeler’s mind has changed as little in forty years as his office. If change happens, it happens; Wheeler can recognize a change when he sees one, but change is not on his program. Difference is. His business, indoors and out, has been the making of differences.”⁶⁵

If Atticus Finch is the same person on the street as he is in his home, Wheeler Catlett is the same in the law office and on the farm—“indoors and out.” The relationship between those two venues in Wheeler’s life marks him as a farmer who practices law, not a lawyer who farms.⁶⁶ Wheeler’s son, Andy, describes that relationship thus: “Farming was his passion, as the law was; in him the two really were inseparable. As a lawyer, he had served mostly farmers. . . . In my father’s assortment of passions, . . . farming was the fundamental one; from farming he derived the terms and conditions of his being.”⁶⁷

61. *Id.* (noting that verbal protagonists, in general, have a “tendency toward self-consciousness”).

62. WENDELL BERRY, *THE MEMORY OF OLD JACK* 164 (rev. ed. 1999) [hereinafter BERRY, *THE MEMORY OF OLD JACK*]. As with *A Place in the World* and *Nathan Coulter*, *The Memory of Old Jack*, originally published in 1974, was revised to permit the author to coordinate dates and events with developments in other stories and novels. The terms of Old Jack’s will are an important part of Wheeler’s efforts to maintain the values of the small farmer and are discussed *infra*, in Part III.B.

63. *Id.*

64. BERRY, *A WORLD LOST*, *supra* note 35, at 30.

65. WENDELL BERRY, *The Wild Birds*, in *THE WILD BIRDS: SIX STORIES OF THE PORT WILLIAM MEMBERSHIP*, *supra* note 48, at 113, 117–18 [hereinafter, BERRY, *The Wild Birds*].

66. Berry himself has been described as having “the mind of a lawyer,” which admittedly may not necessarily be thought of as an unqualified blessing until one notes the remainder of the critic’s description, “the mind of a lawyer whose moral passion is cut to a fine edge by a gift for keen, incisive argumentation.” Esbjornson, *supra* note 15, at 159.

67. *A WORLD LOST*, *supra* note 35, at 64.

The balance between the activities of Wheeler's life is both a matter of necessity and a matter of opportunity. Upon his graduation from law school, he is offered a job in Chicago, and, as so many individuals do, he begins to respond to an external definition of success and usefulness. After reflection, however, he decides to go home to practice:

For suddenly he did imagine what he could be. He saw it all. A man with a law degree did not have to go to Chicago to practice. He could practice wherever in the whole nation there was a courthouse. He could practice in Hargrave. He could be with his own.⁶⁸

Wheeler has an opportunity to be with his own, but the practice of law nevertheless keeps him at some distance—physically and otherwise—from his own:

[T]he complexity of Wheeler's history has been that in order to serve and defend the way of life that he loves and respects above all others, he has had to leave it to live another kind of life, first in college and law school, and then in the courthouse town of Hargrave.⁶⁹

In that service and defense, Wheeler acts as a legal steward of the values of Port William.

B. The Qualities of Legal Stewardship

In carrying out his professional activities, Wheeler Catlett models the characteristics of stewardship: service and obligation, availability and awareness. In two of the passages just quoted, it is not coincidental that Wheeler is described as a lawyer who “serve[s] mostly farmers”⁷⁰ and “serve[s] . . . the way of life that he loves and respects.”⁷¹ It is not just that he *represents* farmers. Service connotes a deeper sense of responsibility.

That responsibility embodies the value of availability, which, as a characteristic of stewardship, can be understood as having two dimensions, each important in the stewardship practiced by a

68. BERRY, REMEMBERING, *supra* note 42, at 68. Wheeler Catlett's decision about where to practice law is mirrored in Berry's reflections on the actual legal career of Kentucky lawyer Harry Caudill. Berry says of Caudill:

He did not come there, then, to serve justice. He has been there because he has belonged there; the land and people for whom he has spoken are his own. Because he got his law degree and went home with it, his mind has never made the expedient separation of knowledge from value

WENDELL BERRY, *Harry Caudill in the Cumberlands*, in *WHAT ARE PEOPLE FOR?*, *supra* note 11, at 30, 33.

69. BERRY, THE MEMORY OF OLD JACK, *supra* note 62, at 163.

70. See *supra* text accompanying note 67 (discussing Catlett's passion for farming and the law).

71. See *supra* text accompanying note 69 (explaining how the practice of law, to some extent, distances Wheeler from a way of life that he loves and respects).

professional. One dimension of availability is simply presence, while the other is an appreciation of the distance involved in the professional engagement with the client.⁷² The two dimensions of availability come together in what might be called a *nonintrusive presence*.

