

Tales of a Nation

Interpretive Legal Battles in Rudy Wiebe's *The Scorched-Wood People*

In his “*Nomos* and Narrative,” the late Robert Cover stated that we grant legal documents authority because they are both normative and located in narrative. “Every prescription,” he wrote, “is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose” (5). Certainly, we tend to regard legal instruments and precedents as our primary nation-founding and nation-building texts. Sections 3 and 4 of the British North America Act, 1867, for instance, provide that the Act itself constitutes the Dominion of Canada. Yet in the Act’s preamble, the Dominion is said to have been established for “the Welfare of the Provinces and [to] promote the Interests of the British Empire.” In short, the British North America Act spells out the duties and powers of provincial, federal, and imperial players without providing for the rights, freedoms, and obligations of those populating the territory. It is a document devoid of a secular awareness of community or nation, in the sense given to this last word by French historian Joseph Ernest Renan, for whom a nation is a spiritual principle constituted of a people’s stance towards past sacrifices, defeats, or victories, and of a clear commitment to a communal future (904). Legislation (or, to use Cover’s own terminology, prescription), in other words, is not narrative in itself; it relies on narrative to acquire a larger purpose or destiny.

Are there other texts, then, suited to the representation of a nation as a mosaic of hopes and intents? Common sense dictates, and many scholars have argued, that literary narratives may provide readers with a sense of nation.¹ What Canadian literary narratives impart community, belonging,

and even dissent, along with a comprehensive view of the past and a particular understanding of a collective future? How do they do this? How do they differ from legal narratives?

In this article, I address such questions by examining one literary work that looks at community in light of a communal memory and vision: Rudy Wiebe's *The Scorched-Wood People* (1977), a novel on the adult years, trial, and execution of Métis leader and rebel Louis Riel, and on the plight of the Prairie Métis. I locate my reading of Wiebe's novel in relation to two groups of studies. Wolfgang Kloos has characterized *The Scorched-Wood People* as "a novel dealing with the rise and fall of a nation," namely the Métis nation (207). For Sam Solecki, the novel opposes Eastern and Western ideologies in a contestational narrative (5). Allan Dueck, for his part, goes further when he claims that "Wiebe's perspective on history *affirms* the cultural heritage and identity of a demoralized and oppressed people" (198; emphasis added). Dennis Duffy, however, fears that in our "days of post-colonial enlightenment" we might too easily lapse into "flabby sentimentality about underdogs" and thus overlook the demanding form (and underlying message) of a work such as *The Scorched-Wood People* (211). Duffy follows Linda Hutcheon's lead in viewing *The Scorched-Wood People* as a metafictional work. At the core of this metafiction lie both the endorsement and the subversion of the authority of language. Duffy grants Riel's vision the power of Scripture itself, of "things unseen [. . .], drifting about in the air like flocks of birds, until they nest among the hearts of men" (206), yet cautions that in the world of British-inspired law, where "vision that results in action will be judged on the basis of action alone," Riel's hopeful words are without power. If any moral is to be identified at the end of the novel, Duffy adds, it lies in our understanding of the incompatibility of differing cultural discourses (more explicitly, that of secular law and that of vision and divine justice) in our society (210). In the end, Duffy asserts, no univocal discourse can claim hegemony in either our Western world or in our understanding of the past. Duffy's denial of univocality is echoed in Marie Vautier's reading of *The Scorched-Wood People* as a postmodern work that "prevents the myth of Louis Riel from crystallizing into a fixed element in the reader's historico-mythical imagination" (83).

I agree with Kloos, Solecki, and Dueck that Wiebe's novel fulfills a pragmatic, oppositional, and affirmative function. But it also grants us access to communal thinking about the possible place of a minority within the Canadian Confederation. More broadly, it asks us to reflect on the meaning

of citizenship. Moreover, *The Scorched-Wood People* achieves this not by deriding and turning away entirely from law, but by the appropriation of a legal genre known for its narrativity. Wiebe's novel may be looked upon as a counternarrative that challenges the integrity of Louis Riel's court judgment by bringing to the fore those facts and testimonies disallowed at the trial. In other words, the novel enacts a kind of trial, for it brings into play adversarial narratives: a historical court case, parts of which appear in Part Three, Chapter Four of the novel and the counternarrative itself. This counternarrative fictionalizes the events leading to Riel's trial at the same time that it presents Métis grievances somewhat differently than did the original judgment; it also provides a critique of white justice, particularly under the Macdonald government of 1885. Because trial narratives are essentially teleological, I endorse those studies that view *The Scorched-Wood People* as a defence of the underdog, yet the adversarial trial format is far from being univocal. Indeed, it provides a forum for various and dissenting voices. Moreover, rather than claim that the novel both installs and subverts such voices, I maintain that in a courtroom all voices and complementary versions of events are heard, although a final verdict must be reached. My position, therefore, is situated at the intersection of what might be called the instrumental and the postmodern readings of Wiebe's novel.

