

KEYNOTE

Louis Riel: Patriot Rebel

REMARKS OF THE RIGHT HONOURABLE
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DELLOYD J. GUTH VISITING LECTURE
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It is a great honour to be invited to the inaugural DeLloyd J. Guth Visiting Lecture in Legal History for Robson Hall. In light of the lecture's focus on legal history, and in this place where he was born, I would like to speak about Louis Riel, his actions, his trial and his legacy.

Why Riel? Simply, because 125 years after his execution, he still commands our attention. More precisely, to understand Canada, and how we feel about Canada, we must come to grips with Louis Riel the person, Louis Riel the victim of the justice system, and the Louis Riel who still inhabits our disparate dreams and phobia.

I. LOUIS RIEL: HIS ACTIONS

Time does not permit more than a brief sketch of this historic personage. But that sketch suffices to reveal a complex and fascinating human being. Louis Riel was born in the Red River Settlement in what is now Manitoba in 1844. Only a fraction of his ancestry was Aboriginal, but that made him a Métis, a mixed identity that became the axis upon which his life and his death turned.¹

¹ For a detailed account of Louis Riel's ancestry and childhood, see Maggie Siggins, *Riel: A Life of Revolution* (Toronto: Harper Collins, 1994) at 1-66 and George FG Stanley, *Louis Riel* (Toronto: Ryerson Press, 1963) at 1-34.

For over a century the Métis people – born of French Canadian (or sometimes Scottish) explorers and adventurers, and Aboriginal women – had made themselves an established fact on the prairies. They were a people defined by their ethnicity, their language and their religion (Roman Catholicism).² For a century, they had shared the west peaceably with the various tribes. And then, in the middle years of the nineteenth century, their situation was suddenly threatened. English-speaking white settlers began to arrive. They were white. They were Protestant. And they wanted to settle in the Hudson's Bay Company's Christian territories.

The Métis became concerned that the largely English Protestant advance would rob them of their rights to land, to the Catholic religion and to the French language.³ As more newcomers arrived from Ontario, conflicts arose. Fear and discontent grew. Demands to protect Métis rights against the settlers were made.⁴ When the Company and then the newly confederated government (1867) failed to respond, the Métis embarked on organized efforts to obtain legal recognition of their status and rights. In a nutshell, that is the story behind the Métis uprisings of 1869, led by Louis Riel.

At this point, we must backtrack for a moment. When Riel was but a boy, the priests in Red River had sent him to study at a seminary in Montreal in 1858.⁵ A decade later, Riel returned from Montreal convinced that the Métis at Red River should enjoy language and religious rights similar to those enjoyed in Quebec. He believed that the rights he sought for his people could be attained peacefully.⁶

The response of the Canadian government was initially disappointing for the Métis. Parliament passed a law in 1869, annexing in colonial style the whole of Rupert's Land and the Northwest Territory, under the absolute rule of a Lieutenant Governor. The legislation took no note of the indigenous population, effectively – or so Riel saw it – denying Métis and Aboriginal people citizenship and a say in the governance of the lands that they regarded as theirs.⁷

Louis Riel believed that if the Canadian government could install this form of administration without first granting proper safe-guards of citizenship, assuring them of secure possession of their homes and guaranteeing their rights and customs, the Métis would lose all possibility of ever securing their rights. He

² Siggins, *supra* note 1 at 83-97; Stanley, *supra* note 1 at 44-53.

³ Siggins, *supra* note 1 at 83-97; Stanley, *supra* note 1 at 44-53.

⁴ Joseph Kinsey Howard, *Strange Empire: Louis Riel and the Métis People* (Toronto: J Lewis & Samuel, 1952) at 129-131.

⁵ Stanley, *supra* note 1 at 21.

⁶ *Ibid* at 30-32; William McCartney Davidson, *Louis Riel 1844-1885* (Calgary: Albertan Publishing Company, 1955) at 24-25.

⁷ *An Act for the temporary Government of Rupert's Land and the North-Western Territory when united with Canada*, SC 1869, c III.

decided that the time for resistance had come – not the disorderly resistance of a mob, but the democratic resistance of an elected council.

