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Literature and Law: How the literary quality of a political statement has affected the development of law in Tanzania

Robert L. Scott

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The purpose of this inquiry is to demonstrate how the literary qualities of a political statement have contributed to the legal and economic development of an African nation.

It is my contention that a literary statement* is a useful tool in representing the process of events in a manner which reproduces the quality and character of the underlying reality. This more accurate reality is derived from the perspective of the artist who writes out of an experience common to his people, even though his expression is essentially a personal one: he writes according to his own sensibilities and is not likely to write according to ideological predispositions without first testing them in the crucible of his experiential reality.

*As used here and elsewhere in this discussion, the terms "literary statement" or "literature" refer to the body of writing which includes drama, poetry, novels, essays—fiction as well as non-fiction.
The focus of this inquiry will be the Arusha Declaration, the principal political document governing Tanzanian development. Its principal architect was the president of Tanzania, Julius Nyerere. It was subsequently adopted by the Tanzanian African National Union (TANU), the political party that controls the government, as the policy statement to govern development of the Tanzanian state. It is my intention to demonstrate how this Declaration is a literary statement written out of a frustration with past experiences of the Tanzanian people, and how it has influenced the development of law.

Before I begin, a few simple remarks concerning the common origins of literature and law seem appropriate to emphasize the human arena from which they emerge. Man’s actions are modified by his interpretation of his sense phenomena, what he hears, sees, feels, smells, tastes. These interpretations become guides to behavior and become part of his experience. Because man is a social animal, his behavior and experiences tend to mirror the behavior and experiences of his fellow man. And, therefore, as a group, man has tended to distill his past experiences through the use of various communication media, and to use them as a guide to future action and as a means of recreating the past for current necessities. Law and literature are two examples of these attempts to distill experiences.

Justifications for This Inquiry: Expressions of Self-Consciousness

On a personal level, there are three reasons for this paper. The first is derived from my background in literature and law and my perspective as a black man. It is my hope that this inquiry into the relationship between literature and law in the context of a black state may offer some personal insight as to my own future goals as well as awaken my own self-consciousness.

Secondly, the focus on the relationship between literature and law in the context of an African nation provides an opportunity to see how a black people restores its self-consciousness and deals with its problems. The literary statement which I focus on here is written out of the common experiences of a black people. The legal development which that statement helped to precipitate resulted in certain tangible benefits to the people of Tanzania. Their experience may be a significant example to blacks in the United States.

Lastly, taking a critical look at the interface between law and literature may be justified at the very least as being responsive to the interdisciplinary thrust of what McLuhan calls our global village. The fragmentation in the wholeness of man’s perception of his world, due primarily to the effect of specialization, is gradually dissipated as the effects of interdisciplinary synthesis begin to restore man’s whole psyche.

I. Literature

In developing an operative definition of literature to be applied to the Arusha Declaration, I examined the definitions of various forms of literature developed by both ancient and modern critics. Their definitions are derived from various purposes, linguistic affects, and ethical values.

The formal theories of literary criticism may be divided according to their purposes. The utilitarian has been advanced by organizations such as the Afro-Asian Writers’ Association, whose position has been expressed by George Vulata, a writer from Tanzania:

We must always remember that imperialist reaction is seeking by every means to split the Afro-Asian Writers’ Association. We writers must help the countries in their struggle against imperialism and colonialism by means of the printed word.
We must create works capable of bringing people the truth, without concealing shortcomings or misleading the readers. Finally, we must develop the traditions and culture of our country.\textsuperscript{3}

Secondly, literature may serve a more aesthetic purpose, to teach and delight. This purpose has been stated in the literary criticism of Horace\textsuperscript{4} and Sir Philip Sidney,\textsuperscript{5} who emphasize that the goal of literature is not outside of the art itself. Therefore, the utilitarian and aesthetic critics have differed in purpose: One focuses his attention on the work, the other on the author.

The ranks of what I call the aesthetic critics are distinguished by such giants of Western literature as Aristotle, Longinus, Dryden, and Samuel Johnson. While each of their critical works is grounded in living things either by direct imitation or symbolic representation (as in allegory), their theoretical principles concentrate so heavily upon literary effect that, for me, the reality they represent is distorted. In the *Poetics*,\textsuperscript{6} Aristotle’s aim is to define the formula for recognizing the best examples of the “species” of tragedy and comedy. Concern is therefore with plot, “artistic” language, recognition and reversals in character development. In contrast to Aristotle’s *Poetics*, Longinus’ major work, *On the Sublime*,\textsuperscript{7} focuses on the quality of excellence as an explanation of the literary process. Longinus has no formula; he relies upon description and analogy to define the literary process. The “causes” of sublimity are described in such terms as “noble thoughts, inspired passion,” “figures” of thought, emotion, language, etc. While not steeped in Aristotelian formalism, Longinus’ theoretical principles have a form of their own which concentrates nonetheless upon the “means” and effects of creation divorced from the reality represented. Gradually, as literary criticism moves toward the modern era, it begins to connect literary formalism with reality. This movement is marked by the critics’ shift in emphasis from form to the author’s sensibilities as the arbiter of literary excellence. Using such terms as “judgement” to describe the author’s accurate portrayal of men and emotions, Dryden fashions a theory of literature which does not prescribe a set form. He relies upon a comparison and contrast of the author’s works to define their excellence.\textsuperscript{8} The same is generally true of Samuel Johnson, who differs only as to the terms used.\textsuperscript{9}

The fact that these latter critics rely mainly upon a “sensible” definition of literature reflects the modern trend away from dry formalism.

Modern critics, such as Ezra Pound, William Faulkner, and Lionel Trilling emphasize literature’s debt to the real experience of people. Pound, for example, conceives of literature as “language charged with meaning.”\textsuperscript{10} The form of literature, language, is given an equal place with the substantive reality it represents. Spoken language is thus defined as “noise divided up into a system of grunts, hisses, etc.”\textsuperscript{11} Written language “consists of signs representing these various noises.”\textsuperscript{12} The representation of reality, meaning—in Pound’s terms—is achieved by the “more or less appropriate agreement that groups of these noises or signs [have] with some object, action, or condition.”\textsuperscript{13} This agreement is achieved by the use of words to throw sensory impressions upon the reader’s imagination. These sensory impressions are conceptualized into ideas—emotion, justice, liberty, etc. Thus some critics have focused upon the ideas that literature expresses. Faulkner reduces the process of literature to the representation of several fundamental ideas: “love and honor and pity and pride and compassion and sacrifice are the universal bones upon which the artist must grieve.”\textsuperscript{14}
It is Trilling who calls attention to this distortion of the process of literary creation, thus linking the form of the statement with the ideas expressed as they arise out of human interaction. We must avoid thinking of ideas, says Trilling, as pellets of intellecction or crystallizations of thought [learning] instead to think of ideas as living things, inescapably connected with our wills and desires, as susceptible of growth and development by their very nature, as showing their life by their tendency to change, as being liable, by this very tendency, to deteriorate and become corrupt and to work harm.

