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Parent, Child, Husband, Wife: When Recognition Fails, Tragedy Ensues

*Scott FitzGibbon**

“Dost know thy lineage? Nay, thou know’st it not,
And all unwitting art a double foe
To thine own kin, the living and the dead”

Teiresias, in *Oedipus the King*¹

I. INTRODUCTION

Recognition, according to Aristotle’s *Poetics*, is one of the three parts of tragedy.² Greek drama often presents an extended course of recognition, reflects its psychological consequences, and makes it a central element in the downfall of the tragic hero. That is the case, for example, with Oedipus. Recognition may also be a crucial stage—a central project—in the development of a society, and failure of recognition a dimension of its deterioration. Any society, to cohere and flourish, must recognize, respect, and encourage the affiliational structures that weave its fabric. All fair social orders recognize the special character of minority groups.³ Recognition is also an element in legal thought, since the law must identify and define social categories and relationships as a basis for doctrine. The law would poorly promote

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¹ SOPHOCLES, *Oedipus the King*, in SOPHOCLES 1, 41, lines 416–18 (E. Capps et al. eds., F. Storr trans., William Heinemann 1912) (Loeb Classical Library No. 20) [hereinafter *Oedipus the King* (Storr trans.)]. This translation places a semi-colon at the end of the lines quoted above. The sentence continues:

Aye and the dogging curse of mother and sire
One day shall drive thee, like a two-edged sword,
Beyond our borders, and the eyes that now
See clear shall see henceforward endless night.

Id. at 41, lines. 418–20.

² See ARISTOTLE, *Poetics*, in II COMPLETE WORKS OF ARISTOTLE 2316, 2324 (Jonathan Barnes ed., I. Baywater trans., Oxford University Press 1984) [hereinafter ARISTOTLE, *Poetics*]. To be more precise, recognition is here identified as one of the three parts of the plot of tragedy.

³ See Charles Taylor, *The Politics of Recognition*, in MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 25, 38 (Amy Gutmann ed., 1994) (reporting the opinion that “[e]veryone should be recognized for his or her unique identity”).

civil society if it misunderstood and mischaracterized its components.

This article briefly notes some developments in the law and society of our present age regarding the understanding—the *recognition*—of marriage, fatherhood, motherhood, and the family. The article warns against a certain casualness, a confusion, perhaps even a certain promiscuity of thought, that has occasionally emerged in the law. Drawing on Sophocles' drama *Oedipus the King* and on the scriptural narrative of David and Bathsheba, the article investigates what might be called the “moral location” of the activity of recognition. It proposes that recognition of basic family forms is a process with a deep dimension. It apprehends that failure of recognition in such matters may sow the seeds of social tragedy.

II. AN INSTANCE OF CONFUSION AS TO RECOGNITION

Scholars of modern family law will be able to identify many instances in which recognition of basic familial roles has been occluded or confused, and many more in which the subject has been treated superficially, as though a legislative subcommittee or a court of first impression could reconstruct basic familial affiliational concepts with the same brisk procedures as might be otherwise applied in adjudicating or revising provisions of a tax code. This section lays out one example.

Ontario law now recognizes certain people who are not married to one another as nevertheless spouses.⁴ This doctrinal misadventure has introduced uncertainty into the meaning of the term “spouse,” and has led to legal doctrines that diverge from social understandings and which embarrass doctrinal development, as will here be explained.

The Ontario Family Law Act provides that “‘spouse’ . . . includes either of two persons who are not married to each other and have cohabited . . . continuously for a period of not less than three years”⁵ Leading cases leave Ontario law fluid as to the meaning of the

⁴ The discussion of Ontario law in this and the following paragraphs closely follows the discussion in Scott FitzGibbon, “*Just Like Little Dogs*”: *The Law Should Speak with Veracity and Respect*, in *THE JURISPRUDENCE OF MARRIAGE AND OTHER INTIMATE RELATIONSHIPS* 107, 136–39 (Scott FitzGibbon, Lynn D. Wardle & A. Scott Loveless eds., 2010).

⁵ Family Law Act, R.S.O. 1990, c. F.3, § 29 (“In this Part, . . . ‘spouse’ means a spouse as defined in subsection 1 (1), and in addition includes either of two persons who are not married to each other and have cohabited, (a) continuously for a period of not less than three years, or (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child.”). Section One provides that “‘cohabit’ means to live together in a conjugal relationship, whether within or outside marriage” and that “‘spouse’ means either of two persons who, (a) are married to each other, or (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right.”