In 1885 Louis Riel led a final series of rebellions at Duck Lake, Fish Creek, and Batoche in the current province of Saskatchewan against the Conservative government of John A. Macdonald. At issue were democratic and land rights for which the Métis of the North-West had been fighting for some time (Stanley 291). On 15 May 1885, Riel, himself both a Métis and a Conservative M.P. who had been elected more than once to Parliament, surrendered peacefully to government forces and was charged with high treason under the British Statute of Treasons (1352). The mandatory sentence for high treason was death by hanging. Riel had hoped to bring his case all the way to the Supreme Court of Canada in order to publicize and denounce the government's role in the injustices suffered by the Métis (*Queen v. Louis Riel* ix). Criminal trials, however, are held close to the location of the crime, and Regina was chosen as a convenient forum instead. Moreover, the North-West Territories Act of 1880 authorized the trial of capital cases by a stipendiary magistrate, the highest judicial official in the North-West at the time, and six jurors only. Rather than being tried before an appointed provincial judge and the usual jury of twelve, Riel finally came to justice before magistrate Hugh Richardson and six white, English-speaking farmers.² Moreover, though

Riel was able to expound the economic and political helplessness of the Métis during two emotional and somewhat erratic speeches delivered at the end of his trial, Crown and defence attorneys generally limited themselves to arguing the substantive content of the charges brought against the accused. The trial, in other words, was concerned not with the government's alleged crimes against the Métis, but with Riel's alleged crimes against the Queen.

The jury found Riel guilty on August 1, 1885, but recommended mercy. Riel was nonetheless hanged on November 16 despite stays of execution during which his Liberal lawyers lost one appeal to the Court of Queen's Bench in Manitoba,³ while the second one, to the Judicial Committee of the Privy Council, was denied (Stanley 362). Described by Desmond Morton as "the most famous trial of Canadian history" (*QvLR xv*), *The Queen v. Louis Riel* was without doubt the most sensational trial of the emergent Confederation; it illustrated rather dramatically the way in which the new Dominion of Canada dealt with dissent.

The trial was a disappointment to Riel. Morton explains in his introduction to the 1974 edition of the trial that Louis Riel was above all a man of words who had hoped for a public trial to explain himself and denounce his enemies (vii). But during his trial Riel lost any authority he might have held in a different forum. To begin with, crucial witnesses who Riel had hoped would testify in his favour were absent from the courtroom. These witnesses included Gabriel Dumont, his military commander during the rebellion (who was to testify that the rebellion might easily have been avoided had the government been more receptive to Métis claims), and the Deputy Ministers of Indian Affairs and of the Interior (who would have been asked to confirm that the Métis' rights had indeed been denied). The court refused to summon government officials (*QvLR xv*; Stanley 346). For their part, as Morton points out, the Métis witnesses had fled to the United States in fear for their lives. Because they were active participants in the rebellion, they would have been prosecuted had they testified (*QvLR xv*).⁴

The defence's strategy was, furthermore, less than successful. After a few days of lengthy and incriminating evidence introduced by the Crown, Riel's Liberal lawyers—identified monolithically throughout *The Scorched-Wood People* as "Lemieux, Fitzpatrick and Greenshields" (317ff.)—decided to plead their client's insanity on the basis, notably, of Riel's claim that he was the prophet of the Métis nation. Riel himself opposed that defence, but, against his wishes, his attorneys called Dr. Daniel Clark of the Toronto Lunatic Asylum to the stand. Unfortunately, Clark admitted during cross-examination

that, despite being prey to delusions that led him to think of himself as a prophet, Riel most likely had the mental capacity to distinguish right from wrong at the time of the rebellion (*QvLR* 257). Since the test for legal insanity was a cognitive one devised in 1843 known as the M'Naghten Rule, which required that the accused prove that he was unable to tell right from wrong when the crime was committed, the jury had to find Riel guilty. According to historian George Stanley, the damning testimony of Charles Nolin—a cousin and rival of Riel's, and the Crown's star witness—also weakened the defence's case (351).

The Crown's narrative characterization of Riel as a traitor and a man of violence proved more consistent than that of the defence. Towards the end of the trial, for instance, Quebec defence attorney Charles Fitzpatrick cross-examined Crown witness Dr. Frederick Jukes in an attempt to prove that his client was of unsound mind. If Riel had laboured under a delusion, Fitzpatrick asked, would he be responsible for his own actions? Unexpectedly, Juke replied:

Well, take Mahomet, for instance [. . .]. He believed and few believed with him, even his own people, that he was divinely inspired, but he acted upon this belief and he carried his whole belief with him. He believed it and he carried it out at the point of a sword and [. . .] he convinced the people of what, if he had failed, would have simply been regarded as a delusion of his own mind. (*QvLR* 273; cf. *SWP* 330)

Jukes's narrative about Mahomet's success constitutes a metadiegetic narrative within the larger, institutionally defined matter of Riel's delusions and responsibility. Much to Fitzpatrick's distress, Jukes's intervention bears a strong thematic connection to the Crown's own description of Riel. It creates an interpretive trope (Riel is like Mahomet) that furthers the larger, juridically constructed story of Riel's criminal responsibility in a damning way. If Mahomet managed to convince the world of his prophethood through violent action, Riel might have done the same. Later during his cross-examination Jukes suggests that Riel, an educated man, took advantage of other Métis' religious naïveté and passed himself off as a prophet to lead them into a self-glorifying battle (*QvLR* 273). Jukes's Mahometan analogy also marginalizes Riel. To any self-respecting Christian at the time, Mahomet, like Riel, was an outsider. Indeed, Riel, as a visionary, a lapsed Catholic, and a French-speaking Métis whose knowledge of English failed him in moments of great emotion, was a conspicuous oddity in the cramped Regina courtroom.

