GINA MILLER EXCLUSIVE

'We actually had whistle-blowers on the Miller II case. They're scared.'

Christopher Jackson and Alice Wright **meet businesswoman and campaigner Gina Miller and find her primed for many more fights in the wake of her Supreme Court victories**

It was the Filipina statesman Miriam Santiago who once said that she ate death threats for breakfast. Gina Miller, who we meet in a location it's probably best not to disclose, eats them for lunch and dinner as well – or so it seems.

Shortly after our meeting, news breaks that a GoFundMe crowdfunding campaign called Kill Gina Miller had somehow been allowed to percolate on the internet since April 2019. But Miller comes across as a very sunny individual; if she's carrying any burdens, she's bearing them very lightly. It's not surprising somehow that she refuses the offer of coffee. "A lot of people are awake and engaged now," she explains, clearly not in need of any caffeine hit.

There is a refreshing directness about Miller. She projects a happy warrior spirit that may in part be what induces such animosity in her adversaries. It's clear right from the start of our meeting that she enjoys being interviewed – which is just another aspect of enjoying her wider battles, which currently go by the names of Miller I and Miller II, both of which played out in the Supreme Court.

These have come to define her life and perhaps neighbour one another in the public imagination, but they are quite different in importance. The 54-year-old points out that Miller I, which found that the government needed to seek the approval of parliament in order to trigger Article 50, attracted some 523,000 viewers online. But Miller II drew a *Morecambe and Wise*-level viewing figure of around 30 million.

"The first case was, in a way, fairly straightforward," she explains. "It stated that parliament must be involved in the process – which we have seen, thank goodness. But the second case, both domestically and internationally, was more important." Contrary to some opinion, the enormity of the case is not that it changed the law but that it confirmed it. Miller agrees: "It confirmed the separation of powers. This notion that the courts can now tread on what they call the 'political terrain' is not true. The justices were very clear to say that this was a very unusual case, and they don't expect to see one like it again. The courts have always been able to hold the government to account if it places itself above the law – and that is what Johnson did by shutting down parliament, because we are a parliamentary sovereignty."

Which takes care, to some extent, of what one might call the theatrical element of the case, which accounts no doubt for many millions of those views. But it by no means accounts for the whole audience share.

Miller explains why the case mattered so much internationally: "There are over 130 countries based on our legal system and the

A BRIEF HISTORY OF WHISTLEBLOWERS

As Gina Miller reveals to Mace that a whistleblower within the government legal department forewarned her about the plans to prorogue Parliament, we look back at some of Britain's most significant bean-spillers

Christopher Wylie

Dr David Kelly

CHRISTOPHER WYLIE
Cambridge Analytica
In a tell-all with *Observer* journalist Carole Cadwalladr, the Cambridge Analytica data analyst lifted the lid on the dark arts of the company's data-mining operation, internal bullying and even sexual exploitation. As Cadwalladr described Wylie: "He was the gay Canadian vegan who somehow ended up creating [in his words] 'Steve Bannon's psychological warfare mindfuck tool.'" Wylie's book, *Mindf*ck*, is reviewed on page 126.

DR DAVID KELLY
Iraq War
The Ministry of Defence weapons expert tragically committed suicide amid the fallout of his revelations about the true scale of Saddam Hussein's alleged weapons of mass destruction. Kelly told the BBC journalist Andrew Gilligan that the Blair government had "sexed up" claims of imminent global destruction at Iraqi hands. Kelly found himself caught in a firestorm when it was revealed that he was the main source for the BBC reporter's story. Ultimately, Westminster accepted Kelly's suspicion that the case for the war wasn't nearly as airtight as had been suggested.

CLAIRE GILHAM
Legal aid cuts
District court judge Claire Gilham suffered through abuse and a breakdown when she tried to take issue with "systemic failings in the court administration" related to cuts in legal aid. Crucially, Judge Gilham won a Supreme Court case in October, setting a precedent for other members of the judiciary to receive protections when they blow the whistle.

