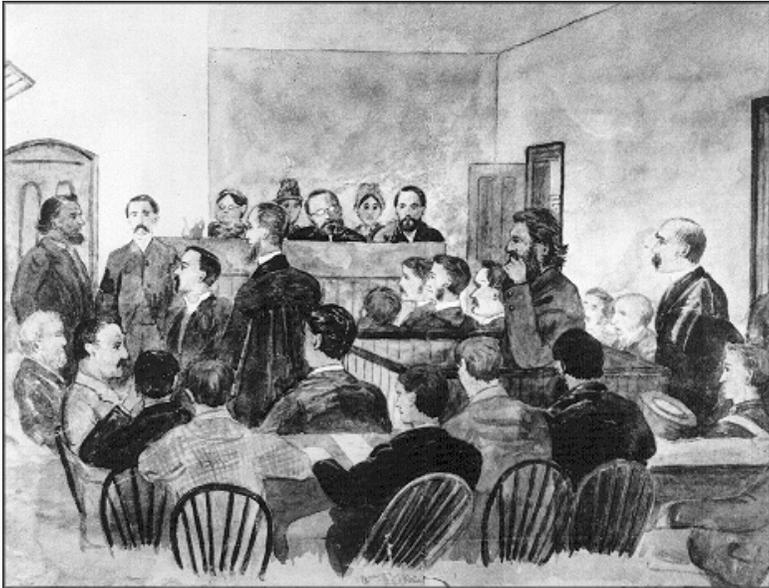


SECTION A

The Trial



SASKATCHEWAN ARCHIVES BOARD NO. RA2007-1

From left to right: Charles Nolin; interpreter (standing); prosecutor Christopher Robinson (in robes); Magistrate Richardson and Justice of the Peace Lejeune (on bench); Louis Riel; prosecutor B.B. Osler (in robes); NWMP Superintendent Burton Deane (seated at right)



SASKATCHEWAN ARCHIVES BOARD PHOTOGRAPH NO. R-82060

Louis Riel, a prisoner, outside the guard tent



SASKATCHEWAN ARCHIVES BOARD PHOTO NO. R-8278

*The members of the jury, from left: Francis Cosgrove (foreman),
Walter Merryfield (standing), Edwin J. Brooks, Peel Deane,
Henry J. Painter (standing), Edward Eratt*

Chapter I

A CHARISMATIC METIS ICON

Louis Riel – the very name conjures up visions in stark contrast to one another: martyred hero – murderous renegade; rational leader – mindless lunatic; cultured gentleman – irate rabble-rouser; selfless advocate – grasping self-seeker; inspired leader – faithless heretic; unjust victim – guilty traitor.

No one who is familiar with the Riel saga is indifferent to the man. He is either revered or reviled, often on the basis of raw emotion rather than bare facts. A French Catholic Quebecer would likely have a more benign interpretation of Riel's conduct and motives in the last year and a half of his life than a militant Protestant Orangeman from Ontario. Regardless of one's feelings or perspective, Louis Riel was a remarkable personality whose life profoundly influenced Canadian society, politics, the founding of Manitoba and the rights of Western Canadians. His impact continues to this day and will continue in the future.

Riel was a wunderkind, a *rara avis*, a natural-born charismatic leader, highly intelligent, handsome and educated. He was elected to the Parliament of Canada on three separate occasions, while he was still in his twenties, but due to politics was never able to take his seat. His fascinating life combined the acme of success and the nadir of defeat, the sacred and the profane. To some he conjoined fame and infamy; to others he was an iconoclast who became an icon. To Riel himself he had a prophetic mission – to lead and champion his people, the Metis, in having their grievances remedied, their rights obtained, and their lives uplifted.

Riel may have seen himself as a prophet in some respects. He was brought up in a highly religious Roman Catholic atmosphere imbued with saints, sacraments, prayers and priests. He was familiar, from his Montreal studies, with the great Biblical prophets. These prophets pervaded the Old Testament with sagas of fiery passion, humility and even ecstatic eccentricity. Stories of their lives have prevailed down the centuries, influencing the faith of the believers. Many acted in an unconventional manner. Isaiah walked naked and barefoot (Isaiah ch 20 ver 2-3); Ezekiel ate a scroll of the words of God (Ezekiel ch 3 ver 1-3). Although many prophets were from humble beginnings they often confronted those in authority and criticized them for injustices done.

Although he did not see himself in the mould of a Biblical prophet, Riel during the trial stated that half-breeds acknowledged him as a prophet. He said "I can see something into the future" adding "we all see into the future more or less" and "the half-breeds as hunters can foretell many things." Although Riel may not have been the prophet of the New World, to many of his followers he was a messianic leader, one who would help his oppressed people.