Having failed to show that Riel was insane during the rebellion, Charles Fitzpatrick attempted during his closing argument to redefine the Métis leader's actions. While the Crown portrayed Riel as neither patriotic nor insane (327), but a treasonous rebel who incited both Natives and Métis to take up arms against the government, Fitzpatrick admitted that acts of violence had been committed; however, he tempered this admission by attacking the government itself. In Fitzpatrick's words, "no one of any nationality, of any creed [. . .] can justify the rebellion." The government, however, is not entirely without fault. Riel, Fitzpatrick argued, had acted in self-defence in the name of the Métis, whom the government had neglected and left to die of starvation while it granted land to white settlers and busily developed the rest of the country's infrastructure. Institutional greed affects not only a minority but all Canadians, who must avoid complacency and remain vigilant; thus, Fitzpatrick continues, "we are made the guardians of each other's rights" (287). Riel's illegal action is not to be characterized as an attempt to destroy the nation but as a plea to be included in it. Yet despite Fitzpatrick's closing attempt to rouse the jurors' sympathy and republicanism, his characterization of the Métis comes too late in the trial and is, moreover, disturbingly patronizing. Fitzpatrick suddenly adopts a new narrative, that of the Métis as noble victims (297) always "on the side of civilization and [. . .] on the side of humanity" despite their grievances against an unfeeling government (289).⁵ Riel is depicted as a descendant of those Natives "of whom the poet has said that their untutored minds see God in the clouds and hear His voice in the wind" (295). Actually, as Stanley explains, only a paternal grandmother of Riel's was herself a Métis (3), and Riel's mind was far from untutored since he had acquired a rigorous classical education at the *petit séminaire* of the *Collège de Montréal* (24-30). Furthermore, prior to the prosecution's final argument, when Riel is finally afforded a chance to speak for himself, François-Xavier Lemieux, another of Riel's Quebec attorneys, warns the jury that the defence cannot be held accountable for Riel's statements (*QvLR* 311), thus underlining the defence team's lack of belief in and identification with the accused.

Ineffective litigation strategies aside, the trial was a confining format to a man such as Riel. Dennis Duffy remarks that "[p]olitical criminals appealing to God and History can entertain us in courtroom drama." But, he asks, "how can one accommodate unearthly visions within the range of our discourse on the nature of a criminal act?" (210). One of the problems raised by Riel's spiritual vision is that of the time-frame used to locate his actions.

In any trial, attorneys' questions to witnesses normally elicit responses that situate the defendant or the accused within a clear chronological framework. In their attempts to refute the insanity defence and to prove that Louis Riel intended to destabilize the government, Crown attorneys in the Riel trial launched into a laborious chronological recounting of events. More often than not, at trial, the acts of commission or omission leading to an actionable event are examined in the order in which they occurred, both to determine causality and to avoid confusing the jury.⁶ How Riel behaved in January, February, and then in March suggests to the jury whether he is criminally responsible or insane. The chronology of the trial itself is equally governed by strict rules. When in mid-trial Riel asks Richardson if he may speak and cross-examine Charles Nolin, whom he has known for most of his life, the magistrate replies: "In the proper time, I will tell you when you may speak to me [. . .]" When Riel insists, Richardson requests that he direct his concerns to his counsel, not to the jury. Even then, Charles Fitzpatrick, one of Riel's attorneys, snaps: "I don't think this is the proper time, Your Honor [. . .]" (QvLR 205). What is at stake here is more than the defence attorney's unhelpfulness. Every criminal trial unfolds in accordance with a conventional formula that includes, in the following order, a plea, opening statements, direct and cross-examinations, closing statements, a verdict, and a sentence; there is no question here of succumbing to anachrony.

As Gérard Genette has noted, chronology is atypical of our Western narrative tradition. (36). Ian Watt, in his *Conrad in the Nineteenth Century*, explains why this is so: "though the mere forward progression of the story may hold the reader's immediate attention through suspense, it cannot satisfy the reflective mind when it comes to ask why an event occurred or what is the moral significance of a character" (286; qtd. in Sternberg 915). What we might call "legal narrative chronology," of course, is established not to create suspense, but to record precisely each and every circumstance that might help a judge or jury arrive at a final verdict. Time, here, is used as a thread upon which the beads, or elements, of a contentious or actionable event are strung causally. Watt suggests that "literary anachrony" takes the reader *out* of the progressive march of time and, paradoxically, gives him or her *time* to reflect. Albeit differently, then, both legal chronology and literary anachrony employ time as a vehicle for cognition. Emile Benveniste, however, anchors the person in the eternal present tense of the act of speaking, which he distinguishes from an "objective chronology" that shuts out subjectivity (227). Quite possibly, then, by denying him the chance to speak

either for himself or in his capacity as leader and prophet of the Métis at inopportune moments during his own trial, the Regina court objectified Riel, and created an accused that merely fit the purposes of the trial format itself.

When Riel finally rises and addresses the jury prior to sentencing, his speech is ineffective. He apologizes for not speaking English well due to the excitement caused by the trial; intersperses his address with French words; prays aloud to God and Christ; begins to describe the state of deprivation in which he found the Métis of Saskatchewan; returns to the trial's many testimonies; remembers that his personal papers were never returned to him following his surrender; revisits the Red River rebellion of 1869; reiterates that he is the prophet of the new world; and continues in this ragged, tattered way until Justice Richardson asks him, "Are you done?" (*QvLR* 324; cf. *SWP* 325). But Louis Riel is vanquished. The legal process is not what he had hoped it would be. Not only is he deprived of the assistance of essential witnesses, but, confined by the strict, linear chronology of the trial, and awash in the narrative constructions of professionals, Riel, who invokes a timeless, ahistorical God throughout his trial, becomes incapable of finding the appropriate timeline and context for an authoritative narrative of his own. The next and last time he is allowed to speak is after the jury declares him guilty of high treason. When on this occasion Riel begins to address the room, Richardson cuts him off and reminds him that the jurors have been discharged (*QvLR* 350). With a portion of his narratees gone, what authority can Riel's pre-sentencing speech hold?

