Newsworld, Riel, and the Métis: Recognition and the Limits to Reconciliation

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Abstract: This article examines the rhetorical character of CBC Newsworld’s 2003 “re-trial” of Métis leader Louis Riel. Specifically, it considers how the broadcast was presented as a gesture of reconciliation toward the Métis but was received by Métis spokespersons as racist or colonizing. The broadcast is analyzed through Robert Hariman’s conception of the popular trial as an occasion for the development of argumentative resources to deliberate on problematic issues within public culture. The broadcast and its reception are then analyzed critically to highlight the tensions between identity, recognition, and reconciliation.


Keywords: Rhetoric; Public Address; Popular Trials; Reconciliation; Recognition; Identity; Law; Postcolonialism; Métis; Louis Riel

On October 22, 2003, Newsworld, the Canadian Broadcasting Corporation’s all-news channel, revisited the case of Louis Riel, who was executed for high treason over a century ago. Riel was convicted of leading the Métis, the descendants of Western Prairie Aboriginals and French trappers, in an armed rebellion. In three one-hour instalments, Newsworld offered (1) a dramatized history of the events leading to Riel’s trial, including the battles between Métis and government troops; (2) a mock “re-trial” of Riel, which invited viewers to vote on Riel’s guilt or innocence online; and (3) a studio discussion in which about 20 Métis participants dis-
cussed Riel, their identity, and their place in Canada. In doing so, the CBC provided Canadians with an opportunity to revisit one of the more unfortunate and controversial moments in the history of Canada. Also, in inviting viewers to vote on Riel’s guilt or innocence according to the laws of today, it provided the opportunity to reconsider the circumstances of his conviction and his place in Canada’s history. Indeed, I argue that this broadcast should be understood as an attempt to stage a rhetoric of reconciliation by offering Canadians the opportunity to symbolically exculpate Riel and, in doing so, to admit the historical injustice of his 1885 conviction and execution. However, while the broadcast was well-meaning and had its supporters, it was denounced by Métis spokespersons who considered it offensive or racist, as well as by conservative commentators and historians who dismissed it as a politically motivated distortion of historical complexity.

In what follows, I will consider the rhetorical dynamic of this broadcast in order to account for the difficulties that it encountered. As we shall see, the broadcast is rhetorically problematic because it is directed toward reconciliation while relying on the rhetorical forms and categories of criminal trials. More precisely, while the broadcast belongs to the rhetorical genre of “popular trials,” a political rather than legal genre, it does not develop adequately a non-legal framework to consider all that “Riel” stands for. As such, the broadcast highlights tensions between reconciliation and forensic judgment as well as between reconciliation as a rhetorical form and the politics of recognition within a multicultural framework. As we shall see, the latter proceeds from identity, while the former builds upon the multiplication of difference.

Riel’s popular trial

In 1885, Louis Riel had been called upon by the Métis to lead them in their struggle against the Canadian government for rights and land. Faced with government intransigence, Riel had declared a provisional government. The conflict escalated into an armed rebellion. Battles were fought. Men died; as the prosecution put it, there were “dead bodies lying on the blood-stained snow” (*The Queen v Louis Riel*, 1974, p. 72). The Métis and their Indian allies were defeated. Riel could have escaped to the United States, where he was a naturalized citizen, but instead chose to surrender. To his surprise, he was charged with the capital crime of high treason under an act dating from 1351 (25 Edw. III St. 5, c. 2).

Riel’s attorneys were faced with a difficult case. No one denied that Riel was the leader of the Métis, had proclaimed a provisional government, had authorized the taking of hostages, and had threatened “a war of extermination” (*The Queen v Louis Riel*, 1974, p. 70). The evidence was clear: Riel had led a group that had defied legally constituted authority violently. In defence of Riel, some still argue that he did not intend violence, that his threats were posturing and bluster, and that the Métis took up arms in reasonable anticipation of government violence. According to historical sources, the precipitating cause of the battle of Duck Lake, the battle that inaugurated the rebellion, was a remark by Lawrence Clarke to the Métis on March 18, 1885, that their petitions for redress would be answered by police bullets and that 500 policemen were coming to capture them (McLean, 1985). This statement, whether actually uttered or only rumoured, transformed the North–West agitation. Riel is reported to have cried out on hearing of it, “[A]ux
“armes, aux armes” (cited in McLean, 1985, p. 98). However, even if the Métis had acted out of fear, Riel’s acts were treasonable according to a strict interpretation of the law. Regardless of his ultimate intention, or of the justness of the laws, Riel’s acts were such that he did “attempt and endeavour by force and arms to subvert and destroy the constitution and government” or “did levy and make war against our said Lady the Queen” as charged (The Queen v Louis Riel, 1974, p. 2, 4). Riel’s defence was saddled also with the fact that this had not been his first clash with the Canadian government. In 1870, similar reasons had led him to proclaim a provisional government in a territory under the authority of the Hudson’s Bay Company, to threaten violence, and to authorize the execution of a Canadian resister condemned in a summary procedure incompatible with the principles of British justice. At that time, for reasons of both policy and expediency, Canada had agreed ultimately to most Métis demands. It created the Province of Manitoba, offered land to Métis settlers “toward the extinguishment of aboriginal title” (Manitoba Act, S.C. 1870, c. 3), and pardoned Riel and others in exchange for their temporary self-exile.

Given the evidence in 1885 and Riel’s notoriety—as well as the fact that he held unorthodox religious views, thought himself a “prophet,” and had spent time in a mental asylum in the 1870s—Riel’s counsel thought it best to plead insanity, all the while arguing that his cause, if not his means, was just. However, in accordance with treason trial procedure, Riel was permitted to address the court directly before the jury’s deliberations. To the dismay of his attorneys, he disavowed the insanity plea before the jury; it concurred and found him guilty, while nevertheless recommending mercy. The judge imposed the required sentence of death, to be carried out by leave of the Crown. The Canadian government, under the leadership of Canada’s first prime minister, Sir John A. Macdonald, ultimately did not heed calls for clemency, and in the Crown’s name, it ordered Riel’s execution.