Availability conceived as a nonintrusive presence is not limited to the professional life of the lawyer. It is found in other aspects of life in Port William. For example, after Ben Feltner's murder, Old Jack Beechum steps in to give assistance to Ben's son, Mat, who is left with the responsibility of farming the land. Old Jack is a character who, in many respects, passes on the legacy of responsible farming practices, a legacy that he in turn received from Ben Feltner. Of the assistance that Old Jack provides to Mat Feltner, we are told that he gives "Mat his help; more important, he [gives] him his presence. As thirty years before Ben had been on hand for him, so now he [i]s on hand for Mat."⁷³ The steward makes the help available, but does not force-feed the help to his or her recipient.⁷⁴

In his law practice, Wheeler is literally available to his clients. Looking out of his second story office window on a Saturday afternoon triggers Wheeler's reflections in the following passage. Listening to his description of his role, one detects that he occupies a position, again expressed as service, which extends well beyond technical legal representation:

Below him, the square and the streets around it are deserted. . . . Only a few automobiles stand widely dispersed around the square, nosed to the curbs, Wheeler's own and half a dozen more, to suggest the presence, somewhere, of living human beings—others like himself, Wheeler supposes, here because here is where they have usually been on Saturday afternoon.

But he knows too that he is *signifying* something by being here, as if here is where he agreed to be when he took his law school diploma and came home, or as near home as he could get and still practice law,

72. See Donald B. Ayer, *Stewardship*, 91 MICH. L. REV. 2150, 2151–52 (1993) (describing law as a "vocation that demands both a measure of detachment and an ability to deal with human problems").

73. BERRY, THE MEMORY OF OLD JACK, *supra* note 62, at 127.

74. The practice of charity to strangers in need in Port William is similarly respectful of the individuality of the recipient of the aid made available to, but not forced upon, the other person and not conditioned on the other revealing more of himself or herself than he or she desires. The Port William attitude toward charity is revealed best in one of the Ptolemy Proudfoot stories, recounting an incident that took place during the Depression. WENDELL BERRY, *The Solemn Boy*, in WATCH WITH ME: AND SIX OTHER STORIES OF THE YET-REMEMBERED PTOLEMY PROUDFOOT AND HIS WIFE, MISS MINNIE, NÉE QUINCH 89 (1994). The title story in that collection, *Watch With Me*, similarly reveals the respectful distance from which the steward stands ready to assist as needed. *Id.* at 133.

forty-one years ago. He is here as if to prove "to all to whom these presents may come" his willingness to be here.

And yet if he is here by agreement, he is here also in fidelity to what is gone: the old-time Saturday to which the country people once deferred all their business, when his old clients, most of them now dead, would climb the stairs to his office as often as not for no business at all, but to sit and speak in deference to their mutual trust, reassuring both to them and to him. For along with the strictly business or legal clientele such as any lawyer anywhere might have had, Wheeler started out with a clientele that he may be said to have inherited—farmers mostly, friends of his father and his father-in-law, kinsmen, kinsmen's friends, with whom he thought of himself as a lawyer as little as they thought of themselves as clients. Between them and himself the technical connection was swallowed up in friendship, in mutual regard and loyalty. Such men, like as not, would not need a dime's worth of legal assistance between the settling of their parents' estates and the writing of their own wills, and not again after that. Wheeler served them as their defender against the law itself, before which they were ciphers, and so felt themselves—and he could do this only as their friend.⁷⁵

The value that Wheeler Catlett attributes to presence is reflected as well in Berry's non-fiction, particularly in *The Hidden Wound*, in which Berry refers to a person "being judged by how willingly and meaningfully he can be present where he is . . . in his part of the world."⁷⁶

The availability of the professional following a stewardship model involves more than mere presence. The second dimension of availability contained in the concept of stewardship calls for an understanding of the detachment that is needed for the application of professional skills and the exercise of professional judgment.

