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PARLIAMENT VS THE PEOPLE: THE STRUGGLE FOR SOVEREIGNTY

Reflections on *Miller*

*Tasneem Ghazi**

Considered the constitutional ‘case of the century’¹ *R (Miller and Dos Santos) v Secretary of State for Exiting the European Union*² – hereinafter “*Miller*” - has had profound implications on the modern constitutional arrangement of the United Kingdom. From a contextual perspective, *Miller* was intrinsically linked to the volatile matter of the “Brexit”, the British political electorate’s decision to leave the European Union.³ When the initial High Court judgment of *Miller* was announced (in 2016),⁴ a violent press storm ensued, whereby this niche case of constitutional law was wrongfully portrayed as the judiciary’s attempt at frustrating Brexit. The *Daily Mail*’s headlines branding the High Court judges “Enemies of the People”⁵ exemplify the public outcry⁶ that resulted from the misrepresentation of a primarily legal matter.⁷ In an attempt to disentangle the case from Brexit, the very first lines of the Supreme Court’s judgment in *Miller* explicitly clarified the apolitical nature and scope of judgement.⁸ It was stipulated that this landmark case of judicial review hinged upon three issues: examining the legality of an executive order;⁹ clarifying the scope of the Crown’s undefined Prerogative Powers and; determining the status of devolved legislatures within the United Kingdom in light of the Brexit referendum.¹⁰ Yet, the Supreme Court’s final judgment was internally inconsistent. At face value, the general principle of *Miller* appeared to be a practical, (if not lax) approach to Parliamentary Sovereignty, but to the question of devolution the ruling echoed a conservative, Diceyan interpretation of the principle. The paradoxical reasoning in *Miller* judgment (along

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¹ ‘Brexit, We Are Told, Means Brexit’, *BBC News*, 31 August 2016 <www.bbc.co.uk/news/uk-politics-37219143>

² [2017] UKSC 5; [2017] 2 W.L.R. 583 (hereinafter “*Miller*”). For the purposes of brevity and clarity, it is worth noting that this paper is a case note on the assenting judgment alone; not the dissenting judgment. The majority consisted of Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption and Lord Hodge. Lord Reed, Lord Carnwath and Lord Hughes dissented.

³ In the aftermath of a decisive political referendum in 2016.

⁴ The High Court judgment was subsequently appealed. However, the misrepresentation of the High Court Judgement in the press was so controversial that President of the Supreme Court, Lord Nuremberg gave a speech clarifying the nature of the *Miller* case and condemning the slander of the sitting High Court Judges.

⁵ *The Daily Mail*, (4 November 2016), 1.

⁶ ‘We Must Get Out of the EU’ *Daily Express*, 4 November 2016; ‘Enemies of the People’ *Daily Mail*, 4 November 2016; see also ‘The Judges versus the People’ *The Daily Telegraph*, 4 November 2016.

⁷ *Ibid.*, (Press articles misrepresenting the *Miller* case)

⁸ *Miller* [2017] UKSC 5; 2, 3

⁹ *Ibid.*, 4-5.

¹⁰ *Ibid.*, 48, 50.

with the political stains of case) subsequently inspired a breadth of legal scholarship, with many focusing on why and how *Miller* merits the title: 'case of the century'.

I. Introduction

If the *Miller* case had not been so deeply intertwined with *Brexit*, perhaps it would have been archived beside heaps of other cases of judicial review on the legality of government decisions. It was the misrepresentation of *Miller* by the press during the case's initial stages that attracted far more controversy and attention than any other recent case of judicial review over the past three decades. O'Brien notes that the subsequent vilification of the judicial system alone demonstrates the newfound influence the British press has acquired on the Britain's constitutional arrangement and its subsequent public perception.¹¹ However, as this case note demonstrates this view demonstrates the significance of *Miller* from one angle alone. In fact, the Supreme Court judgment (and precedent High Court Judgement) touched upon a vast range of issues central to the uncodified British constitution. Thus, the *Miller* judgment encompassed: defining the separation of powers between the Executive and Legislative branches; the scope of the undefined Prerogative Powers¹²; the role of the Judiciary in the modern context; the influence of the media on the British constitutional arrangement; and most importantly; the dilemma of Sovereignty in the current constitutional arrangement.¹³