Under Riel's leadership, a council was formed and declared itself the effective "provisional" government of the Red River Settlement.⁸ Ottawa seemed content to allow this Council to continue, even after it sent out a governor, and negotiations ensued. Eventually, the Canadian government assured the Métis that the Canadian Parliament would guarantee the use of both English and French in the courts and parliament of the new territory, and that the Judge of the Supreme Court would speak both languages. Manitoba became the sixth province to enter Confederation.⁹

All these achievements, however, were marred by one fatal event, the execution of a Northern Irish Orangeman from Ontario, Thomas Scott. Scott viewed the Métis as inferior and lost no occasion to make his views known. In the course of a few short months, Scott was involved with a series of plots to destabilize the community, ranging from kidnapping Riel to attacks on Fort Garry.¹⁰ The escapade that finally landed him in the custody of Riel's provisional government was an attack on the jail, in an attempt to free certain prisoners. The attack failed and Scott was detained. Riel's Council, after a fruitless attempt to interview Scott – who continued to rain racist epithets down on them – decided that he should be tried before a Court Martial of seven members. The panel of judges found Scott guilty and a majority voted for execution. Under pressure to show that he could act forcefully in the face of the likes of Scott, and without the counsel of his long-time advisor, Archbishop Taché, Riel rejected suggestions that the execution be stayed. The decision was to prove a fatal turning point in the life of Riel and the future of the Red River colony. The next day, March 4, 1870, Scott was executed by a firing squad.¹¹

That execution became a cause célèbre. It provoked outrage in Ontario and raised a clamour for removal of the provisional government and of Riel. Prime Minister Macdonald, in response, dispatched the Canadian army.¹² Various Métis advocated advances to thwart the army; Riel urged restraint. Ultimately, with the arrival of the army imminent, Riel and three of his councillors evacuated Fort Garry.¹³ Riel's nine-month period of government in Red River was at an end and he went into exile.

⁸ For accounts of the formation of Riel's provisional government, see Stanley, *supra* note 1 at 54-77; Howard, *supra* note 4 at 109-162; Siggins, *supra* note 1 at 98-138.

⁹ *An act to amend and continue the Act 32nd and 33rd Victoria, Chapter 3, and to establish and provide for the Government of the Province of Manitoba*, SC 1870, c III.

¹⁰ Siggins, *supra* note 1 at 149-157.

¹¹ *Ibid* at 149-163.

¹² JM Bumsted, *Louis Riel v Canada: The Making of a Rebel* (Winnipeg: Great Plains Publications, 2001) at 128-130, 145; Siggins, *supra* note 1 at 164, 183-184.

¹³ Stanley, *supra* note 1 at 155-156.

Yet his achievements endured. He had won provincial status for Manitoba against persistent opposition and had secured linguistic and religious recognition for his people. In the end, the Canadian government had granted his major claims.¹⁴ All this, apart from the Scott affair, had been achieved without bloodshed.

Riel, however, emerged from these events an outlaw. The events of the uprising unhinged his always volatile mental state. After peregrinations in the United States, he entered Longpoint Mental Asylum in Montreal, where he remained for seven years. Released, he eventually made his way to Montana, married and took a post as teacher at a Jesuit school.¹⁵

It was there that Gabriel Dumont, leader of the Métis of northeastern Saskatchewan, found Riel in 1884.¹⁶ And so began the third and final period of Riel's adult life. The Métis of the Northwest had for over a decade been petitioning the federal government for recognition of their status as rights-bearing citizens and of their claims to land. Unlike the Aboriginals, they had made no treaties with the government and had never abandoned or given away their lands. They wanted a negotiated settlement before settlers overran them and erased any hope of justice. The government, however, was unresponsive.¹⁷

In desperation, Dumont decided to ask Louis Riel to aid them. Riel might be disgraced, but the fact remained that he had achieved recognition of Manitoba as a province and secured guarantees of language and religious rights through his movement of resistance two decades earlier. He had forced the government to listen and the government had responded. Perhaps he could do it again, this time for the Métis people of the Northwest Plains.¹⁸

Riel by day was a hard-working schoolteacher. But the work provided no outlet for his twin passions – his increasingly aberrant religious views and the cause of the Métis.¹⁹ Dumont's request for assistance promised a way to fulfill Riel's mission on both fronts. Little wonder, then, that he accepted Dumont's offer. The Messiah had once more found a mission.

At St. Laurent, near the present Prince Albert, Riel began a campaign of peaceful agitation for redress of the grievances of the local population. He worked on a Bill of Rights, which was, by any measure, a moderate proposal.²⁰ The

¹⁴ Dollard Dansereau, *Causes célèbres du Québec* (Saint-Lambert, QC: Editions Sedes, 1990) at 28.