Trials are a mechanism, or a discursive procedure, to apply laws to particularities. But trials are more than that. As Robert Hariman observes, trials offer a “performance of the laws” (Hariman, 1990, p. 17). Trials are performances because they are staged public events that give presence and voice to law. The proper unfolding of a trial not only renders justice to particulars, but also recursively constitutes both the nature of justice and the legitimacy of constitutional authority. Trials matter, because they are a medium that legitimates the state’s exercise of violence. As such, trials are rhetorical, both because they are forums in which prosecution and defence seek to persuade a jury and because they are an implicit public argument for the rightness of the law. And, since all rhetoric is an occasion for counterargument, trials are an opportunity for members of a polity to contest the law. In most cases, this does not occur, but there are occasions when a law’s rightness is not taken for granted or when the law’s application becomes a sign of what many consider a poorly formed or unjust policy. Such was the case in 1885.

Riel’s trial fits Robert Hariman’s definition of a “popular trial”: It gained the attention of a general audience, was characterized by an unusual crime, and elicited both special media attention and an intense popular response (Hariman, 1990). Popular trials are occasions in which advocates (both within and without the courtroom) address a public audience, and the fate of the accused is only one aspect of a larger set of questions that the public is called upon to judge. As such, popular trials are significant beyond the fate of the accused and subsequent jurisprudence, as
they supply opportunities and materials for advancing causes. Hariman thus considers that such trials are significant rhetorically and “constitute a genre of the literature of public life” (Hariman, 1990, p. 5). In other words, popular trials are a rhetorical resource, providing discursive materials with which to deliberate upon issues instantiated in a case.

Trials are sanctioned procedures to produce factual and forensic knowledge through argumentation. Prosecution and defence make arguments regarding questions of fact before a judge and jury, who are then called upon to judge whether the defendant violated the law. In popular trials, social knowledge is also at issue. According to Thomas Farrell, “Social knowledge comprises conceptions of symbolic relationships among problems, persons, interests, and actions, which imply (when accepted) certain notions of preferable public behaviour” (Farrell, 1976, p. 4). Farrell goes on to argue that social knowledge is rhetorical, because it exists by and through claims in public address, and that it rests upon an attributed—rather than actual—consensus. Social knowledge is also normative, as it dictates appropriate social, policy, and legal responses to events and states of affairs. As trials perform the laws, they enact social knowledge implicitly and, in doing so, also provide saliency and focus to debates over social knowledge. Furthermore, because trials are sanctioned by and enact the power of the state, popular trials occupy a central place on the public stage. As Hariman observes, with reference to the 1925 Scopes “Monkey” trial concerning the teaching of evolution in a Tennessee public school, in popular trials “the many voices of the national theatre [are] brought together” (Hariman, 1990, p. 21). Trials provide a national stage, as they “[require] that people of vastly different perspectives recognize a common forum, while allowing them to keep and project their own voices” (p. 21).

This was certainly the case in the Riel trial. The trial received major media coverage and served as an anchor for debates on a number of national issues, including the fate of Canada’s “Indians,” the nature of criminal insanity, the plight of the Métis, and the Macdonald government’s management of the Northwest. Debates surrounding the trial were political, partisan, and very public, particularly since Canadian journalism in the nineteenth century did not categorically split news from opinion, and newspapers had strong partisan commitments. Opposition parties and the Grit press charged that the Northwest rebellion was a consequence of bad governance, particularly since the government ultimately implemented many of the Métis’ demands. Many also felt that the government was out to get Riel, who was charged with high treason, a capital crime, rather than felony treason, a lesser offence punishable by imprisonment. This argument is bolstered by the fact that the government elected to try him in the Northwest Territory, the place of the crime, rather than in the Province of Manitoba. While there were good legal grounds for doing so, Riel had fewer rights in the Territory. In the Northwest, there were no grand juries, trials were presided over by magistrates serving at pleasure rather than tenured judges, juries were of six rather than twelve, and francophone defendants had no right to francophone jurors. Furthermore, Riel came to stand for more than himself or even the Métis that he led. Riel was a Montréal-educated French-speaking Catholic. Consequently, his trial and subsequent execution were figured by many French Canadian politicians, at least those not in the governing party, as an attack on their race. Wilfrid Laurier, who would later become Prime Minister, mov-
ingly declared at a Montréal rally the Sunday after the hanging: “Si j’avais été sur les bords de la Saskatchewan lorsqu’éclata la révolte, j’aurais pris moi-même les armes contre le gouvernement” (Bélanger, 1986, p. 137). As such, Riel’s trial was not only an occasion to judge the Conservative government’s Northwest policy, but also an opportunity to scrutinize Canada’s treatment of its French minority. In addition, the rebellion and trial highlighted controversies over Canada’s Aboriginal policies and the place of the Métis in the nation.

Social knowledge is produced through a variety of public rhetorical forms. While court proceedings are not directed primarily toward social knowledge, but toward forensic judgment, popular trials are particularly significant to the formation of social knowledge, not only because they can call attention to issues, but because the testimonies, arguments, and unfolding drama of the trial provide materials and reference points to organize public controversy and debate.

Hariman asserts that popular trials are effective in contributing to social knowledge because of certain generic characteristics that originate in trial practice: Hariman identifies four such elements: The adversarial format, the necessity of decision, the theme of judging character, and the use of official symbols (Hariman, 1990). The first three of these help structure public debate. Public discourse on controversial questions is often diffuse and ongoing. Trials punctuate such discourse. Trials demand that sides be taken, that judgments be made, and that these judgments focus on the character of public actors. They reduce the abstraction of cultural movements and policy questions through concrete cases and actions. Furthermore, the use of official symbols—and, one could add, the rituals and generic forms that mark trials and their media coverage—provides a stable and easily recognizable container for a wide range of symbolic acts. As Hariman explains, official symbols in a trial are a source of its legitimacy, and they “counteract the anxieties resulting from adversarial antagonisms” (Hariman, 1990, p. 26).