This case note highlights the unique angle *Miller* takes with regards to defining and applying Parliamentary Sovereignty. Subsequently, this Supreme Court Judgement is analysed in light of: (I) An Orthodox and a "practical" interpretation of Parliamentary Sovereignty, and; (II) The role of the British political electorate in the current constitutional arrangement. Thereafter, this article argues although the *Miller* judgement may be as confident attempt to "restore power to the people" by re-asserting the centrality of Parliamentary Sovereignty, in fact the case demonstrates a new phenomenon for Britain's constitutional arrangement¹⁴: the direct enforcement of the will of the people, prior to the will of Westminster.¹⁵

I. Dissecting Parliamentary Sovereignty in *Miller*

From the very outset of the Supreme Court judgement in *Miller*, the centrality of Westminster's supremacy in the British constitution is emphasised: "Parliamentary Sovereignty is fundamental principle of the UK

¹¹ P. O'Brien, "'Enemies of the People": judges, the media and the mythic Lord Chancellor', *Public Law* (2017 (Nov Supp, Brexit Special Extra Issue), 135-149.

¹² J. Grant 'Prerogative, Parliament and Creative Constitutional Adjudication: Reflections on *Miller*' 28 *King's Law Journal* 1 (2017), 35-61.

¹³ F. Davis, 'Brexit, the Statute of Westminster 1931 and Zombie Parliamentary Sovereignty', 27 *King's Law Journal* 3 (2016), 344-353. *See also Ibid.* The list of issues is non-exhaustive. As established by Davis, part of the judgement's significance is how vast it is.

¹⁴ V. Bogdanor, 'The EU Referendum Shows How the Sovereignty of Britain's People Can Now Trump Its Parliament' *The Telegraph* 26 June 2016., www.telegraph.co.uk/news/2016/06/26/the-eu-referendum-shows-how-the-sovereignty-of-britains-people-c/.

¹⁵ This idea was first suggested by V. Bogdanor, 'Brexit, the Constitution and the Alternatives' 27 *King's Law Journal* 1 (2016), 314. Bogdanor describes, "the introduction of a new principle into the British Constitution—the principle of the sovereignty of the people, a principle which, on this issue at least, supersedes the doctrine of the sovereignty of Parliament".

constitution”.¹⁶ Hence any “unprecedented state of affairs” - in this context EU membership - “will only last so long as Parliament wishes”.¹⁷ The judgment goes on to state that despite the “supranational” character of EU law, “this source of legislation can only enjoy a status in domestic law which that principle allows”. This is hardly a novel point. Here, *Miller* echoes the precedent case *R v The Secretary of State for Transport & Anor* (the “HS2 case”), under which it was held that EU law may coexist in the UK without undermining Westminster’s Legislative Supremacy.¹⁸ In this regard, it is the “self-embracing view” of parliamentary sovereignty that is being asserted in the judgment - Parliament’s Sovereignty is not undermined by restrictions it chooses to enforce upon itself. It follows from this that Britain’s membership to the European Union and its supranational legal order is simply one amongst these “self-inflicted restrictions”. Accordingly, it would be unthinkable that this restriction could ever undermine Parliament’s Sovereignty.