Still, in both trial and novel the Métis leader goes on: "Who starts the nations?" he asks defiantly. "The very one who created them, God" (*QvLR* 358; cf. *SWP* 324). But by the time he utters this momentous statement, his trial is over. Sentence will soon be passed: mercy denied; Riel must hang. *The Scorched-Wood People*, however, ends with the words of Gabriel Dumont, one of the witnesses on whom the defence was unable to count during the trial due to prosecutorial threats: "You think Riel is finished? He said a hundred years is just a spoke in the wheel of eternity. We'll remember. A hundred years and whites still won't know what to do with him. The smart whites will say [. . .] it's judicial murder; Riel was mad. But it wasn't, and he wasn't mad" (351). Dumont unambiguously challenges both the insanity defence and the trial's outcome, at the same time as he rewrites history. Although hanged, pronounced dead, and buried, Louis Riel is hardly "finished." In addition to suggesting that Riel might be a transcendent Christ-like figure, Dumont also alludes to those Métis who survived exile,

poverty, and the rebellion itself, and whose struggles will be passed on to future generations. According to legal scholar David Luban, traditionally “[t]o the victor goes the right to infuse a constitutional clause, or a statute, or a series of prior decisions with the meaning that it will henceforth bear by recounting its circumstances of origin and assigning its place in history” (2152). Richard Delgado, another legal writer, asserts that court battles hardly end with a verdict and a sentence. Alternative narratives that disclose what was left out of a trial can provide much-needed, revisionist footnotes to such marks of victory (2429). Here, Delgado’s New Historicism displays affinities with Jean-François Lyotard’s postmodernism; for Lyotard, justice depends not on a final, consensual acknowledgment of victory and defeat, but on an inevitable and continual reconstitution of events and consequences (65-66).⁷ In *The Scorched-Wood People*, this “reconstitution” of legal history is achieved through the words of narrator Pierre Falcon, a Métis bard historically dead in the late 1870s, who addresses us from beyond the grave.

Falcon, whom Riel calls “grandfather,” no doubt to signal the bard’s status as an elder within the Métis community (SWP 35-36), makes up songs that help the Métis remember their origin, their struggles, and their victories. Addressed to narratees identified as “you” (348), and who might be of either Métis or non-Métis origin, *The Scorched-Wood People* is not one of Falcon’s God-inspired songs,⁸ but a more prosaic account of the rise and fall of the Métis nation envisioned by Riel. Although he prays to God throughout *The Scorched-Wood People*, Falcon regrets that for that brief and bright moment between 1870 and 1885, when the Métis accepted Riel’s vision and launched a final rebellion against an unjust government, God has given him “nothing” (141). Because God seems to deny him this last song, Falcon tells us that he “must leave the words to stand in all their unmemorable bareness,” in the hope that “their unearthly power [. . .] {may} be seen in the effect they had on Riel, on our people, and on Canada” (141). Falcon thus reports what he and a number of fellow Métis viewed as Louis Riel’s Moses-like prophethood in his efforts to found a nation in the North-West based on God’s word (140). At the same time, he prays that future generations derive from his account both strength and faith.

Falcon’s contradictory status both as Riel’s contemporary and as a post-historical, omniscient narrator who speaks from beyond the grave has been the object of much scholarly attention. W. J. Keith writes in his *Epic Fiction* that “Falcon’s narration is [. . .] the crucial aesthetic issue in the novel” (96). In her Bakhtinian analysis of *The Scorched-Wood People*, Penny van Toorn

shows with remarkable clarity that Falcon's account may appear at first glance to be monologic, but "either obviously or in subtle ways, contains multiple 'other' voices embedded in it" (147). According to van Toorn, these include Wiebe's own voice, that of Falcon (who not only narrates, but appears as a character within his own narration), and, among others, of Riel, Christ, and John A. Macdonald. Falcon is able to carry these multiple voices, van Toorn argues, because of his dual narratorial status, which allows him to speak of historical events from the immediacy and contingency of "ground-level" while simultaneously authorizing spiritual truths "which Wiebe believes to be absolute and eternal" (162). In the end, van Toorn claims, the novel represents a parable against violence that is consistent with Wiebe's own Mennonite pacifist views (160).

Yet van Toorn sees in Falcon's words more than a mere showcase for Wiebe's personal views. *The Scorched-Wood People*, she writes, "reopens a court case closed officially many years ago." Thus she suggests that an injustice was perhaps carried out. She adds, however, that the novel asks us to "judge Riel's and the Government's actions and words in the light of Mennonite morality, not Canadian law" (140). This assertion is puzzling. Aside from the fact that Wiebe himself is of Mennonite background, there is no historical reason why Mennonite morality ought to have greater authority over either Riel or the Canadian government than Canadian law or the Métis' own cultural and spiritual traditions. Presumably, van Toorn's proposition is to be interpreted in two ways. Not only do Mennonites (including Wiebe) advocate non-violence (a position that neither Riel nor the Canadian Government was able to sustain), but, like the Métis themselves, they represent an insular community within Canada and thus pose a challenge to the state as a unitary source of authority. Thus, I argue, Falcon's narration accommodates both what van Toorn describes as Wiebe's intrusive authorial voice in relation to spirituality and non-violence (144), and Falcon's own communal devotion to the Métis as a distinct community within the Confederation. Because he is, after all, an identifiable, historical Métis bard, Falcon is not entirely assimilable to Wiebe, although he may at times speak like Wiebe.