Several other Ontario provisions define “spouse” in unusual ways, as cited and described in an appendix to *Rosenberg v. College of Physicians and Surgeons*, [2006], 216 O.A.C. 358, at

term “spouse.” In the case of *Mahoney v. King*, the court identified seven definitional factors, each with subparts amounting to twenty-two in the aggregate.⁶ Not included among these components was any oath or pledge or assurance that the parties might have made to one another. There was no reference to a duty to love,⁷ honor or cherish. Loyalty was not specified as a requirement.⁸ Exclusivity was not mentioned.

Ontario law has endorsed the conclusion that you can be one person’s spouse at the same time that you are married to someone else. In *Sullivan v. Letnik*,⁹ an Ontario court held that a cohabiting couple had established spousal status even though one member was married to another person.¹⁰ In *Mahoney*, an Ontario court endorsed, as sufficiently meritorious to go to trial, Sandra Mahoney’s assertion that she was her ex-lover’s “spouse,” even though he was married to another woman during the affair and continued throughout to live with his wife. The court observed that “[i]ssues relating to the definition of spouse are in transition.”¹¹

Further definitional fluidity is introduced by judicial interpretation of one portion of the statutory definition of “spouse,” namely, the phrase “cohabited . . . continuously for a period of not less than three years.”¹² Astonishingly, a leading Ontario court has held that this does not require living together for three years. The court in *Sullivan v. Letnik* held that continuity of cohabitation was established across a

app. (Ont. C.A.).

⁶ [1998], 39 R.F.L. 4th 361, ¶ 6 (Can. Ont. General Div.) (citing *Molodowich v. Penttinen* [1980], 17 R.F.L. 2d 376 (Can. Ont. Dist. Ct.)).

⁷ Though one question on the court’s list was “[w]hat were their feelings towards each other?” *Id.* ¶ 6 item (ii)(c).

⁸ Fidelity, however, was included, as reflected in a question: “Did they maintain an attitude of fidelity to each other?” *Id.* ¶ 6 item (ii)(b) (under the heading “Sexual and Personal Behaviour.”). Note the implication that fidelity is attitudinal, rather than a matter of belief or obligation.

⁹ [1994] 5 R.F.L. 4th 313 (Ont. Unified Fam. Ct.), *rev’d in part on other grounds*, [1997] 27 R.F.L. 4th 79 (Ont. C.A.) (applying a statute in effect prior to the Family Law Act discussed above). See *Perkovic v. McClyment*, [2008] 57 R.F.L. 6th 57 (Ont. Sup. Ct. J.) (ascribing spousal status to a man who was married to someone else). The caselaw on these issues is discussed in MARY JANE MOSSMAN, *FAMILIES AND THE LAW IN CANADA* 510 (2004).

¹⁰ In *Mahoney*, the court made this conclusion fairly explicit:

It appears from the caselaw that parties may cohabit within the meaning of the Family Law Act when one party is still legally married to another. In *Sullivan v. Letnik*, Beckett found: “I am of the opinion that the parties cohabited in a conjugal relationship after June 2nd, 1981, and certainly since January 2nd of 1985 when the applicant and her husband formally separated. The relationship was continuous from that time until March 1992.

[1998] 39 R.F.L. 4th ¶ 7 (internal citation omitted) (citing *Letnik*, [1994], 5 R.F.L. 4th ¶ 23).

¹¹ *Mahoney*, [1998] 39 R.F.L. 4th ¶ 26.

¹² Family Law Act, R.S.O. 1990, c. F.3, § 29.

lengthy time period when Mrs. Sullivan refused even to set foot on the love nest—a boat called the *Jadrin*—“because of the business turmoil between them and her fear of violence.”¹³ The court noted “that did not mean that the relationship had terminated. * * * * Whether couples are separated is a question of intent, not geography; at least one of the parties must intend to permanently sever the relationship.”¹⁴

The fluidity of Ontario law as to the definition of “spouse” impedes judgment on related matters. In *Rosenberg v. College of Physicians & Surgeons*,¹⁵ a physician whose license was revoked owing to his having had sexual relations with a patient advanced as a defense the allegation that the patient was also his spouse. The prohibition of sexual relations with a patient was subject to no express spousal exception, but common sense might require that one be inferred. Surely the drafters did not intend to prohibit sexual relations between husband and wife. Dr. Rosenberg’s patient, however, was not his wife. Dr. Rosenberg maintained that owing to cohabitation she was nevertheless his spouse. The court rejected this defense, and refused to infer the spousal exception on the grounds that “the term ‘spouse’ has no clear definition in law” and that “‘spousal relationship’ means one thing in one context and something quite different in another,”¹⁶ so that the proposed exception would “open a significant hole” in the disciplinary requirements.¹⁷ After this decision, it remained unclear whether a physician in Ontario who afforded medical treatment to his wife (or to her husband) might also engage in marital sexual relations.¹⁸

These legal provisions reflect a disorder not only of doctrine but

¹³ [1994] 5 R.F.L. 4th 313 ¶ 23.