The primary contention that arises with regards to Parliamentary sovereignty in *Miller* is a different matter altogether. It relates to the inconsistency of the judgment with regards to how Parliamentary sovereignty is defined and applied. Yet since the fundamental principle of Parliamentary sovereignty is invoked in countless Statutory instruments and Common Law judgments, it would be remiss to mention this vast principle without clarifying how it is to be defined and interpreted in this specific context.¹⁹ The origin of Parliamentary sovereignty and its most commonly enforced definition stems from the so-called “Orthodox Dichotomy” coined by Albert Venn Dicey.²⁰ In its original form, this principle implies that the authority of Parliament is both “absolute” and “unqualified” throughout the United Kingdom, both in a legislative and political capacity.²¹ However, due to changing nature of Britain’s constitutional arrangement, there is also a breadth of legal scholarship that exists with the sole aim of applying and reconciling of Parliamentary Sovereignty in the UK’s modern context.²²

Most recently, the precedent case of *Factortame*²³ gave credence to contention that Parliamentary Sovereignty was reduced to being no more than a theory (arguments such as those of by Barber and Young that the principle had “died a quiet death”).²⁴ The *Miller* case, conversely, can be seen as having reincarnated the principle. The resonance of Parliamentary Sovereignty throughout *Miller* bears testimony to its significance within the UK’s modern constitution despite the increasing scope and number self-imposed “restrictions to the competences of Parliament”.²⁵ With this in mind, the most useful approach

¹⁶ *Miller* [2017] UKSC 5; 2, 20-24.

¹⁷ *Ibid.*

¹⁸ *HS2 Action Alliance Ltd, R (on the application of) v The Secretary of State for Transport & Anor* [2014] UKSC 3, See 207, where it is asserted that since Parliament enacted the European Communities Act [1972], Parliamentary Sovereignty is not mutually exclusive to being party to the supranational legal order of the European Union, particularly in light of the uncodified nature of the UK constitution.

¹⁹ F. Davis, ‘Brexiteer, the Statute of Westminster 1931 and Zombie Parliamentary Sovereignty’, 27 *King's Law Journal* 3 (2016), 344-353.

²⁰ A.V. Dicey, *Introduction to the Study of the Law of Constitution* (Liberty Classics 1982) 3.

²¹ W. Bagehot, *The English Constitution* (1873) 183, <<http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/bagehot/constitution.pdf>>.

²² P. Craig, *Constitutional Foundations, the Rule of Law and Supremacy*, (2003) 92.

²³ Commonly known as ‘Factortame’, Case 213/8, *R v Secretary of State for Transport, ex. p. Factortame Ltd.* [1990] E.C.R. I-2433.

²⁴ See P. Craig, *supra* note 22.

²⁵ *Miller* [2017] UKSC 5; 2, 20-24.

towards the Westminster's legislative Supremacy would be a flexible "practical" one (leaning towards the manner and form interpretation)- this paper employs such an approach- namely the approach advanced by Bogdanor.²⁶

In line with this framework of Parliamentary Sovereignty, the restrictions Westminster imposes upon itself are "self-imposed". The most notable examples of these limitations apparent in *Miller* are: Britain's (previous) membership of the EU, Devolution and the legal obligations towards sources of international law. In each of the aforementioned examples, Parliament has voluntarily limited its own competences by either subjecting itself to a supranational legal order, delegating extensive powers to regional authorities (governments) or choosing to ratify external determined sources of legislation.²⁷ Nevertheless, on theory, this practical interpretation of "sovereignty" holds Parliament remains sovereign, for it retains the power to revoke such self-inflicted restrictions.²⁸ This interpretation is clearly reinforced in the *Miller* judgment. It was only by virtue of an act of Parliament that Britain chose to bind itself to the supranational legal order of the European Union, namely the treaty of Accession. The outcome of *Miller* is hardly surprise then, Brexit may not be undone without notifying Westminster and obtaining its approval. Moreover, the judgement emphasised that result of the British political electorate's decision via the referendum to leave the EU is not constitutionally binding *per se*, this referendum only became binding following a determinant Act of Parliament.