As literature becomes more immediately an expression of the real world, it becomes more intimate, reflecting the author's personal experiences and the common experiences of the culture of which he is a part. The black American author, Richard Wright, has alluded to this process:

In a fundamental sense, an imaginative novel represents the merging of two extremes; it is an intensely intimate expression on the part of a consciousness couched in terms of the most objective and commonly known events. It is at once something private and public by its very nature and texture. [The writer's] imagination is a kind of community medium of exchange: what he has read, felt, thought, seen, and remembered.

The critic, J.E. Spingarn, has pointed out that the expression of group consciousness in literature in the form of political ideas expands its content to include "all human activity." Spingarn has advocated the infusion of political consciousness into literature because "a real and noble love of country symbolizes all human activity. . . It works with economic means, moral means, intellectual means." To buttress his call for artists to become more political, Spingarn reminds us that some of the great literature of the world has consisted of political themes:

. . .if you look at the great poetry of the world from Homer down you will find this keen political sense underlying it. Homer's Iliad is the struggle of two great nations, representing two ideals, in mortal conflict for the government of the world.

It is but a short step from Spingarn's position of political literature to advocation of the literary purpose as purely utilitarian. Such open advocation that literature be in the service of a nation is espoused by Franz Fanon. In speaking of the African poets, Fanon says:

It is not enough (for the poet) to try to get back to the people in that past out of which they have already emerged; rather we must join them in that fluctuating movement which they are just giving a shape to.

Similarly, Amiri Baraka (Leroi Jones) has advocated the same purpose for Black American artists:

The Revolutionary theatre must accuse and attack, attack anything that can be accused and attacked. It must accuse and attack because it is a theatre of victims. It looks at the sky with the victims' eyes, and moves the victims to look at the strength in their minds and their bodies.
The above discussion of definitions of literature provides a reasonably comprehensive framework for developing an operative definition of literature with which to judge the Arusha Declaration. The writer hopes to fashion a definition which allows the least limitation upon the author’s subject matter.

The operative definition will be an eclectic one. It will not require a particular form, but it will evaluate that form in terms of ideas, the realities it expresses. Because those ideas happen to be political or express economic or social philosophies or happen not to be expressed in poetry or drama will not be thought an impurity or an impiety. The breadth of the definition I intend to use is aptly expressed by Sir Philip Sidney in his contrast of the standard professions:

The lawyer saith what men have determined; the historian, what men have done... Only the poet, disdaining to be tied to any such subjection, lifted up with the vigour of his own sense he goeth hand in hand with Nature, not enclosed within the narrow warrant of her gifts, but freely ranging only within the zodiac of his own.22

The question is posed—how might great “literature” be distinguished from mere rubbish? My answer is by force of truth, i.e., a statement which is synthesized in the fullest context of diversity, history, experience, sensibilities, etc. The virtue of such an expansive definition is that literature is distinguished by the extent to which it accounts for ideas which are continuing in man’s consciousness despite the exigencies of the moment and the reshaping of those ideas (and the institutions which perpetuate them) by those exigencies. The form of a work will be defined in terms of its perspective in relation to reality and its effect upon it: imitation as opposed to symbolism, fiction as opposed to nonfiction, poetry as opposed to prose, complaint as opposed to plan. I believe, as Trilling, that greatness may vary with the greatness in us. Perhaps the most that can be said of a work of literature is that it is unique. Paulo Freire, the revolutionary pedagogue, comes closest to defining this uniqueness in his concept of cultural synthesis:

Cultural synthesis does not deny the differences between two views; indeed, it is based on these differences. It does deny the “invasion” of the other, but affirms the undeniable “support” each gives to the other.23

What is the difference between the political and the literary statement? Each is distinguished by its purpose. The political statement is a vehicle principally used to effect partisan principles. The literary statement operates upon a higher plane and, while it may advance partisan ideals, its appeal is directed to the highest instincts of man as a social being: to justice, truth, fairness, etc. Yet, there is no reason why a written piece may not have both political and literary elements. The Arusha Declaration is a case in point.

II. The Arusha Declaration as Literature

The Arusha Declaration was the product of deep deliberation by Nyerere and the National Executive Committee of TANU, but it is not the law of Tanzania. The National Assembly is primarily concerned with the more detailed task of giving effect to government policy through the appropriate legislative measures and vigilant control over all aspects of government expenditures.24
The Arusha Declaration is in form comparable to our own Declaration of Independence. It is short, concise, and reasonable in stating the future policy position of the Tanzanian government. The Arusha Declaration makes no pretense at eloquence. It is not an appeal to the emotions. It is motivated by reason. It sets out the policy of a poor country which has decided not to acquire wealth at the expense of its integrity but to retain its honesty, its character, its traditions, and to develop itself from resources within.

Declarations are typically drawn with broad strokes, coming to the point very quickly; they are, therefore, characteristically short as contrasted with the elaborate detail of some statutes. The Arusha Declaration is no exception.

The first part of the Declaration sets out the policy and beliefs of TANU. The document begins with the following statement: "The policy of TANU is to build a socialist State. The principles of socialism are laid down in the TANU Constitution." The document then goes on to recite certain clauses of the TANU Constitution which are relevant to the TANU policy of socialism. It begins with a short, staccato statement of TANU's creed and its objectives. One is reminded of the Ten Commandments. The following is an example.

Whereas TANU believes:
   a) That all human beings are equal;
   b) That every individual has a right to dignity and respect;
   c) That every citizen is an integral part of the Nation and has the right to take an equal part in government at local, regional, and national levels;...

The obvious effect of such form is to convey decisiveness of the idea expressed.

