

**Protect or Plunder?: Understanding Intellectual Property Rights by Vandana Shiva, London and New York: Zed Books, 2002, ISBN 1-84277-108-6, (Price \$55); Paper: ISBN 1-842-77109-4, (Price \$17.50), pp. 146**

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Vandana Shiva believes that current international patent law “reflects the arrogance of western civilization.”<sup>1</sup> As proof she cites the case of *neem*, a tree with pesticidal properties, native to India. For more than 2,000 years, Indians have developed ways to use *neem* to purify air and fight disease. Knowledge of *neem*’s applications is universal in India.

*Neem* does not grow naturally in the United States. Americans first imported it for cultivation as a pesticide in the 1970s. After a decade of research and development, the federal government began to issue patents for *neem*-based products. W.R. Grace (Grace), a multinational chemical corporation, purchased many of the patents. To ensure itself a steady supply of reasonably priced *neem* seeds, Grace established a base in India. The price for *neem*, which had always been free or cheap, now has risen beyond what Indian farmers can afford.

More than 200 organizations have challenged Grace’s patents on *neem* products. Grace defends its patents, maintaining that the company creates new products to which it is entitled property rights. Farmers, scientists and activists, Dr. Shiva among them, contend that multinational companies like Grace are using international patent law and new

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<sup>1</sup> Vandana Shiva, *Protect or Plunder?: Understanding Intellectual Property Rights* 7 (2002).

conceptions of intellectual property to plunder the knowledge and resources of the third world.

The debate over *neem* illustrates many of the issues that transnational intellectual property law raises in developing nations. In *Protect or Plunder*, Shiva presents a passionate argument in favor of reforming international patent laws. She argues that if the natural resources and knowledge of these countries continue to be patented by corporate outsiders, developing nations will become beholden to industrialized countries at the expense of their own development.

Shiva is known throughout the world for her work as an environmentalist, physicist, feminist, activist and philosopher. She is the founder of a movement to protect India's biodiversity. Her activism permeates *Protect or Plunder* and inspires a passion that is absent from other intellectual property texts.

Shiva opens with an examination of the history of patents. Europeans developed patents during the Renaissance to encourage the spread of knowledge across national borders. Individuals bringing knowledge or technology from abroad would receive exclusive patent rights for a fixed period of time. This gave underdeveloped countries the opportunity to acquire new technology, while providing profits to the person who imparted the knowledge. The knowledge transfer at the heart of the creation of the patent would now be viewed as piracy due to the evolution of intellectual property laws.

Shiva argues that current international patent regulations emphasize the protection of innovation, not the transfer of knowledge. She deconstructs and simplifies the decisions that have led to the current patent regime. She begins with the Supreme Court decision in *Diamond v. Chakrabarty*, 447 U.S. 303 (1980), which enabled living organisms to be patented for profit. The Trade Related Intellectual Property Rights (TRIPs) agreement negotiated at the Uruguay Round of GATT is also singled out for criticism. TRIPs, which regulates international intellectual property laws, is too closely styled after American patent laws, Shiva argues.

American patent law and TRIPs allow corporations to patent knowledge or inventions that are novel to the United States. The story of *neem* demonstrates how corporations use these regulations to own and profit from knowledge that has existed elsewhere for centuries simply by asserting intellectual property rights through the patent system. American corporations plunder the third world of its resources by placing patents on these natural products or processes and then selling them back to the countries in which they developed. The countries in which the patented products originated receive none of the profits, and are often priced out of a market they created.

As Shiva sees it, the patent regime is designed to keep developing countries poor by allowing industrialized nations access to their knowledge and native organisms. She characterizes current intellectual property laws as “instrument[s] of colonization.”<sup>2</sup> Shiva maintains that national wealth in coming years will be based on intellectual property, rights and argues that current international patent laws allow industrialized nations to

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<sup>2</sup> Id at 18.

assert a disproportionate amount of control. Shiva brands the United States as the primary colonizer because of its global dissemination of policy that permits multinational corporations to easily obtain patents and enforce them across international borders. “TRIPs and US-Style patent laws,” writes Shiva, “annihilate rights of Third World communities by not having any system of recognition and protection of indigenous knowledge and not having any system for preventing patents claiming piracy of such knowledge as an invention.”<sup>3</sup>

Should the current regulatory regime continue to allow profit-hungry multinational corporations to patent the resources of the developing world, Shiva envisions a “new era of colonialism in which not only are we recolonized as a people, but all life forms are colonized.”<sup>4</sup> This concern for the future, as well as the harsh criticism lumped on the United States, makes *Protect or Plunder* an important book. Readers may not agree with Shiva’s claims, but it is important for American audiences to pay attention to voices from the developing world and see the passion and struggle that our national policies create.

*Protect or Plunder* presents bold views that do not always reach American students, lawyers and politicians. Shiva writes in an accessible style that educates on the complexities of patent law and its effects on the developing world. Readers new to Shiva’s perspective may be curious to learn more. Unfortunately, with only a reference list at the back of the book, it is difficult to link the facts underlying Shiva’s claims to their origins.

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<sup>3</sup> Id at 120

<sup>4</sup> Id at 132

Shiva's obvious passion will win over many readers, though some may be tempted to dismiss her as a radical. Her characterization of the west as an arrogant colonizer might offend American readers, but they should not close themselves off to the book as a whole. Though some may disagree with her reasoning and conclusions, they should be mindful of her criticism of the current patent regime. Even if intellectual property laws were not designed to plunder the developing world, this has been their consequence at times. Outsiders cannot easily know what policy makers intend when they draft patent laws, but they can see, as in the case of *neem*, the effects that these laws can have.

Shiva's latest book is a good primer for those interested in learning more about the role of intellectual property and free trade. *Protect or Plunder* gives readers a view from the developing world and insight into the intense debate over globalization.