Divided System  
Negative Case by Thomas Keith  


This is a defensive case, designed to undermine the impacts of the affirmative side. Your attitude when running this case will always be that what your opponent just said is not important, and that he or she is missing what actually matters in the round. To win with this case, you need to push the resolutional analysis every time you speak, and focus as much of your time as possible on pushing the unique benefits of the negative side.

In essence, this case divides the criminal justice system into two different domains, and then argues that we should affirm the resolution in one domain but negate it in the other. It tells the judge that as long as a benefit stems from the former domain, it shouldn’t matter in the round because both sides agree that rehabilitation should be valued there.

The strategic advantage to this is simple. Most affirmative cases right now argue that rehabilitation is good because of the benefits that stem from the first area. By arguing that the first area is irrelevant, it’s telling the judge that the affirmative hasn’t been discussing what really matters. It undermines the burden of proof. For most affirmative cases, all that negative needs to win is to make it clear that the balance exists.

There are two primary obstacles that the person running this needs to overcome. The first is clarity. If the balance doesn’t make sense to the judge, it’s not going to win the debate round. Large chunks of the rebuttal need to be spent making sure that the judge understands the logic behind how it’s possible to divide the criminal justice system into two parts, and how that translates into a balanced negative.

The second is the question of whether you’re really running a balanced neg, or if you’re actually affirming the resolution. Aff may argue that the second domain is less important, so by affirming the resolution in the first, one is actually affirming the res. The answer to this is that while they are equal domains, the second domain has a greater influence over the first, and so the only logical conclusion is that either there’s a balance or retribution is being valued higher.

Needless to say, this is a supplemental case. It’s not meant to be run as a primary negative, but instead in response to affirmatives who only talk about the first domain. This is also an unorthodox case with an unorthodox value. If your region is heavily tradition-based or has messed up debate theory (Region 8) don’t even think about running this.

Otherwise, just focus on the res analysis and why it matters, and you’ll be fine.

Divided System

Children are sent to timeout not when they need to be productive, but when have done something wrong. Whether in the family, the community, the state, or the nation, a criminal justice system is designed for one purpose: to punish people who have done wrong for what they have done wrong.

It’s because rehabilitation fails to uphold the basic essence of what a criminal justice system is, that I negate this resolution.

# Resolutional Analysis: Burden of Proof

There are three things that we need to remember if we’re going to understand what this debate is about.

The first thing is:

## A Divided System

The Criminal Justice System in this debate is divided into two equal parts: The Courts, and the Prisons. When this resolution talks about the criminal justice system, it’s referring to those separate, individual parts: The Courts, and the Prisons.

The second thing you need to remember is:

## Burden to Prove Both

What happens if only the Prisons choose to value rehabilitation? Then Aff hasn’t won this round. Why? Because there’s a whole other half to the justice system that *isn’t* valuing rehabilitation. When only one half values rehab, then it’s equal with retribution, not valued above it like the resolution demands. For my opponent to win this round, he must show that in both the Prisons *and* the Courts, rehabilitative theory is better than retribution.

The third thing you need to remember is the negative thesis:

## Balanced Approach

When you negate the resolution, you’re choosing a balanced approach. This means that in the Courts we use retribution to figure out how long we take away a convict’s freedom, but that in the prisons we value rehabilitation so we can use that loss of freedom in a way that benefits society. While Aff has to value rehabilitation in both the prisons and the courts, I’m saying that rehabilitation is great in the prisons but dangerous in the courts.

# Value: Added Benefits

A debate is a lot like two car companies trying to convince you to buy their car. My opponent’s car dealership has just walked up to you and said that your first consideration should be [AFFIRMATIVE VALUE], or for the sake of the analogy, fuel efficiency, and he’s just shown you his most fuel efficient car.

I’m going to agree with his value; fuel efficiency is the most important thing. At the same time, however, I’m going to show you a car that looks, feels, and acts differently—but is just as fuel efficient as my opponent’s car.

So let’s break this down. Fuel efficiency is the most important thing, but both cars are just as fuel efficient as the other. So how do you make your decision? You make it by looking at its color, its feel, how safe it is, how quickly it’ll go from 0 to 60. You make your decision using the added benefits.