CHRISTOPHER STEELE
Trump-Russia dossier
The cocktail of allegations about Trump-Russia collaboration in the run-up to the 2016 presidential election contained in the Steele dossier triggered the biggest American political scandal since Watergate. The 35-page collection, sourced by the former Russia desk chief of MI6, was published by *Buzzfeed* in January 2017. This led Trump days later to pressurise FBI director James Comey to investigate the so-called 'golden showers' tape it described. The Mueller Report later confirmed some of the allegations listed in the dossier, disputing others.

way our democracy works, and the judiciary around the world are under attack right now. This is the first case on the international stage that confirms the separation of powers and protects the judiciary and the supreme courts in all those countries. That is why myself and the courts have had so many judges – from Thailand to Indonesia to Australia – all writing in, thanking us for doing this case."

And what of the views, such as those expressed by William Cash on page 91, that the case represents the politicisation of the judiciary? Miller isn't convinced: "This has been so overstated because it fits both the press and the government's agenda. If you look back throughout history, every hundred years or so there is a rise in populism: it is not a new phenomenon and there is a populist playbook for destabilising a society. First, you attack experts and academics – all those who have knowledge. Secondly, you attack the rule of law and the judiciary." A little later she observes: "It is actually quite an easy thing to do, to destabilise the state."

So, sitting here, a month or so later, what are the implications of the case? The British system works according to a series of conventions that assume fair play. If one takes the view – which not everyone does – that Johnson misled the Queen, surely it would follow that we need some form of codification in order to prevent further encroachment of political bias into our system.

Miller has a nuanced view on this question: "I think what [Miller II] has done is to throw under the spotlight the whole conversation around codifying part of our constitution. There is a school of thought that having an unwritten constitution means it's more flexible, organic and robust. So that some experts, particularly retired judges, are worried about going to the US model of having a fully written constitution. Now I think there is something in between – a partially codified constitution."

> "There is a populist playbook... It is quite an easy thing to do, to destabilise the state

So what exactly would she look at codifying? "I would look at codifying the powers of the executive, the prime minister and the role of parliamentarians, as well as the boundaries between the separation of powers and human rights." She adds: "Also, some of the procedures in the house are very antiquated. Relying on Erskine May does make us a bit of a laughing stock around the world. But beyond that, you don't have to go much further."

Are there any other changes she'd like to see? "The other constitutional debate is about further devolution – or what I call deliberative democracy. The North-South divide is the deepest in the UK of any member state and part of that is because we don't have any regional representatives with real power and budgets that can make a difference. People don't feel part of the system because everything feels so remote in what they call 'the Westminster bubble'." So would she back a travelling parliament? "I think more along the lines of regional assemblies."

All of this is very interesting, and yet something makes one want her to re-tell the story about Miller II. Then without pause, she is back in the thrust of it all, reliving her victory – how she began preparations for the case on 11 July and how, on 12 August, she received a suspiciously long letter that announced the government's intention not to prorogue. She says she read it "about four times" before reaching a conclusion that would alter legal history: "I said, 'We are going to not stop, we are going to prepare the case.'"

Things got very tight. "The last letter we got was at five o'clock on the Monday evening on 27 August – and the next morning they announced it. But when they made that announcement on the Tuesday morning at 10 o'clock, we filed at 4.30 and they didn't expect us to be ready."

And then quite suddenly she says something that makes the jaw drop. "We actually had whistleblowers on the case. That's why we asked for signed statements [from the government], because we knew nobody would sign them because nobody wanted to perjure themselves; it was a very strong point for us. The other thing is, we were told by a very senior whistleblower that, if we lost the case, the government were going to extend the prorogation for three months." Does Miller know the identity of the person? "Yes." And are they still working there? "Yes, but they're scared, they're worried."

She won't reveal the whistleblower's identity, but she does describe the complexity of the government legal department, which comes across as Kafkaesque, with perhaps a touch of Le Carré. "The government legal department is like Fort Knox, and the treasury solicitor's office, in particular, is very difficult to get into. Most of the information comes from the civil service in the justice department." (We called the justice department before publication, but they gave no comment.)

Miller continues, describing a culture of fear: "I've been told that things are not good there, that the atmosphere is not great. Sick leave has gone up and stress levels are ridiculous."

