



# Modern Church

faith in the world

## Can the dons sack their dean? An interview with Oxford historian Gillian Evans on Martyn Percy's predicament

By Linda Woodhead and Gillian Evans, 20<sup>th</sup> November 2018

Modern Church's President, Professor Linda Woodhead, talks with Professor Gillian Evans in order to throw some light on the confusing and worrying situation involving our Vice President, the Very Reverend Professor Martyn Percy.

Linda and Gill are old friends and colleagues of Martyn, but that does not mean they automatically take his side in the present dispute dividing Christ Church. They both have long experience of the ways in which disputes brew in academic settings, and of how complaints are handled.



*Prof G.R. Evans, author of  
The University of Oxford:  
a new history*

Christ Church is not just an academic institution. It is also a cathedral run under ecclesiastical and canon law exactly like any other cathedral. The Dean presides over both college and cathedral. He lives in a glorious house in the main quad. It is the same one in which [Alice Liddell](#) - the muse of Lewis Carroll's *Alice in Wonderland* - grew up, and there is more than a faint echo of that book in what is unfolding...

**Linda:** **Let's start at the beginning. Why is this college of Christ Church also a cathedral?**

**Gillian:** It is a self-governing and largely autonomous academic and ecclesiastical body, the only such in the world. This is a historical legacy from the sixteenth century. An ambitious Cardinal Thomas Wolsey founded it as 'Cardinal College', and a reforming Henry VIII created the diocese of Oxford in 1542 and gave the College its Foundation Charter in 1546, with its chapel as cathedral.

**LW:** **I know that the place still has a deep sense of its own specialness. Insiders often refer to Christ Church as 'the House'.**

**Who actually runs Christ Church?**

**GE:** It has a governing body made up of the canons of Oxford cathedral (which is also the College chapel) and the College's academics (who are called Students not Fellows). The canons are the cathedral's own clergy who form a

separate governing body for the cathedral. Currently, there are 64 members of the governing body, mostly canons and Students.

So the short answer is that those 64 academics and clergy are in charge. Although the Dean presides over both college and cathedral, he is not so much the 'head' as 'first amongst equals'.

**LW: Is the governing body responsible for what is happening to Martyn?**

GE: Yes. Every member of governing body is responsible for what happens - they are all trustees. However, with such a large body, it's often the case that, in practice, a small number can exercise disproportionate influence.

**LW: One of the characters in [J.I.M. Stewart's fictional account of Christ Church, \*The Gaudy\*](#), describes meetings of governing body as 'festivals of pusillanimity relieved by sporadic dog-fights'. That's a pretty good description of many large academic gatherings, and not only at Oxford!**

**But tell me, is Christ Church a law unto itself or do all Oxford colleges have similar statutes?**

GE: All the Oxford - and Cambridge - Colleges are self-governing entities which can make their own statutes, but these have to be approved by the Privy Council. The Queen is the ultimate authority. Oxbridge colleges are also subject to some wider rules about the relationship of colleges to the University.

Christ Church actually has its own Act of Parliament, y (1867), which is still in force. It begins by explaining that 'questions' had 'arisen' between the Dean, the canons, and the Senior Students of the said House. The Act created new Ordinances which have been periodically been slightly amended ever since.

**LW: Is Christ Church subject to the law of the land, and to employment law in particular?**

GE: Yes, of course. All Christ Church's employees have the protections of modern employment law.

**LW: Is the Dean employed by Church or College?**

GE: The Dean does not have an ordinary employment contract. He was appointed by the Queen by Letters Patent. They speak of 'our Cathedral Church of Christ in Oxford' and grant the Dean the 'place and dignity' of his office. They require the chapter and canons of the cathedral to admit the Dean to his office and 'institute and invest' him as Dean.

The courts have tended to find that ministers of religion are not employees (though rulings are inconsistent on this point), so he is probably not an 'employee' of the Church. But he may be protected by some features of employment law, especially since the largest part his role relates to being a head of college.

**LW: Are the 'Students' employees of the College?**

GE: Yes, the academics who are 'Students' (that is, Fellows) of the College are employees, though Oxford has a system of 'conjoint' appointments which means that many dons are employees of the University as well as the College. They are all protected by employment law.