Robert Wicks, a professor of pastoral counseling at Loyola College in Maryland, in his book on the virtue of availability, identifies a number of factors that "distinguish us from those who seek our help . . . factors that make us different from (not better than) the persons to whom we are ministering."⁷⁷ Two of those factors illustrate the dimension of availability that I am suggesting involves a professional distance. They are described by Wicks as a "body of knowledge . . . or experience and an ability to be more objective, which we can draw upon to help others," and a "recognition that persons come to us for help with

75. BERRY, *The Wild Birds*, *supra* note 65, at 114–15.

76. WENDELL BERRY, *THE HIDDEN WOUND* (1970).

77. WICKS, *supra* note 16, at 13.

specific needs at *certain* junctures in their lives.”⁷⁸ Such a recognition calls for a realistic level of humility, expressed by Wicks as an awareness that those who seek our professional help “do not come because our lives are so successful; they usually come because their own lives seem presently confused or full of failure,”⁷⁹ to which the legal professional might also add, “or full of risk.” What Wicks is describing is, if you will, a professional presence without displacement. The individuality of the client is not overwhelmed by the presence of the professional.⁸⁰

Wheeler Catlett’s law practice reflects those factors in operation but not always without considerable struggle on his part to be aware of and faithful to the demands of stewardship. On a general level, Wheeler performs the same role in fiction that Wendell Berry’s father performed in his life: helping to organize a cooperative for the tobacco farmers of the region⁸¹ and thereby making the small farm operation economically viable for at least a little while longer. As the *Wild Birds* passage quoted above suggests,⁸² the professional activity in which we most frequently encounter Wheeler involves settling estates and writing wills, that is, in structuring the succession of ownership of the farms in the vicinity of Port William. In that role, he consistently acts in ways that enhance the stewardship of the farmland. More fundamentally, however, he uses his professional role to preserve and extend the values of the community in whose membership he so persistently believes and trusts:⁸³ “Wheeler’s fidelity has been given to the human homesteads and neighborhoods and the known ways that preserve them.”⁸⁴

78. *Id.*

79. *Id.*

80. Although the focus of this Article is on the stewardship of lawyering, the qualities of availability discussed in the text could be applied also to the medical profession. *See generally* CARL E. SCHNEIDER, *THE PRACTICE OF AUTONOMY: PATIENTS, DOCTORS, AND MEDICAL DECISIONS* (1998).

81. ANGYAL, *supra* note 5, at 3.

82. *See supra* text accompanying note 75 (discussing the nature of the professional services offered by Wheeler).

83. Wheeler comes close to embodying a notion that Thomas Shaffer describes as a “Jeffersonian” attribute of the earliest American writing about legal ethics, “that no legal argument was sound unless the construction argued for would benefit the community as much as the client.” THOMAS L. SHAFFER & MARY M. SHAFFER, *AMERICAN LAWYERS & THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION* 6 (1991).

84. BERRY, *The Wild Birds*, *supra* note 65, at 128.

III. STEWARDSHIP IN PRACTICE: THE STORY OF THREE WILLS

Wheeler Catlett's professional service in the interest of preservation of the farmland and of the way of life of the small farmer is illustrated by his role in the writing of three critical wills. Two of the wills are drafted for characters who are central to Berry's fiction and to the life of Port William. One is Burley Coulter, one of the more colorful people in the community, the character who would have warranted the designation as "a character" in real life. The other is Old Jack Beechum, to whom earlier reference was made,⁸⁵ a man whose commitment to traditional farming values is a stabilizing force in the community. The third character for whom an important will is written is Athey Keith, who is introduced for the first time in the most recent of Berry's novels, *Jayber Crow*.⁸⁶ An examination of the events surrounding the drafting of those three wills, in the reverse order from which they have just been named, not only will demonstrate the different aspects of Wheeler's ability to influence the community through his professional work but also will provide greater insight into the struggle that Wheeler goes through to live up to the demands of the stewardship of lawyering.

A. Athey Keith—Protecting the Land

Athey Keith is a paragon of responsible farming. His dilemma is that his only daughter, Mattie, has married a man, Troy Chatham, who has accepted without any reservations at all the agribusiness notions that are antithetical to the continuation of a practice of stewardship of the land. As Athey and his wife grow older, we are told that they "retained title to their farm on the advice of their lawyer, Wheeler Catlett."⁸⁷ Beyond that preservation of their right to say how the land is to be used during their lives, however, their wills provide that the farm will go solely to their daughter, rather than jointly to Mattie and her husband.⁸⁸ *Jayber Crow* reflects thus on the risk inherent in that disposition of the property and on Wheeler Catlett's responsibility in the matter:

This too was done on the advice, or anyhow with the concurrence, of Wheeler Catlett

You could argue, if you wanted to, that Athey and Della were ungenerous in this and misused their power. . . . You could propose

85. See *supra* text accompanying notes 62–63 (describing Wheeler Catlett on the day of Old Jack Beechum's funeral).

86. BERRY, *JAYBER CROW*, *supra* note 9, at 126.

87. *Id.* at 232.