Riel has been called the first prairie populist politician. Some consider him to be the precursor of Thomas Crerar of the Progressive Party in the 1920s; of William Aberhart of the Social Credit Party in the 1930s and 40s; of Peter Lougheed of the Alberta Conservative Party in the 1970s and 80s; and of Preston Manning of the Reform Party in the 1990s. Riel is a symbol of the alienation that Western Canadians frequently feel as a result of the disregard or meddlesome policies towards the West of the Eastern-dominated federal government.

There have been numerous biographies and books written about Riel. A postage stamp bearing his likeness was issued a generation ago, when Canadian stamps sold for six cents each. Harry Somers, a leading Canadian composer who died in 1999, wrote an opera entitled *Louis Riel*. It was his masterpiece and was premiered by the Canadian Opera Company in 1967. It was also the first Canadian opera to be performed at the Kennedy Centre in Washington, D.C. Riel's life has been the subject of stage, radio, film and television productions, as well as historical fiction. The city of Saskatoon celebrates *Louis Riel Days* every summer. In June 2001, a main highway in Saskatchewan was renamed the "Louis Riel Trail." In 2004 a pedestrian bridge, built between the historic Forks area of Winnipeg and St. Boniface, was named Esplanade Riel in honor of Riel. There is even a CD-ROM on Riel and the North-West Uprising. The home of the Riel family in St. Vital (a suburb of Winnipeg, Manitoba) has been designated a National Historic Park by Parks Canada. Statues of Riel have been erected on the legislative grounds of Winnipeg and Regina, the capital cities of Manitoba and Saskatchewan where the Red River Resistance and the North-West Uprising respectively occurred. The statue of Riel in Regina was removed several years ago because of its controversial depiction of Riel, a fate similar to that which befell an earlier sculpture of Riel in Winnipeg.

The cover photograph shows the monumental statue of Louis Riel, which stands between the banks of the Assiniboine River and the magnificent Manitoba legislative buildings in Winnipeg. The accompanying plaque briefly recites highlights of his life and concludes with the statement:

In 1992, the Parliament of Canada and the Legislative Assembly of Manitoba formally recognized Riel's contribution to the development of the Canadian Confederation and his role, and that of the Metis, as founders of Manitoba.

In March 1998 the government of Canada issued a Statement of Reconciliation relating to past treatment of the aboriginal peoples of Canada. The Statement referred to "the sad events culminating in the death of the Metis leader Louis Riel." It added that it would look for ways of "reflecting Louis Riel's proper place in Canada's history." In 2004, Prime Minister Paul Martin stated that Riel's contribution was not only "to the Metis Nation, but to Canada as a whole."

On Canada Day in 1998, *Maclean's* (Canada's Weekly Newsmagazine) published its list of "The 100 Most Important Canadians in History". Louis Riel was one of the select few and appeared under the category of "Activists". The writer of the Riel profile in *Maclean's* ventured the view (repudiated by many including the author of this text) that Riel was likely insane at the time of the North-West Uprising.

In October 2004, Private Bill C-216 entitled *An Act respecting Louis Riel* received first reading in the Canadian House of Commons. The Bill recites that its purpose is to reverse the conviction of Louis Riel for high treason and to formally recognize and commemorate his role in the advancement of Canadian Confederation and the rights and interests of the Metis people and the people of Western Canada. Section 6 of the Bill reads:

Louis Riel is hereby recognized as a Father of Confederation and the Founder of the Province of Manitoba.

Riel himself in his address to the jury at his trial stated:

I know that through the grace of God I am the founder of Manitoba.

Much of the argument against the Bill may be based on the assertion that Riel was legally, fairly and justly tried, convicted and sentenced to death for high treason and deserved to be executed. One may anticipate that some Parliamentarians and historians may decry the "revisionism"

which they see in such a Bill. They will not accept it as a re-assessment of the facts, or that many points of view related to Riel's trial, conviction and execution call out for revision to correct errors of the past.

The purpose of this treatise is to provide a critical legal and political analysis of the trial for high treason of Louis Riel (under the *1351 English Statute of Treasons*), the appeal, Riel's execution and the surrounding circumstances. After giving background information and the events leading up to the 1885 trial in Regina, there is a review of trial procedures, testimony of witnesses, performances of Crown and defence counsel and of the presiding stipendiary magistrate. Profiles of the lawyers and magistrate are given. Process of selection of the trial site and the jury, legal arguments, addresses of counsel to the jury, the magistrate's charge to the jury, and the direct political involvement in the trial and appeal of the highest judicial and political officers are dealt with. The 534 year-old English Statute under which Riel was convicted and executed, as well as other statutes, are analyzed in detail.

Riel's mistreatment at the hands of his own counsel, the serious deficiencies exhibited by these same counsel, and Riel's address to the jury and subsequently to the magistrate, are examined and commented upon. Correspondence from Justice Minister Alexander Campbell to Prime Minister John A. Macdonald is reviewed. It discloses judicial and political meddling in the Riel trial of an improper nature.