She takes us up until the judgment. "When Lady Hale said 'unanimous judgment', we thought we had lost. It wasn't until about three-quarters of the way through her reading of the judgment that we realised we had won. What is extraordinary about the judgment is not just that it is unanimous but its robustness; by the cases they quoted and the lengths to which they went to justify their ruling. That is why a lot of lecturers will use it in the future, because it is an extraordinary judgment."

Talking of the future, we are surely approaching the point when Brexit will begin to recede – at least in its first phase. Yet Miller is synonymous in the public mind with Brexit. What might she do next? "I have a big environment campaign on my agenda, which I started putting a strategy together for," she says. "Then Brexit happened, and things got put on the back-burner. What I'm very concerned about is ESG [environmental,

INSIDE THE GOVERNMENT LEGAL DEPARTMENT

Gina Miller describes a culture of fear within the legal wing of the civil service. But veteran lawyer Anthony Inglese argues that the GLD offers some of the most rewarding work in the field of law. *Words by Alice Wright*

Given its size, the Government Legal Department (GLD) is surprisingly low-key. This non-ministerial department has more than 2,000 employees, 1,400 of whom are solicitors or barristers. As the government's principal adviser on the law, the GLD's stated purpose is to help "the government to govern well, within the rule of law". With that in mind, it has attracted no small degree of interest after the government received one of the greatest judicial checks in the country's legal history.

Anthony Inglese, Gray's Inn bencher and Simmons & Simmons consultant, has held leading GLD positions in over five departments including Defence, the Home Office and HMRC, where he led a team of almost 400 lawyers with an annual budget of £50 million.

A personable figure, Inglese argues that conflict between lawyers and ministers is inevitable; the movers and shakers in power sometimes have to be told that implementing a certain policy will run into legal problems.

"Different people handle these conversations in their own way," he says. "I have known some lawyers that will face down ministers and really stand their ground. I prefer to be less confrontational – I find that works much better."

I'm keen to know what it is that motivates people to go down the civil service route given that the financial rewards of private practice are so much greater. "The government legal service is the most important and most interesting thing one can do in the law," Inglese says. "Yes, the money is not the same, but the proximity and influence on real decisions that affect so many people is more rewarding. You will get to work on important cases straightaway and have much more access to those at the top."

Does Inglese think the pitfalls of an unwritten constitution have been exposed by recent events. Shouldn't the UK be moving towards a written constitution? The question draws a guarded response. "It wouldn't be right for any member of the civil service, or ex-civil service, to comment on anything political," he says. "I will say that a written constitution would not provide the flex that I have enjoyed about the law."

Are there conflicts with being a UK-wide government and having to incorporate the difference of Scottish law? "In Scotland, the legal sector tends to play it safe, be less creative and more certain. This may be because the legal sector is smaller, more acquainted with each other so can get more of a feel of the general consensus. I went to the library in the Faculty of Advocates with a friend once, who knew almost everybody in the room. You wouldn't get that in London. They are also representing a much smaller population, so can afford to be more specific. But there must always be an open conversation, not an antagonistic approach, because the government does represent both."

Given the government's recent Supreme Court defeat, I'm curious to know which supreme court judge Inglese most admires? "Lord Sumption, now retired. It's interesting that he had a unique appointment to the Supreme Court from being a barrister with little judging experience – so his understanding of advocacy was far more fresh than judges who worked their way up through the ranks of the judiciary."

social and corporate governance] investing. Companies are using people's desire to invest and get returns but also their desire to do good, but when you look under the bonnet it is absolutely terrifying. There is no ESG! It is women and young millennials that are being caught in it. They are being heavily marketed at because they want to do good. Greenwashing is rampant and it is a real problem that everyone is turning a blind eye to."

Extinction Rebellion, you feel, could learn something from her. But it's characteristic of Miller that no sooner is she telling you about one campaign than she's outlining another.

"The really big conversation when this is over is trickle-down economics: it is not working," she says. "I want to talk about responsible capitalism. Unless you change the way in which companies operate and make people, profit and planet part of their raison d'être" – she calls this the triple bottom line – "it won't change. Right now, we are pushing for a complete review of the Financial Conduct Authority, because I don't think we have a proper regulator in the industry.

