

# Ownership and distribution

## Ethical issues in patenting

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We have more than one moral principle  
Reasonable people can disagree on their priority  
Unusual situations bring this out

PLURALISM  
DIVERSITY  
'NEW PROBLEMS'

Do *good*

Do *right*

Seek good  
consequences

Respect persons

Avoid bad  
consequences

Be fair

International laws and guidelines

Professional guidelines and regulations

National laws and guidelines

Local regulations

- Ownership:
  - Why ?
  - What ?
- Distribution:
  - Knowledge
  - Goods
  - Incentives



Purchase?  
Labor?  
Utility?  
Need?  
Skill?  
Discovery?  
Invention?

« Everything has either a *price* or a *dignity*.  
Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits of no equivalent, has a dignity. But that which constitutes the condition under which alone something can be an end in itself does not have mere relative worth, i.e., price, but an intrinsic worth, i.e., a dignity”

Immanuel Kant, Groundworks of the metaphysics of morals



A patent does not confer ownership, but the (exclusive) right to prevent others from exploiting <insert something here>



What does this change?

- “The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.” (Directive 98-44-EC Art 5.1)
- “An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.” (Directive 98-44-EC Art 5.2)



## Directive 98-44-EC Art. 6

1. Inventions shall be considered unpatentable where their commercial exploitation would be contrary to ordre public or morality; however, exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation.
2. On the basis of paragraph 1, the following, in particular, shall be considered unpatentable:
  - (a) processes for cloning human beings;
  - (b) processes for modifying the germ line genetic identity of human beings;
  - (c) uses of human embryos for industrial or commercial purposes;
  - (d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

# Conclusion 1

- We own things because we *deserve* to own them
  - But we diverge in part on what makes it so
  - This raises issues of utility and fairness
- We own things *which are such that they can be owned*
  - But we diverge in part on what makes it so
  - This raises issues of respect for persons (and living things?) and of utility

# Distributing ideas

- Science is a collaborative enterprise, and thrives on the free exchange of ideas
- Patenting may discourage disclosure



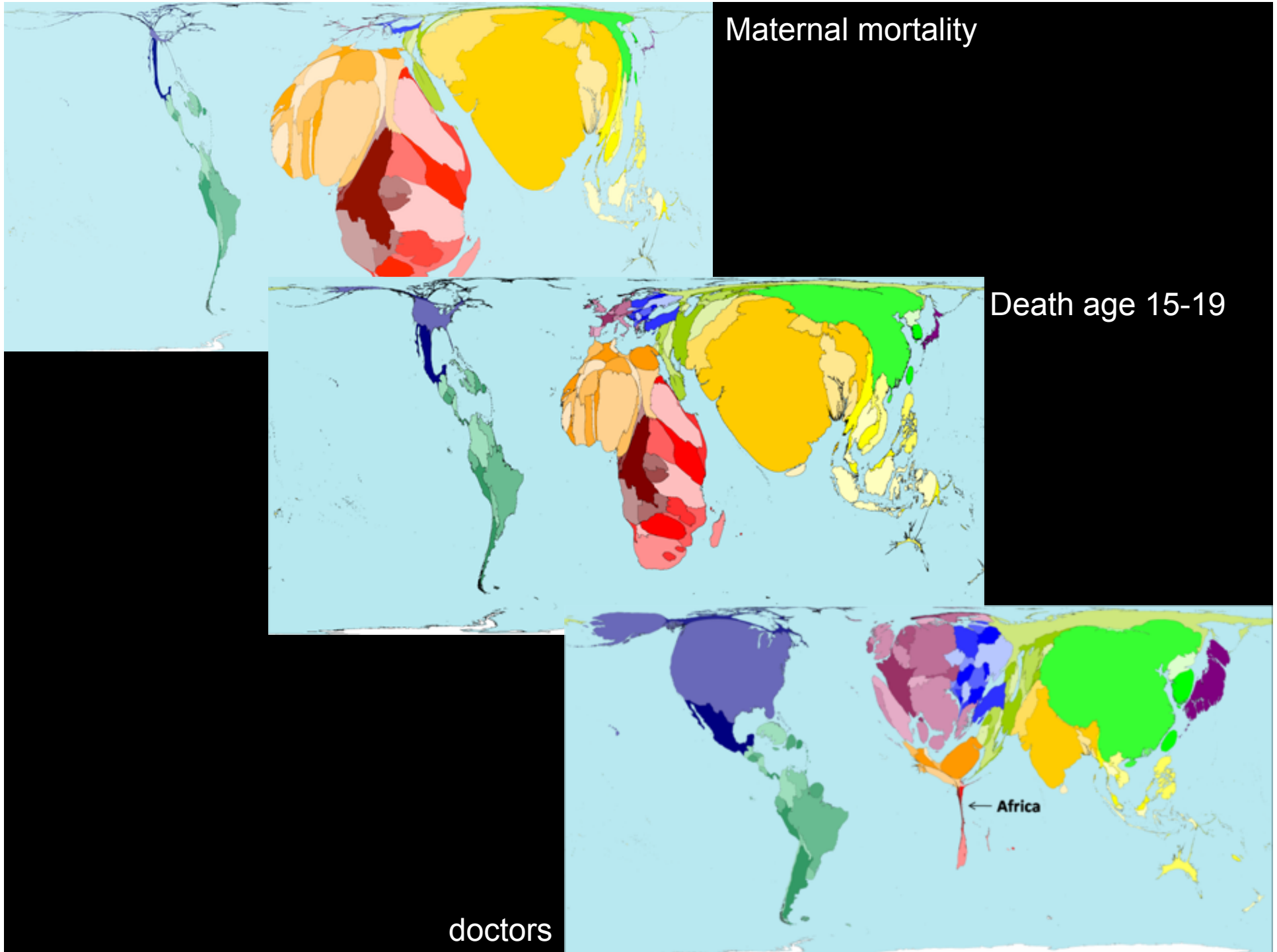
- Science should be / needs to be curiosity-driven
- Patenting leads to incentive-driven research