Hariman does not consider in detail the role that popular trials play in settling public controversies, but he is clear that these are not resolved by a jury’s verdict or a judge’s ruling or sentence. Trials settle factual and forensic questions before the law. Nevertheless, trials often contribute to the development of social knowledge by giving rise to interim points of closure. Because popular trials focus and provide resources for public argument and are marked by “adjudicating discourses” that examine cultural and political commonplaces critically, they play an important role in structuring the lifespan of their attendant controversies. In other words, discourse flares during trials and abates afterwards. Furthermore, popular trials often have as legacy new forms of social knowledge. Thus, John Lucaites writes that the 1709-10 impeachment trial of Dr. Henry Sacheverell confirmed the existence of an unwritten right to resistance under the British Constitution (Lucaites, 1990), just as Celeste Condit and Lawrence Bernabo argue that despite John Scopes’ conviction for teaching evolution in Tennessee, his popular trial and its fictionalized rendering on stage and screen as Inherit the Wind discredited the Bible (for a while at least) as an authoritative text for teaching natural science (Bernabo & Condit, 1990).

Within a strongly constituted framework, popular trials may well serve as a stable medium to order controversy even as social knowledge is contested and revised. This follows from the fact that the legitimacy of the trial as a form is granted. The implications of Riel’s popular trial, however, were more problematic. In Riel’s case,
proceedings began under a cloud. As noted above, Riel was tried under a fourteenth-century imperial statute rather than Canadian-authored law and prosecuted under the rough rules of procedure established for a sparsely settled territory. Clearly, the government was seeking the death penalty, even if it needed to recur to a law framed five centuries earlier. As such, one cannot conclude that official symbols conferred legitimacy on the proceedings. At most, one could say that they conferred legal authority. Riel’s supporters, as well as the government’s opponents, figured his prosecution as malicious. In Parliament, future prime minister Wilfrid Laurier, sitting in opposition, decried Riel’s execution as a “judicial murder” (Canada, 1886, p. 110). While the legality of the trial was upheld on appeal, its legitimacy was tainted. Riel’s popular trial provided occasions to challenge social knowledge, but it certainly did not contribute to any interim closure. Rather, the trial became for many an authoritative performance of the injustice of constitutionally sanctioned authority.

Lloyd Bitzer observes that not all rhetorical situations are met with a fitting response. Some situations are complicated because they consist of multiple exigencies and suffer from a lack of focus (Bitzer, 1968). Hariman, commenting on the structure of popular trials, observes that “formal closure provides the genre with both its aesthetic unity and its ability to stimulate and focus debate” (Hariman, 1990, p. 27). The rhetorical situation of Riel’s trial lacked such unity, however, in part because of the unclear relationship between two exigencies: justice for Riel (compounded by his insanity plea) and justice for the Métis and the Northwest. At best, the trial provided rhetorical resources to contest social knowledge and to challenge the legitimacy of constitutional authority, but it also rendered any assessment of either Riel’s or Prime Minister Macdonald’s character problematic. Indeed, one could say that “Riel” became a floating sign, to be claimed variously by competing advocates. Ultimately, the only consensus produced by the Riel case was the recognition that social knowledge formation in Canada is fundamentally strained. The legacy of Riel’s trial was not a reworked body of social knowledge, but rather the undermining of its very possibility, of the capacity to attribute consensus effectively. Dissensus became the norm, splitting French from English, Catholic from Protestant, and undermining the Conservative Party in Québec. The trial itself became the site of a wound, of a perceived wrong based on misrecognitions or negations, and the locus for the expression of resentment.

When the issues at stake in a popular trial are clear, a controversial verdict such as Riel’s conviction can be productive, focusing discussion on the rightness of the laws or the justness of the legal process. In Riel’s case, such clarity was lacking. The prosecution depicted Riel as an evil man who fomented rebellion for personal gain, while Riel’s defence depicted him as an honourable but mentally ill man confronted by a negligent government. As such, the trial did not force a single clear topic through which to deliberate the justness of Riel’s sentence. The insanity defence and the ambiguous verdict ultimately rendered any definitive judgment regarding Riel’s character or actions problematic. Furthermore, in the public debate, Riel’s very identity is unstable. He is an “other” for English Canada, but he is ambiguously Métis or French Canadian. Indeed, even his Catholicism is problematic, as he sought to establish a new papacy in the Northwest. In other words, while the trial in both its legal and popular aspects focused intensely on Riel’s character,
it failed to provide adequate resources to answer the question, “Who was Riel?”

**Riel’s Newsworld re-trial**

If the conflicts at the root of the 1885 rebellion, Riel’s trial, and his subsequent execution had been settled or forgotten, the Newsworld series could be considered “mere history,” even if it was of a popular sort. However, given the controversy surrounding the broadcast, it is better understood as a continuation, rather than an account of, Riel’s popular trial, although in a radically different context and after much of the dust had settled: Ontario is no longer a bastion of Orange anti-French sentiment, Europe’s history of colonization has been subjected to continued critique for close to half a century, and the rights of Canada’s Aboriginal peoples were recognized and affirmed in the *Constitution Act*.

Furthermore, the place that Riel holds in Canadian history had already undergone a remarkable revision before the series was broadcast, in part because of an effective ongoing rhetorical campaign by Métis and other Riel advocates for much of the second half of the twentieth century. In 1962, Riel’s trial was adapted as a sympathetic play by John Coulter (Coulter, 1968). In 1974, McGill-Queen’s University Press published the trial transcript as a sort of counterpoint (*The Queen v Louis Riel*, 1974). In 1979, the Association of Métis and Non-status Indians of Saskatchewan petitioned the Canadian government for Riel’s pardon (Association of Métis and Non-status Indians of Saskatchewan, 1979). In 1982, Canada’s *Constitution Act* explicitly recognized and affirmed that Métis have Aboriginal rights. And in 1998, the Minister of Indian Affairs read a “Statement of Reconciliation” acknowledging and apologizing for the harm done to Aboriginals by Canada. Writing in *Maclean’s* in 1999, Peter C. Newman cited a recent Angus Reid poll in which 75% of Canadians indicated that they thought Riel’s execution was wrong and Newman described Riel as “one of our genuine frontier heroes” (Newman, 1999, p. 48). Thus, while Métis advocates and organizations continue to press for rights and entitlements, Riel’s reputation had in large part been transformed by the time of the broadcast. The only thing his historical “rehabilitation” still required was a formal apology or gesture of acknowledgment. This was provided by Newsworld’s “re-trial,” when it asked Canadians to vote online on whether or not Riel was guilty. By making Canadians virtual jurors, the series created an occasion to make a public gesture of reconciliation.