The assertive style continues in the next two parts, with informal prose topically arranged in semi-outline form. These two sections briefly elaborate upon the policies of socialism and self-reliance. The language consists of informal statements which assume an attitude of logical irony. The following example of the absurdity of the continual emphasis upon money without also calling for a raise in taxes is a case in point:

Calling on the government to spend more without raising taxes is like demanding that the government should perform miracles; it is equivalent to asking for more milk from a cow while insisting that the cow should not be milked again.

The clear, short, assertive, conversational tone of the Declaration provides a fitting contrast to the important ideas it expresses. The simplicity is fitting because the Declaration was designed for mass consumption via the press and word of mouth.

The uniqueness of the Declaration may be attributed to its subordination of the purposes and powers of government to human needs. The Declaration evinces a willingness to risk economic growth to maintain the integrity, national traditions, dignity, and equality of the Tanzanian people. Consequently, the policies of socialism and self-reliance are advocated.

The advocation of socialism and self-reliance does not inhere in any substantial part with sloganizing or regimentation. The ideas were synthesized from experiences and events of the early period of independence."
The Declaration is addressed to the nascent capitalist and bourgeois class of urban Africans. Vulnerable to the attraction of partnerships in and directorships of foreign firms, Tanzanian leaders could all too easily yield to affluence—hence to foreign influence—and forget their obligation to the mass of the people who live in the countryside at near-subsistence levels.

The seeds of capitalism and elitism had in fact already been planted in Tanzania. Some of them blossomed in October 1966 when students at University College went on strike against the terms of national service. They had been asked to give several months of their time for military training, to be followed by 21 months in civilian jobs they would probably have entered anyway, but at half the customary salaries. Though they would still be earning many times the average per-capita income of $60, and despite the fact that their education, the pass-key to relative affluence, had been paid for by the Tanzanian Government, the students protested. Nyerere sent more than 300 (half the student body) of them home to work on their fathers' shambas and learn a little humility.

As though to confirm his fear that imported values would nurture the growth of an African class system, Nyerere found that a number of African delegates to the November 1966 meeting of the Organization of African Unity had brought European advisers with them to Addis Ababa; some even carried credentials signed by expatriate officials in their own governments. In a fury, Nyerere denounced this bald display of neocolonialism and decried the "devils" at work in Africa who mocked its independence.

Hence the Arusha Declaration, in charting Tanzania's road to socialism, directs senior officials of the government and trade unions to resist the siren call of quick wealth. It tells them to get rid of their shares and directorships in businesses, to stop the lucrative practice of using easily obtained loans to build houses for rental to foreign diplomats, advisers, and businessmen, and to draw only one salary. Nyerere announced a 20 percent reduction in his own salary in October 1966 at the time of the student demonstrations and pointedly said he assumed that other senior officials would gladly do the same. They did, and high office in Tanzania can no longer be considered a horn of plenty. The Mercedes Benz sedan, formerly the status symbol par excellence, has become the stigma of the exploiter.

Nationalization of the major foreign industries having precluded further foreign aid, the Declaration announced a policy of self-reliance. The Declaration says that it is "stupid" to rely on money as the major instrument of development because, first of all, "we shall not get the money," and secondly, external gifts and loans will "endanger our independence." But the doctrine of self-reliance was neither a retreat into economic isolationism nor a blueprint for anarchy. It was a realistic response to the exigencies of the present international economic order.26

The gap between the rich nations and the poor was widening. Prices of the products of industrialized nations were rising; those of agricultural commodity producers were falling. Economic aid from the rich countries, generally cited at inflated levels, owing to the high costs of tied procurement and the onerous terms of repayment, had been declining; often it barely covered the imminent costs of repayment of earlier loans. The dribble of private foreign investment, the vast bulk of which was directed to the oil and other mineral-producing countries, was often exceeded by the repatriation of profits. African industry, thwarted by its inability to compete in international markets,
was typically left with those small-scale activities for which there is an adequate home market, e.g., the production of cigarettes and beer.

In sum, most of Africa faced bleak economic prospects despite the flow of aid and trade from the developed world. Such was the view of G.K. Helleiner, Director of Economic Research at University College, Dar es Salaam. Tanzania, which at present relies principally on coffee, sisal, and cotton for export earnings, is particularly vulnerable because the prices of all three commodities are depressed and likely to remain so for some time to come.

Tanzania’s economic retrenchment is not a retreat into economic primitivism. Self-reliance is a means of bringing Tanzania to grips with its own problems and of meeting the needs of people:

In Western terms, the belt-tightening is a striking form of “self-help” based on the assumption that only through their own efforts can African countries develop economically and retain their sovereign integrity. It is not however, a renunciation of foreign trade and aid, without which Tanzania’s produce would rot in the tropical sun and its growing public sector would surely crumble. But self-reliance does place the burden of economic development—as nationalization places control of the major means of production—in Tanzanian hands.

The principal idea of Arusha is that of socialism intertwined with democracy. Socialism is not viewed as scientific in the way Marx views it—as inevitably following a necessary period of capitalism. Rather, capitalism is characterized as a state of mind, manifested by greed and exploitation. Capitalism may be unlearned by practical limitations on greed and exploitation.

The key to advancing the Tanzanian socialist-democracy lies in the recognition by the government of its duties to control greed and exploitation and, thereby, to insure individual rights. As announced in the Declaration, these rights consist of equality, dignity, equal participation in government, a just return for labor, freedom of expression, freedom of movement, and freedom of religious belief. These rights are preserved by the State’s duties to hold natural resources in trust for descendants, to insure economic justice, to control the means of production, and to intervene generally to prevent exploitation and accumulation of wealth. The remainder of the Declaration is concerned with the governmental policies and practices which flow from these principles.

Internal development consistent with the principles of a social democracy is carried on under the rubric of self-reliance. In the past the lack of internal development had been the source of oppression: “It is our weakness that has been oppressed.” The conscience of the people had been influenced by the base value of the oppressors—money. This tendency is next traced to every phase of government action. In criticizing the effect of the Five-Year Plan, the Declaration says:

...Our Five-Year Development Plan aims at more food, more education and better health; but the weapon we have put emphasis upon is money.

The result of the continued dependence upon money could lead to a loss of independence: “He who pays the piper calls the tune.” As a consequence, only those gifts, loans, and private investments which “stimulate our own efforts” would be accepted.
More particularly, internal development of the farms and farmers has been deterred by the emphasis upon the growth of industry and towns. Industrial growth, it is said, fosters capitalism to the detriment of socialism: industry required and stimulated the growth of towns, which in turn, attracted the farmers from their farms.