88. *Id.*

that Wheeler gave bad counsel—that he, who had seen so much of division, ought to have known the danger of dividing husband and wife.

I concede the weightiness of these thoughts, and I acknowledge that I am well acquainted with Wheeler Catlett's prejudice in the matter. Wheeler was no longer a young man by the time he wrote Athey's will. He may not have known yet that he too was a man outliving his time (though such was the case), but he loved Athey and understood exactly what Athey was and what he stood for, and he had no time for Troy, whom he also understood.⁸⁹

The most compelling physical symbol of Athey Keith's stewardship of his land is a stand of woods—Athey calls it the "nest egg"⁹⁰—from which no timber has been cut.⁹¹ The predictable friction within the Chatham family about deviating from Athey's practices and wishes is cut short only by the premature death of Mattie Keith Chatham. While Mattie lies dying in a hospital, that stand of timber is subjected to clear cutting by Troy Chatham, destroying the legacy that Mattie's father had so carefully cultivated. The cutting ultimately proves to be a vain attempt to raise cash to satisfy the creditors who are such a pernicious consequence of the new way of farming.

B. Old Jack Beechum—Passing on the Values

Like Athey Keith, Old Jack Beechum is a farmer whose only child is a daughter, but, unlike Mattie Keith who shares the perspective of her father, Old Jack's daughter has married a banker in Louisville, Kentucky, and has embraced a life and a set of values that are far removed from the community of Port William. The will that Wheeler Catlett prepares for Old Jack Beechum is mentioned above in connection with the reflections on Wheeler's character following Old Jack's death.⁹²

89. *Id.* at 232–33.

90. *Id.* at 180.

91. The lawyer's role in supporting the Athey Keith view of the relationship to the land is mirrored in one of Berry's essays reflecting on an incident in the legal practice of Berry's brother. WENDELL BERRY, *An Argument for Diversity*, in *WHAT ARE PEOPLE FOR?*, *supra* note 11, at 109, 120. Berry recounts a client's visit:

Seeking to determine the value of the land, my brother asked him if he had ever logged the woodlands. [The client] answered, "Yes, sir, since 1944. . . . I have never robbed [the land]. I have always just cut a little out where I thought I needed it. I have got as much timber right now, I am satisfied, . . . as I had when I started mill runs here in '44."

Id.

92. *See supra* text accompanying note 63 (describing Wheeler as a person "who could get things done").

When Old Jack becomes too old to continue farming, he moves into Port William⁹³ and rents the farm to a tenant named Elton Penn.⁹⁴ Elton has impressed the community with his diligence and his respect for the land, but Old Jack is reluctant simply to give the land to Elton, thinking that Elton needs to acquire the land through the exertion of more effort than that.⁹⁵ Old Jack's solution is to suggest a price for the farm and to leave to Elton half of the money needed to meet that price.⁹⁶ The legal problem comes from the fact that the price for the farm—\$200 per acre in 1953—is not set out in the will but rather is written by Old Jack in a notebook in a form that the law would have found to be too cryptic to be enforceable.⁹⁷ This scheme, which tries to be too clever, almost results in frustration of Old Jack's intent when his daughter and her banker husband decide that the farm should be sold at public auction, driving up the price of the farm beyond that which Elton thinks he can afford.⁹⁸

Old Jack's daughter is fully aware of what her father wanted to happen to his land, and Wheeler Catlett assumes that she will respect those wishes. We are told that Wheeler "had done his assuming, as he often did, in a world that he assumed was ruled by instinctive decency."⁹⁹ As Old Jack's daughter makes clear, however, her father's loves are not her own.¹⁰⁰ Therefore, she insists on selling the land for the best price that it can return rather than for the highest value for which it can be used.¹⁰¹

Having been unable to prevent the situation just described from developing, Wheeler Catlett attends the auction of the Beechum land, initially providing moral support to Elton that is moral, but Wheeler's support turns out to be financial as well so that the intent behind Old Jack's will can be carried out. In thus involving himself personally in

93. See BERRY, *THE MEMORY OF OLD JACK*, *supra* note 62, at 140.

94. WENDELL BERRY, *It Wasn't Me*, in *THE WILD BIRDS: SIX SHORT STORIES OF THE PORT WILLIAM MEMBERSHIP*, *supra* note 48, at 47–48 [hereinafter BERRY, *It Wasn't Me*].