In Hariman’s understanding, the kernels of popular trials are the legal proceedings, which are amplified, refracted, commented upon, and even “sampled” in the public sphere. Trials become “popular” as they receive media attention and acquire rhetorical significance. All trials have forensic significance, as they decide the fate of the accused. Some have legal significance, as they give rise to jurisprudence. Popular trials have rhetorical significance, as they provide materials for public argument. As such, the popular aspect of trials is fundamentally not concerned with guilt or innocence per se. Its interest is in the social, cultural, or political concerns attached to a given case or verdict. In Newsworld’s “re-trial,” this was the case as well, but in a paradoxical manner, since it called upon viewers to reach a verdict even as it dispensed with the original trial.

Dramatizations of popular trials are not uncommon. Usually, however, even when condensed and simplified, they retain the central arguments of the original
trial proceedings. They contribute to public understanding and debate by replaying key parts of the original trial. Thus, for example, while the play and subsequent film *Inherit the Wind* fictionalizes the trial of John Scopes for teaching evolution, it retains the dramatic moment where Clarence Darrow calls William Jennings Bryan, the populist defender of biblical authority, to the stand and makes a fool of him through a pointed examination of his inconsistent beliefs. Even though in the film the names were changed, a romantic angle was added, and the Bryan character died at the trial’s conclusion rather than less than a week afterward, one can still recognize the arguments and drama present in the original trial.

In contrast, the Riel “re-trial” bore no resemblance to the original proceeding, and it certainly provided no basis for understanding why the original jury, while recommending mercy, found Riel guilty. The only witness to speak in the broadcast was the character of Riel, despite the fact that Riel was not even examined in the original trial, but only exercised his right to address the jury before their deliberations. Furthermore, the insanity plea at the centre of Riel’s original defence was not addressed. The “re-trial” focused on Riel’s goals or cause, rather than on the commission of specific acts that would have been illegal then as now. As such, the three-part broadcast coheres as a complex instance of advocacy directed toward Riel’s exculpation in the popular imagination and the presentation of the Métis cause in a sympathetic light, rather than as an exploration of historical complexity. The broadcast, in its conception and execution, is a call for recognition—for a gesture of good will—through a non-guilty verdict.

The series had a complex rhetorical objective. Its aim was to promote reconciliation by leading Canadians to consider Riel’s story and then cast a (not guilty) verdict, where the casting itself would be proof of a spirit of reconciliation, through a rhetoric of enactment\(^1\) addressed to the Métis and indeed all Canadians. It did not simply aim to convince viewers that Riel was a victim and not guilty, or that the Métis were mistreated, but instead sought to change the very relationship between Canadians and the Métis. The complexity of the objective was matched by the complexity of the rhetoric itself. As noted above, a tension exists between the re-trial framework and the production of social knowledge. There is a further tension between the form of knowledge each episode is ostensibly directed toward and the epistemic underpinnings of reconciliation.

The three episodes of the series consisted, respectively, of a historical documentary, a mock trial offering sets of arguments concerning Riel’s motives and involvement in the 1885 rebellion, and a “town meeting”–style public-affairs discussion. Generally, these correspond to three orders of knowledge. The first episode sought to offer empirical knowledge, providing viewers with an account of the events leading to Riel’s trial and conviction. The second was concerned with justice and sought to construct forensic knowledge, dealing with Riel’s moral character and guilt or innocence. The third aimed to produce social knowledge, combining epideictic and deliberative discourse as it celebrated certain values in the present and explored the policy implications of the Métis rebellions and their legacy. Each of these, at least superficially, spoke a different order of “truth.”

More specifically, the series consisted of three one-hour instalments. The first hour presented itself as offering empirical truth though a dramatized history, with soundtrack, that told the story of the Métis, focusing on the difficulties they faced
as a result of Canada’s annexation and colonization of the Northwest, the role played by Riel in advancing their demands, and the rebellion itself. Despite speaking in history’s voice, this account was not disinterested, but was in the service of the episode that would follow. That is to say, it offered a coherent narratio (rhetorical narrative) that could serve as groundwork for Riel’s defence. While literary theory considers narratives in terms of the way that they create a spatio-temporal diageatic space that gives rise to identifications, rhetorical theory considers narrative to be that part of a speech that orders the elements of a case. As a rhetorical narratio, rather than a dialectical narrative, this history episode was structured to provide coherence over complexity. As Lucaites and Condit note in their discussion of rhetoric and narrative:

The narratio played a key role in [forensic] oration, as it was designed to influence the judge’s interpretation and understanding of the proof of the case. It achieved this end by characterizing the “nature of the subject” through the telling of facts in story form. (p. 94-95)

In traditional classifications of oratory, the narratio follows the introduction and precedes arguments or “proofs.” The narratio is not innocent or unbiased. It selects and orders the facts of a case in a manner that favours and serves the proofs that will follow. As such, the diagesis that it offers is interested, and it is told from an advocate’s point of view. Furthermore—and this was certainly the case with the Newsworld episode—it exploits the process of identification. That is to say, the point of view that it offers promotes pathos or audience sympathy. The history lesson provided by the first hour, excerpted from the CBC’s major production Canada: A People’s History, was not patently false, but it offered a Métis- and Riel-centred account, disposing its audience toward a not-guilty verdict as it sought to fuse the viewer’s and Riel’s interpretive horizons. Tout savoir, c’est tout pardonner.

The second hour of the series consisted of the re-trial itself, which gestured toward the generic constraints of trials. The trial was set in a mock courtroom, presided over by former justice Thomas Berger of the Supreme Court of British Columbia, who wore judicial robes. Two prominent Canadian litigators, also in robes, stood before him as Crown prosecutor and defence attorney, respectively. A third attorney, a well-known constitutional activist, took the witness stand in period dress as Louis Riel. This staging did little, of course, to hide the rhetorical character of the exercise, even though the re-trial format made the ultimate rhetorical purpose unclear. Speaking with typical bluntness, National Post columnist Andrew Coyne dismissed the re-trial as “rigged,” with a “stacked jury”:

And check the lineups! For Riel, you had Edward Greenspan, Canada’s foremost criminal lawyer, as defence counsel. You had Guy Bertrand, a lawyer by trade but an actor by calling, cutting a compelling figure as Riel himself. And you had Thomas Berger—Thomas Berger!—as the judge. Perhaps Judge Berger’s lifetime of passionate commitment to native causes should not have disqualified him to hear the case—though try to imagine a passionate opponent of native rights, or even a mild skeptic, being assigned the same role—but his charge to the jury, in essence a second summation for the defence, surely would.