The Declaration affirms that "the development of a country is brought about by people not by money." With the help of "people," agriculture would now be the primary basis of development. Henceforth, development would depend upon "people, and good policies, and good leadership." The conditions of development would require hard work and intelligence. People would be enlisted wherever possible to build roads, schools, dispensaries, instead of capitalist companies.

The Declaration calls upon the TANU leaders to set the example: They are to forego owning shares in any company, holding directorships in privately owned enterprises, receiving more than one salary, or owning houses which are rented to others. The legislature is called upon to implement the policies promulgated by the Declaration.

The Declaration thus indicates the source of weakness and states a policy which will strengthen the fiber of the country. The idea is fundamental no less for its force of intellect than for the example it provides for clear, sober thinking.

An analysis of the Declaration's power to engage the reader is more difficult. The difficulty may be partially attributed to the lack of "feel" that we as Americans have for Tanzanian affairs. For, such "feel" would inevitably reproduce the matrix of expectations of attitudes towards the government and its leaders within which the Declaration was promulgated. The final test of engagement is the effect that the Declaration had on legislation and administrative programs.

III. The Effect Upon Legal and Economic Development

Any discussion of law must first begin with some definition of terms. For such definition, I look to Myres S. McDougal, the noted international legal scholar. Law is the "process of authoritative decision-making," says McDougal. It consists of the variety of value demands of a people, the strategies used to achieve these demands, the context in which these demands arise, the disposition of these demands according to certain expectations, and the variety of effects engendered. Law is, therefore, the process by which people register their approval or disapproval of some aspect of their existence and its subsequent adoption by a significant segment of the populace by means of a decision-making entity which seeks to change existence accordingly.

I have chosen McDougal's definition of law because it places the development of legal rules in the context of a people's decision-making process. By focusing on the decision-making process (by which legal rules develop) it avoids the limited assessment from the purely institutional point of view or the limiting definitions of the internal structure of a society according to such connotative terms as "collective," "individual," "democracy," "socialism," etc.

Applying this yardstick to the process in Tanzania which led up to the passage of specific legislation, it is readily apparent that this passage represented both the party's prior attempt to create expectations from the top down as well as expectations created by the Arusha Declaration itself.

The government's attempt to create expectations can be compared to the use of free speech in America to disseminate ideas. The party did not use authoritarian means to force adoption of its views.
Even before the Declaration, Nyerere’s efforts to build Tanzania in the socialist model has involved an extensive communications effort. His book *Freedom and Unity* is essentially a collection of speeches which espouse ideas similar to those appearing in the Declaration. Those same ideas appeared in *Uhuru Na Ujamaa* and various journals after the Declaration.

In *Freedom and Unity*, Nyerere charts the origins of self-reliance:

Years of Arab slave raiding, and later years of European domination, had caused our people to have grave doubts about their own abilities. This was no accident; any dominating group seeks to destroy the confidence of those they dominate because this helps them maintain their position, and the oppressors in Tanganyika were no exception. Indeed, it can be argued that the biggest crime of oppression and foreign domination, in Tanganyika and elsewhere, is the psychological effect it has on the people who experience it. A vital task for any liberation movement must therefore be to restore the people’s self-confidence.

Capitalism was seen as a disruption in the unity of the family, leading ultimately to loss of equality and dignity:

The principles of the traditional African family all the time encourage men to think of themselves as members of a society. In contrast, the capitalist and money economy, as introduced into Africa by the trading and colonial powers, operates on the basis of individualism; it encourages individual acquisitiveness and economic competition. A wage-earning member of the family is therefore exposed to luxuries like radios and wrist-watches, and in the wider society his status depends on possession of these things. Yet his responsibilities to the other members of his family remain, and increase with every increase of his wages, because they are the responsibilities of sharing. At this point the traditional small society, and the new wide money-based society, come into direct conflict; and the effects are visible on individuals and on the society throughout Africa today.

This change is not just economic. By introducing the possibility of hoarding wealth through money, by encouraging the acquisitive instinct in man, and by basing social status on material wealth, the very basis of traditional social life is undermined. The economic inequalities between men become so great that man’s basic equality is imperceptibly transformed into a merchant and client relationship. It is then impossible for all members of the society to discuss together as equals with a common interest in the maintenance and development of society.

With the Declaration the communication campaign hit high gear. These campaigns have been described by the *Nationalist*, the local newspaper:

Heralded by peasants’ war cries, strains of brass-band tunes, the President, beaming with revolutionary confidence, steered the Presidential column into the streets of the summit town hedged with crowds of cheering masses. Mwalimu’s brisk march into the town stunned the masses, who, on seeing him in sound health, were driven wild with admiration and excitement to borders of near frenzy. The entire town was gripped with the revolutionary fervor of the Spirit of Arusha.

This method of campaigning was particularly effective, given the prestigious position of TANU in a country that was relatively free of factionalism. Also, its general lingua franca Swahili tended to make the campaign’s appeal even more believable to the Tanzanians.
Therefore, the campaign to create the expectations called forth by the Arusha Declaration is a top-down phenomenon; it can be compared to President Nixon's campaigning for his own political ideas. The principle difference is that no one of his (Nixon's) political documents has had a comparable impact on the country.

But, the effect of Arusha is not simply explained as a top-down phenomenon. It still remained for the legislature to take independent action. As Tanzania's parliamentary draftsman, Bashir Rahim, has said, the Arusha Declaration is not law:

Although it may appear that the promulgation of the Arusha Declaration by the National Executive Committee of TANU was an act which amounted to a trespass by the Party into the province of the legislature, the roles of the National Executive Committee and of Parliament are distinct and well-defined. Each has its own functions. The National Executive Committee is concerned with the formulation of the broad lines of policy. As the Presidential Commission on the Establishment of a Democratic One-Party State put it—"it is the soul and conscience of the Party."

The National Assembly is primarily concerned with the more detailed task of giving effect to Government policy through the appropriate legislative measures and exercising vigilant control over all aspects of Government expenditure. The Arusha Declaration was the product of deep deliberation by the National Executive Committee, but it is not the law of Tanzania and it is for this reason that certain aspects of the Arusha Declaration had to be given statutory effect.

There is no doubt that, since TANU was the principal party to mobilize the country's drive for independence, the ideas expressed by it through the Arusha Declaration would be listened to. But legislation came only after months of campaigning, and giving legislators time to assess the popular appeal of Arusha. To this fact must be added the caveat that there were no comparable competing programs advanced against those of the Declaration. Therefore, it comes as no great surprise that Tanzanian people came to adopt the expectations of government action the Declaration announced.