II. Devolution and Parliamentary Sovereignty

Nonetheless the angle taken by the *Miller* judgement on the subject of devolution contradicts its initial "practical" approach towards defining Parliamentary Sovereignty. The judgment held – in an excessively conservative Diceyan fashion - that the outcome of the Westminster Act (the Brexit decision) was unequivocally constitutionally binding on all devolved legislatures, most importantly Northern Ireland and Scotland.²⁹ The latter is a particularly interesting example. With regards to the legally binding nature of Brexit on Scotland, the majority justified its reasoning through invoking the Acts of Union of 1706 and 1707.³⁰ The Supreme Court declared that as per Article XVIII of the Act, the laws of Scotland are "alterable by the Parliament of Great Britain". It did not, however, continue to quote the subsequent part of the Act: "no alteration [can] be made in Laws which concern private Right except for evident utility of the subjects within Scotland". Likewise, the judgement deemed the Sewel convention "not legally enforceable" in this specific context.³¹

This is ironic as neither the Act of Union, nor the Sewel convention were aimed at protecting Westminster's legislative supremacy. Quite to the contrary, the objective of both these statutory instruments was protecting Scotland's legal autonomy (as exemplified by the subsequent passage of the Act, quoted above). It is also worth noting that although the *Miller* judgment enforces an excessively

²⁶ V. Bogdanor, 'Brexit, the Constitution and the Alternatives' 27 *King's Law Journal* 1 (2016), 314; see also V. Bogdanor 'After the referendum the people, not Parliament are Sovereign', *Financial Times*, 9 December 2016.

²⁷ *Miller* [2017] UKSC 5; 2, 20-24, 48,90.

²⁸ See W. Bagehot, *supra* note 21.

²⁹ *Miller* [2017] UKSC 5; 2 150-152 ;See also (1706), (1707) Acts of Union .

³⁰ *Miller* [2017] UKSC 5; 2 135-148.

³¹ *Ibid.*, 145.

conservative approach of Parliamentary Sovereignty, in the context of devolution, the judgment could have been even more (excessively) Orthodox. The judgment did not rule out the applicability of the Sewel convention altogether, and as a result, it may be seen to having set the groundwork for a politically problematic situation. This loophole with regards to the classification of the Sewel Convention allowed Scottish First Minister Nicola Sturgeon to publicly signal her view that the convention still applies.³² Accordingly, in the aftermath of *Miller*, (as expected), the Scottish Parliament brought forward a 'Legislative Consent Motion', to "ensure that the Scottish Parliament has the opportunity to vote on whether or not it consents to the triggering of Article".³³ Of late, this culminated with Edinburgh's public rejection of any potential outcome of the Brexit Bill,³⁴ even though - as established in *Miller* - this political stalemate does not have the legal capacity to block Brexit in Scotland.³⁵

In sum, not only has this extremely conservative ruling on Devolution undermined the authority of Westminster in Edinburgh (thereby increasing political tensions), it is also clearly inconsistent with the commonly accepted "flexible" and "practical" approach towards defining Parliamentary sovereignty. Further scrutiny of the judgement demonstrates that the latter approach is more plausible and reasonable in light of the modern, evolving constitutional system of the UK. Since this "practical" approach towards defining Parliamentary sovereignty primarily acknowledges that the notion of "absolute sovereignty" is a theoretical matter, it does not negate the considerable degree of autonomy granted to devolved regions, (by virtue of legislation such as the Sewel Convention' and the Good Friday Agreement). By acknowledging the extensive powers granted by Westminster to devolved regions then, a softer approach towards the principle does not contradict the notion that both Scotland and Northern Ireland have external sources of legislation that function as '*de facto*' constitutions. This is also reinforced by a number of Common Law judgments, that clarify how Westminster's sovereignty is (in practice) compromised by the nature of devolution. Lord Bingham's *obiter* reflecting on *Robinson v Secretary of State for Northern Ireland* [2002] is of particular relevance.³⁶ Describing the 1998 Scotland Acts as "repealable only through a political referendum", Lord Bingham confirms that the Act is "in effect a constitution".³⁷

Indeed, the view asserted by Lord Bingham in *Robinson* is hardly unique. Several other recent precedent cases of judicial review reinforce the fact that devolution has necessitated a more qualified, flexible approach towards defining the Sovereignty of Westminster's Parliament. Perhaps the most recent and pertinent Supreme Court judgment is that of *Jackson v Attorney General* [2005].³⁸ In this landmark case,

³² 'Sturgeon: Scotland say in Brexit is 'matter of democratic principle'', *BBC News*, 25 Jan 2017, <https://www.bbc.co.uk/news/av/uk-scotland-38733315/sturgeon-scotland-say-in-brexit-is-matter-of-democratic-principle>.