And for the prosecution? An eminent Crown counsel? A noted historian?
No, a securities lawyer. Alan Lenczner acquitted himself well enough, I suppose, but it was clear that his role was to be the cartoon baddie of the piece, the avatar of heedless “progress.” (Coyne, 2002, p. A26)

While Coyne’s characterization of Lenczner is harsh, the securities lawyer certainly lacked the notoriety of the other participants. Greenspan, Berger, and Bertrand were all well known to the Canadian public. Berger represented the Nisga’a Indians before the Supreme Court of Canada in the 1973 “Calder” case, which confirmed that the Nisga’a still held title to their land. He also was commissioner of the McKenzie Valley Pipeline Inquiry that concluded that the project could not proceed without negotiating Aboriginal claims. Greenspan is without a doubt Canada’s best-known criminal lawyer, having many high-profile clients, including Brian Mulroney and, more recently, Conrad Black. Finally, Guy Bertrand was at the time a highly visible constitutional lawyer. A former candidate for the leadership of the Parti Québécois, he had repudiated the sovereignist project and become involved in a court challenge to the constitutionality of a possible Québec succession, which had inspired the federal government to refer to the Supreme Court of Canada the question of Québec’s right to secede.

The third hour of the series was the most rhetorically complex and interesting of the three, although it was organized in response to the first two and focused not on the past, but on the present and future. Originally, it was intended to provide a forum for reconciliatory dialogue between Métis and non-Métis Canadians, but ultimately, it consisted of Métis participants only (except for Newsworld moderator Anne Petrie). In response to the strong objections of some Métis leadership, the format had been changed to ensure that the Métis would have a voice: Approximately 20 Métis, many of whom were prominent, gave their views on Métis identity, the place of the Métis in Canada, and the re-trial broadcast itself.

I will return to the third hour below. For the moment, I will consider the rhetorical implications of the history and mock re-trial episodes. Given the unsettled place that Riel holds in Canadian history, the re-trial cannot be dismissed simply as a theatrical or a pedagogical device, designed to attract viewers and media attention. On the contrary, the re-trial stands as a continuation or reprise of the original popular trial, offering an occasion to repair the breach in social knowledge caused by the original events. While Tony Belcourt, the leader of the Métis Nation of Ontario, objected to the re-trial, in part because it again subjected the Métis to judgment, no reasonable commentator would have expected Riel to suffer an Internet conviction. Thus, while the broadcast was billed as a “re-trial” and the second episode had the props and conventions of a trial, it did not re-enact the forensic enquiry that made up the bulk of the original trial. Trials are dry affairs, for the most part concerned with establishing factual details through an agonistic process that can then be assimilated into a rhetorical narrative of human intentions and actions. In the re-trial segment, we are left with Riel on the stand, answering questions posed by defence and prosecution. Riel thus is given the opportunity to figure the actions for which he is charged in his own terms. The emphasis is thus in large part on his character, and the trial drifts from forensic to epideictic rhetoric, from rhetoric that is concerned with judging the justice of past event to rhetoric that praises community values in the present. While Riel’s answers were in large measure taken from his speeches and writings, the questions put to him were not from the original trial. How could
they be? In 1885, he had not taken the stand. The prosecution’s original case was re-stated, but with neither witnesses nor evidence, and it took the form of a cross-examination. Riel was offered the opportunity to rebut the charges and explain his state of mind, but without an insanity plea to cloud the issues. We have a trial’s generic markers: the process appeared adversarial, had official symbols, the question of character was central, and a decision was called for. The complexities and ambiguities of law, evidence, and situated judgment, however, were all absent. Indeed, viewers were not asked to judge Riel’s guilt on the basis of the original statute, but on unspecified “laws of today” that were further reduced to Justice Berger’s instructions to focus on whether Riel intended to “levy war,” without also adding that intention should apply to specific treasonable acts, and not only to a general abstract purpose.

Gesturing toward the generic constraints of popular trials, while freed of the duty of actually dispensing justice in accordance with the law, the re-trial became a referendum of sorts on Riel’s character, the results of which could stand as a rhetoric of enactment, as a reconciliatory gesture that also asserts a social knowledge claim. In other words, the vote could be figured as affirmation of a new attributed consensus. Finally, the vote’s outcome could stand in further rhetorical argument as an inartificial² (i.e., non-rhetorical) proof of Canadians’ interpretation of the Riel affair and as an admission of the commission of an injustice. This finds its confirmation in Greenspan’s remark, with the announcement of the “verdict,” that he would move forward to petition the Canadian cabinet to posthumously overturn Riel’s conviction (Jenish, 2002).

If viewed as a single text disconnected from any historical or political context, one could conceivably interpret the broadcast as “merely” educational or informative, or perhaps even as entertainment. It would be an error to do so, however, particularly in the context of the Canadian government’s 1998 statement of apology and reconciliation for its treatment of Aboriginals, the Aboriginal rights that are recognized in Canada’s constitution, and ongoing legal and political processes by which Aboriginals, including Métis, seek to have their claims recognized. The broadcast was rhetorical. Certainly, the broadcast simplified Riel’s case and left a story far less damming legally than the original trial, but Riel’s guilt was far less important to the broadcast than his place in the Canadian imagination. Morton, who introduced the publication of the Riel trial transcript by the University of Toronto Press, had remarked years earlier that popular treatments of Riel did not offer history, but “heritage.” In this vein, the broadcast offered a simplified history in the service of nation-building. With the bluster typical of conservative columnists, Coyne responded by deriding its rhetorical character while offering a rhetoric of his own. Though expressing sympathy toward Riel, he insisted that Riel’s champions ignored the clear evidence of his treasonable acts and would make him a hero even as they would reduce John A. Macdonald to a villain and Canada to an evil scheme.