The movement away from Western economic influence as reflected in the Declaration may be traced to particular events which occurred before Arusha.

Since 1964, Nyerere has steered a course which has resulted in closer ideological relations between Tanzania and China and certain East European countries. In observing the differences his country has had with the West, Nyerere notes an ideological and practical affinity with the East:

There is a difference between Eastern and Western countries, and between poor and rich countries. The West is just too individualistic. All the textbooks of Western countries talk about rights, rights, rights, and no duties. The West looks at (duty) as privation of freedom. . .

China is a backward country trying to pull itself up. But it is two steps ahead of us. . .You can see the steps, and you say, Boy! Why didn't we think of that? . . .I should send many people to see these things. . .The stage of their development is relevant to us.
The government perceived that the West, based upon its contributions to Tanzania's internal development, was using them for their own selfish ends. In April, 1964, when West Germany threatened to cancel a military-aid program to Tanzania unless Tanzania severed newly established diplomatic relations with East Germany, Nyerere responded by asking West Germany to cancel all its aid, interpreting West Germany's ultimatum as "bullying." In November, Tanzanian officials reported what they conceived to be a plot to overthrow the Tanzanian government. A series of incidents followed, diplomatic in character, which resulted in Tanzania's recalling its ambassador to the United States. The following year relations with England became strained when England allowed the white minority government in Rhodesia to declare their unilateral independence.

Tanzania withdrew from the British Commonwealth. These events were preceded in the year by Nyerere's first state visit to China. Subsequently, China agreed to build the Tanzanian half of the railway which would have allowed Zambia not to have to ship its goods through white-dominated Rhodesia. The United States had previously refused, determining that the investment would not yield a sufficient return. This determination was interpreted as insincere, on the basis of U.S. spending in Vietnam, one week of which would have paid for the railroad.

The Arusha Declaration is essentially a document which sets out a number of policy propositions. It was necessary to translate some of these propositions into statutory instruments. Several statutes have been enacted to give the force of law to a number of propositions set out in the Declaration.

The most important statute which emerged from the Arusha Declaration is the Interim Constitution of Tanzania (Amendment) (No. 2) Act, 1967 (Act No. 40 of 1967). This Act was designed to implement that portion of the Arusha Declaration which laid down the qualifications for leadership. The Arusha Declaration requires that no leader shall himself be a person to whom a finger can be pointed in accusation of exploitation. In this respect the following paragraph in the Declaration is significant:

Socialism is a way of life and a socialist society can not simply come into existence. A socialist society can only be built by those who believe in and who themselves practise the principles of socialism. The successful implementation of socialist objectives depends very much upon the leaders, because socialism is a belief in a particular system of living, and it is difficult for leaders to promote its growth if they do not themselves accept it.

The Declaration then proceeds to lay down the qualifications which every leader must satisfy:

Every TANU and Government leader must be either a peasant or a worker and should in no way be associated with the practices of capitalism or feudalism. No Government or TANU leader should hold shares in any company. No TANU or Government leader should hold directorships in any privately owned enterprises. No TANU or Government leader should receive two or more salaries. No TANU or Government leader should own houses which he rents to others.

The Declaration defines the term, "leader," as including members of the TANU National Executive Committee, ministers, members of Parliament, senior officials of organizations affiliated to TANU, senior officials of parastatal organizations, all those appointed
or elected under any clause of the TANU Constitution, members of local authorities, and civil servants in the high and middle cadres.

The 1967 Act amended section 27 of the Constitution and incorporated therein the qualifications of leadership prescribed by the Declaration. Section 27 prescribes the circumstances which, if they exist in relation to a person, would disqualify that person from being appointed as a constituency member. This section was amended so as to disqualify the following persons:

(a) any person who or whose spouse is the beneficial owner of any share in any company incorporated or established in the United Republic or elsewhere or of any interest in any such share;

(b) any person who or whose spouse holds the office of a director in any company incorporated or established in the United Republic or elsewhere otherwise than as a nominee of the Government or of a statutory corporation or of any company of which the majority of ordinary shares are held by the Government or by a statutory corporation;

(c) any person who or whose spouse is the beneficial owner of any house or other building or of any interest in a house or other building which or any portion of which is in the exclusive occupation of some other person in consideration of payment of rent, fee, or other valuable consideration whatsoever other than lawful deductions from the wages payable to a domestic servant in respect of an occupation by him of any portion of such house or any living quarters attached thereto;

(d) any person who or whose spouse is in receipt of two or more salaries and

(e) any person who or whose spouse is a person engaged in any trade, business, profession, or occupation and who employs any workman for the purpose of or in connection with such trade, business, profession, or occupation.

Several explanatory subsections were added to section 27 to serve as a guide in interpretation of the additional qualifications incorporated. Subsection (14) deals with the prohibition on employment of workmen. One of the basic principles of socialism is that a person should not be permitted to enrich himself by exploitation of the workers. The amending Act disqualifies any person who or whose spouse gains by exploitation of workers. In its neat form this prohibition would undoubtedly have caused considerable hardship and might well have resulted in stagnation of productivity insofar as members of Parliament were concerned. Subsection (14) introduces certain necessary modifications. The effect of this subsection is, primarily, to allow a member who is engaged in agriculture to employ workmen on a daily basis or on a piece-work basis. Tanzania is essentially an agricultural country and many members of Parliament are engaged in agricultural activities. It is necessary for these members of Parliament from time to time, especially during the harvesting season, to employ workmen to assist them on their farms. The subsection does not permit them to employ workmen on a permanent basis and to sit back and enjoy the fruit of their labors. Their farms must be worked by themselves and members of their families, but in order not to render their agricultural activities non-productive, they are permitted to employ casual workers. The subsection further permits a doctor, a lawyer, an architect, a civil engineer, or a
dentist to employ persons in connection with his profession. This is also a necessary modi-
fication, as people engaged in such professions must necessarily require the services of
trained staff in order to carry out their duties efficiently. Sub-paragraph (iii) of paragraph
(a) of subsection (14) gives recognition to the African tradition whereby the whole com-
munity participates in carrying out a work for the benefit of a member of the community.
It is not uncommon to find in rural areas members of the community helping someone of
their own group to build a house or to till his land. In such cases there is no employment
in the legal sense although those who participate in doing the work are often remunerated
either by cash or by a free meal or drinks. A member of Parliament may therefore safely
invite his neighbors to help him with some work without contravening the prohibition
on exploitation of workers.