I therefore look upon Falcon's dual status somewhat differently. The embedding technique used throughout *The Scorched-Wood People* that van Toorn describes might also apply to Falcon's status in the novel. Falcon's occasional homodiegetic narration⁹ is embedded within the utterances of Falcon, the "transcendent" and extradiegetic narrator. Moreover, as a manifestation of Wiebe's intellect that extends, however, beyond Wiebe's personal

realm of experience, Falcon's "ghostly" and all-embracing voice acts as the implied author (to use Wayne Booth's term). From it we may learn *The Scorched-Wood People's* "extractable meanings but also the moral and emotional content of each bit of action and suffering of all the characters" and achieve "the intuitive apprehension of a completed artistic whole" described by Booth (73). Traditionally, the implied author and the narrator are distinct voices, but Falcon acts as both. Even as a mere narrator, Falcon is idiosyncratic. To grant Falcon a hybrid role as an implied author who also rolls up his sleeves and narrates does away both with the awkwardness of what has so far been described as Rudy Wiebe's intrusions and with the perplexing matter of Falcon's ghostliness. Throughout my study, then, the name "Falcon" alludes to this hybrid status.

Within this framework, I argue that *The Scorched-Wood People* might be labeled a counternarrative to the historical trial. In this counternarrative, Falcon guides readers through the events of the 1885 rebellion; investigates the historical defence lawyers' contention that high treason "can *never* be justified" (SWP 319); casts doubt upon the ultimate relevance of the issues brought up at trial; insists upon presenting evidence and witnesses denied by the original court; submits that Riel was both a prophet and a fallible human being; and champions the cause of an entire people, something that Riel was kept from doing at his own trial. The dialogic nature of Falcon's account only lends credence to his advocacy. Like any attorney, Falcon introduces and cross-examines a number of witnesses whose narratives may contradict one another. Yet the tenor of the counternarrative as a whole is unambiguous: it grants dissent a voice ninety-two years after being silenced and offers to present-day and future Métis a record of a political and spiritual vision that may give them a sense of their heritage and a reason to endure.

At times, the Métis bard acts as Riel's true attorney. Throughout the novel, Riel's lawyers (Lemieux, Fitzpatrick, and Greenshields) are too dismayed by their client and perhaps too concerned with their own future political careers to be successful. They rap Riel on the knuckles as if he were a child and scold him for having failed to respect Her Majesty's laws (319). Their loyalty to their client seems so tenuous that Falcon remarks that the Macdonald government obtained the guilty verdict it needed in the Riel trial "confidently assisted" by the three attorneys (322), thus suggesting not only that the impartiality of the historical tribunal was corrupted by the political agenda of the executive branch of government but that the Liberal defence lawyers were inept. Falcon, however, occasionally draws upon

sound and forceful legal arguments. He objects to the Crown's indictment of Riel on points of fact and law. Riel himself never fired at Canadian soldiers. Strangely, those Métis who did are charged not with high treason, but with the lesser count of treason-felony, which requires that the accused intended to levy war against the Queen without actually doing so. "I know of no historian," Falcon remarks, "who has commented on this [. . .] strange legal distinction that the men who shot and killed Canadian soldiers only *intended* to wage war while Riel, whom no witness had ever seen with anything more than a cross or a pen in his hand, [. . .] had actually waged war" (316-17; emphasis in original).

But whereas Falcon is quite capable of arguing the Queen's law, the greater part of *The Scorched-Wood People* is noteworthy for its lack of resemblance to traditional courtroom discourses. First, rather than circumscribing and ascertaining facts by way of corroborating testimonies, Falcon at times freely reconstructs documented episodes. Early historical events that took two months to unfold are, as W.J. Keith puts it, "contracted into a single day" (88). Dumont meets Riel much earlier than he actually did.¹⁰ Riel's sister Sara calls him Louis "David" Riel after King David; according to historian Thomas Flanagan, Riel first gave himself the name "David" as a pseudonym to throw his pursuers off track (*SWP* 129; Flanagan, *Louis "David" Riel* 43). Keith argues that these and other factual liberties heighten dramatic tension and thus better capture "a crucial turning point in the history of the nation" (88). In a similar vein, Georg Lukács notes that what draws successive generations into the past is "not the re-telling of great historical events, but the poetic awakening of the people who figured in those events" (42).¹¹ *A fortiori*, a prophecy needs to be a forceful narrative if it is to make a lasting impact and attract followers; the painstaking details and accuracy required in a courtroom would stand in the way of such a compelling narrative. Despite Métis defeats, Falcon attempts to "name" and establish the Métis community arisen from prophecy in order to give it a place in national consciousness. In doing so, he adopts a strategy in accord with Delgado's contention that, in order to install a counternarrative to the victor's version of events, the "outgroup" or vanquished minority must stay clear of the confining discourse of law, which, after all, rewarded the victor in the first place (2413-15).

Beyond what Keith identifies as a selective "concentration and telescoping" of events (89), the destiny of the Métis and a cyclical understanding of history thus merge to challenge the trial's emphasis on individual responsibility and on chronology. The account Falcon presents is anything but temporally

straightforward. He peppers his account with ironic returns to the past and premonitory visions. Lief Crozier, the first white man to tell Gabriel that Métis law is now invalid and has been replaced by the Queen's law, turns out to be the last man to whom Dumont speaks of Riel's timeless influence (350-51). Rather than surrender to Canadian forces in 1885, Dumont flees to Montana (313), where only a few months earlier he had convinced Riel to cross over into Saskatchewan to fight for Métis rights (182). Riel's institutionalization at the Beauport asylum in 1877 (153-67) comes back to haunt him during his trial (321). His hanging is announced twice: when Canadian soldiers hang him in effigy (120), and in a revelation seen by both Riel and Dumont once the former makes the decision to return North in 1884 (188).