¹⁵ For an account of Riel's life during this period, see Stanley, *supra* note 1 at 157-251. Thomas Flanagan provides an account of the development of Riel's religious views in *Louis 'David' Riel: Prophet of the New World*, rev ed (Toronto: University of Toronto Press, 1996), esp at 37-132.

¹⁶ Stanley, *supra* note 1 at 272-273.

¹⁷ *Ibid* at 260-264.

¹⁸ *Ibid* at 272.

¹⁹ For a thorough account of the development of Riel's religious views, see Flanagan, *supra* note 15 at 81-104.

²⁰ Siggins, *supra* note 1 at 368-369, 452.

government ignored the Bill on the ground that it had been prepared by a person who was not a British subject, Riel having become a citizen of the United States.²¹ If the Métis got rid of Riel, rumour suggested, perhaps a commission could be established to look at their grievances. The Métis were not impressed.

The community, led by Riel, set about devising a plan that mirrored Riel's successful effort to secure the language and religious rights of the Métis in Manitoba a decade and a half earlier. Riel believed that the success of the Métis in Manitoba and the absence of bloodshed in the Manitoba resistance had been due to their efficient preparation for trouble by a show of men under arms, visibly well disciplined.

And so the drift toward confrontation began. The government, upon learning that the Métis were arming and organizing themselves, responded not with a commission but with increased military and police presence. Riel insisted that the Métis only fire if fired upon.²² Privately, accounts indicate, his behaviour was increasingly messianic and irrational.

On March 26, 1885, a group of Métis led by Dumont surrounded a group of fifty-five police officers and forty-three Prince Albert volunteers. When an Aboriginal on the Métis side made a move to take away the revolver of a police scout, the scout shot him dead.²³ Riel's force responded, with Riel directing them from his horse as he rode, cross held high. The police had drawn first blood and the war was on.

That history continues to our own day. The RCMP reinforcements arrived and a few weeks later the Canadian army joined them. The outcome was never in doubt. Riel, probably thinking a trial would serve as a platform for his cause, refused to flee back to the United States, and on May 15th gave himself up. He was taken to Regina where he was convicted by a six-man territorial jury on the charge of high treason, with a recommendation for leniency. Appeals to the Manitoba Court of Queen's Bench and the Judicial Committee of the Privy Council failed. The government refused a petition for clemency. On November 16th, 1885 Louis Riel serenely mounted the scaffold and died.²⁴

His execution led to riots in Quebec, which saw it as an attack on French language and Catholic religious rights. In Ontario, by contrast, Riel's execution was cheered. The great national divide that would become a recurrent part of Canada's history was engaged.

That is a thumbnail sketch of the events of Riel's life. It does not begin to capture the man and what he has come to stand for. Riel the man - how to sum his parts? He was loved by some, demonized by others. He was devoutly religious,

²¹ Bumsted, *supra* note 12 at 256.

²² *Ibid* at 256-259; Siggins, *supra* note 1 at 366-380.

²³ Siggins, *supra* note 1 at 382-384.

²⁴ Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1994) at 306-18.

yet clashed with his church and rejected some of its central teachings. He was a man of peace, yet led two rebellions. He was, above all, a man of dreams and ideals, which he pursued with messianic zeal. His varied life reveals many passions. Two, however, were constant: his passion for God and his passion for justice for the Métis. Was Riel, in addition to all his other attributes, mad? That question dominated his trial, to which I now turn.

II. LOUIS RIEL: THE TRIAL

It is Riel's trial, more than his accomplishments for the people of Red River or his defeat at Batoche, that has defined his public image ever since. Discussion continues in academic circles about what Riel accomplished for the Métis people. One question has seized the imagination of people everywhere: did the trial of Louis Riel, a man consumed by a passion for justice, deliver justice, for him and for Canada?

To understand the trial of Riel, one needs to understand the politics of the country at the time of the Northwest Rebellion. Canada was only a few years old. Prime Minister Macdonald was committed to a trans-Canadian railway, western annexation and settlement, in pursuit of his dream of a Canada that stretched from sea to sea. The Métis were seen as a problem and the rebellion had become highly inconvenient, to say the least. The Prime Minister's problem was complicated by politics in the east. French-speaking Catholics sympathized with Métis claims to linguistic and religious guarantees. By contrast, English-speaking Ontarians viewed Riel as the murderer of Scott and the Métis uprising as an affront to the rule of law and an impediment to orderly settlement of the west. The Prime Minister attempted to satisfy both constituencies as well as his desire (admitted on more than one occasion) to be rid of Riel. The result was a process that was arguably lawful but unquestionably harsh and unwise.