The legislature was not content with incorporating into the Constitution the leadership
qualifications. The Constitution was further amended to provide machinery to carry out
annual checks to ensure that these qualifications were complied with. The attorney-general
has power to petition the High Court for a declaration to unseat the offending member.

Members of Parliament, however, are not the only leaders for whom the Arusha Decla-
ration prescribes conditions of leadership. These conditions are required to be complied
with by civil servants, members of parastatal organizations and members of local authorities.

In January, 1968, Parliament passed the Local Government Laws (Amendment) Act,
1968 (Act No. 15 of 1968), which amended the Municipalities Ordinance, Local Govern-
ment Ordinance and the Local Government (Elections) Act, 1966, to incorporate in
each the leadership qualifications of the Arusha Declaration, so as to apply them to all
members of local authorities. These amendments follow the same pattern as the amend-
ments introduced by the Interim Constitution of Tanzania (Amendment) (No. 2) Act,
1967. It is therefore not necessary to discuss the 1968 Act in any detail.

With regard to civil servants, a staff circular was issued requiring every citizen civil
servant in receipt of a salary of Shs. 1,066/- or more a month to comply with the Arusha
Declaration qualifications of leadership and giving an option to those who did not wish
to comply with the Arusha Declaration qualifications to retire with full benefits. Para-
statal organizations have also taken similar measures to implement the Arusha Declara-
tion insofar as it prescribes conditions of leadership.

Leadership, however, was not the only topic dealt with in the Declaration. The De-
claration also called upon the Government to take over major means of production. In
order to implement this aspect of the Declaration, five Acts of Parliament were passed
in early 1967.

The National Bank of Commerce (Establishment and Vesting of Assets and Li-
bilities) Act, 1967, nationalized all commercial banks in Tanganyika and established
the National Bank of Commerce. The assets and liabilities of the nationalized banks
were vested in the National Bank of Commerce.

The provisions of the National Bank of Commerce Act are strict. Section 14 of the
Act makes it an offense for any person to carry on banking business in the United Re-
public. Section 15 contains provisions which were designed to ensure co-operation by
the nationalized banks in the transfers of assets and liabilities to the National Bank of
Commerce. This section reads as follows:

(15) (1) A bank and every director of and person employed in such bank in
relation to its banking business in the United Republic immediately
preceding the effective date shall do or join in doing all acts or things
which it is necessary or convenient to do for or in relation to the opera-
tion of any of the provisions of this Act, and in particular for or in
relation to—
(a) the taking over by the National Bank under this Act of the assets and
business of that bank;
(b) the assumption by the National Bank under this Act of the liabilities of
that bank.

(2) Any bank or person who contravenes the provisions of subsection (1) shall
be guilty of an offense and, on conviction, shall be liable to a fine not ex-
ceeding Shs. 10,000/- in respect of each day that the contravention continues.

It should be noted, however, that only Tanzanian assets were nationalized. The term
"Tanzanian assets" is defined as meaning assets situated or deemed by law to be situated
in the United Republic. Section 2 also provides that a chose in action wherever situated
relating to the banking business of a bank in the United Republic shall be deemed to be
situated in the United Republic.

The State Trading Corporation (Establishment and Vesting of Interests) Act, 1967,
established the State Trading Corporation and vested in it the assets and liabilities of
certain firms and foreign companies, the shares of certain firms and foreign companies,
and the shares of certain local companies. The firms and companies concerned were
those involved in large-scale import and export business. Part II of the Act establishes
the State Trading Corporation as a corporate body. Section 4 sets out the functions
of the Corporation and provides as follows:

(4) (1) As from the effective date it shall be the function of the Corporation—
(a) to conduct the business of importers, exporters, wholesale dealers,
and retailers of such merchandise as the Board may from time to
time decide;
(b) to conduct its business in an efficient manner and in accordance with
the best mercantile traditions;
(c) to conduct its business without discrimination except on such grounds
as are appropriate in the normal and proper conduct of mercantile
business.

The State Trading Corporation, in addition to assuming the business of the nationalized
firms and companies, has undertaken considerable import and export business in Tanganyika.
The Act follows the same pattern as the National Bank of Commerce Act and, with regard
to firms and foreign companies, has provisions relating to employees on the same lines as
the corresponding provisions in the National Bank of Commerce Act. Local companies,
however, were nationalized by acquisition of their shares. All the shares of these com-
panies were vested in the State Trading Corporation. This had the effect of one share-
holder holding all the shares in a company. Such a situation would, of course, be unlawful
under the Companies Ordinance. Provision had, therefore, to be made to legalize the
situation. Section 21 makes the following provision:

(21) Every provision in any law or in any Articles of Association or any other
charter or instrument of a scheduled firm, providing for any consequence
to follow or requiring any act or thing to be done, or entitling any person to
do any act or thing or to take any action whatsoever, as a result of a reduction
in the number of members of the firm below a certain number, shall be of no
effect in relation to the scheduled firms.

It was also envisaged that certain provisions of the Companies Ordinance would have
to be modified in order to administer the nationalized companies efficiently. Section 20
gave the Minister power to make regulations modifying in their application to a nation-
alized company any of the provisions of the Companies Ordinance or of any subsidiary
legislation made thereunder or of the Articles of Association or other charter or instru-
ment of the nationalized company.

The National Agricultural Products Board (Vesting of Interests) Act, 1967, nation-
alized certain firms and companies engaged in the milling business. The nationalization
provisions of the Act follow the same pattern as the State Trading Corporation Act.

The Industrial Shares (Acquisition) Act, 1967, empowers the Minister for industries
to acquire shares up to sixty percent of the total shareholding in certain companies
specified in the Schedule to the Act. The companies specified total eight in number.

Each of the Nationalization Acts makes provision for payment of full and fair com-
pensation.

Later in 1967 the State Trading Corporation Act and the National Agricultural Pro-
ducts Board Act were amended to make provision for the transfer of an employee from
one nationalized company to another nationalized company. The Act amending the
State Trading Corporation Act also made provision for the transfer of assets of the
Corporation to any of the nationalized companies. Under their powers to make
regulations modifying the Companies Ordinance, insofar as it applies to the nation-
alized companies, the Ministers responsible for the administration of these Acts have
made regulations which make provision for the winding up of any nationalized com-
pany by a ministerial order. Where the Minister makes a dissolution order in respect
of any nationalized company all the assets and liabilities of the nationalized company
become vested in the Corporation or the National Agricultural Products Board, as the
case may be. Adequate machinery has thus been provided to enable the State Trading
Corporation and the National Agricultural Products Board to gradually dissolve all
the nationalized companies and to take over the assets and liabilities.

