

Philosophers debate the thesis that lawyers have a special obligation to facilitate access to justice.<sup>[1]</sup> Such a special obligation may arise *prima facie* from the *telos* of lawyers as providers of legal services.<sup>[2]</sup> Mandatory pro bono has been proposed as a means of fulfilling this obligation.<sup>[3]</sup> The most powerful objection against mandatory pro bono is the rights-based argument from autonomy. The thesis of this paper is that autonomy is limited because its foundation is restricted self-ownership, rather than absolute self ownership. Restricted self-ownership affirms that, under particular circumstances, individuals have an obligation to (i) avoid actions which harm others and to (ii) perform actions which help others. The principle of restricted self-ownership implies a duty on the better off to allow and enable the worse off to exercise restricted self-ownership. If my argument for restricted self ownership is sound, then the lawyer has a moral right to partial autonomy and not one to absolute autonomy.<sup>[4]</sup> The purpose of this paper is to defeat the autonomy objection to the proposition that there is a special obligation on the part of lawyers to assist the poor in accessing justice.

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<sup>[1]</sup> See for example: Devlin Richard. 2002. "Breach of Contract? The New Economy, Access to Justice and the Ethical Responsibilities of the Legal Profession." *Dal. L.J.*: 447. Woolley Alice. 2008. "Imperfect Duty: Lawyers' Obligation to Foster Access to Justice." *Alta. L. Rev.*

<sup>[2]</sup> This is a proposition I formulated by analogy to Plato's teleological argument in the Republic. "Is the physician [...] a healer of the sick or a maker of money? And remember that I am now speaking of the true physician. A healer of the sick, he replied." Similarly, a lawyer is teleologically a provider of access to justice, rather than a money maker.

<sup>[3]</sup> See the report by the Pro bono Committee of the Law Society of Alberta (April 2003), online at: <<http://lawsocietyalberta.com/files/reports/probono03.pdf>>

<sup>[4]</sup> Thus, when the basis of autonomy (i.e. self-ownership) is analyzed, it may seem that the very foundation of the autonomy thesis can be used as an argument for, rather than against, an obligation to assist; however, the merits and wisdom of mandatory pro bono (as a special kind of assistance) are beyond the scope of this paper.