Before addressing the questions that have been raised about Louis Riel's trial, a brief outline of the proceedings is in order.

Riel was charged with high treason. He was ordered to stand trial before a Territorial Court in Regina.²⁵ At the outset of the trial, the defence raised procedural objections regarding the fairness of the venue: frontier territorial procedures (the jury was made up of six Anglophones) and local laws were particularly harsh and outdated when compared with the English criminal law transplanted to Canada; trying Riel for treason also raised basic jurisdictional issues because he had become an American, and was no longer a British subject.

²⁵ George Goulet, *The Trial of Louis Riel: Justice and Mercy Denied* (Toronto: Tellwell Publishers, 1999) at 43-55. The most recent and authoritative scholarship on point is in Barry Wright & Susan Binnie, eds, *Canadian State Trials, Volume III: Political Trials and Security Measures, 1840-1914* (Toronto: The Osgoode Society for Canadian Legal History, 2009).

All such objections were summarily rejected.²⁶ Having lost their procedural arguments, the defence lawyers decided that their best option was to plead insanity.

Riel did not agree with that defence. He viewed himself as a sane man, fighting for a venerable cause. He wrote to Prime Minister Macdonald complaining that his lawyers were well-intentioned but unable to understand his cause. His letter fell on deaf ears. Defence counsel proceeded undeterred.

At the trial's conclusion, the judge gave a brief direction that offered virtually no comment on the evidence or the law. The jury retired for an hour, returning a verdict of guilty with a recommendation for mercy. After a further speech from Riel, Judge Richardson sentenced him to death.²⁷ Appeals were rejected and, after sending out a fact-finding mission, the government rejected a petition for clemency. Riel was hanged on November 16th, 1885. That, in brief compass, was Riel's trial.

I return to a question I posed earlier: did Louis Riel get justice in the end? The answer turns on what we mean by "justice". The government's treatment of Riel probably accorded with the law in that time and place. Canada did, however, have choices, and its harsh decisions proved devastating – and ultimately fatal – for Mr. Riel.

I turn to areas of the proceeding that remain particularly troubling.

A. The Venue

Riel was initially ordered to stand trial before the duly constituted courts of Manitoba. The government quickly changed its mind, however, ordering that Riel be tried in Regina in the Northwest Territories. The Territories did not possess a developed justice system and did things differently than the rest of Canada. In Manitoba, Riel would be tried by a jury of twelve men, much more his peers: six Francophone and six Anglophone. In the Territories, Riel would be tried by a jury of only six men, an all-white English Protestant panel unlikely to understand the language of many of Riel's witnesses. In addition, territorial criminal procedure was significantly less developed: many protections enjoyed by defendants in Manitoba had not been extended to the Territories, to Riel's detriment.²⁸

B. The Judge

The judge, Hugh Richardson, was a stipendiary magistrate appointed at the pleasure of the government, without tenure, one of the most significant protections of judicial independence. He did not speak French and had no experience at conducting controversial trials. Indeed, as became apparent in some

²⁶ Goulet, *ibid* at 71-81.

²⁷ Michael Bliss, ed, *The Queen v Louis Riel* (Toronto: University of Toronto Press, 1974) at 343-372.

²⁸ Goulet, *supra* note 25 at 45-48.

of the other trials he presided over, involving other persons associated with the uprising, he could not be called a highly skilled lawyer or jurist.²⁹

C. The Charge

The Canadian government had the choice of three statutes under which it could lay charges against Riel: the 1838 Fenian Act,³⁰ the 1868 Canadian High Treason Felony Statute,³¹ and the medieval 1351 *Statute of Treasons*.³² The last made “high treason” the most serious offence in English law, with death being the only possible outcome upon conviction. The decision to charge Riel under this 1351 legislation was made by the Justice Minister, Sir Alexander Campbell, and by the Prime Minister, Sir John A. Macdonald. Of the seventy-two participants charged in the rebellion, only Riel was charged with high treason,³³ the only charge that carried an automatic death penalty.

