recognition, for association of ideas, for co-ordination, and the visual and auditory memories. They might well include such an excellent device as the "cylinder test" of Dr. Lightner Witmer, of the University of Pennsylvania, which, regardless of school or other environment, is a good test of a child's judgment and learning capacity and other valuable qualities.

But there are no tests that will measure such qualities as persistency, mental doggedness, honesty of purpose, indifference, and so on, which affect tremendously an individual's use of his mental equipment. Some children of mediocre mental ability, through sheer determination and perseverance, make a very high standing in school, and others of brilliant mind, because of a lack of important character qualities, have been abysmal failures.

Let us say, then, that the use of both kinds of intelligence tests can be of great use in judging of a child's intelligence and in planning his education. But it would be a serious mistake to declare that any tests could determine a child's future place or success in society. For this place and this success depend also on other non-testable qualities—personal character qualities—without which the most able mentality may well prove worthless, and with which even a very average mental equipment may achieve a very great success.

Judge Lynch Reversed

HOPE and despair, terror, courage, and the patient will to struggle to the end were elements involved in one of the greatest cases in American legal procedure that has received little notice in the press of the country. The end of this case was marked by the appearance of the news item several weeks ago which reported that Governor McRae, of Arkansas, had commuted the sentence of death of six Negroes to terms of twelve years in the State penitentiary. For more than four years there had been a fight for the lives of those men; but there had been more than six lives at stake. The long legal battle which saved these men from the electric chair repelled encroachments of lynch law upon American courts.

In Arkansas an organization of Negro farmers a few years ago had undertaken to get a settlement of legal claims against white landowners. On the night of September 30, 1919, while they were attending a meeting in one of their churches, called to arrange for the employment of counsel to help them in their claims, they "were attacked and fired upon by a body of white men," as Mr. Justice Holmes, in delivering the opinion of the United States Supreme Court, reports the facts on which there was no dispute, "and in the disturbance that followed a white man was killed. The report of the killing caused great excitement and was followed by the hunting down and shooting of many Negroes and also by the killing on October 1 of one Clinton Lee, a white man. . . . O. S. Bratton, a son of the counsel who is said to have been contemplated, . . . is said to have barely escaped being mobbed. . . . A Committee of Seven was appointed by the Governor. . . . The newspapers daily published inflammatory articles. On the 7th a statement by one of the Committee was made public to the effect that the present trouble was 'a deliberately planned insurrection of the Negroes against the whites.'" A mob which marched to the jail to lynch the arrested Negroes refrained from acting when the Committee gave its solemn promise that the law would be carried out. "According to affidavits . . . the Committee made good their promise by calling colored witnesses and having them whipped and tortured until they would say what was wanted. . . . The Court and neighborhood were thronged with an adverse crowd that threatened the most dangerous consequences to any one interfering with the desired result. The counsel did not venture to demand a delay or a change of venue, to challenge a juryman, or to ask for separate trials. He had had no preliminary consultation with the accused, called no witnesses for the defense although they could have been produced, and did not put the defendants on the stand. The trial lasted about three-quarters of an hour and in less than five minutes the jury brought in a verdict of guilty of murder in the first degree. According to the allegations and affidavits there never was a chance for the petitioners to be acquitted; no juryman could have voted for an acquittal and continued to live in Phillips County and if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob."

Except for one sentence, used for the purpose of condensation, this report of the admitted facts in the murder trial is in the dispassionate language of a United States Supreme Court Judge. It conveys of course no suggestion of the emotional strain, the sense of outrage, the conflicting fears, the hatred and anger and fear engendered; it sets forth the facts simply so far as they are pertinent to the question whether justice was administered with due process of law.

It would seem that the question answered itself; but it did not answer itself in the minds of the judges of the two State courts and the Federal District court to which the case was appealed. There was no lack of effort to obtain justice. Of the counsel for the colored prisoners the outstanding figure was a Southern white man, formerly Attorney-General of the State of Arkansas, eminent among the lawyers of the State, Judge George W. Murphy. The National Association for the Advancement of Colored People appealed to public sentiment for a defense fund, and received contributions from both white and colored people. While the case was in a critical stage Judge Murphy, a man advanced in years, weakened by his toil on the case, died, a martyr to the cause of justice and a witness to the sense of justice among the finest spirits of the South.

After various technical appeals and after the case was finally argued before the United States Supreme Court by Mr. Moorfield Storey of Boston, President of the National Association for the Advancement of Colored People, and former President of the American Bar Association, the order of the Arkansas Federal Court was reversed, and the accused and convicted prisoners were saved from execution that they might have a hearing. And eight months after that their sentence was commuted by the Governor of the State.

The effect of this decision can be seen more clearly by the reference to the famous case of Leo Frank. In that case the accused was tried under conditions not unlike those in the case of these Negroes. The spirit of the mob pervaded the community and even invaded the court-room, and ultimately triumphed by the lynching of the convicted man. According to the record in the Frank case (Frank v. Mangum, 237 U. S. 309) the Presiding Judge stated that he did not believe that the guilt of Frank had been shown beyond a reasonable doubt, and when he requested Frank and his attorney to remain out of the court-room when the jury rendered its verdict he gave as his reason that if the jury were to bring in a verdict for the defendant, or would disagree even, he could not answer for the life of Frank nor of his attorney because he felt he could not give

them the protection to which they were entitled. Despite the mass of evidence which was presented indicating that Frank's trial was dictated by a mob so bitterly hostile to the defendant that but one verdict could have been rendered, the majority opinion of the Supreme Court in that case held that the Federal Government had no right to interfere so long as the *form* of a trial was given. In brief, it declared that "the requirements of the due process clause were satisfied just so long as the trial preserved the forms of law and where there was adequate appellate machinery for correcting errors." Frank's appeal was denied on that ground.