Falcon, then, relies heavily upon the notion that time and history are circular. Like the Israelites to whom Riel compares his people, the Métis must never forget the crimes committed against them. "Oh God," Falcon prays at the very end of his narrative, "[g]ive [our people] that faith again" (351). Yet the aim of Falcon's anachronological and cyclical recounting is not merely to confront the reader with a subjective appreciation of a Métis sense of time. Falcon also opens the door to Riel's inspired understanding of constitutional politics.

Between 1869 and 1885, the poor and largely uneducated Prairie Métis lived in a world where grassroot demands and the religious vision of their leader commingled to oppose the Queen's law. Legal theorist Robert Cover makes a strong and eloquent case for the role of nonofficial players in the production of constitutional meaning. Judges, lawyers, and legislators may interpret or "make law," but others are involved as well. Not only do the minoritarian norms of insular communities like the Amish or the Mennonites co-exist with those of the majority, he writes, but the dissenting hermeneutics of, say, civil liberties groups may also lead to transformational politics that eventually push the often narrow limits of majoritarian rule. Resistance to the laws of the state becomes "paideic," "world-creating," or normative (12) when the dissenters are united in a committed vision of the future. Yet because courts of law are themselves committed to the state, and because this commitment demands that conflicting *nomoi* be quashed, resisters must entrench their norms, communal identity, and commitment in a founding narrative (27). They at times need also to speak their commitment "in the medium of blood" or of "time in jail" (47). Within this framework, Falcon uses narrative to entrench Riel's revolutionary and visionary hopes, themselves rooted in Biblical narratives.

Throughout *The Scorched-Wood People*, Riel wavers between the combative prophethood of the Old Testament and the peaceable tolerance of Christ. By the time he is arrested and tried, Riel's political understanding has grown broader and more egalitarian. No longer concerned only with Métis rights, he envisions a North-West apportioned equally among wandering Jews and "the landless believers" of Europe and French Canada (352). But generally, for Riel it is God who directly inspires man to found nations; God trumps constitutional, judicial, and even ecclesiastical law. As Riel notes, the Catholic priests who live among the Métis have no qualms about fusing worldly and spiritual interests. One such priest, Father Fourmond, tells the restless Métis that "to rebel against [. . .] civil authorities is as great a crime against God as to rebel against the Holy Mother Church, or the Holy Father!" (221). Riel fights fire with fire. His God is not the God of the French priests who tend to the Métis' spiritual needs. Just as he opposes the Queen's laws, he rejects "the mathematical legalism of a calculable God" who metes out pardon and punishment according to a person's capacity for meek endurance under economic hardship (52). Riel remembers what happened in Manitoba, which he helped turn into a province after he led the Red River rebellion of 1869-70. Soon after, Canadian settlers and speculators moved in and drove the Métis further West, where they were forced to start over as the buffalo became scarce, and where reserve Natives tried, and failed, to farm under adverse climatic conditions. Canada is likened to Babylon (187) and Riel parodies the priests' immutable instructions: "If the [Hudson's Bay] Company pays you ten cents for a ratskin and sells it for a dollar, don't complain. Your reward is in heaven" (201). Far from being the origin of a nation of people united by a common vision, the new Dominion is depicted in *The Scorched-Wood People* as a mere economic venture established to the detriment and disadvantage of its weakest elements.

Since both politicians and priests contribute to the impoverishment of the Métis, Riel brings to his people a religious vision that is both spiritually and politically empowering. As prophet he has but one goal: "we will build community here, community," he tells Gabriel Dumont. The right to land is "a simple human right," and so is the self-sufficiency that results from it (201). Since God, after all, preceded the Queen, His word supersedes the Queen's laws; defying such laws in order to obey God's will is therefore a risk worth taking. Walter Benjamin has noted that the tension inherent in social protest and revolution may lead to what he calls a "Messianic cessation of happening," in that such tensions momentarily arrest the progress of

time and allow for a “revolutionary chance in the fight for the oppressed past” (254). Riel’s God-inspired rebellion also affords the Métis a chance to divert the march of history and to name both the land they inhabit and its customs. For a brief moment, Riel is triumphant. First, the Métis rename the days of the week (SWP 281) in imitation of French revolutionaries. Soon after, they proudly decide to wage a defensive Holy War against the advancing Canadian forces. With Riel as their leader and prophet, they momentarily regain authority over themselves, although they appear to have none in the eyes of the Canadian government. Falcon warmly recalls the Métis heading for their second armed confrontation of 1885, at Fish Creek. It was “the greatest army we ever had,” he exclaims, “to see our people ride like that: excitement, pride, brotherhood, and ceremony all together are not easily found on earth, especially not by the poor [. . .]” (261).

Yet as van Toorn remarks, this account of Riel is hardly monologic. She notes cleverly that Falcon’s utterance itself is “métis” because it represents a site of social struggle (141), notably between violence and pacifism, vision and secular interests. Not only does Falcon refer to and oppose the narrative of Riel’s historical trial, but within the retrial that is *The Scorched-Wood People*, he invites “witnesses” to speak up against Riel. Through their own resistance to Riel, these characters reflect historical characterizations of the Métis leader as either occasionally violent and despotic or as an embodiment of Christian values. Charles Nolin, Riel’s cousin, dreams of living like an affluent white man; Métis struggles for recognition are therefore suspect to him, and he soon becomes Riel’s victim as the latter accuses him of being a traitor and calls for his trial and execution (227). Gabriel Dumont, in turn, doubts the effectiveness of non-violence and prayer. Although momentarily won over by Riel’s faith, he finally launches into a desperate shooting rampage when the rebels are defeated in 1885 (307). These “testimonies” also signal to us that Riel remains on trial (although here, through Falcon’s account, Riel’s actions are reviewed not as crimes against the Queen, but for their effect on the Métis). In addition to such dissenting voices, Falcon allows Riel to “testify” in his own defence. As the rebellion of 1885 begins, Riel warns Gabriel that the Métis’ demands for justice need to be obtained without bloodshed; the mere threat of violence, followed by negotiation, must suffice. Still the inevitable occurs; when Canadian troops fire first at Duck Lake, Riel, holding up a large, visible crucifix, orders his men to return their fire in the name of God (237).¹²