Two intertwined reasons have been suggested for the government’s decision. First, the record suggests that Macdonald wanted Riel executed.³⁴ Second, the government was politically motivated to paint the rebellion as the act of one evil man, rather than what it was: a Métis movement for recognition of their rights to land, language and religion.³⁵

The decision to charge Riel with high treason was risky. The essence of high treason was the act of a citizen against the sovereign. But Riel had become an American citizen on March 16, 1883. The appropriate charge for Riel, a non-citizen, would have been under the Fenian Act, which made it treason for a citizen of another country to levy war against Canada.³⁶ Either the government was unaware of Riel’s American citizenship, or they knew and were willing to take the chance – correctly as it turned out – that this “technicality” would not result in Riel’s acquittal.³⁷

²⁹ *Ibid* at 56-62.

³⁰ In 1838, Upper Canada passed *An Act to protect the Inhabitants of this Province against Lawless Aggressions from subjects of Foreign Countries, at peace with Her Majesty*, 1838, 1 Vict., c 3. This was subsequently amended by 1840, 3 Vict., c 12. The statute was so heavily relied on to prosecute the Fenians that it became known as the “Fenian Act”. Under the Fenian Act, it was treason for a citizen of another country, an alien, to levy war against Canada.

³¹ SC 1868, 31 Vict., c 69, formally titled *An Act for the better security of the Crown and of the Government*. Under s 5, it was treason-felony to levy war against the Crown or the government.

³² (UK), 25 ed III, Stat 5, c 2.

³³ Goulet, *supra* note 25 at 48.

³⁴ Jean Teillet, “Exoneration for Louis Riel: Mercy, Justice, or Political Expediency?” (2004) 67 Sask L Rev 359.

³⁵ Bumsted, *supra* note 12 at 271.

³⁶ Teillet, *supra* note 34.

³⁷ Riel was charged with breaches of allegiance (as a British subject) and local allegiances (as a person living with Canada under the protection of the sovereign). In fact, due to the *Naturalization Act, 1870* of the United Kingdom the doctrine of national allegiance was wiped

Particularly troubling was the fact that the legal basis of the prosecution was not specified at the outset of the proceedings. The six charges were couched in fusty language. Riel was accused of “being moved and seduced by the devil” and “most wickedly, maliciously and traitorously” having levied and made war “against our Lady the Queen.” But the statute under which he was charged – and hence the fact that he was facing death – became clear only partway through the proceeding.³⁸ Such a state of affairs remains incomprehensible to a modern practitioner of criminal law.

D. The Defence Team

Riel’s lawyers were respected members of the bar and appear to have worked conscientiously on his behalf. Nonetheless, there was a fundamental disconnect between Riel and his legal team as to how the trial should be conducted. As I mentioned earlier, Riel wanted a defence based on the merits of the Métis cause. His defence team viewed this as a legal non-starter (the wrongness of government policy was no defence to a charge of treason) and instead argued that Riel was an intermittently insane man whose aberrant behaviour was the product of delusions.³⁹ While perhaps legally unpromising, a defence on the merits was Riel’s unwavering wish, which he was persistently, and ultimately, denied.

E. The Defence of Insanity

Insanity was the only real defence Riel’s legal team advanced. From the point of view of overall justice, did the Regina trial condemn to death a man who was mentally ill and thus not legally responsible for his actions?

Viewed through a modern lens, Riel’s conduct and mental state at the time of the rebellion suggested a man swept away by a religious-political vision. He viewed the uprising as an event directed by God and himself as God’s chosen instrument. He appeared to have believed that God would intervene and grant victory. He saw visions and broke with Catholic doctrine and the church. He often acted in a clearly irrational, arguably paranoid fashion. Then there was his personal history: seven years in a mental institution after the Red River uprising.⁴⁰

It is difficult, at this historic remove, to conclusively say whether Riel was sane or insane at the time he directed the events of the Northwest uprising. However, several points should be made. First, it may well be that the jury did not understand that being able to express oneself logically later in the courtroom was consistent with the possibility that Riel had previously acted under delusions.

out. The first 3 of the 6 charges of high treason against Riel were thus invalid: see Goulet, *supra* note 25 at 50-51.

³⁸ *Ibid* at 50-51.

³⁹ *Ibid* at 117-124.

⁴⁰ Flanagan, *supra* note 15, generally.