³³ 'Court rejects Scottish Government Article 50 argument', *BBC News*, 24 Jan 17, <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-38721681>.

³⁴ 'No Deal: Nicola Sturgeon rejects Brexit Bill', *The Scotsman*, 24 March 2018, <https://www.scotsman.com/news/politics/no-deal-nicola-sturgeon-rejects-brexit-bill-1-4729671>.

³⁵ The Brexit Deal is yet to be finalised, but Sturgeon has made her position quite clear. When the Bill passes, the Scottish Parliament because of *Miller*, would be legally obliged to accept the outcome.

³⁶ *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32.

³⁷ *Ibid.*; See also Scotland Act 1998, and 2016, sch 5; The Act undermines the Diceyan principle that, as an extension of "Sovereignty" a future Parliament cannot be bound by its precedent. This is not consistent with the approach taken towards devolution and Parliamentary Sovereignty in *Miller*.

³⁸ *R (Jackson) v Attorney General* [2005] UKHL 56.

the orthodox Diceyan ideal of Parliament may legislate in favour of, or repeal any law is refuted by Lord Steyn, Lord Hope and Lady Hale alike. Lord Hope's *dicta* is of particular significance: "Parliamentary sovereignty is no longer, if it ever was, absolute.. Step by step, gradually but surely, the English principle of the absolute legislative sovereignty of Parliament ... is being qualified"³⁹

Thus, these recent cases of judicial review may be taken as a reminder that the current evolving constitutional arrangement of Great Britain necessitates a more qualified, flexible approach when interpreting the principle of Parliamentary Sovereignty. Bogdanor reinforces this point, noting that whilst the outcome of *Jackson* undermines the existence of Diceyan version Parliamentary sovereignty today, the spirit of the judgement does not contradict a practical and progressive application of the principle. Accordingly, the judicial rhetoric in *Jackson* may be interpreted to signify that Parliamentary Sovereignty is absolute in theory alone, and has in the modern context been qualified by various self-imposed restrictions.

Returning to *Miller*, the Supreme Court majority's judgment toys with two conflicting definitions of Parliamentary Sovereignty: a conservative Diceyan interpretation and a more practical perspective. In an attempt to make sense of these definitional flaws, Elliot⁴⁰ and Grant⁴¹ argue that the inconsistencies with regards to Parliamentary Sovereignty in *Miller* may be resolved in light the tradition of "judicial conservatism" and non-interference in English Legal System the UK. However, in my opinion it does not suffice to gloss over these internal inconsistencies in such a landmark judgement without considering the possibility of another wider aim. Even if Parliamentary Sovereignty is central to *Miller*, this does not necessarily mean that it is the underlying principle behind the judgment.

III. The Principle Behind *Miller*

If judicial non-interference and the Supremacy of Parliament are not the overarching principles behind the *Miller* judgement, one is left to search for another theory that may provide a plausible explanation of the inconsistencies within the judgment. This case note asserts that the long- sought principle in *Miller* is none other than 'Popular Sovereignty' and the 'theory of democracy'. Analysing the judgment in its entirety corroborates this. From a judicial and constitutional perspective, these considerations are not just practical, but may also be seen as a common thread throughout the Supreme Court's judgment in *Miller*.

O'Brien additionally argues that the outcome of *Miller* may be seen as indicative of how the judiciary may be influenced by the press.⁴² In a similar vein, I argue that the judgment may have been deliberately fashioned to reconcile the most fundamental principle of the British constitution - Parliamentary Sovereignty - with the "will of the people", (albeit at the former's expense from a definitional perspective). Indeed, it is unlikely that such a high profile Supreme Court judgment would entail a long drawn out inconsistent interpretation of Parliamentary sovereignty without enforcing a more pertinent and relevant

³⁹ *Ibid.*

⁴⁰ M. Elliot, 'The Supreme Court's Judgment in *Miller*: In search of a constitutional principle', *Cambridge Law Journal* (2017) 1-19.