When Justice Richardson delivers his sentence during the historical trial, he is merciless. “You have been found [. . .] guilty of a crime the most

pernicious and greatest that man can commit," he tells Riel. "You have been guilty of high treason. You have been proved to have let the flood-gates of rapine and bloodshed, you have [. . .] brought ruin and misery to many families whom if you had simply left alone were in comfort, and many of them were on the road to affluence" (*QvLR* 371). The Court caters to majoritarian standards and fulfills what Cover calls its "jurispathic" or "killing" function (40) when it suppresses Riel's vision in favour of values (comfort, affluence) already dear to the white inhabitants of an expanding nation. More particularly, the historical Richardson refers here to some of the local white merchants and farmers whom Riel and his Métis followers had made prisoner, and whose stores and cattle the insurgents had used as their own during the rebellion. The magistrate's concern, in other words, lies above all with the material welfare of the white community, members of which were victims of the rebels (although no prisoners were actually killed in 1885 [Stanley 329-38]).

In contrast to this judicial narrative, Falcon depicts Riel as an inspired prophet and a well-intentioned but troubled and fallible man who may have occasionally lapsed into autocracy and violence. He also shows the Métis to be victims of an insensitive government that has failed to look after the disenfranchised, has violated its own rules of representation by excluding an elected Riel from Parliament, and has taken on the role of aggressor. Not only did Canadian troops fire first in 1885, but Riel was more than once elected to Parliament as a representative of Provencher, and finally expelled from it. Although John A. Macdonald had agreed to make a province out of Manitoba according to Riel's demand during the earlier 1869-70 uprising, the Canadian Prime Minister refused to grant Riel an amnesty for his insurgent activities (*SWP* 136-37) and, according to Stanley, members of the House of Commons would not sit with Riel in Parliament (203). Later, in Saskatchewan, Riel's petition to the Canadian government for equality, land grants, and democratic rights is ignored (*SWP* 205). Falcon thus presents readers with a string of legitimate grievances rendered inadmissible at trial due in part to the absence of crucial Métis and government witnesses. When lawful means fail, rebellion in the name of divine justice becomes a conceivable reaction to cumulative instances of institutional discrimination and negligence.

I have argued so far that *The Scorched-Wood People* may be looked upon as an effort by Falcon in his roles as implied author, narrator, and iconoclastic "attorney" to counter the official narrative of Riel's trial, during which Métis rights, interests, and concerns went unheard for reasons of ideology

and of legal procedure. One of the ways to understand *The Scorched-Wood People*, then, is as a narrative effort to grant authority to a people by pitting their spiritual vision against secular law *and* to offer a plea for a Confederation which not only unites the provinces, Ottawa, and the Empire but also attempts to accommodate those whose beliefs may appear different and insular, but whose insularity is partly a product of life-long institutional exclusion. I disagree with Marie Vautier's claim that because the Métis are defeated and the Queen's law wins, this project is futile (59). When Falcon closes his narration with the words of Gabriel Dumont to the effect that a hundred years is but a spoke in the wheel of eternity and that Riel is hardly defeated (*SWP* 351), he raises the possibility that Riel's prophecy of a recognized Métis nation may yet be accomplished.¹³ The British North America Act, 1867 does not contain a narrative that gives Canadians a sense of their nation's past, purpose, and destiny. In *The Scorched-Wood People*, Falcon defends the Métis' commitment to a sense of belonging of their own. If every prescription necessitates narrative to give it life and meaning, Cover explains, "every narrative is insistent in its demand for its prescriptive point, its moral" (5). Falcon's moral is that without justice, the law loses its claim to normativity. This point is emphatic; it is also free from the relativity with which postmodern readings infuse *The Scorched-Wood People*. Yet while this counternarrative is compelling in its defence of the vanquished minority, the reader is encouraged as well to consider a number of critical questions concerning Riel's actions: Can treason and armed violence ever be justified? Is treason the only possible characterization of Riel's actions? Should immunity from prosecution be granted to the active participants of an armed rebellion? Was Riel in fact insane when he declared that he was the Métis' prophet? These inquiries arise from a consideration of *both* sides of this dispute, for the reader is equally bound by the existence of the original trial to consider and deliberate upon all arguments in this case. Each side of this debate refers to the other, casts light upon its weaknesses, yet also demands that its merits be considered seriously. From the clash of such conservative and oppositional positions, or from what Robert Cover calls the "jurisgenerative process" (40), or the balancing of such forces, norms tailored to a community (even to a community of readers) can ultimately arise.¹⁴ Thus new norms and interpretations emerge that allow a community to define itself and perhaps even to endure.

In his "Theses on the Philosophy of History," Walter Benjamin reminded us that "every image of the past that is not recognized by the present as one

of its own concerns threatens to disappear irretrievably” (247). The adversarial model within *The Scorched-Wood People* attempts to make its “image of the past” a concern for contemporary readers. It follows Ernest Renan’s prescription for a nation: it tells us at once where we have been, and what we may hope to become. The official trial narrative asks who is guilty of crimes against both Queen and nation, and who must consequently be excluded from citizenship. Falcon’s legally unorthodox counternarrative asks whether our survival and greatness as a nation depend upon trying to, in Richard Rorty’s words, “extend our sense of ‘we’ to people whom we have previously thought of as ‘they’” (192).