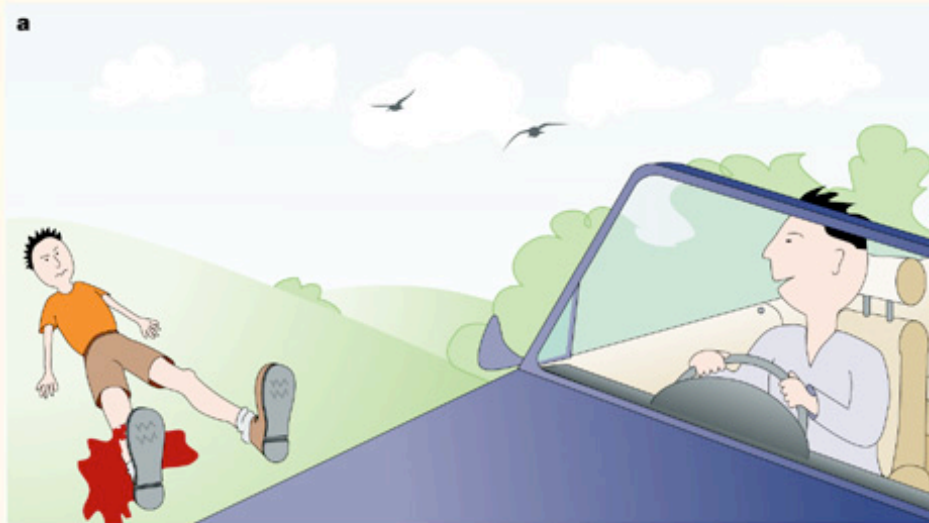
Maternal mortality

Death age 15-19

doctors

← Africa





# Problems with patent system

- Exclusion of poor people
- Neglect of diseases concentrated in low-income countries
- Bias towards maintenance drugs
- Wastefulness
- Counterfeiting
- Drug resistance from diluted version of counterfeit
- Excessive marketing
- The last mile problem

Banerjee A., Hollis A., Pogge T.: The Health Impact Fund: incentives for improving access to medicines. Lancet 2010

# Distributing goods

## Patenting

- Rewards discovery
- Monopoly pricing
- Pay-per-use
- User payment

## Health impact fund

- Rewards discovery *and distribution*
- Cost of production
- Pay-per-utility
- Third party payer

Both reward innovation

Both look to consequences

Both can achieve fairness for innovators

The question here is *what works* ?

And *what can achieve fairness to users* ?

## Do good

+Patenting is necessary in order to create an incentive for investing research and development that will lead to various benefits; without the incentive provided by patenting that investment will not be made.

- Patenting will have destructive economic effects on social structures ( eg family farms or clinical practice); will enable patent holders to reap monopoly profits even from life saving therapies and diagnostic techniques; will lead us to objectify life and living creatures. human and otherwise.

## Do right

+Patenting of life forms is justified on grounds of fairness to inventors and investors.

- Ownership of life, or property rights in portions of the human genome, are inherently wrong.



- Patents raise ethical issues linked to ownership (on which we diverge) and distribution (on which we also diverge).
- These issues have two levels:
  - Which values should we prioritize when values conflict, and can we prioritize more of them?
  - When we try to protect a value, does it work?
- We also diverge on whether we *ought* to pursue some patentable avenues of research.
  - These questions are not directly to patents, but they tend to get smuggled into the discussion.

