

Did Louis Riel deserve to hang?; On Thursday, University of Calgary political scientist Tom Flanagan and NDP Member of Parliament Patrick Martin participated in the Royal Ontario Museum's "History Wars" series, debating the resolution "Louis Riel deserved to hang." What follows are short essays adapted from their opening remarks.; Guilty as charged

Author: Flanagan, Tom

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Abstract: [...] it also left the presiding judge with no discretion in sentencing, because death by hanging was the only punishment specified in the Statute of Treasons, 1351, under which Riel was charged (mercifully, Parliament had removed drawing and quartering from the Act in 1814). After the jury found Riel guilty, the judge, as he had to, imposed the sentence of death by hanging; but it remained open to the cabinet to exercise the royal prerogative of mercy and commute Riel's sentence to a term of imprisonment.

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Full text: Congratulations to Pat Martin for being re-elected in Winnipeg Centre as an NDP Member of Parliament. Now let's talk about a Conservative Winnipeg MP who's even more famous than Mr. Martin - Louis Riel. We are debating the proposition that "Louis Riel deserved to hang." I will vigorously defend his prosecution and conviction for treason; but, as I will explain later, I'm not so sure about the hanging part. There is absolutely no doubt that Louis Riel in 1885 levied war against the sovereign, which is the classic definition of treason. He declared a provisional government at Batoche, cut telegraph lines and took hostages, sent letters asking other Metis and Indian communities to take up arms, and fought three pitched battles against Canadian police and soldiers. All historical sources agree that he was the unquestioned leader of the movement. Some have argued that Riel and the Metis had no choice except to rise in arms because the government had ignored their grievances. Wrong. The government was in the middle of dealing with the major Metis complaints when Riel started the Rebellion. An order in council of January 28, 1885, had authorized a commission to enumerate Metis claimants for a land grant in the North-West; and in early March 1885 claimants to river lots were invited to make entry for their claims at the Prince Albert Lands Office. There were delays, to be sure, and the Metis did not get everything they wanted; but they were not ignored. What about Riel's trial? The short answer is that it was fairly conducted under the laws of the time, but that these laws were quite different than what they are today. The North-West Territories Act, 1880, called for a trial in the Territories, not in Winnipeg or Ottawa or anywhere else, with a jury of six presided over by a stipendiary magistrate. The Act did not provide for a pre-trial hearing on fitness to stand trial, as would happen today. Riel's sanity, which was the main issue in the trial, was adjudicated under the McNaghten Rules, which required only that the defendant know right from wrong. That cognitive test was relaxed in the 1892 Criminal Code, but the McNaghten Rules were still good law in 1885. Within this legal framework, Riel had excellent legal representation from several lawyers paid for by friends in Quebec. His lawyers appealed his verdict as far as the law allowed, to the Manitoba Court of Queen's Bench and the Judicial Committee of the Privy Council. They lost, but one can never count on victory in an open-ended process such as a trial. Riel was the only defendant charged with treason; the other rebels were charged with the lesser offence of treason-felony. That made sense because it was obviously Riel who had fomented the uprising. However, it also left the presiding judge with no discretion in sentencing, because death by hanging was the only punishment specified in the Statute of Treasons, 1351, under which Riel was charged (mercifully, Parliament had removed drawing and quartering from the Act in 1814). After the jury found Riel guilty, the judge, as he had to, imposed the sentence of death by hanging; but it remained open to the cabinet to exercise the

royal prerogative of mercy and commute Riel's sentence to a term of imprisonment. Another option would be confinement in a mental institution. The jury had found Riel to be sane at the time he committed his treasonous acts, but perhaps he had lost his mind afterwards while in prison. Prime Minister John A. Macdonald appointed a medical commission to investigate that possibility, but it was only a maneuver to buy time while he brought his Quebec ministers onside for the execution. Macdonald manipulated the commission from start to finish, even redacting its published report to cover up one member's opinion that Riel was of unsound mind. I understand the political reasons for carrying out the sentence; this was, after all, Riel's second rebellion against duly constituted authority. But with the advantage of hindsight, I think it would have been wiser to commute the death sentence and send Riel to a lunatic asylum. I know Canadians don't like to take instruction from the United States; but, with much stronger provocation, the North did not execute any Southern rebels. Sometimes mercy can be good politics. Be that as it may, I think the kind of legal exoneration of Louis Riel that Mr. Martin proposes would be a very bad idea, particularly now that the Parti Quebecois appears poised to win the next Quebec election and restart the sovereignty debate. Riel twice issued a unilateral declaration of independence (UDI). As the debate over Quebec separatism reopens, do we really want to send the message that UDI is an acceptable option? - Tom Flanagan is professor of political science at the University of Calgary and author of several books on Louis Riel and the Metis. Credit: Tom Flanagan; Special to the National Post Illustration / An undated photo of Louis Riel.;; Caption:

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