Counterplan Text: The USFG should require that psychic restitution be incorporated in the plea bargaining process.

Crime victims aren’t represented in plea bargains now. **Alkon 12**[[1]](#footnote-1)

**Traditionally, in the U**nited **S**tates, the answer is clear: no, **the victim is not a party to the plea bargain** and has no standing to prevent it.  In the most basic terms, **plea bargains are** deals **between the prosecutor and defense that the judge must agree to** accept for it to go forward.  **The victim is not part of the negotiation process**, nor can the victim prevent the deal from going forward by not approving it (as a judge can).  In recent years, with legislation to better protect victims, many states now require that victims be informed about any plea deals.  And, a few prosecutors around the country have it as their stated policy to not proceed with plea deals if the victims do not agree.

Psychic restitution is fundamentally retributive. It’s also a prerequisite to the aff. Restoration is impossible if the victim is excluded from plea bargains.

**Starkweather 92**[[2]](#footnote-2)

Although the **retributive** theory of **justice dictates**, in part, **that an offender ''pay" a punishment sufficient to restore a victim to** his or **her status quo** ante,63 1 financial loss is only part of the loss a victim suffers as a result of crime. A victim will always suffer psychological trauma as well.64 Therefore, to be consistent with the retributive theory of punishment, the criminal justice system must assist a victim in resolving the psychological harm caused by an offender's conduct. Currently, however, the plea bargaining process alienates a victim and hinders the resolution of his or her psychological trauma**.** 6 **Commentators** usually **refer to** the victim's interest in **psychic restitution as** "**retributive**";6they equate the "retributive" interest with a victim's desire for revenge or retaliation.67 They argue that allowing a victim to retaliate against an offender in a formal setting aids resolution of the event by providing the victim with a cathartic experience. 68 However, a victim's desire for revenge or retaliation undermines the retributive concept of proportionality. 69 For example, "a victim may believe that an auto thief should be hanged and may muster a variety of moral arguments in support of his position, [but] proportionality requires a rejection of the victim's position."70 Psychic restitution is a sanction imposed on a defendant that provides the victim an emotional resolution of the crime experience. However, a sanction based on revenge will not provide true resolution but suppress it. Vengeance will not likely allow a victim to recover psychologically, but its opposite, forgiveness, will enable the victim to be restored emotionally. [Florgiveness is the exact opposite of vengeance, which acts in the form of re-acting against an original trespassing, whereby far from putting an end to the consequences of the first misdeed, everybody remains bound to the process .... In contrast to revenge ... [florgiving ... is the only reaction which does not merely re-act but acts anew and unexpectedly, unconditioned by the act which provoked it and therefore freeing from its consequences both the one who forgives and the one who is forgiven.7 ' Forgiveness, rather than vengeance, therefore, allows a victim to place the criminal experience behind him or her and restores the relationship between a victim and offender. **The current plea bargaining process does not protect** a victim's **interest in psychic restitution** by facilitating forgiveness. Instead, by placing a premium on obtaining convictions regardless of a victim's psychological harm, the system aggravates the sense of helplessness and the loss of control produced by the crime.72 Moreover, **a victim** who is **not consulted** or notified about a plea bargain **will view the** criminal **process as** an **invalidation of** his or **her experience**, especially **where charges are dropped or reduced.**73 This invalidation contributes to the denial already taking place within the victim.7 4 "[U]ntil the victim acknowledges the actual experience as hers or his alone-that she was raped, that he was mugged-the victim is virtually powerless to be free from the rapist or the mugger. ' 7 5 **Only a plea process that emphasizes** an **offender's responsibility** for his or her criminal act **enables a victim to accept what happened and** to eventually **come to** the point of **forgiveness. Only then will** the **relationships between victim and offender** and victim and community **be restored.**

1. Cynthia Alkon (Texas Wesleyan School of Law, Criminal Justice). “Should victims be able to stop plea bargains?” Law Professor Blogs Network. September 2nd, 2012. http://www.indisputably.org/?p=3851 [↑](#footnote-ref-1)
2. David Starkweather (Indiana University School of Law). “The Retributive Theory of “Just Desserts” and Victim Participation in Plea Bargaining.” Volume 67, Issue 3. 1992. http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1445&context=ilj [↑](#footnote-ref-2)