Following the Arusha Declaration the Government also declared its policy to ac-
quire a majority interest in the sisal industry. To implement this decision the Tanzania
Sisal Corporation (Establishment and Vesting of Interests) Act, 1967, was enacted in
October, 1967. The Act established the Tanzania Sisal Corporation and nationalized
certain firms and companies owning sisal estates in Tanganyika. These firms and com-
panies were divided into two categories: Those listed in Part I of the Schedule were
wholly nationalized; those listed in Part II of the Schedule were nationalized to the
extent of sixty percent of their shareholding. The milling companies and the sisal com-
panies which were nationalized were found to be carrying on activities other than those
relating to the milling or sisal industry. It was not the intention of the Government to
take over these other activities. It was, therefore, agreed that the government would
divest itself of non-milling and non-sisal assets and liabilities. With regard to the sisal
companies it was also discovered that in a few cases the company had only nominal
capital and that it was doing its business on monies lent to it by the shareholders.
This situation gave rise to considerable difficulties. This course had been adopted by the shareholders for specific reasons but with the Government as the principal shareholder this state of affairs could not be allowed to continue. In 1968 the Tanzania Sisal Corporation (Establishment and Vesting of Interests) (Amendment) Act, 1968, was enacted. This Act empowers the Minister to capitalize such loans.

In 1968 the National Milling Corporation Act, 1968, was enacted which established the National Milling Corporation and empowered the Minister for Agriculture to transfer to this Corporation any of the assets or liabilities vested in the National Agricultural Products Board by the National Agricultural Products Board (Vesting of Interests) Act, 1967.

The Insurance (Vesting of Interests and Regulation) Act, 1967, put a total prohibition on all forms of insurance business in Tanganyika save the business carried on by the National Insurance Corporation. This prohibition applies both to life insurance as well as other forms of insurance. The carrying on of insurance business has been defined in sections 8 (which relates to life insurance) and 13 (which relates to other forms of insurance).

The Arusha Declaration places great emphasis on self-reliance. It calls upon the country to develop from within with its own resources. The effect of Arusha upon administrative programs may be determined from a comparison of the first two five-year plans.

The first Five-Year Plan of Economic and Social Development covered the years from 1964-1969. The average increase in income per capita over that period was at most one percent. The increase in real per-capita income was not spread evenly over the population. On the contrary, important differentiation had taken place. Average wages, outside subsistence, and small-holder farming had increased by 80 percent. Moreover, the average wage increases did not lead to a general decline of profits and investments. On the contrary, the surplus of enterprises appears to have increased from 12.7 percent of national income in 1960 to 14.5 percent in 1966. Thus, the spiral of wages and corporate influence had expanded.

Because the expansion of secondary and tertiary education was exclusively geared to the estimated manpower needs of an infant economy, and because these needs did not constitute a full-employment market, 50 percent of all children received no education at all. The vast majority of those who did receive schooling were denied continuance beyond the secondary level. The transition to secondary school constituted a cut-off point of tremendous consequence. They did not want to return to the farm. Yet, the pattern of selection promoted continued oligarchy among those who were selected—the educational elite.

The revenue from exports of agricultural products was not used to improve conditions in the countryside, but was invested in such a way that the elite benefited most. Moreover, the great masses in the countryside were not organized, lacked a voice, and could not influence reforms.

As has been pointed out:

The nature of the problems is such that a framework is required, an ideology supported by a vision of the future, whereto reference can be made; a vision, too, to which parochial interests can be subjected, with reference to the “national interest.” This framework is provided in the Arusha Declaration of February, 1967.
The same conclusion was stated by Nyerere himself:

By the resolutions of the Arusha Declaration we have decided that our Government and our people must work for economic growth in a manner which will bring benefit to all; and we have decided on the policy of Socialism and Self-Reliance. It is in the light of these accepted objectives that the Government has examined the achievements and failures during the First Plan period, and used the accumulated experience in drawing up the Second Plan.

The priorities for the second Five-Year Plan were decided in the light of Arusha objectives: “Firstly, providing an adequate and balanced diet; secondly, providing sufficient good, and if possible attractive, clothing for all our people; thirdly, providing decent housing for all our people; and fourthly, providing educational opportunities for all the people.”

In 1964 Tanzania had not worked out clearly the implications of its socialist belief. As a result the government was simply trying to attract investment of any type, and the role of public enterprise appeared to be that of filling in gaps left by private investment. The National Development Corporation (NDC) was not created until 1965, and its function as promoter of socialist large-scale production was spelled out even later.

All this changed in 1967 when the Arusha Declaration was adopted. The NDC was then given its very heavy new responsibilities, and other parastatal organizations were created:

Over the next three years, the government entered into agreements to participate in the ownership of the Italian-built Tiper oil refinery near Dar es Salaam, and of the rest of the petroleum industry, and in early 1970 announced plans to take over the entire wholesaling system, which was controlled by Asiana. In early 1971, in what Nyerere described as a “mopping-up” measure, the National Assembly passed a bill authorizing the nationalization of all commercial buildings, apartments, and even houses—except those lived in by their owners—that were worth more than fourteen thousand three hundred dollars.

A similar change affected agriculture. The first Plan talked only in terms of increased production and efforts were directed at encouraging greater output, even when this meant helping individual peasants to become employers of labour. The policy of Ujamaa which was adopted by the Party in October, 1967, meant the beginning of a change; gradually Tanzania began moving toward a program of integrated rural development which leads in the direction of the kind of socialist society the Arusha Declaration called for.

The important difference between the two plans is that while attempts to enlist popular participation were more ambitious in 1968-69 (but also failed badly), the plan prepared five years later is much more identified with the interests of the people than the first. The main reason is its close identification with the national objectives as expressed in the Arusha Declaration:

The “identity” of the plan is always important but particularly so in less developed countries where resources are scarce and political crises may arise from the way resources are allocated. The more resource allocation is bound by the content of a specific document, the more important it is that the plan—and, of course, the government—enjoy a high degree of legitimacy. Plan proposals are likely to be more controversial and create more difficulties of implementation if they are launched in a context where no long-term political choices have previously been made.
Recent reports indicate that Ujamaa development is receiving resistance from the large farmers. They are passively resisting the policy of rural development. The peasant farmers, on the other hand, are not yet completely organized. TANU organizers have succeeded in establishing a people’s militia to balance the power of the elite. Their emphasis is political education, reminiscent of the practices in China. The Arusha Declaration provided a North Star, but the charting of the course in the direction of socialism is still going on.