Second, there was strong evidence that Riel was highly delusional at critical points in the uprising but thereafter appeared clear-minded. Today, a person with a history of serious mental illness who commits an apparent crime while operating under visions and delusions that appear irrational to reasonable people will almost undoubtedly escape conviction. He will be sent to a hospital under Part XX.1 of the *Criminal Code*. He most certainly will not be convicted of treason. Justice according to the letter of the law and understanding of mental illness in 1885, perhaps. Justice according to our modern understanding? Probably not.

F. Post-Verdict Proceedings

In the absence of clear trial error on the record, the Manitoba Court of Queen's Bench dismissed Riel's appeal. The Judicial Committee of the Privy Council summarily confirmed this decision. It is difficult to fault these decisions on the record as it stood.

What is controversial is whether or not the Government of Canada erred in rejecting Riel's plea for clemency. The jury had recommended clemency. The doubts about Riel's mental state cried out for clemency. Yet Riel's petition for clemency was rejected.⁴¹

While considering Riel's petition, Prime Minister Macdonald was pressured to appoint a medical commission to investigate Riel's sanity. The Prime Minister agreed to have doctors talk to those who knew Riel, but ordered them to "stop so soon as you are convinced that Riel knows right from wrong and is an accountable being".⁴² Given the Prime Minister's avowed desire for Riel's execution, it is perhaps unsurprising that he ignored medical opinion that concluded that Riel showed signs of insanity.⁴³ What was surprising was the report that the Prime Minister gave to the House of Commons. The doctor's report was edited to omit any reference to signs of insanity.⁴⁴ With the deceptively edited information before it, the Commons rejected clemency and Riel's execution proceeded.

G. Summary

Judged from the perspective of 2010, Riel's trial, while minimally legal, suffered from many imperfections. The choice of venue - the Territories - deprived Riel of legal and procedural protections and a trial by peers who understood the language of crucial witnesses. The judge was not a skilled jurist and lacked institutional independence. The charge was unclear and the harshest

⁴¹ Bumsted, *supra* note 12 at 302-304.

⁴² Thomas Flanagan, *Riel and the Rebellion: 1885 Reconsidered*, 2nd ed (Toronto, University of Toronto Press, 2000) at 159.

⁴³ *Ibid* at 160.

⁴⁴ P Waite, *Canada 1874-1896: Arduous Destiny* (Toronto: McClelland and Stewart, 1971) at 165.

available. The defence team ignored his wishes. It is not clear that the jury appreciated that a man who could make a cogent argument might nevertheless be delusionally insane. And the government's insistence on death in the face of a jury recommendation for clemency and starkly contrasting medical evidence, while perhaps explicable by the need to preserve peace in the Northwest, seems, in retrospect, perverse.

Had Riel been quietly consigned to pass the rest of his days in a mental institution, he would probably not have become a martyr whose cause still tears at us in the twenty-first century. Perhaps that is how Riel, whose goal throughout was nothing more than a trial that would highlight the plight of the Métis people, would have wanted it.

III. LOUIS RIEL: THE LEGACY

Riel fought against Canada in the name of values that Canada now proudly embraces: respect and accommodation for pluralism. Does this make Riel a rebel? A patriot? Can he be both? Overarching this inquiry is the question of Riel's significance to modern Canada. Like many Canadians, Louis Riel was a composite. He was Métis, Quebecois, Aboriginal, Catholic, eastern and western. He was all these identities while being Canadian at a time when the nation was still trying to figure out what being Canadian meant.

Each part of Riel speaks to different constituencies that we modern Canadians can also share, in terms of language, religion or culture. But sharing an aspect of Riel's heritage is only the beginning of understanding his significance to us. While he speaks to individual and community identities, his example more broadly embodies the pluralistic nature of Canada. The challenge Riel faced is how to master the complex tasks of integrating and controlling the conflicting demands of his, and Canada's, many identities. This is ultimately the challenge of our modern, multi-cultural nation and its rule of law.

What lessons do Louis Riel's life and fate teach us? Let me suggest two central lessons. The first is the importance of the rule of law and a fair, effective and independent justice system. The second is that we must respond with respect to concerns of Aboriginal peoples – and by extension other minorities – in the spirit of reconciliation. Had Canada observed these precepts in 1885, the Riel uprising and execution would not have occurred.