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. BERRY, *It Wasn't Me*, *supra* note 94, at 45, 48.

100. *Id.* at 51.

101. The distinction between price and value appears again in the title story of *The Wild Birds*. BERRY, *The Wild Birds*, *supra* note 65, at 116. Two of Berry's essays are particularly insightful explorations of the relationship between economies and value: WENDELL BERRY, *Two Economies*, in *HOME ECONOMICS: FOURTEEN ESSAYS* 54 (1987); and WENDELL BERRY, *The Economies of Subsistence*, in *THE GIFT OF GOOD LAND: FURTHER ESSAYS CULTURAL AND AGRICULTURAL* 149 (1982).

the carrying out of his friend and client's wishes, Wheeler describes to Elton Penn the bonds of friendship and community that have entangled both of them:

[Elton] looks up again at Wheeler. "So this has happened now because of all these things coming together—because Mr. Beechum wanted it to happen, and because the farm, as you say, wanted it to, and because you wanted it to."

....

"And because what has happened has been desirable to a lot of people we never knew, who lived before us."

Elton nods, looks down, thinks again, and again looks up. "And you're saying you're going to be my friend because of all that? . . .

. . . You're going to be my friend, it sounds pret' near like, because you can't get out of it."

"If I was his friend, given what that meant, I can't get out of it."

"But, Wheeler, that's pretty tough."

"It's tough. It's not as tough as being nobody's friend."

"You're saying there's not any way to get out of this friendship."

"No. You can get out of it. By not accepting it. I'm the one, so far, who can't escape it. You have it because I've given it to you, and you don't have to accept. I gave it to you because it was given to me, and I accepted."¹⁰²

C. Burley Coulter—Extending the Community

Burley Coulter proves to be a considerably more challenging client for Wheeler Catlett. The two men are near contemporaries, and they have enjoyed a long-standing friendship. Burley never married, but he had a long-term relationship with a woman named Kate Helen Branch, with whom he had a son named Danny Branch. When Burley instructs Wheeler that he wants his will to pass his farm on to Danny, Wheeler initially is vehemently opposed, thinking that the land should go to Burley's nephew, Nathan Coulter, who is presented throughout the Port William fiction as one of the model farmers of the generation after Burley Coulter and Wheeler Catlett.¹⁰³

Letting the land leave the family strikes Wheeler as "wayward," as Burley describes Wheeler's reaction.¹⁰⁴ Waywardness is a fault that Wheeler associates with Burley's entire way of life and that he sees as counter to his own personal and professional values:

102. BERRY, *It Wasn't Me*, *supra* note 94, at 71–72.

103. Nathan Coulter's youth in Port William was the subject of Berry's first novel. WENDELL BERRY, *NATHAN COULTER* (1960).

104. BERRY, *The Wild Birds*, *supra* note 65, at 122.

The wayward is a possible way—because, for lack of a better way, it has had to be. But a better way is thinkable, is imaginable, and Wheeler, against all evidence and all odds, is an advocate of the better way. To plead the possibility of the merely possible, losing in the process all right to insist on the desirability of what would be better, is finally to lose even the possible—or so, in one way or another, Wheeler has argued time and again, and against opponents of larger repute than Burley Coulter. If he is set now to do battle with his friend, his purpose is not entirely self-defense, though it is that.

He does not forget—it has been a long time since he has been able to forget—that he is making his stand in the middle of a dying town in the midst of a wasting country, from which many have departed and much has been sent away, a land wasting and dying for want of the human names and knowledge that could give it life. . . . [W]hat he longs for, [is a] passing on of the land, in the clear, from love to love, and it is in grief for that loss that he is opposing Burley. . . . How many times in the last twenty years has Wheeler risen to speak, to realize that the speech he has prepared is a defense of the dead and the absent, and he is pleading with strangers for a hope that, he is afraid, has no chance?¹⁰⁵