NOTES

- 1 Among them are Benedict Anderson, for whom nations are not born but constructed through the imagination of their inhabitants, and American legal scholar Robert Ferguson, whose study of post-revolutionary “lawyer-writers” maps out the aesthetic shaping of American national identity.
- 2 Historian Desmond Morton (in his introduction to *The Queen v. Louis Riel*) suggests that Regina was preferred over Winnipeg because the latter would have allowed Riel to be tried by a mixed (English and French) jury of twelve men, whereas Regina allowed only for a stipendiary magistrate and a jury of six (QvLR viii). Thomas Flanagan argues that the facts and archives fail to bear out Morton’s theory. Not only was the government uncertain of the laws that applied, but the issue was never raised at trial by Riel’s attorneys. More simply, Regina may have been viewed as a neutral forum since neighbouring jurisdictions such as Battleford and Prince Albert had been under siege for months as a result of Riel’s insurrection. Jurors from these towns might have proved less than fair to the accused (*Riel and the Rebellion* 138-39).
- 3 This change of forum is provided by section 77 of the North-West Territories Act, 1880, according to which anyone convicted of an offence punishable by death could appeal to the Manitoba Court of Queen’s Bench to confirm or overturn the sentence (*The Queen v. Riel, Manitoba Law Reports*, 322-23).
- 4 The Court was unwilling to grant such witnesses immunity. As Crown attorney Christopher Robinson put it during the trial:

[...] we have no power whatever to give to any of those persons who have fled from justice anything approaching protection or safe conduct, if they choose to enter this province. If they enter it in innocence, they can prove their innocence. If they enter it guilty, they must take the chances of all others who are guilty. (QvLR 54)

 Naturally, what Robinson suggests is that only prosecution and a full-fledged trial could adequately determine these men’s guilt or innocence.
- 5 To present alternative arguments (or alternative narrative interventions) to a judge or jury when a first argument or narrative lacks strength and persuasiveness is a common litigation practice that is rarely viewed as a breach in the careful, chronological and logical development of a trial. In other words, a plurality of arguments does not necessarily

- negate logic or chronology. In a criminal case, especially, the defence may both refute the Crown's accusations and counterattack with distinct allegations of its own. In this, litigators differ from judges and scholars, whose decisions and theses require greater singularity of focus, although their plural discourses resemble the alternative narrators and narratives that the genre of the novel accommodates.
- 6 I do not wish to imply that a trial cannot begin *in medias res*; it usually does. Criminal trials open with the charge warranted by a specific crime. From there, a prosecutor guides both judge and jury back to the events that led to the crime in order to lay out the facts of the case and to determine, among other things, motive, opportunity, or intention. To avoid confusing the jury, however, these retrospections are then presented chronologically up to the point of the trial's cause.
 - 7 One need not, however, be a New Historicist or even a postmodernist to endorse the capacity of justice to revise its own judgments; judicial review is built into the juridical system, although the revision must be warranted on points of fact or law.
 - 8 The epigraph to *The Scorched-Wood People* asks, "[. . .] who has made this song?" and answers, "[w]ho else but good Pierre Falcon. / He made the song and it was sung / To mark the victory we had won [. . .]." *The Scorched-Wood People* essentially represents the narrative of a valiant struggle that ended in a historical defeat. The epigraph clearly refers to the victorious Red River rebellion of 1869-70, and not to the final rebellion of 1885, which Falcon describes in greater detail. The epigraph thus merely introduces Falcon as narrator; it does not imply that *The Scorched-Wood People* is one of Falcon's songs.
 - 9 In Part One, Chapter One of *The Scorched-Wood People*, Falcon appears within his own narration as Riel's elder and sings a narrative song of his own composition titled "The Sad Ballad of King Muck" (38-39).
 - 10 George Stanley traces Louis Riel's first meeting with Gabriel Dumont to 1884, when the latter visited Riel in Montana to ask him how the Saskatchewan Métis might fight for their rights (250). In *The Scorched-Wood People*, however, Riel and Dumont are already comrades in 1869, during the Red River rebellion (33).
 - 11 Of course, what Falcon stresses, and what Delgado and Lukács point to, is the inescapable ideological function of narrative, be it legal, historical, or fictional (Hutcheon 74; White 36-37). In the courtroom, however, narratives and ideologies clash until a verdict is rendered. That trial narratives are biased is not shocking; it is expected.
 - 12 Both sides of the North-West conflict sustained casualties. As implied author and wise "attorney," Falcon makes concessions to the Canadian troops' humanity, notably when Colonel Williams explains the Métis' Roman Catholicism to his curious men and concludes ("gruffly," Falcon adds) that "[t]hey're Christians, you know [. . .]" (279).
 - 13 Debates concerning Riel and the Métis persist to this day. Despite support from a majority of Canadians, and though at least two private members' bills were introduced in Parliament to exonerate Riel and declare him a Father of Confederation for his role in the founding of Manitoba, the Métis themselves claim that a pardon would merely underscore Riel's status as a criminal (Daly 3).
 - 14 It is perhaps worth noting here that *The Scorched-Wood People* was published only five years prior to the entrenchment of the *Canadian Charter of Rights and Freedoms*, the aim of which is, precisely, to ensure that the rights of individuals or collectivities are balanced (by way of a number of judicial tests) against the potentially crushing interests of the state.

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