"As with all the campaigns I've ever been involved with, you have to wait for the right time. I started talking about responsible capitalism just before the financial crisis, over 10 years ago, and nobody was interested. Whereas now, with the environmental conversation and because of the social mobility gap, it is the right time to have these conversations."

And as she prepares to leave for her next meeting, you know she will have these conversations – and many more. One last question: would she ever enter politics? "Everyone keeps asking me and I say, 'I'm not going there, because there is no way I could possibly do that.' I'd be rebelling every single day on something different."

She laughs, and it has to be said that the idea of anyone whipping Gina Miller into line does indeed seem slightly ridiculous.

> "The really big conversation when this is over is trickle-down economics: it is not working

OKAY

In response to the crowdfunder that sought to raise money to have Gina Miller killed, the poet Alyson Hallett considers the rising level of aggression in our politics

Shooting an MP because you don't agree with her is not okay.
Have I shot BJ? Or JC or JS or JR dash M?
No, I have not shot them
because shooting people I disagree with is not okay.

It is not okay to publicly raise money to hire a hitman.
Have I raised money to obliterate
people I hate? No, I have not
because murdering people I disagree with is not okay.

Last winter I took the Silver Meteor from New York to Miami.
In the dining car I lunched with a Clinton voter
and a Trump voter. We ate our food
and debated our differences as the train sped through Georgia.
I want there to be a zone for things that are not okay.
An island, a flashing light, a warning
that something dangerous
is not far away but right here, visible, audible, alive.

It is not okay to think everyone must think the same.
We are not clones. We are various,
brilliant, funny, similar, different.
Come and sit at my table and I will listen to what you say.

This is the okayness I cherish. The one that's big enough
for us to pull in opposite directions
without tearing each other apart.
Violence is not the new normal: there's another way.

OKAY

The poet Alyson Hallett considers the ramifications of the GoFundMe crowdfunder – now under police investigation – that sought to raise money to have Gina Miller killed

POLEMIC

The PM's right to prorogue Parliament is one of the most important and ancient powers of the Crown

by William Cash

I was having breakfast in a hotel close to the Royal Courts of Justice with the senior partner of a law firm the day after the Miller II announcement was made by the Supreme Court that Boris Johnson's decision to prorogue Parliament was unlawful.

When I wondered aloud whether the unanimous decision of the 11 judges – nobody even knows who is nominated and there is no election – threatened to overturn the essential principles of our 800-year-old constitution, the fundamental principle of which is the separation of powers, he broke off a piece of almond croissant and commented: "Yes, you might be right. Every time an activist, or a political party, doesn't like a new law, or Act of Parliament, they will be reaching for a top QC on their speed-dial to try to overturn it."

"For political reasons?" I asked. "I thought the Supreme Court was meant to be non-partisan and independent. Not like America, where there is a federal court." I recalled that when I lived in America, it was front-page news when a Supreme Court judge died: everybody wanted to know what the new political 'scorecard' of the make-up of the highest court would be. When Antonin Scalia died in 2016, you would hear people saying: "It was 5-4, Conservative. But Obama's going to level the score with a liberal."

"But our judges are all non-political... aren't they?" I said to my lawyer friend. He smiled at me and ate what was left of his croissant before moving our conversation on to another subject.

> "Every time an activist doesn't like a new law, they will be reaching for a top QC on speed-dial to overturn it

For those interested in the figures, the top three QCs by case count who have acted for clients before the Supreme Court – and we like rankings at *Mace* – are Sir James Eadie, some way in front with 65 cases, Richard Drabble in second with 31 cases, and Lord Pannick (representing Gina Miller in both Miller I and II, as well as Sir Oliver Letwin in his amendment to the Benn Act) in third with 26 cases.

When I got back to my office later that day, I found that a *Legal Business* article had been emailed to me by my breakfast companion. It was written by Professor Stephen Tierney, editor of the UK Constitutional Law Association blog, who admitted concern that the judgment could open the door to other courts using the ruling as a "launchpad into further political space".