The first problem with that government's treatment of Riel was the glaring deficiency of rule of law in the territories of the new Canada. There were two aspects in this failure. First, there was no legitimate way for Riel to bring grievances to the attention of the government. The government itself did not lend an ear, and the courts – the last resort for all aggrieved citizens – could not remedy violation of rights by any set standard law because the *Charter* – now Canada's ultimate expression of its commitment to freedom and human dignity –

did not exist. Riel had no legitimate avenue to express concern except by petition and, in the end, protest. Second, the state of the criminal law and the rules of criminal procedure were woefully inadequate, anachronistic and confused in the territories outside Canada. Canada took advantage of this by ordering Riel to be tried in territorial Regina instead of Manitoba, under legislation from the fourteenth century that mandated the death penalty and that did not prevail elsewhere in Canada. Territorial law, as it turned out, did not require an independent judiciary, appropriate pre-trial hearings, or a timely declaration of charges.

Rule of law – the general proposition that decisions should be made by applying known principles and laws – shields the citizen against arbitrary and capricious governance. Riel did not enjoy the full protection of this shield. Because of this, we are left with the sense that justice was not done. Any fundamental failure of justice creates an open wound that remains on the body of a nation until addressed. Despite all the tributes to Riel over the past half-century, despite the statues erected and tomes penned to his memory, we are still left with the sense that the wound inflicted on the body politic by Riel's execution has not yet fully healed.⁴⁵

The second lesson is the need to respond to concerns of minorities in a spirit of respect and reconciliation. Broadly, Riel demonstrated that we must provide refuge for our minorities, embodied in the principle that all people, regardless of the group to which they are born or assigned, are equally worthy and equally deserving of respect. At the same time, we must resist the temptation to equate equality with assimilation. Assimilation undermines the identities of members of a group, identities based on unique histories, languages, and cultures which deserve recognition and preservation.

The government of Canada in 1885 failed to take seriously the concerns of the Saskatchewan Métis minority that their rights needed to be recognized. If they had, the violence of the Northwest uprising and Riel's hanging would never have happened. Riel's initial tactics during both the Manitoba and the Saskatchewan uprisings were the same: peaceful agitation for redress of the grievances of the local population. In the first uprising in Red River, the newly minted Canadian government ultimately listened to Riel's concerns and responded by granting the right to French language, Catholic religion and provincial status. In the second uprising in Saskatchewan, a more mature Canada refused to recognize the Métis demands, refused even to discuss them. Refusing to do so much as consider the claims of peoples who had lived on the prairies for generations, who had their own distinct language and culture, simply plowing them under with a plan to resettle the west with immigrants, allowing nothing to stand in the way.

⁴⁵ Teillet, *supra* note 34.

Riel's story teaches us that we must take seriously rights and grievances. We must not sweep dissent under the carpet; we must not ride roughshod over difference. We must address the concerns of Aboriginals and other minorities from the stance of respect and reconciliation. As Supreme Court of Canada Chief Justice Antonio Lamer stated in the seminal decision of *Delgamuukw*, "Let's face it, we are all here to stay."⁴⁶

I return to the title of this talk: *Louis Riel: Patriot Rebel*. By any measure, Riel was a rebel.

His Canada was born in an era of ethno-nationalism, religious and linguistic intolerance and state-sanctioned racism. Riel rejected this stance and fought the established order, which is the essence of rebellion. But just as clearly – viewed through our modern lens – he was a patriot. The values Riel fought for – inclusion, equality, respect and accommodation – are values which we recognize in today's Canada, in our *Charter*, and which make us deeply proud to be Canadian.

Perhaps the debate concerning Riel's patriotism is best resolved by Riel himself. Just before the jury retired to consider its verdict, Riel asked to speak. He looked each juror in the eye and said:

I am glad the Crown have proved that I am the leader of the half-breeds in the Northwest. I will perhaps be one day acknowledged as more than a leader of half-breeds, and if I am, I will have an opportunity of being acknowledged as a leader of good in this great country.⁴⁷

Today, there is no doubt that Riel stands as a leader, not only of Métis, important as that is, but of all Canadians. He teaches us that the multiple identities and rights that make up our complex heritage must be respected, not crushed. And he teaches us that we must seek justice for all – the despised as much as others – not only in form but in substance.

⁴⁶ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 186.

⁴⁷ Final Statement of Louis Riel at his Trial in Regina, Friday, July 31, 1885, online: <<http://www.law.umkc.edu/faculty/projects/ftrials/riel/rieltrialstatement.html>>.