While Coyne’s response comes as no surprise, what accounts for the broadcast’s chilly reception among the Métis, or at least Métis spokespersons? University of Saskatchewan law professor Paul Chartrand, active in the area of Aboriginal constitutional rights, denounced the broadcast as “socially, morally and politically irredeemable” (Boswell, 2002, p. A10). Gerald Morin, president of the Métis National Council (MNC), objected strongly to the project. In part, what was at stake was the
symbolic ownership of Riel, of who might speak for him. Morin objected to the fact that the Métis were not consulted during the original production, to which Greenspan countered, “Louis Riel is part of Canadian history and therefore belongs to all Canadians. There is no merit in any claim against this enterprise” (Curry, 2002, p. A1). In a sense, Greenspan is right. The Métis do not have privileged access to the historical record, and their investment in Riel’s ethos cannot be proprietary. But what Morin’s objection speaks to is a perceived lack of recognition, which is furthermore amplified by the broadcast’s forensic form, even as it disregarded the original trial. As he put it:

We know that Riel was innocent, but do not believe we should be rewriting history in order to deal with the injustices committed against him. If people truly want to address the injustices perpetuated against Riel, they should urge the government of Canada to honourably deal with what he fought and died for; namely, the rights, land, continued existence of our people, the Métis, within the Canadian federation. (Morin, 2002, p. A19)

Clearly, the re-trial as a gesture of reconciliation was in some respects a failure, despite the 87% acquittal. In what follows, I will argue that this arises because its complex rhetorical aim did not find a fitting form, in part because of the complexity of broadcast, but more specifically because of the tensions between its forms of truth and because of the epistemic requirement of reconciliation itself.

Truth, recognition, and reconciliation

As we have seen in this paper, “truth” is not a simple category. Just as social knowledge is an opinion, or doxa, accompanied by a claim of rightness, so does “truth” rest upon interpretations and judgments. Also, truth clearly has something to do with reconciliation. Moving beyond conflicts or the experience of wounds at the very least requires an understanding of what is being overcome or left behind. But what is the relationship of truth to such understanding? The South African experience is most helpful in addressing this question.

The relationship of truth to reconciliation was confronted most directly in South Africa, in the context of the creation of a Truth and Reconciliation Commission (TRC) to assist in the passage from apartheid to a non-racial democracy. The final report of the commission identifies four kinds of truth relevant to the reconciliatory process: (1) “empirical and forensic truth,” concerned with the record of events; (2) “personal and narrative truth,” consisting in the lived and told experience of individuals; (3) “social truth,” the “truth of experience that is established through interaction, discussion and debate,” (Albie Sachs cited in South Africa, 1999, p. 113); and finally (4) healing truth, “the kind of truth that places facts and what they mean within the context of human relationships—both amongst citizens and between the state and its citizens” (South Africa, 1999, p. 113.)

Defenders of the TRC have argued the superiority of its model of enquiry over that found in trials for overcoming the legacy of systematic injustice. Trials, like conventional histories, are concerned with establishing empirical truth, but their scope is quite narrow, since their focus is on specific acts and the guilt or innocence of particular parties. There are a number of consequences to this form. Most importantly, its privileging of the first type of truth subordinates the others. This certainly occurred in Riel’s original trial, which focused on Riel’s acts and his sanity rather
than the broader system of motives, and also, to a lesser extent, in the Newsworld re-trial, because it was directed toward a verdict. Neither provided an adequate forum for the “presencing” of Métis and non-Métis experience. Speech was directed toward forming judgments, not fostering intersubjective understanding.

In a trial, the suffering of victims, the relevant social truths, and the possibility of healing are not primary concerns. This is compensated for in popular trials, as they give rise to public discourses that move beyond the questions facing the court. This occurred with Riel’s trial in 1885, as well as through the discussions surrounding the “re-trial.” Even so, the broadcast itself in large measure failed as a rhetorical reconciliation: It offered only limited support for the expression of personal, social, and healing truth, because the history and the mock trial explicitly adopted a forensic frame. The “re-trial” called for judgment, instead of understanding. While ultimately the broadcast led to a reassessment of the entire historical episode, its “hook” was for viewers to judge Riel and, by association, the Métis. Belcourt found this particularly offensive. The pragmatics of forensic judgment strip the Métis of their sovereignty: They find themselves in the dock and as such disenfranchised and subordinated to the authority of others. Belcourt succinctly recognized this dynamic when he stated in the latter part of the third hour of the broadcast: “I suppose I can breathe a sigh of relief along with the rest of us about the outcome of the vote, but I don’t like the way we were put through this roller coaster emotional ride, all of our people.” Furthermore, while the broadcast sought to reconcile Canadians through a new trial, the process and pragmatics of truth-telling such reconciliation requires was lacking. Even though Riel took the stand in the second episode, the first two episodes of the broadcast provided no opportunity for today’s Métis to tell the truth of their experience, as following from events revisited by the trial, nor for that matter could other Canadians express their own experiences and understandings. While such telling is not particularly relevant to the historical-legal forensic frame of these episodes, it is fundamental to efforts at reconciliation, particularly because the first Métis demand is to be recognized.

The broadcast was certainly rhetorical, and it offered new social knowledge, but its capacity to satisfy a call for truth was highly compromised. Just as it did not have the types of truth the TRC report considers fundamental to a process of reconciliation, it did not actually have the forensic process of a real trial, either, and so the details of the original trial over a century ago, just like current historical debates, were ignored by most of the television audience. Commenting on the ongoing revision of the history of Riel, several years before the broadcast, Desmond Morton observed: “Canadians in 1998 are free to use Riel as they please, much as children use dolls to learn how to socialize and to fantasize. Riel the symbol, after all, is heritage, to be exploited for collective self-esteem, victim status and the indoctrination of the young. If heritage makes happiness, let’s do it. History... is something else” (Morton, 1998, p. A7). The broadcast, as heritage, was sympathetic toward Riel, but even Métis critics objected to its revisionism (Brennae, 2002). Métis leaders want recognition of Métis status through policy, not symbolic gestures.