What did he mean by this? The point at issue is that the UK Supreme Court was invented by Tony Blair in 2005 essentially as a human-rights court. It now seems to be in danger of turning into a constitutional court. This is exactly what the Supreme Court is in America and exactly what the Supreme Court is not meant to be in Britain.

According to former Supreme Court president Lord Neuberger, having a "constitutional court" in the UK – interpreting any law from the European Withdrawal Act to human-rights law – would be an error: "We have a very simple system of courts and I think replicating the civil, European system of having a supreme court and a constitutional court – a supreme administrative court – is just a recipe for complication, for cost and for unnecessary duplication."

Yet that appears to be exactly what is happening. As Tierney wrote of the Miller II ruling: "Although dressed up as a defence of Parliament (something Lord Pannick did

successfully with Miller I), make no mistake, the Court is asserting its own constitutional position under the guise of being Parliament's troubleshooter… the consequence could be a self-transformation of our highest appellate court into a constitutional court comparable to other politically engaged judicial powerhouses around the world."

Remember also that before the judges' ruling, the proroguing of parliament by Boris Johnson was simply returning the parliamentary calendar back to what the system had been like for years, when parliament was (after a short September sitting) effectively closed down for most of September and early October for the party conferences. I can remember my father, the MP Bill Cash, complaining about wanting to get "back to school" in September.

The September recess only changed when people started complaining that MPs were getting too much time off. But it doesn't change the fact that the prime minister's right to prorogue parliament is one of the most important and ancient powers of the Crown.

How did we get to this place where our justice system now appears to be moving to a position of all-powerful political supremacy over the government? Or is Professor Tierney wrong to have used an exclamation mark when he dared to suggest that it was hardly unlawful for the PM to prorogue parliament as that was "surely within the limits of its lawful purpose!"?

In my view, Charles Moore got it right when he dared to suggest during Miller I that the problem is that our justice system has become increasingly like an exclusive club of like-minded judges who represent the groupthink collective views of the legal establishment and political class.

Henry Fairlie, in his famous article in *The Spectator* in 1955, made the critical point about the way Establishment power is exercised in Britain: namely a "matrix" of influence was exercised "socially", behind closed doors.

> “The entire UK legal profession is broadly supportive of the European legislative status quo

Writing in the *Daily Telegraph*, Moore came close to saying something similar to Fairlie when reflecting on the not-so-hidden EU credentials of certain members of the 11 Supreme Court judges who were deciding whether to overturn the High Court ruling (brought by Gina Miller) that an Act of Parliament – as opposed to use of the Royal Prerogative – is required to trigger Article 50. He worried whether senior members of the judiciary were part of a cosy social club who shared similar pro-EU views, as opposed to having "independence from one another".

And it is not just the senior members of the legal profession who are broadly supportive of the European legislative status quo. It is the entire UK legal profession – starting with graduate trainee solicitors who have often turned down opportunities to become globetrotting investment bankers – jetting to Frankfurt, Milan, Paris and Zurich – to work for the new 'global' breed of law firm.

This is what many top-tier UK law firms aspire to today: an 'international' law firm with offices around the world. You are unlikely to have built up an 'international' reputation unless you are embedded within the EU legal culture. Take a promo film for Schillings, one of the world's highest-ranked privacy/reputation law firms. The *Night Manager*-style legal promo trailer is narrated by a no-nonsense American actress who could have walked off the set of *LA Law*. The promo features yachts, New York skylines and 'global citizens at play'; you'd never even know that it was a British firm.

What binds this new matrix of power and influence together is not class, education or schools, but rather some first-class progressive minds – there's no room for insular, backward thinking in these leather and chrome armchairs.

Whether anything will change in January 2020 – when Lord Reed, a Scottish judge, becomes the next president of the Supreme Court – remains unlikely. He will be joined by three other new appointees: Lord Justice Hamblen, Lord Justice Leggatt and Prof Andrew Burrows. That all these appointments were made by Theresa May suggests they are all paid-up members of the progressive New Constitutional Establishment.

Ironically, despite all the court's gender-equal credo, the new make-up of the Supreme Court from June next year (Lady Hale retires in January) will become 10-2 male to female. Tut-tut.