⁴¹ J. Grant 'Prerogative, Parliament and Creative Constitutional Adjudication: Reflections on *Miller*' 28 *King's Law Journal* 1 (2017), 35-61.

⁴² P. O'Brien, "'Enemies of the People": Judges, the Media and the Mythic Lord Chancellor', *Public Law* (2017 (Nov Supp , Brexit Special Extra Issue), 135-149.

principle. Thus, in an age where justice is commonly seen to be synonymous to 'democracy', there are few more important principles than the democratic notion of 'Popular Sovereignty'.⁴³

This is even more evident considering the context of the *Miller* Case and the political culture of referendums in Great Britain. Whilst direct democracy (and representation) is not the standard system of governance in the United Kingdom, the rallying cry during the violent political climate following *Brexit* was the idea that power/sovereignty to the people must be "restored".⁴⁴ The political referendum of *Brexit* was deemed to be no more than "merely advisory",⁴⁵ but the very notion that the courts could inasmuch as stall *Brexit* (as portrayed by the press during the beginning of the *Miller* case) caused the judiciary to be vilified as "Enemies of the People".⁴⁶ Thus, the dire issue at hand is that Parliament's supremacy and sovereignty has been challenged by a non-binding political referendum alone.⁴⁷ And from a constitutional perspective, it would hardly be logical for the Supreme courts to augment this problem in the *Miller* judgment and signal another constitutional crisis.

Ergo, these aforementioned considerations demonstrate the practical reasoning behind the Supreme Court's decision in *Miller*. By taking a 'democratic approach', the judgment tackled two birds with one stone: the dwindling support for Parliamentary Sovereignty and the rising demand for the electorate's sovereignty. Portraying the judgement as an attempt to restore 'power to the people' was sorely needed. Whilst the theory of Parliamentary Sovereignty and that of the Electorate's direct sovereignty are to a certain degree mutually exclusive, the *Miller* judgment's inconsistent approach towards defining Parliamentary Sovereignty reconciled this. Thus, the Supreme Court's decision in *Miller* may be characterized as a democratically justified approach, blending both traditional and novel principles of the UK's constitution within the context of popular demand.⁴⁸

IV. Parliament vs The People

As established then, the forthcoming power struggle is clear. Armstrong, notes that "surely once you depart from parliamentary sovereignty by holding a referendum, direct democracy trumps representative democracy".⁴⁹ Even though the *Miller* judgment seems to be asserting Parliamentary Sovereignty, it has glossed over the inconsistency of this principle in an attempt to democratically enforce the direct will of the people. In reality, Parliament is doing little other than ensuring the "necessary domestic legislative changes to give effect to changes in the UK's international obligations",⁵⁰ it is sovereign solely in theory.

⁴³ V. Bogdanor, 'The EU Referendum Shows How the Sovereignty of Britain's People Can Now Trump Its Parliament' *The Telegraph*, 26 June 2016., www.telegraph.co.uk/news/2016/06/26/the-eu-referendum-shows-how-the-sovereignty-of-britains-people-c/.

⁴⁴ F. Davis, 'Brexit, the Statute of Westminster 1931 and Zombie Parliamentary Sovereignty', 27 *King's Law Journal* 3 (2016), 344-353

⁴⁵ *Miller* [2017] UKSC 5; 2 112-116.

⁴⁶ P. O'Brien, "'Enemies of the People": judges, the media and the mythic Lord Chancellor', *Public Law* (2017) (Nov Supp, Brexit Special Extra Issue), 135-149.

⁴⁷ F. Davis, 'Brexit, the Statute of Westminster 1931 and Zombie Parliamentary Sovereignty', 27 *King's Law Journal* 3 (2016), 344-353.

⁴⁸ V. Bogdanor, 'Brexit, the Constitution and the Alternatives' 27 *King's Law Journal* 1 (2016), 314.

