

Gina Miller: the Brexit judgment isn’t a victory for me, but for our constitution

An overriding principle of British law is that parliament is sovereign – and we should be grateful to the judges, in the face of huge pressure, for upholding it

In upholding the high court’s [decision in November](https://www.theguardian.com/politics/2016/nov/03/gina-miller-the-woman-behind-the-article-50-legal-challenge) in the case of R (Miller) versus The Secretary of State for Exiting the European Union, the judges of the supreme court have not handed me a victory. The victors are our constitution, our laws, and, I would argue, our way of life.

The Conservatives have always regarded themselves as the party of law and order, so it is ironic that it should have been their leader who made the decision to appeal the high court ruling. I make no pretence at being well-versed in politics – it is all too often about personalities and emotion – but I do know a thing or two about our constitution, as I once trained to be a lawyer. Even a first-year law student learns that an overriding principle is that parliament is sovereign. This is what we should be eternally grateful to the judges – in the face of enormous pressure from most of the press – for upholding.

Throughout this entire legal saga, I have kept resolutely to the facts. I have also, from the start, made it clear that I respect the unambiguous decision that the people of the United Kingdom took in the referendum on 23 June 2016. What was not so clear was how we should go about triggering [article 50](https://www.theguardian.com/politics/article-50), which is the only mechanism for a member state to leave the European Union.

The problem with article 50 of the Lisbon treaty is that it is not substantive in its content or conditions, and only concerns itself with procedural requirements. Article 50 paragraph 1 states: “Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.”

Under pressure, Theresa May’s government let it be known that it planned to bypass parliament and trigger article 50 by invoking an ancient crown prerogative power. My three years at university studying law, together with being a history geek, made it immediately obvious to me that this would deny the sovereignty of parliament. This was the elephant in the room – and an elephant, it seemed to me, that could do a lot of damage.

**It is one of the most beautiful things about our country that just one individual, so long as he or she has the law on their side, can take on the most powerful institutions or people in the land and win.**

In the high court last year, my superb counsel, Lord David Pannick QC, argued that no government had the right to trigger article 50 without being authorised by an act of parliament. He made the point that once article 50 is triggered, the legal consequence of the UK withdrawing would inevitably result in citizens’ rights being diminished or removed. In particular, the four freedoms of the free movement of goods, people, services and capital over borders could cease, depending on the exit package the UK

A fundamental pillar of our constitution is that only parliament can grant rights, and only parliament can take them away. It just wasn’t good enough for people to say it wasn’t absolutely clear in this situation where the power lay: that was the legal certainty my legal team and I wanted the courts to pin down. Vagueness and good law are simply incompatible.

There were, as we expected, attempts from many quarters to politicise my case, including what can only be described as dangerous and reckless headlines in some of the papers – but the judges, to their enormous credit, simply followed what the constitution and the law required them to do.

There were those who said that the attorney general and the wider government legal team did not put their case well. I think they put it as well as they possibly could, but no lawyer – no matter how persuasive – can ever overcome fundamentally weak arguments.

If the supreme court were to have ruled in the government’s favour, it would have set a very dangerous precedent and undone 400 years of constitutional standing. In my opinion, it would have changed this country for the worse. Decisions of profound importance to our way of life could then have been taken by the prime minister, her ministers and their successors behind closed doors without reference to parliament. In terms of Brexit, May and her most senior people would have been able to take on all EU law and rights, the so-called [acquis](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en), and exercise the power to decide among themselves which to strip away from UK citizens and which to keep.

I do not of course suggest that May is intent on grabbing power by any means possible. She is no despot, but she has, of course, been given a very difficult task by the people of the United Kingdom, and I can well understand her desire to try to get it done as quickly as possible. I am relieved that in her speech last week she said both houses of parliament [will have a vote](https://www.theguardian.com/politics/2017/jan/17/prime-minister-vows-to-put-final-brexit-deal-before-parliament) on the final negotiated package that will come after the two-year period following the triggering of article 50. The question that still remains is if this deal is not good for Britain, and is therefore voted down by parliament, will we still be in the EU? Only time will tell.

My strong belief is that parliament will actually help May to make a success of [Brexit](https://www.theguardian.com/politics/eu-referendum) by enabling her to stress-test her plans in the greatest debating chambers our country has to offer. More than ever, our constitution matters, and the prime minister should be relieved that the supreme court has at least spared her the consequences of one law – the law of unintended consequences.