Newsworld’s re-trial fails as a gesture of reconciliation because it imagines that its work can be performed by perpetrators or their proxies, as they present themselves refigured before those who have suffered. As the South African experience has made clear, reconciliation cannot begin until victims and perpetrators tell their
own stories. The re-trial also fails because it privileges the telling of a “happy truth,” and hence the proffering of new social knowledge, over the difficult encounter with complexity and the bringing to presence of the other three forms of truth, which may not be reducible to a simple narrative account of villains and victims, of innocent and guilty. There is no “working through.” Finally, the broadcast fails because neither its producers nor its critics are committed to the unsettling at the heart of reconciliation.

Writing with an eye to the South African case, but out of Pauline theology and Hegelian philosophy, Erik Doxtader has observed that reconciliation is a rhetorical performance and norm of rhetorical practice that productively opposes the definitional logic that sustains identitarian thinking and some forms of identity-based politics. Its expression challenges but does not negate the law of non-contradiction, the violence of precedent, and the power of self and collective constitution. In this rhetorical opposition to identity, reconciliation performs a conceptual and tropological turn: a movement between violence and understanding that invents and enacts the potential for speech. (pp. 269-270)

For Doxtader, reconciliation occurs in the interruption of speech and in the creation of conditions to begin again. Reconciliation includes a moment of “letting go” of identity’s investments in the positions of perpetrator and victim, but without naïve amnesia. In contrast, the re-trial broadcast, in its form and execution, is predicated upon definitional logic. First, the forensic form in general requires stable categories, such as judge and accused, guilt and innocence. Second, since the broadcast offers Riel as synecdoche for a historical episode, and then calls for a judgment on Riel, it promotes the containing of identity through a single judgment. Third, in revising the third episode to exclusively feature Métis voices, it reproduced the identitarian thinking at the core of their own opposition to the broadcast. While “Métis” in the nineteenth century meant “half-breed,” itself a term not then considered offensive (and indeed used by Riel), and “métis” more generally denotes a thing or person of mixed origin or substance, Métis advocates do not figure themselves as being between cultures or possessing plural identities. They have no interest in being the poster children for postmodern theories of anti-identity. On the contrary, they figure themselves as having a proper and distinct identity arising from a synthesis of Aboriginal and French elements. For Métis advocates, reconciliation passes through recognition, which means through an acknowledgment of their identity, and subsequent negotiations as a distinct people with the Canadian government regarding the modalities of their self-government.

Doxtader’s understanding of reconciliation leads one to question whether it can be compatible with such a form of recognition, which Charles Taylor has identified as being at the centre of “multiculturalism,” the Canadian approach to plurality. The Métis seek recognition, and yet the “politics of recognition” is subtended by a politics of identity (Gutmann, 1992), which has “been shaped by the growing ideal of authenticity” (Taylor, 1992, p. 36). Thus, it is clear that for Métis advocates, as well as for Newsworld’s producers, Métis identity precedes and is the basis for the production of any truth. Of course, at one level recognition and reconciliation are in harmony, since recognition implies communication and forms of discourse directed
toward understanding. However, for many, authenticity is the basis for a critical standard to judge recognition. This raises the stakes in a manner not necessarily compatible with reconciliation. As Taylor observes, “On the social plane, the understanding that identities are formed in open dialogue, unshaped by predefined social script, has made the politics of equal recognition more central and stressful [, for] the withholding of recognition can be [regarded] as a form of oppression” (Taylor, 1992, p. 36). And yet, in the context of reconciliation, as recognition and understanding undermine hierarchies and establish commonalities, entrenched identities are at risk, particularly if those identities are tied to some kind of debt to the past, for as Taylor puts it in a different context, “My own identity crucially depends on my dialogical relation with others” (p. 34).

Canadian multiculturalism admits the right of cultural groups, particularly French Canadians and Aboriginals, to be recognized in their particularity and to be granted a degree of self-government and hence separate development. In 1885, the Métis did not benefit (or suffer) from this model of apartness. Despite the existence of some Métis communities, they were not legally recognized as a people or nation. They were recognized as a distinct group in the vernacular, but they were considered Canadians, who at best deserved to be compensated for any claim to land derived from the Native part of their mixed ancestry. Over a century later, Métis communities and institutions still exist, and their leaders press for greater recognition and collective rights.

Newsworld’s production of the Riel documentary exacerbated the feeling of non-recognition experienced by many Métis. To compensate for this, the producers altered the format of the third hour, which had originally been intended to be the site of dialogue and exchange between Métis and non-Métis. As Belcourt put it, “They had no idea how strongly we felt about having been left out in the first place. … So they decided to change the third part of the show to be exclusively about the Métis” (Boswell, 2002, p. A8). The original plan was for Métis and other Canadians to participate in a studio discussion of Riel, his trial, and the place of Métis and other Aboriginals in Canada. In the revised format, the only non-Métis was Newsworld’s Anne Petrie, who moderated the discussion. This third segment provided prominent Métis figures, some of Riel’s relatives, and some students the opportunity to express how they felt ignored, repressed, and indeed conquered. While most ultimately conceded that the re-trial had done some good in raising awareness about the Métis and welcomed Riel’s 87% Internet acquittal (which they received with applause), they still objected to its production, its version of events, and its featuring of the argument that Riel was more French Canadian than Métis.

A significant theme in the discussion segment was the nature of Métis identity. Riel’s Métis identity was not challenged in the original trial. Such a challenge during the re-trial can be understood as a pedagogical device to clarify who the Métis are; this certainly led to its discussion in the third segment, but it also triggered anxieties over non-recognition. Tony Belcourt, president of the Ontario Métis Federation, denounced as racist the idea advanced by the prosecution in the re-trial that ancestry is determinant of Métis status and noted the parallel between that argument and one advanced by the Government of Ontario in a recent land claim case. There was strong consensus in the studio that the Métis are a people or nation, but that being Métis is not determined by a percentage of Métis “blood.” As one student
explained, the Métis National Council had established a definition for being Métis, which includes some Métis ancestry, self-identification with the Métis nation, and general recognition by the Métis community. As such, Métis identity has a voluntary component. This led to actress and filmmaker Genevieve Pelletier and student Riel Dion, clearly in the minority, admitting that they are reluctant to identify as Métis; the former because of a lack of knowledge of the culture, the latter because he did not experience himself as such and because such self-ascription would imply taking on a duty or set of responsibilities. Dion said, “I haven’t identified with it, even though my grandmother [sitting beside him] has, and that thing has a lot to do with the upbringing. . . . It has to be seen from both sides, I think. Before I make a decision like that, I feel that I would have to weigh both sides, because it is something that is irreversable, I can’t go back and say ‘no, I’m not a Métis anymore, yes I am a Métis.’” Quite bitter, Belcourt said that such remarks were hurtful. He blamed the student’s ambivalence on racist arguments and attitudes and asserted that he considered Métis identity to be fundamental and that those who did not experience it were victims of propaganda and policies of assimilation.