The need to deal with Burley's wishes causes Wheeler to confront a reality that he would prefer to evade. The office visit at which Burley gives Wheeler his instructions turns into a moving realization on Wheeler's part that, even though he has been and remains a central figure in the community, his professional life nevertheless sets him at some distance.¹⁰⁶ As Burley expresses it, Wheeler can be Burley's friend because he is not his brother. Wheeler reacts with pain at the recognition of the "great cavity that has opened at the heart of a friendship, a membership."¹⁰⁷ Nevertheless, Burley understands that pain and offers a way to construct a new bridge over that cavity, saying, "I think you've got to forgive me as if I was a brother to you. . . . And I reckon I've got to forgive you for taking so long to do it."¹⁰⁸

Earlier in the story of what appears to be a traumatic recognition of a tension between Wheeler's personal preferences and the wishes of his

105. *Id.* at 128–29. The important realization that a lack of success is distinguishable from futility is echoed elsewhere in Berry's fiction. In *Remembering*, Wheeler Catlett's son, Andy, insists, "But that an argument was losing did not mean that it should not be made." BERRY, *REMEMBERING*, *supra* note 42, at 87.

106. The tension between friendship and detachment in professional relations is explored in an interesting way in JUSTIN OAKLEY & DEAN COCKING, *VIRTUE ETHICS AND PROFESSIONAL ROLES* (2001).

107. BERRY, *The Wild Birds*, *supra* note 65, at 144.

108. *Id.* at 145.

client, Wheeler's professional life in Port William has been characterized thus:

A more compliant, less idealistic man than Wheeler might have been happier here than he has been, for [his office] has been a place necessarily where people have revealed their greed, arrogance, meanness, cowardice, and sometimes their inviolable stupidity. And yet, though he has known these things, Wheeler has not believed in them. In loyalty to his clients, or to their Maker. . . he has believed in their generosity, goodness, courage, and intelligence. Mere fact has never been good enough for him. He has pled and reasoned, cajoled, bullied, and preached, pushing events always toward a better end than he knew they could reach, resisting always the disappointment that he knew he should expect, and when the disappointment has come, as it too often has, never settling for it in his own heart or looking upon it as a conclusion.¹⁰⁹

The generosity of spirit revealed in that passage ultimately prevails as Wheeler yields to Burley's wishes and re-engages his professional talents: "As often, the defeat of his better judgment has left him only with a job to do, a job that he *can* do, and he feels a sudden infusion of good humor."¹¹⁰ The waywardness of Burley's life and his relationship to his son is overcome by Wheeler's recognition that Danny Branch is part of the Port William membership, that if the "formalities of events" have not done so, the acknowledgment of his father has made him so, "and his face now takes its place among the faces that belong there. . . . And so with Wheeler's consent Danny comes into their membership and also is one there with them."¹¹¹

IV. FIDELITY TO THE DEMANDS OF STEWARDSHIP

The scene of writing Burley Coulter's will takes place in 1967. Ten years later, in the title story from the collection *Fidelity: Five Stories*, Burley is dying in a Louisville hospital, a manner of death that his family and friends cannot imagine Burley having to tolerate.¹¹² Danny Branch drives to Louisville, sneaks Burley out of the hospital, and returns him to the land where he has spent nearly all of his eighty-two years.¹¹³ After Burley dies in the peace of that place, Danny buries him in the woods.

109. *Id.* at 116.

110. *Id.* at 143.

111. *Id.*

112. BERRY, *Fidelity*, *supra* note 47, at 107.

113. *Id.* at 121-29.

While all of this action has been taking place, officialdom has been at work, personified by Detective Kyle Bode, who is investigating the disappearance of Burley from the hospital. Although the lawyer who is approached in the matter is Wheeler Catlett's other son, Henry, who has joined and is succeeding to his father's practice,¹¹⁴ Wheeler is the person to whom the detective is brought.¹¹⁵ The apparent scenario in the detective's mind is that Burley has been the victim of foul play, with the most obvious suspect being Danny, who has been Burley's heir since Wheeler wrote the will a decade earlier.¹¹⁶

In the last we will hear from Wheeler in this visit to Port William,¹¹⁷ the following exchange with the detective takes place:

"There are several of us here who belong to Danny and to whom he belongs, and we'll stand by him, whatever happens. . . . After money, you know, we are talking about the question of the ownership of people. To whom and to what does Burley Coulter belong? If, as you allege, Danny Branch has taken Burley Coulter out of the hospital, he has done it because Burley belongs to him."

.....
"Well, anyway," Detective Bode said, "all I know is that the law has been broken, and I am here to serve the law."¹¹⁸

Wheeler's reply serves as a coda to his belief of the appropriate relationships of lawyer to law and of law to life:

"But, my dear boy, you don't eat or drink the law, or sit in the shade of it or warm yourself by it, or wear it, or have your being in it. The law exists only to serve."

