

ALTERNATIVES TO IMPRISONMENT.

By Lord HEWART of Bury (Lord Chief Justice of England).

In electing to speak for a few moments upon "Alternatives to Imprisonment" I have chosen a subject which bears some relation, at any rate, to one of the heads of your programme, but unfortunately its short title might conceivably be thought to convey some disparaging criticism of imprisonment itself. Nothing, I need hardly say, is further from my intention. It is true, indeed, as one of the experienced Prison Commissioners of England and Wales observed to me a few years ago, that at the bar of public opinion, which tends always to be imperfectly informed, prisons suffer from at least one fundamental disadvantage. Other institutions are judged by their successes: prison is always running the risk of being judged by what are regarded as its failures. A school or a college, for example, comes before the public eye, and lingers in the public memory, as one at least of the training-grounds of this or that distinguished person. But a prison, on the other hand, is always in danger of being made famous by some notorious or frequently convicted wrongdoer. The superficial criticism which results is doubly unfair, and indeed grotesque. It is unfair, in the first place, because the chief success of prison consists, after all, in preventing people from becoming prisoners. It is unfair, in the second place, because with the prisoner himself the success of prison consists precisely in this, that in relation to prison he is never heard of again. He goes back to join the citizen body, and is merged in it, and his association with prison is happily forgotten for ever. The danger of overlooking this simple fact is by no means fanciful. It is so easy for a Judge or a Magistrate, when he is faced with the dreadful task of passing sentence, to be impressed by the number and variety of the prisoner's previous convictions. The Judge has not, and still less has the public, any such vivid reminder of the enormous number of those who, after serving one term of imprisonment, are never again in the hands of the police. Any fair estimate of the results achieved by prison must obviously take account not merely of particular instances, but of the total mass, especially when, as in these days, so much imagination, patience, insight, and devotion are happily applied to the noble work of helping the prisoner both in prison and after imprisonment.

The consideration, therefore, of "alternatives to imprisonment" does not in the smallest degree involve any disparagement of the functions or results of imprisonment in its proper sphere. The question rather is whether that sphere may not be deliberately and carefully limited and curtailed by the adoption of other methods in suitable circumstances and in cases of the right kind. But it is a little important to perceive clearly what, and how much, is contained in this question. It is obvious, indeed, in a sense, that one and by far the best alternative to imprisonment is to refrain from offences against the criminal law. It is obvious, also, in a sense, that another, and possibly the worst, alternative to imprisonment is to let the offender off. But the question means nothing of this kind. We are to suppose a case in which an offence has been committed, the charge has been proved, and the defendant is, under the provisions of the criminal law, liable to imprisonment. The question is whether, and how, and how far, the ends that are sought by imprisonment can be attained by other means. It is not suggested that the ends which are sought by imprisonment should be diminished, much less that they should be abandoned. The problem is to find and to apply, in proper cases, not an unsatisfactory but a real and more satisfactory alternative method of fulfilling those purposes which the welfare of society needs to have fulfilled, and which, as things stand, are normally fulfilled by a punishment consisting in imprisonment. Now, it is abundantly clear that a solution of that problem presupposes some theory, at any rate, of the functions of imprisonment, the purposes of punishment, and the aims of civilized society. In other words, one cannot usefully consider an alternative without forming first a clear conception of the meaning and the objects of that to which it is to be an alternative. For the present purpose, therefore, much, and very much, is to be taken for granted. Otherwise the inquiry must, in the Aristotelean phrase, stretch out in the direction of the infinite. Let us assume, therefore, for the sake of brevity, that, in the words of the ancient philosopher, civil society came into existence in order to make life possible, and continues to exist in order to make life good. Let us assume also that civil society, for the protection of the general welfare, and to prevent the interruption of its lawful aims, has the right and the duty to punish. The essence of the matter is well and shortly expressed by Thomas Hill Green in his memorable lectures on the principles of political obligation, now to be found in the second volume of his works. "In the crime," he says, "a right has been violated. No punishment can undo what has been done, or make good the wrong to the person who has suffered. What it can do is to make less likely the doing of a similar wrong in other cases. Its object, therefore, is not to cause pain to the criminal for the sake of causing it, nor chiefly for the sake of preventing him, individually, from committing the crime again, but to associate terror with the contemplation of the crime in the mind of others who might be tempted to commit it. And this object, unlike that of making the pain of the punishment commensurate with the guilt of the criminal, is in the main attainable. The effect of the spectacle of punishment on the onlooker is independent of any minute inquiry into the degree to which it affects the particular criminal." In like manner, Bentham, in his well-known chapter on the ends of punishment, having observed that, with respect to a given individual, the recurrence of an offence may be provided against in three ways—(1) by taking from him the physical power of offending, (2) by taking away the desire of offending, and (3) by making him afraid of offending—hastens to add that general prevention ought to be the chief end of punishment, as it is its real justification. "If," he says, "we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent, but also to all those who may have the same motives and opportunities for entering upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all. That punishment which, considered in itself, appeared base and repugnant to all generous sentiments