**LW: What process has been triggered in relation to the Dean?**

GE: When academic tenure was removed in 1988 by the Education Reform Act, pressure from both Houses of Parliament created a requirement that there should be a fair process which would have to be followed if a higher education provider wanted to sack an academic. The University Commissioners created a Model Statute which had to be adopted by all the universities which then existed, including all the Oxford and Cambridge Colleges. It had a provision for removing a Vice-Chancellor. In the case of Christ Church that provision is for removal of the Dean, a clumsy adaptation that has a bearing on the Dean's current problems. No detailed procedures or By-Laws were ever made to ensure that that such a removal would proceed fairly.

There is, however, an obscure provision created under the Christ Church Oxford Act in the late nineteenth century:

'It shall be lawful for the Dean, or any Canon or Student, if he shall conceive himself aggrieved by an act, decision, or sentence of the Governing Body....to appeal against such act or decision or sentence to the Visitor'.

The Visitor to which the Act refers is the Queen. However, the Higher Education Act 2004 s.46 took away the jurisdiction of Visitors when there was a dispute arising under the statutes affecting academic employment, and it would have to be tested (by the Visitor) whether that applied in the present situation.

**LW: Christ Church's official statement to the press says that**

**'The governing body and chapter of Christ Church have agreed to set up an internal tribunal with an independent chair in accordance with the college's statutes. The tribunal will review a formal complaint made against the Dean.'**

**Normally in the case of a complaint, there would be an internal investigation of the complaint, a chance for the accused to give their side of the story, and possibly mediation. Has that happened in Martyn's case?**

GE: It appears not.

**LW: Let's run through the steps that normally occur when a complaint or 'grievance' has been made. First, it's made clear who will handle the complaint, for example, an HR department. If the matter can't be easily sorted out, a panel is convened to hear the complaint. The accused party is told of the accusation and is able to mount a defence. There will be an inquiry in which both sides, and witnesses, can present evidence. The panel then has to decide if the complaint is to be sustained. At any stage a mediation can be attempted. Both sides are entitled to legal defence. If the complaint is upheld, there are a wide range of penalties, from a reprimand to dismissal.**

**All of that is familiar in grievance procedures. So why have all those steps been missed out in Martyn's case?**

GE: This is where that clumsy provision for the removal of the Dean may be at fault. If someone wished to remove the Dean without due process, they might have noticed that irregular element of the statutes and decided to act.

**LW: So the Students in Christ Church have a right to due process in relation to a complaint against them, but not their Dean. Can this be right?**

GE: Of course it is not right, but it may well be something that most have not realised. The Queen as Visitor may have powers to intervene about that. And if the Tribunal had a Chairman who were a senior judge, he would be likely to raise this as a concern before proceeding.

**LW: A crowd-sourced fundraiser has been set up for Martyn's defence, and there have been some very large donations. Why would someone who is better paid than most clergy need such assistance?**

GE: Lawyers' fees can run into hundreds of thousands in a dispute like this. It appears that the College can draw on its considerable wealth to fund the action against the Dean, but that he cannot do the same to defend himself. He is not paid like a Vice Chancellor.

**LW: Christ Church has not said what the 'complaint' against the Dean is, but one of the former canons, Angela Tilby, says in [the Church](#)**

[Times](#) that it is ‘trivial’ and centres ‘on a bad-tempered internal spat about salaries.’ **Can a Master of a College really be dismissed for something so minor?**

GE: That is the problem. There are plenty of novels about squabbles in Oxbridge colleges, like [C.P. Snow’s \*The Masters\*](#), and [Tom Sharpe’s \*Porterhouse Blue\*](#) became a TV series. Normally this sort of thing would be resolved ‘politically’, faces would be saved and a College would carry on with its normal life.

**LW: Can any Student bring a complaint against the Dean? Could it be just one, or a tiny faction?**

GE: The Statutes say there have to be seven complainants, and the governing body is 64 strong. It is rather like the forming of factions in Parliament which we have been seeing lately over Brexit.

**LW: We learn from [The Observer](#) that the Dean has been suspended. He cannot carry out any of his duties, not even religious ones. Because suspension occurs to protect people from harm, students and members of the cathedral congregation might reasonably assume that their Dean is a safeguarding risk. That seems absurd and damaging if the real offence is merely ‘a spat’. On what grounds could he be suspended from all duties?**

GE: Suspension should never be used except where the person is a serious danger to the institution or the public, but it does sometimes happen in higher education disputes. The Statutes allow suspension, but this looks like an example of a provision which needs to be revised.