The decision in Moore v. Dempsey, as the Arkansas cases were known, is, in effect, a reversal of that Court's decision in Frank v. Mangum. Many authorities on Constitutional law have felt that the minority opinion in the latter case was the correct one, and their contention has been upheld by the recent ruling. Justices Holmes and Hughes, who dissented in **Frank v. Mangum,** said that it was the duty of the Court "to declare lynch law as little valid when practiced by a regularly drawn jury as when administered by one elected by a mob intent on death," no matter what the Supreme Court of a State may have said. That view has now been confirmed by the Supreme Court, and, according to Louis Marshall, who was attorney for Frank, "Due process of law now means, not merely a right to be heard before a court, but that it must be before a court that is not paralyzed by mob domination."

James Wilson

By LAWRENCE F. ABBOTT

Contributing Editor of The Outlook

IT now looks as if the word "taxation" were bound to be the key-word of the coming Presidential campaign. If that is so, we may all as well make up our minds that the campaign is going to be one of National irritation. For the words "taxation" and "taxes" are about as vexatious words as can be found in the dictionary. Nobody ever heard of a noble tax-collector or of a high-spirited and self-sacrificing tax-evader. There is a kind of petty meanness about the whole subject that irritates everybody who touches it. Or, if meanness is too strong a word to use, it may certainly be said that the subject never produces any feeling of elation or exaltation. No poet has yet written a national anthem about the splendor of paying taxes. Taxpaying is a necessary and disagreeable job, like brushing the teeth. Everybody recognizes that it is essential to the prolongation of national health and life, but nobody takes any especial pleasure in it.

There is, however, a more serious side to the subject of taxation. The dictum of Chief Justice Marshall, that "the power to tax involves the power to destroy," uttered in the famous case of McCulloch *versus* Maryland, discloses that serious side. Where an attempt is made to use taxation as a destructive power it must be done with caution, wisdom, and scientific knowledge, or else, like electricity, it may turn and rend or cripple those who are meddling with it ignorantly or thoughtlessly.

It is this view of the dangers of ignorant or thoughtless taxation which, I take it, has led Secretary Mellon to make his protest against the inequalities and injustices of the present Income Tax Law. The primary function of government is of course to protect life and property. Taxes are paid to insure this protection. It is obvious that the man who has large property receives more protection and should therefore pay more taxes than the man of small property. But the moment that the small-property man, out of envy, greed, jealousy, or hatred, endeavors to use the taxing power to destroy the large-property man's wealth he inevitably brings upon himself increased costs of living. The purpose of taxation is to promote the prosperity and welfare of all; if it is used by any class or group of the people for selfish purposes, it becomes an engine of destruction.

The married man with five infant children who has an income of $4,500 pays no income tax to the Government; but in considering what his attitude should be towards the surtaxes paid directly to the Government by men much richer than himself he must remember, however he may feel towards the very rich and however much he may wish to mulct them for their enviable position, that whatever surtaxes he lays upon them by his vote are returned to him in the high price of rent, food, clothing, and coal. In addition, extreme taxation, even if he does not pay any of it himself directly, threatens and hampers his own gainful employment. For the universal history of all civilized countries for thousands of years has established as surely as the law of gravitation this law of taxation, namely, that excessive and unjust taxes reduce the fruits of industry and drive wealth from overtaxed countries to those where protection to life and property are furnished on a juster and more reasonable basis. In a word, *e pluribus unum* should be the economic as well as the political motto of the United States.

These observations on taxation, which will no doubt seem abecedarian and platitudinous to the political economist, have been prompted by a memoir which I have just read of James Wilson, the founder and first editor of the London "Economist." He was one of the outstanding figures, along with Richard Cobden, in the Anti-Corn Law League, which overturned the taxation system of England in the middle of the last century. I am aware of the danger of introducing Cobden's name into a discussion of American taxation, because his name is anathema to a certain school of taxationists in this country, although he himself was a great believer in the American people, visited this country more than once, and was greatly impressed with what he called "the orderly self-respect which is the great characteristic of the masses in the United States." But James Wilson's name can hardly disturb anybody, because it is almost unknown in this country, although from a very humble beginning he reached very high office on the financial side of the British Government. He was the son of a well-to-do Quaker; was apprenticed in boyhood to a small hat manufacturer; became at nineteen years of age a partner in the business and moved it up to London; developed into a prosperous and successful man of business; established the "Economist," which is now perhaps the leading journal of its kind in the world; was elected to Parliament; was for five years Financial Secretary of the Treasury in the British Government; and, finally, was sent by that Government to India, where he died at the age of fifty-five in the midst of the successful establishment of a new, just, and effective system of taxation for British India. His principles of taxation were not derived from theo-