"Serve what?" [Detective Bode said.]

"Why, all the many things that are above it. Love."¹¹⁹

114. *Id.* at 161.

115. *Id.* at 169.

116. *Id.* at 148-49, 164.

117. Although this incident will serve as the finale of Wheeler's appearance in this Article, it should be noted that Berry offers us a last view of an aged Wheeler that is at once disturbing and reaffirming. In the story *The Inheritors*, an apparently befuddled Wheeler is shown driving to Louisville with Danny Branch. WENDELL BERRY, *The Inheritors*, in TWO MORE STORIES OF THE PORT WILLIAM MEMBERSHIP 39 (1997). On the way back home, Wheeler recounts the story of one of his professional successes, all the while driving his car on the shoulder of the wrong side of the interstate. *Id.* This elegiac vision of Wheeler, however poignant it is to see the man with reduced faculties, is frighteningly evocative of an infamous fatal traffic accident in which an intoxicated driver on the wrong side of that same stretch of interstate highway in Kentucky collided with a school bus. The superficially comic episode with Wheeler is chilling to anyone familiar with the story of that accident and the subsequent products liability litigation against the manufacturer of the bus, which is told in JAMES S. KUNEN, RECKLESS DISREGARD: CORPORATE GREED, GOVERNMENT INDIFFERENCE, AND THE KENTUCKY SCHOOL BUS CRASH (1994).

118. BERRY, *Fidelity*, *supra* note 47, at 174-75.

V. CONCLUSION

This visit to Port William will conclude with a final passage from Berry's work, a passage that speaks to a sense of being accountable for how one executes the obligations of stewardship, an accountability that understands both its burden and its liberation. In the novel that consists of seventy-two-year-old Jack Beechum's reveries on his dying day, *The Memory of Old Jack*, Old Jack reflects on the hardship he endured when his own pride and temper led to the destruction of his barn and livestock, with his subsequent immersion in a long period of paying off a mortgage during the depression, an experience he describes as losing fifteen years of his life. Old Jack then speaks of his understanding of the Twenty-third Psalm, with its imagery of the valley of the shadow of death and the comfort of green pastures.

Old Jack arrives at a newfound appreciation that is linked to his own experience, and he internalizes the verses of the psalm as he imagines the poet must have felt them, speaking of the psalmist (and of himself) in this way:

The man who first spoke the psalm had been driven to the limit, he had seen his ruin, he had felt in the weight of his own flesh the substantiality of his death and the meaning of his despair. He knew that his origin was in nothing that he or any man had done, and that he could do nothing sufficient to his needs. And he looked finally beyond those limits and saw the world still there, potent and abounding, as it would be whether he lived or died, worthy of his life and work and faith. He saw that he would be distinguished not by what he was or anything that he might become but by what he served. Beyond him was the peace and rest and joy that he desired. Beyond the limits of a man's strength or intelligence or desire or hope or faith, there is more. . . . [H]e knows that he lives by a bounty not his own, though his ruin lies behind him and again ahead of him, he will be at peace, for he has seen what is worthy.¹²⁰

The conception of stewardship that one can take away from a visit to Port William is a call for devoting one's professional talents to the service of a greater good.¹²¹ That greater good can be grounded in a

119. *Id.* at 175. Compare *id.*, with Ayer, *supra* note 72, at 2159 (calling for "a new emphasis on the lawyer's duty of service to and stewardship for the law"). Ideally, the lawyer contemplated in this Article's vision of the stewardship of lawyering will comprehend both Ayers' call for stewardship of the law and Wheeler Catlett's recognition that the law itself exists to serve, not as an end in itself.

120. BERRY, *THE MEMORY OF OLD JACK*, *supra* note 62, at 122-23.

121. See Cornell, *supra* note 20, at 23-24. "Stewardship is a discipline that can be carried out only in reference to a larger community. It transcends the purely economic considerations of personal interest." *Id.* A similar sentiment is expressed by Professor Gerald Williams in his call

mundane notion of institutional success, as it has been put forward in some of the corporate management literature,¹²² or it can have a strong religious dimension. Indeed, the conception of stewardship I have been drawing from the Port William novels and stories is one that is fundamentally consistent with Ignatian ideas of discernment and service.¹²³ Even without that overtly religious dimension, however, the call to stewardship in this form can be reconciled with the practice of civility and integrity as described by Stephen Carter in the first two volumes of his exploration of the civic or “pre-political” virtues.¹²⁴