It would be of undoubtable interest to learn in more detail how the legal process, i.e., legal structures, administrative structures, and police powers are being used to deal with the problems of plan development. However, no such research is available, and answers to these questions must await their future availability.

Conclusions

The Arusha Declaration is unique in its simplicity and clarity. Its principal objective is the uplifting of the whole society through the process of eradicating exploitation of man by man. The legislative and administrative agencies have implemented certain parts of the Declaration, the most important of which remains that section which now stands incorporated in the Constitution. It boldly commits Tanzania:

...to evolve a machinery to ensure that those who are entrusted with the task of law-making, and also those responsible for administering the laws, are people who will be able to perform their functions without fear or favour. The legislature must always be an instrument to reflect in law not only the policies of the country but also the aspirations of the people. In a democratic society the legislature consists of people with a mandate from the electorate to safeguard in all respects the interests of the electorate. It is not sufficient for leadership to be elected by the people. If the leadership of any State fails to serve the people the principles of democracy are defeated. “People” in this context does not mean a segment of the population but means the whole population. Nothing can frustrate democracy and make a mockery of justice and equality more than corrupt leadership. One does not have to look far back into history to discover how those who made use of slogans such as Law and Order, Equality, Justice, Democracy and Fraternity as stepping stones for climbing on the pedestal of leadership, once there, became servants of economic monopolies or cartels and exploiters or instruments of oppression of minorities and of systematic annihilation of human rights as much as it can safeguard them. Man makes the law, and man is not infallible, but susceptible to greed, hatred, lust for power, and other human foibles. Tanzania has taken steps to divorce greed and lust for power from leadership.

Beginnings

One objective in attempting a comparison between law and literature was to examine their common origins in the affairs of men. Another was to explain their functional relationship. I have concluded that literature is a source of ideology upon which law may be built.

Literature is the expression of individual or group consciousness—fears, despair, hopes, etc. Moreover, literature is eclectic, containing the subject matter upon which such disciplines as philosophy, history, anthropology, sociology, and psychology are based. Literature, therefore, embraces more than its various formal expressions in poetry, drama, novels and the like: whether we believe the teaching of aesthetic critics who emphasize
literature's appeal to the sensibilities or the utilitarians who ask that literature comport with societal objectives, literature represents the attitudes of people and is therefore the bones upon which ideology is based. Such attitudes form expectation which may precipitate legal development. For, law is the expression of the people's self-consciousness in the form of community expectations and their resolution by authoritative decisions, whether we view these decisions as the quantitative implementation of qualitative ideals or the crystallization of new ideology in which means are also ends.

For me, there are obvious implications in these observations for Blacks. An expanded definition which seeks to integrate law and literature is a useful tool in legitimizing Black attempts to develop a plan for change. Its value lies in the integrity with which it reflects and affects our struggle. Stereotype assessments such as those that have attended the economic and political ideas of leaders such as Angela Davis may give way to a continuing dialectic.

The literary object in this discussion is, of course, a political statement. Its effect upon law was, therefore, relatively easy to make. But, this is an after-the-fact assessment. There is no evidence of the formal use by Nyerere of the literary perspective in creating law. The most that can be said is that he was guided by elements known to literature. How much more significant it is if a poem, an essay, or play could actually affect the point of view of lawmakers.

The time will come when we can, with the African poet David Rubadiri, say that

Whoever really understands anything in the heart of a man?
We all live to ourselves until something brings us together.
But here in our village all belongs to our total life.43
FOOTNOTES

1. Tanzania is an amalgam of two countries formerly known as Tanganyika and Zanzibar. Tanganyika was formerly a German colony and, following the Great War, it became a British Trusteeship territory. In 1961 it became an independent nation. Tanzania was formed in 1964.

In 1954 the Tanganyika African National Union (TANU) was formed. With its founding, the independence movement developed rapidly, and independence was achieved in 1961. There were three reasons why the drive for independence was so effective: None of the many tribes was dominant, there was only a small community of white settlers to resist the rise of African nationalism, and the general lingua franca Swahili tended to unite the nation. The road to independence was unusually clear of bloodshed and violence. Racism did not play the role it did in Kenya. TANU won by electing more TANU candidates to the House than any other interest. (See William Edgett Smith, “Profile: Julius Nyerere,” New Yorker, October 16, 1971.)

2. Nyerere received his higher education in Uganda and later in England. It was during these years that his political interest took root. In 1943, after completing his standard ten studies at Tabora, Nyerere entered Makerere College in Uganda. While there, he was particularly influenced by John Stuart Mills’ essays on representative government. His political interest caused him to help organize a campus chapter of the Tanganyika African Association, a social group for African civil servants. Nyerere turned the club into one for studying political issues. Completing his studies in 1945, Nyerere taught for the next four years. In 1949, he began graduate work at the University of Edinburgh. While his strongest subject was biology, he took his degree in history and economics. Of his days at Edinburgh, Nyerere said:

I had had three years in which to think. I had given up the politics of complaint and was ready to tackle the roots of the problem of colonialism.

Upon his return, Nyerere was elected president of the Tanganyika African Association. The efforts of TANU led to independence.

As a leader Nyerere is primarily concerned with meeting the basic physical needs of his people:

It’s not a question of whether they are happy. That’s a philosophical question. I’m not trying to make them happy! But there is a difference between clean water and dirty water. My problem is to get a woman clean water. My problem is to get her a healthy child.


4. Horace, Art of Poetry, I.


9. Samuel Johnson, Preface to Shakespeare, first published in 1765,


11. Ibid.

12. Ibid.

13. Ibid.

14. From Faulkner’s Nobel Prize acceptance speech.

16. Ibid. at p. 293.


19. Ibid.


26. Ibid., at 10.

27. Ibid., at 9.


32. See note 29 supra, at 2.

33. See note 29 supra, at 10-11.


35. See note 28 supra, at 185.


38. Ibid.


40. Smith, supra, p. 84.


42. See note 28 supra, at 201-202.