INTRODUCTION: The Second Coming of Columbus

Claim: During the “age of exploration,” (esp. latter part of 15th century), “charters and patents turned acts of piracy into divine will.” Lands outside of Europe were regarded as unowned and effectively unoccupied *terra nullius,* in spite of the indigenous peoples who lived there.

Claim: Intellectual property institutions are effecting the same sort of theft perpetrated by European imperialists worldwide. The actions of the WTO, WIPO, recent agreements like GATT, are simply the next stage in a process of colonial imperialism that started in the 15th century.

Claim: Locke’s view of property is essentially imperialist and oppressive, and provides a justification for piracy.

CHAPTER ONE: Knowledge, Creativity, and Intellectual Property Rights

Diverse Creativities

Claim: Indigenous knowledge systems are “ecological,” while scientific knowledge systems are “reductionist and fragmentational.”

Claim: Rather than promoting creativity, IP institutions stifle creativity.

Claim: IP institutions fail to recognize, respect, and promote some forms (the most important forms?) of creativity.

Forms of Creativity:
1) Inherent biological creativity of organisms
2) Creativity of indigenous communities.
3) Creativity of

Intellectual Property Rights and the Destruction of Intellectual Diversity

Claim: Because IP rights narrowly define ‘creativity,’ they wind up promoting only one kind of creativity.

“The TRIPs treaty of the Final Act of GATT is based on a highly restricted notion of innovation. By definition it is weighted in favor of transnational corporations, and against citizens in general and Third World peasants and forest dwellers in particular.”(10)
IP Rights Restrict liberties by: (10)
1) Turning public rights into private rights.
2) Recognizing only those innovations that generate profits, not those that answer social needs.

To say that IP rights promote innovation is “a denial of the role of innovation in traditional cultures and in the public domain.” (11)

Sherwood’s Examples: p. 12.

“Central to the ideology of IPRs is the fallacy that people are creative only if they can make profits and guarantee them through IPR protection. This negates the scientific creativity of those not spurred by the search for profits. It negates the creativity of traditional societies and the modern scientific community, in which the free exchange of ideas is the very condition for creativity, not its antithesis.” (13)

**Patents as a Block to Free Exchange**

“There is virtually no evidence that patents actually stimulate invention.” (13)

**Claim:** Introduction of patents and other IP rights in scientific research stifles communication among scientists, which in turn undermines scientific creativity.

**Threats to the Tree of Knowledge**

**Claim:** IP has had the effect of ‘skewing’ research toward profit and money making endeavors, and away from less profitable but socially beneficial forms of creativity.

**Enclosure of the Intellectual Commons**

**Claim:** The development of IP rights is like the “enclosure of the commons” that took place in the late 18th and early 19th century in Britain and Ireland, when peasants were driven from land on which their families had lived for centuries. In that case, the pretext was that the land was the property of the aristocracy. In this case, the pretext is the promotion of innovation and creativity, and allocation to creators of their rightful property.

(Note: This interpretation adds to Shiva’s text. Would she accede to it?)