Bend now an ear. Reading between the lines of Harper's Weekly, and remembering the kind of support it gave Governor Wilson a year ago when the Interests seemed to own him, followed by its long silence as from a stunning blow when he threw the crew of Jersey pirates overboard, we think we can detect between the lines in its words of praise certain slightly smothered echoes of elfin laughter. Listen for those interlinear echoes when Harper's praises Wilson again.

✣ ✣

Powers of the Supreme Court.

Congressman Berger, the Socialist, is enjoying humorous editorial attention for reasons which put the joke on the editors instead of Berger. In his old-age pension bill Mr. Berger undertakes to prevent judicial nullification by forbidding it in terms. To editorial writers falsely trained to regard a majority of the nine judges of the Supreme Court as the absolute sovereigns of this Republic, Congressman Berger's proposal has all the qualities of a comic novelty. But if the Socialist party were to get into power at the White House and in Congress—any party with genuine respect for the Constitution, for the matter of that—the utter weakness of the Supreme Court as a governing body would doubtless soon be demonstrated; and in a perfectly Constitutional manner, not only as to the letter of the Constitution but also as to its spirit.

✣

The declaration in Mr. Berger's bill is simply one to the effect that the law making power will no longer allow itself to be bound by an independent body, with co-ordinate powers only. So long as Congress and the White House yield to the Supreme Court as a superior political power, they enacting or enforcing only such laws as five out of its nine members agree upon as Constitutionally enactable and enforceable, all such declarations as that of Mr. Berger's would indeed be futile, even if inserted in Federal laws; but this judicial usurpation would soon come to a feeble end the instant that the law-making and the law-executing departments of the government practically asserted their own co-ordinate powers.

✣

Take Congressman Berger's old-age pension bill, for an example, and see how its anti-judicial declaration would work out. Every person sixty years of age would be entitled to a pension by the statute, though not by the Constitution as we may suppose five of the Supreme Court judges to think. But how could those judges act? Only in a law suit. Who would bring the law suit? Presumably not any person sixty years of age, unless some kind of collusive moot case were cooked up like that by which the execution of the income tax law was prevented. Would the suit be brought, then, by a Federal official? Not likely, if both Congress and the President were determined not to be overridden any longer by the third co-ordinate department of the government. It might of course be brought by a tax payer, claiming that a little pension to a working man or woman sixty years of age is so different from a big one to a military personage as to be confiscation. No matter, however, by whom the suit might be brought, if a suit were brought the Supreme Court could act. But how?

✣

It would have to admit that it has only co-ordinate power with the President and Congress, and therefore cannot presume to enjoin or otherwise order either of them in the matter. Suppose, however, that it should say: "This is a question between Jones, who happens to be a tax collector, and Smith, whom Jones is threatening to mulct; so we will order the tax collector to desist." But the court couldn't carry that theory into execution under the circumstances supposed, for there would be no way of distinguishing the pension part of the tax from the part that was needed—say for judges' salaries. The court would have to enjoin the officer who paid the pensions. But wouldn't he be an officer of the Executive department, over whose official action the Supreme Court has no more Constitutional authority than it has over the President himself?

✣

Such authority is habitually exercised by the courts to be sure, but this is only because Presidents and Congresses have acquiesced in that sort of usurpation by the judiciary. If a President and a Congress were to insist upon their co-ordinate powers under the Constitution, no official in the Executive department of the government could be coerced by the Supreme Court to disobey an act of Congress and the orders of the President under it; and not merely for lack of the necessary physical force, but also for lack of the necessary Constitutional authority.

✣

The Constitutional right of Congress, of the President, and of the Supreme Court to interpret the Federal Constitution is co-ordinate and independent. If they disagree upon its interpretation,

the acts of Congress and the orders of the President pursuant thereto are as sacred Constitutionally as a decision of the Supreme Court. None of the three departments has the right to intrude upon the functions of the other. But an injunction of the Supreme Court forbidding the execution by a President through his subordinates of an Act of Congress is an intrusion upon executive and legislative functions, whereas resistance would be no intrusion upon judicial functions—not under the Constitution of the United States. It may turn out that Congressman Berger has shown more genuine consideration for that instrument than those editorial gentlemen wot of, who see in his attempt to have Congress warn off the Supreme Court a subject for summer mirth.

✣ ✣

Workingmen Out of Jobs.

In expectation of a railroad strike, railroad managers were reported on the 10th* as saying that they "can marshal an immense force of workingmen at almost a moment's notice," because "thousands of men are seeking employment daily." Are those railroad officials "tafters," or do the prosperity touters exaggerate.

✣ ✣

The Des Moines Labor Injunction.

If labor injunctions can be used to get back to solid legal ground with, this has been done in Des Moines. There is no stretching of judicial power in that case, but rather a readjustment of legal power in accordance with legal principle. Some critics assume that the court came into the contest with an arbitrary injunction such as that with which President Taft when a judge made his judicial innovation in behalf of the plutocratic interests in a novel law-suit. But in fact there are in the Des Moines case two contracts; and it is upon these that the injunction is based.

✣

The city has an unexpired contract with the traction company, and the traction company has an unexpired contract with its employes. The company broke the contract with its men, in consequence of which the men repudiated their obligations under it, and the effect altogether was a breach of the contract of the company with the city of so serious a character as to shut off traction service. On that state of facts the city applied for an injunction requiring all concerned to perform their contract obligations, and such an injunction was granted. Under it, street car service has been resumed, all relations being fully restored to the condition prior to the company's breach. We venture no opinion as to the technical validity of the injunction; but if there are to be any injunctions at all in labor cases, we see no reason for criticizing this one.

*See Chicago Record-Herald of the 11th, on page 2, column 6.

✣ ✣

True Courage in High Office.

The man who could do what the Governor of Oklahoma did, as explained in a letter from which we are about to quote, has a quality of courage that is both admirable and rare. To appreciate Governor Cruce's act, the peculiar circumstances must be taken into account. He is Governor of a State in which hatred of the Negro as a race is only less general than indifference to his claims upon human sympathy as a race. In that State a friendless Negro boy, friendless both as Negro and as individual, awaited hanging upon conviction of a capital crime, and Governor Cruce commuted the penalty to life imprisonment. In that bare statement there may be no evidence of extraordinary courage. But read these quotations from Governor Cruce's letter to the sheriff having that Negro in custody:

> Nothing has occurred since I have been the Governor of the State that has given me so much concern and worry as to what should be done by me, as the matter of the execution of John Henry Prather, who is sentenced to be hanged today. He is absolutely friendless and alone; one Negro woman has appealed to me for clemency in his behalf, and I have received a letter from one prominent white citizen in this State. This is the sum total of the interest taken in his behalf, so that what I do in this matter is done solely upon my own responsibility and in answer to the demands of my conscience. This Negro has pleaded guilty to an atrocious crime; that the murder he committed was unprovoked and inexcusable will not be denied; he entered his plea of guilty and threw himself upon the mercy of the court; the death sentence was imposed, being the highest penalty that can be paid for crime. Oklahoma City has been in existence more than twenty-one years; during that time there have been many, many crimes that were as atrocious as the one committed by this Negro, and up to this time only one person has paid the penalty for his offense with the sacrifice of his life, and that was a Negro. Many white men have been guilty of an equally grave offense and have been permitted to go with a life sentence in the penitentiary or a sentence of less duration. . . . Had this offense been committed by a white boy 18 years of age, I would have received thousands and thousands of letters petitioning me for clemency; as it is, the offense was committed by a Negro boy without friends and without parents, who has had no fair opportunity to make a man of himself by any training that he might have received; a member of an inferior and despised race, and