The manner in which the unanimous recommendation of the jury for mercy was handled by Prime Minister John A. Macdonald and rejected is investigated. The appointment of a medical commission to examine Riel prior to his execution and Macdonald's blatant attempts to manipulate the commission's reports and his government's gross political deception and mendacity concerning the reports are looked at.

Although short monographs or chapters have been published relating specifically to Riel's trial,¹ no historians or biographers have done an in-depth study of the trial, likely due to their lack of legal training. This

¹ See e.g. Lewis H. Thomas "A Judicial Murder – The Trial of Louis Riel" Howard Palmer ed., *The Settlement of the West*, p. 37-59; Thomas Flanagan, *Riel and the Rebellion*, Ch. Six p. 116-34; Desmond Morton intro., *The Queen v. Louis Riel*, p. vii *et seq.*

treatise is intended to fill that void, and in so doing it arrives at some unique and startling conclusions not made by historians.

In a marvelously entertaining book, which incidentally is scathing of many prominent historians, Professor David H. Fischer wrote that “all historians ... must and should make value judgments ...” He added some amusing comments such as “whether or not history repeats itself, historians repeat each other”; and much “humbug has been proclaimed to the world as the objective truth of history, ...”. He quotes Nietzsche: “Historians begin by looking backward. They often end by thinking backward.”²

Hopefully, the analyses in this dissertation will not attract similar droll comments for, as Disraeli stated, it is easier to be critical than correct. In this critique the author will be making judgments and giving opinions based on his research and assessment of relevant documentation. The better part of these judgments and opinions is reflected in the sub-title of this volume. A polemical tone as to the absence of justice and mercy in relation to the trial, conviction and execution of Riel may be noted.

One frequently hears laments from historians and others with respect to the sorry state of the study of history in our schools. These are often accompanied by complaints bemoaning the fact that Canadian heroes are not being recognized. One well-known Ontario historian recently labeled Riel a “bastardized” hero.³ He added that Riel lacked credentials as a hero to all Canadians and that his life should not be taught in schools as if he was such a hero. Using that credentials test, no one in Canada or in the world would qualify as a hero. Others have a different view of Riel. Another historian, Professor Gerald Friesen, doesn’t apply this insurmountable test. In Professor Friesen’s view, Louis Riel is “paramount” among “multicultural heroes”.⁴ Professor J. M. Bumsted has called Riel “one of our few mythic heroes”.⁵ The prominent Canadian journalist

² David H. Fischer, *Historians’ Fallacies – Toward a Logic of Historical Thought*, p. 79; 25; 41; 131.

³ J. L. Granatstein, *Who Killed Canadian History?*, p. xvi. This book was reviewed in a critical manner by Robert Fulford in “Is it possible to be too patriotic about Canadian history?” *Globe and Mail Newspaper*, May 22, 1999, p. D9.

⁴ Gerald Friesen, *The Canadian Prairies: A History*, p. 73.

⁵ J. M. Bumsted, “The ‘Mahdi’ of Western Canada? Louis Riel and His Papers”, *The Beaver*, August/September 1987, p. 47.

and author Peter C. Newman pithily stated that Riel “was one of our genuine frontier heroes.”⁶ On June 30, 1999, the results of a national survey to nominate Canada’s top 10 “heroes” were published in the *National Post* newspaper. The Dominion Institute and the Council for Canadian Unity conducted the survey. Louis Riel was among the top ten heroes selected.⁷ Professor George F. G. Stanley, an eminent historian (and incidentally the designer of the Canadian flag in the 1960s) referred to Riel as “A Canadian legend” and “our Hamlet, the personification of the great themes of our human history.”⁸

In addressing the jury at his trial, Louis Riel stated:

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

* It should be noted that at his trial Riel used the term “half-breed”, not “Metis”. In his two courtroom speeches, he uttered the word “half-breed” 46 times. He referred to himself as a “half-breed” on two occasions, once to the jury and once to the magistrate. In the 1800s the English word for the descendants of European men and Indian women was “half-breed”, while “Metis” was the French term. For example, the English version of the *Manitoba Act of 1870* used “half-breed” whereas the French version used “Metis”. Although the term “Metis” has today superseded it, in the interest of historical integrity the term “half-breed,” which some now consider politically incorrect, is used herein as it was used by Riel at his trial and in its historical context.

⁶ Peter C. Newman, “Rewriting history: Louis Riel as a hero”, *Maclean’s Magazine*, April 12, 1999, p. 48.

⁷ James Cudmore, “Canadian Heroes”, *National Post*, June 30, 1999, p. A8. John A. Macdonald was also among the ten listed.

⁸ George F. G. Stanley, “The Last Word on Louis Riel – The Man of Several Faces”, Hartwell Bowsfield ed., *Louis Riel, Selected Readings* p. 42, @ 56.