Only in this third hour of the series, in the disruption of predictable narratives, did we see a process that might open toward reconciliation. Visibly moved, Nelson Sanderson of the Manitoba Métis Cultural Club asserted that viewing the first two hours with his family had made him proud and that he was not offended by the broadcast because he saw the “bigger picture”: that the broadcast presented Riel to the country. In that third hour, personal or narrative truth could be given voice. Even then, however, productive truth-telling was tenuous, because discussion was policed by community authorities and because statements often oscillated between the expression of resentment and the restating of ideologically entrenched positions that very few were willing to question.

Given that most of the participants not only define themselves as Métis, but have prominent roles in Métis organizations, it is hardly surprising that they spoke for the Métis as a nation and that their suffering was from non-recognition. Consequently, the dominant tone was one of frustration and defensiveness. Métis advocates expressed their truth, but this did not lead to an enquiry into its nature. Rather, it led to pedagogy. That is to say, while they saw themselves as victims of government policies, most had little interest in offering testimony or giving themselves over to an encounter with their pain. There was no moment of purgation or catharsis. There was advocacy: They spoke as appropriate to their roles, insisted on their existence as a people, decried their treatment by government authorities, praised Riel as the founder of their people, and demanded recognition. As such, the rush to a meta-narrative of truth by the well-meaning producers of the program found its echo in the dominant Métis discourse. Métis advocates do seek a forum where they can express the truth of their experience, but only from within their narrative of community, and only as it serves the interests of advocacy. Thus, even in this third hour, we had only a limited departure from forensic truth, because of the dominance of ideological, rather than personal, narrative. This may give rise to understanding, to recognition and respect, to deliberative democracy, or to political negotiation, but reconciliation in Doxtader’s sense was constrained. The third hour certainly promoted talk, but it did not overcome identity-based boundaries. Ultimately, of course, this is not the fault of the Métis; it arises from both the form of the broadcast and the very logic of Canadian–Aboriginal relations.
Canada was for the most part colonized without the overt military conquest of its Native populations. Competing European powers entered into alliances with “Indian” tribes in order to advance their interests. Ultimately, most of Canada was acquired through treaty, albeit between unequal parties, as North American Indian ways of life were undermined by contact, trade, disease, and settlement. These tribes, usually now termed “First Nations,” acquired legal status as they were recognized as distinct nations under the Crown and ceded territories in exchange for reserved areas, traditional hunting and fishing rights, and a government commitment (“fiduciary obligation”) to provide for their education and welfare. Their relationship to Canada has not for as much been happy. Their populations have dwindled, and they have regularly encountered racist attitudes, complained of unmet treaty obligations, and suffered under ineffective government policies designed to encourage their assimilation into the Canadian mainstream. Perhaps for this reason, and because of their demographic and economic marginality, First Nations have insisted on their difference and treaty rights, even though some argue that the treaty system is Canada’s apartheid and perpetuates inferior status. What they hold to is a promise of separate development.

The Métis seek a similar arrangement. Like the First Nations, Canada’s Métis do not want to be simply Canadian, but assert the principle that they constitute distinct nations under law with collective rights. Canada’s 1982 constitution recognizes that the Métis also have some Aboriginal rights as the country’s prior occupants, and Métis leaders seek a constructive dialogue that will consider their demands. Such dialogue requires of course that they be recognized and heard, which implies some form of reconciliation, as well as some faith in the “works of words.”

What is nevertheless unclear, however, given the categorical frameworks of both forensic judgment and constitutionally established identitarian categories, is the degree of reconciliation that can take place. Reconciliation demands recognition of the other, but not the full acceptance of the other’s self-constitution and terms. The process of reconciliation risks coming to an end when recognition slides into a commitment to given identities, because identity fixes and therefore limits apprehension. When recognition grasps what identity prefigures, two options are then open: Either recognition forms the basis for regulated talk that seeks common ground from fixed positions, or recognition initiates a displacement, where identities are loosened and opened to a future based on re-figuration.

Notes
1. A rhetoric of enactment is one in which the rhetorical performance itself proves or makes real that which is claimed. For a discussion of rhetorical enactment, see Campbell & Jamieson (1978).

2. In rhetorical theory, inartificial proofs would usually include physical evidence, contracts, and testimony given under oath or extracted through torture. Artificial proofs, in contrast, would consist of what we today might call circumstantial evidence. Of course, even in antiquity, the unreliability of sworn statements and torture-based confessions was recognized. Indeed, in the Rhetoric, Aristotle acknowledges that all inartificial proofs require rhetorical interpretation and framing, and hence that even material evidence requires artificial proof to persuade effectively.

3. In South Africa, the debate over the proper way of dealing with systematic past injustices was between the creation of a Truth Commission with some form of amnesty and the prosecution of perpetrators. For insight into this debate, see the essays in Villa-Vicencio & Doxtader (2003).
When Canadians are in his audience, South African satirist Pieter-Dirk Uys makes a point of thanking them on behalf of the former apartheid regime for the inspiration provided by the Canadian reservation system. In Canada, the charge that the treatment of Aboriginals in Canada was apartheid-like has been made a number of times, most notably by Justice Berger with reference to the treatment of Nisga’a in British Columbia (cited in Raunet, 1984). David Raunet develops that view in a stinging critique of Canadian policy toward its Native population (Raunet, 1984). “Canada’s Apartheid” was also the name of an in-depth examination of the status of and issues facing Canadian Natives published by The Globe and Mail (Stackhouse, 2001). Some Canadian tax-reform advocates also use the term when decrying the “special status” provided by the Indian Act, which they argue has significant costs to the taxpayer while reinforcing Aboriginals’ subordinated status (see Fiss, 2004).

References