Writing of the “spirituality of stewardship,” one author has identified the essence of Christian stewardship as “return[ing] to God some of our God-GIVEN time, talents and treasure.”¹²⁵ Wheeler Catlett, in his legal practice, and his close friends, in their lives, practice that spirituality without being overtly religious. As Old Jack Beechum thought, “[h]e would be distinguished not by what he was or anything that he might become but by what he served.”¹²⁶ That is a notion that might be at once disconcerting and comforting, given that those of us who are attracted to law as a profession are probably disproportionately interested in being and becoming.

The call to stewardship and the realization of its ideals of service, availability, and awareness require a conscious and conscientious internalization of a vision of community, a concern with how one’s own

for a recognition of the “transpersonal commitment” of stewardship, “a commitment by professionals never to use their considerable powers to serve themselves, but rather to use them only to serve a larger good.” Gerald R. Williams, *Negotiation as a Healing Process*, 1996 J. DISP. RESOL. 1, 65 (emphasis omitted).

122. See, e.g., PETER BLOCK, *STEWARDSHIP: CHOOSING SERVICE OVER SELF-INTEREST* (1993).

123. See, e.g., HARVEY D. EGAN, *IGNATIUS LOYOLA THE MYSTIC* 119–45 (1987) (discussing the sacramental mysticism of service); DAVID LONSDALE, *EYES TO SEE, EARS TO HEAR: AN INTRODUCTION TO IGNATIAN SPIRITUALITY* 91 (2000) (describing discernment as “the art of appreciating the gifts that God has given us and discovering how we might best respond to that love in daily life . . . a process of finding one’s own way of discipleship in a particular set of circumstances”); see also GEORGE GANSS, *SAINT IGNATIUS’ IDEA OF A JESUIT UNIVERSITY: A STUDY IN THE HISTORY OF CATHOLIC EDUCATION* 42 (1956) (noting the importance of universities as “a means of producing the leaders and citizens influential for good who are so necessary in both ecclesiastical and civil society”).

124. See STEPHEN L. CARTER, *INTEGRITY* (1996). Carter defines integrity as requiring “three steps: (1) *discerning* what is right and what is wrong; (2) *acting* on what you have discerned, even at personal cost; and (3) *saying openly* that you are acting on your understanding of right from wrong.” *Id.* at 7; see also STEPHEN L. CARTER, *CIVILITY: MANNERS, MORALS, AND THE ETIQUETTE OF DEMOCRACY* (1998) (defining civility as the moral demand to treat fellow citizens with respect and to make sacrifices for the sake of community).

125. C. JUSTIN CLEMENTS, *THE STEWARD’S WAY: A SPIRITUALITY OF STEWARDSHIP* 56 (1997).

126. BERRY, *THE MEMORY OF OLD JACK*, *supra* note 62, at 123.

efforts can promote the preservation of the best values of that community, and the attainment of the best reality for the community that is possible.¹²⁷ That demand for many, if not most, of us is admittedly different from, and arguably more difficult than, the realization of community in a specific place and time such as Port William in the middle of the twentieth century. At the beginning of the twenty-first century, living and working in a more atomistic world, legal professionals committed to a notion of stewardship need in the first instance to identify the counterparts of the geographic place in which Wheeler Catlett is so firmly grounded, to locate—and perhaps in that process of locating, to define—the communities in which their membership can be both a challenge and a reward.

To those who would say that such a notion is impractical, that it is too idealistic, that it is too difficult to follow, to those who might ask, “can we?”; the answer, I think, is that we must. We dare not aim for anything less.

127. Cardinal Avery Dulles has recently spoken of

what perhaps ought not to be taken for granted, namely that the lawyer is in the business not simply to get a lucrative job and win cases, but to do some good for society. . . . [T]he law may be regarded as a vocation, as an opportunity to accomplish some good and make the world a better place for one's having been in it.

. . . By striving to serve the greater good of humanity, [lawyers] can achieve an inner peace and satisfaction that eludes persons who treat the profession simply as a means of gaining wealth, prestige, or status for themselves.

Avery Cardinal Dulles, S.J., *Catholic Social Teaching and American Legal Practice*, 30 *FORDHAM URB. L.J.* 277, 288–89 (2002). The lawyer's role as a vocation is treated at length in JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* (1996).