⁴⁹ K. Armstrong, 'Has Article 50 Really Been Triggered?', *U.K. Constitutional Law Blog*, 14 Jun 2017, at <https://ukconstitutionallaw.org/>.

⁵⁰ V. Bogdanor, 'Brexit, the Constitution and the Alternatives' 27 *King's Law Journal* 1 (2016), 314.

In practice, popular sovereignty is at the forefront of our considerations. Hence, the age of Parliamentary Sovereignty may be nearing its end, for it has met its bane: the increasing enforcement of 'Popular Sovereignty' in England, through measures that directly empower the political electorate (as opposed to Westminster), as was the case with Brexit.

However, one must distinguish the notion of Popular Sovereignty from the notion that the entire system of government must be overhauled and replaced by a system entirely based on representative democracy and proportional representation. One cannot deny the aftermath of Brexit, there were increasing calls in the press for Constitutional Reform in favour of increasing 'direct democracy'. However, calling for greater democratic participation in our current system is an altogether different matter from uprooting the very foundations of the United Kingdom's constitution.⁵¹ The system of polity that exists in Great Britain is entirely different to a system composed entirely of direct democracy. In fact, the latter has not been proven to be particularly successful in and of itself, let alone in the context of the United Kingdom.⁵² Not only is a system composed entirely of direct representation prone to yielding uncertain results, it is also to a certain degree incompatible with Britain's constitutional arrangement. If anything, this is corroborated by the extremely recent accusations and investigation into the alleged electoral misconduct of the "Vote Leave" campaign.⁵³ The *Miller* case reinforces this point, incorporating popular sovereignty into Britain's constitutional arrangement does not and should not equate undermining the entire system of Parliamentary democracy.

V. Conclusion

In conclusion then, the outcome of *Miller* did little to alter British constitution in itself. However, the nature and content of the judgment, its political implications and its reception by the British public have revealed a new political phenomenon for Britain's Modern constitution: the active enforcement of Popular Sovereignty (the will of British electorate) in both a judicial and political context.⁵⁴ The question now remains as to whether our current system of representative democracy shall stand the test of time and whether and how it shall be reformed to directly enforce and convey the will of the people. As Davis notes, the issue at the heart of Brexit has always been "restoring sovereignty to the people".⁵⁵ In *Miller* the Supreme Court's judgment attempted to do this by singing the traditional ballad of Parliamentary Sovereignty, even though this principle had become (arguably) less enforceable than ever. The inconsistencies within the judgment, corroborate this, for it entails a hardly logical sparse application of

⁵¹ A brief but more sophisticated defense of this argument, see Leslie Green, 'Should Parliamentary Sovereignty Trump Popular Sovereignty?' *Semper Viridis*, 3 November 2016, <https://ljpgreen.com/2016/11/03/should-parliamentary-sovereignty-trump-popular-sovereignty>; see also 'Parliamentary Voting System and Constituencies Act 2011', sch 8.

⁵² *Ibid.*

⁵³ 'Electoral Commission launches investigation into Leave EU referendum finances. *The Independent* 9 July 2018, <https://www.independent.co.uk/news/uk/politics/brexit-leave-eu-electoral-commission-investigation-spending-donations-arrron-banks-a7695841.html>.

⁵⁴ V. Bogdanor, 'Brexit, the Constitution and the Alternatives' 27 *King's Law Journal* 1 (2016), 314.

⁵⁵ F. Davis, 'Brexit, the Statute of Westminster 1931 and Zombie Parliamentary Sovereignty', 27 *King's Law Journal* 3 (2016), 344-353.

different versions of Parliamentary Sovereignty. From a judicial perspective, there is a novel principle behind the *Miller* judgment (Popular Sovereignty and the theory of democracy) and this precisely why in my opinion, it merits the title 'Constitutional Case of the Century'. For the first time in a case of judicial review in the United Kingdom, a Supreme Court judgment has invoked the principle of direct democracy and set aside the reality of our democratic system.