So I’m not going to disagree with [AFFIRMATIVE VALUE]. Instead, I’m here to tell you that both rehabilitation and a balanced approach will reach that goal just as well as the other. As a result, I’m asking you to make your decision not based on [AFFIRMATIVE VALUE], but instead using the added benefits.

Let’s talk about some of those benefits, starting with my first and only

## Contention: Balance is Better

When the prisons are told to value rehabilitation, and the courts are told to value retribution, we get three incredibly important benefits that we would not get if we only valued rehab.

## The First Benefit: Just Punishments

When we ask the Golden Gate University Law Review what rehabilitation looks like in the Courts, we get something that looks abnormally unjust.

Quote:

“Under the rehabilitative theory, judicial discretion has been quite broad, based on the idea that the punishment should fit the criminal and not the crime. Sentencing should be individualized depending on such factors as the particular circumstances of the crime, the prisoner’s previous criminal record, and the chances that another crime will be committed.”

What does this tell us? That a child who gets caught stealing a pair of shoes can be sentenced for abnormally long periods of time if the judge assumes he’s a kleptomaniac. That murderers and rapists can get off lightly if they convince the judge they won’t do it again. That’s the problem with rehabilitation: It fills the jails without punishing the criminals.

When we choose a balanced approach, we value retribution in the courts. We give murderers and rapists what they’re due because that’s what they deserve for the crimes that they’ve committed. We punish based on the crime, not the criminal.

## The Second Benefit: Preserves Rule of Law

There’s another problem with sentencing based on who the criminal is: It undermines rule of law. Laws by nature are static. They can’t judge individual circumstances; they can only set universal rules.

So when we make punishment about individual circumstances, we’re giving government officials the power to make broad decisions that directly affect the lives of others, not based on laws, but on their own subjective opinions.

That’s the definition of tyranny. When government officials can say “I am the law,” we get something that resembles a dictatorship, not a free society.

A balanced approach on the other hand is *based* on the rule of law because it values retribution in the courts. When you vote Neg, you say that punishments should be what our laws say is proportional to the crime committed—and that’s the only way to preserve the rule of law.

## The Third Benefit: Treats Humans like Humans

Our justice system has a moral imperative to treat human beings as if they’re responsible for their actions. But when we turn their sentencing into a gauge of how long it will take to retrain them into something else, we’re no longer treating them as responsible human beings but instead as animals to be drugged, tested, and experimented on, until we can turn them into something else.

I’m not saying that rehabilitation is always bad. But that the only way to treat humans like humans is to give them the basic dignity of being held responsible for their actions—and only a balanced approach that provides retribution in the courts can do that.

Opposing Brief

The key to beating this case is to take down the res analysis. Run two or three logical responses to why it doesn’t make sense, bog down both the value and pre-value debate with tricks and straw men, and make it as confusing and unappealing as possible. If the judge can’t understand the negative’s res analysis or why it matters, he won’t vote for it.

There are three ways to take it down.

The first is argue that both the courts and the prisons are connected. The decisions made in one will directly affect the other, therefore they can’t be separated. Make it clear that rehabilitation programs are incompatible with the nature of retribution and vice versa, therefore you can’t rehabilitate in one and exact retribution in the other. It simply doesn’t work.

The second is to argue that it doesn’t make sense that you can divide the justice system in two. It’s a process, not just different sets of institutions. And even then, there’s no way to determine whether or not you’re still valuing each 50/50. Challenge the negative for a standard to determine whether they are equal in value, and when that’s not provided argue that it’s not possible to quantify and therefore not worthy of the judge’s consideration.

The third is to outweigh the negative side. Argue that while you can send criminals out of prison immediately once they’re ready, the negative wants to keep them incarcerated as they slowly inculcate back into the criminal lifestyle. That’s not a viable alternative. The only way to have effective rehabilitation is to direct the entire system towards rehab, not just half.

Because most of the negative arguments are dependent on that res analysis, all you need is a full-on assault on the concept of a balance, a “No Impact” response to the negative case and a reminder to the judge on how much the affirmative case matters in the round.