The 1867 Act was quite clear that the governing body could not interfere with ‘powers and authorities which’ are ‘expressly reserved to the Dean and Canons.’ That covers all the ecclesiastical and religious duties, so the suspension may have to be looked at again. Also, it appears that the Dean has not been charged with any offence under the Clergy Discipline Measure, and his Bishop of Oxford may be able to intervene.

**LW: If the Dean is being treated unfairly, how, under the College statutes, can he appeal or bring a grievance?**

GE: When the statutes were drafted (they were last updated in 2011) no-one seems to have realised that the section about ‘removal of the Dean’ did not have any provisions that might protect the Dean from false accusations or give him a right to appeal. But the 1867 Act, as revised, allows him to appeal to the Visitor of the College, and it may be that he could do that.

**LW:** **Does the College have any other independent oversight - like a council?**

**GE:** The Queen, as the Visitor of Christ Church, is the only higher authority for the College. The Bishop of Oxford has powers with reference to the clergy of the cathedral.

**LW:** **That means that the charge made against Martyn will proceed straight to the internal tribunal?**

**GE:** Yes, unless it can be shown that the tribunal has not been properly constituted.

**LW:** **Who will make up that tribunal?**

**GE:** The Statutes say there has to be an independent Chairman and then a panel made up of equal numbers of members of the governing body from the canons and the Students who have not been involved in the matter up to this point. If internal disagreements make it impossible to form such a panel there is a question whether a Chair could be the Tribunal all by him or herself.

**LW:** **This sounds more and more like Alice in Wonderland: 'Off with his head!'**

**Just to be clear, because it seems so odd - will there really has been no pre-investigation to ascertain the facts and collect relevant information from both sides?**

**GE:** A Chairman who is an experienced senior lawyer or judge would certainly have to ensure that this happens. The problem is that there has been no preliminary investigation, such as any other academic would be entitled to. And now that the press is onto it, opinions may be hardening. The reputational damage to the College may now be prompting the governing body as a whole to consider its action.

**LW:** **We've raised the possibility of a mediation process - will that take place and would it be helpful?**

**GE:** Mediation is always a possibility but it is outside the adversarial process. It can only work if both sides are willing to work out a solution. If one side is determined to remove the Dean it is unlikely to work.

**LW:** **This all seems very irregular and unfortunate, to say the least. A good man's reputation, living and home could be taken away on the whim of a small number of Students. Is that a fair summary?**

GE: It is actually very unlikely that this can happen quickly. Dismissing an academic protected by the 1988 Act or disciplining a clergyman can take many years. That is one important reason for not rushing to suspend someone.

**LW: If the statutes of the College lack provisions to ensure a just process, then surely there is still nothing to stop the College pursuing normal good practice in any case - carrying out a proper investigation and so on? Don't the statutes merely set a minimum standard?**

GE: The Statutes stand at a high level as legislation, just under an Act of Parliament. Of course, it is possible - and necessary - to act fairly within their provisions. It could also be that the seven complainants have to withdraw their complaint while the statutes are revised to provide a fair process. That could be an opportunity to avoid exposing the College to more awkward questions.

**LW: Colleges like Christ Church are autonomous and self-governing in law, partly to protect academic freedom. Is it sensible to preserve this system, even if injustices occasionally occur?**

GE: It is sensible to get the system right. The statutes clearly need amendment. It's not hard to amend statutes. It may be time-consuming, but the Privy Council expects institutions to keep their statutes up to date and in good order. The University would expect that too.

**LW: If the governing body don't like their Dean, isn't it their right to eject him?**

GE: You cannot mean that the Head of a College just has to be popular, never offend anyone, and not ask awkward questions or seek reforms?

**LW: No. Alice would disapprove.**

---

Prof G.R. Evans is Emeritus Professor of Medieval Theology and Intellectual History in the University of Cambridge. She is author of [The University of Oxford: a new history](#) and writes regularly on higher education policy issues. She co-authored [Managing the church?: Order and organization in a secular age](#) with Martyn Percy in 2000. She lives in Oxford.

Linda Woodhead MBE is Professor of the Sociology of Religion at Lancaster University. She has been President of Modern Church since 2014. She is author with Andrew Brown of *That Was the Church That Was: How the Church of England Lost the English People*. She is currently a Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford University, USA.

---