¹⁴ *Id.* ¶¶ 23–24; see also *Stephen v. Stawecki*, [2006], 32 R.F.L. 6th 282 (Ont. C.A.), *affirming* [2005], 32 R.F.L. 6th 273 (Ont. Sup. Ct. J.); *Sturgess v. Shaw* [2002], 31 R.F.L. 5th 453 (Ont. Sup. Ct. J.); *Mahoney*, [1998], 39 R.F.L. 4th ¶ (“[P]arties may be found to be cohabiting, even if they maintain separate residences.”). A further point about the Ontario definition of “spouse” is that by its terms it applies only to Part Three of the Family Law Act (“Support Obligations”). The term “spouse” is extensively used throughout the act (as of course are terms which would normally be cognates, such as marriage, family, and so on), but outside of Part Three the term “spouse” is not explicitly subject to the extended definition quoted above. It seems you may be a spouse for some purposes but not for others.

¹⁵ *Rosenberg v. Coll. of Physicians and Surgeons of Ont.*, [2006], 216 O.A.C. 358 (Ont. C.A.).

¹⁶ *Id.* ¶ 40. The court attached an appendix that charted the varying definitions under twenty-six Ontario statutes and regulations.

¹⁷ *Id.* ¶ 42 (characterizing the reasoning of the disciplinary committee). The court did leave open the possibility that some exception along those lines might later be identified, stating that “the legislation may leave some scope for finding that the [medical-disciplinary] . . . regime does not apply to certain relationships.” *Id.* ¶ 44.

¹⁸ It might be doubted whether he could even touch her (or she him), or suggest making love at some future date, since even “touching of a sexual nature” and “behavior or remarks of a sexual nature” were prohibited. *Id.* ¶ 6.

also of what might be termed “legal cognition.” They are objectionable not only on the directly consequentialist ground that they may forbid or penalize what should be encouraged, and might encourage what should be forbidden, but also on the grounds that they reflect a legal system which, at least in some instances, “doesn’t know what it is talking about,” or at least neglects to think carefully and in a sustained way about its terminology and doctrines. They display a disorder as regards recognition.

III. THE NATURE OF RECOGNITION

What is recognition? What is involved, for example, in recognizing one’s condition as a married man or woman; or in a society’s recognition of marriage or the parent-child relationship?¹⁹

The Greek term is *anagnôrisis*. *Anagnôrisis* is knowledge of a sort that involves assessment—the exercise of judgment—the forming of a conclusion as to what the data really mean, what they add up to, and what they may import. Recognition is an achievement.

Recognition displays two or three facets. The first is achieved by looking into the thing whose recognition is at issue; and the second is developed through looking outward or “around” the thing, determining, so to speak, where it is located—where it fits in. Recognition of a person, for example, has an anthropological aspect and also a social aspect—it entails thinking about who that person is, and indeed perhaps what *persons* are, and it usually entails thinking about affiliations such as friendships and discerning socially recognized roles. Recognizing a person as a husband or a wife, for example, will involve identifying the person and his or her history and commitments and also deploying an understanding of the nature of marriage.

Recognition of the person may also involve a moral and a juristic aspect. It may call for an acknowledgment of the merits or demerits of the person’s way of life, an identification of his social or legal location as an honorable person or a miscreant, and an identification of the person’s special roles and of the goods which those roles serve or neg-

¹⁹ There is an interesting discussion of various senses of “recognition” in chapter two of PATHCEN MARKELL, *BOUND BY RECOGNITION* (2003), but none of the major meanings there identified fully corresponds to the meaning developed here. For example, the account here is not limited to retrieved knowledge, as when one recognizes a friend: Oedipus does not retrieve old knowledge when he recognizes that he has killed his father. Further, the account here is not limited to knowledge that implies respect: although the term recognition, as in the phrase “public recognition,” often does imply respect, this is not always the case (certainly Oedipus’ self-recognition did not enhance his self-respect). Further, the account presented in this article is not about recognition in a performative sense, as when the chair recognizes a speaker.

lect. In tragic drama, it may involve a recognition of the incipience of retribution, as when Macbeth recognizes the fulfillment of prophecy when he hears that Birnam Wood is moving towards Dunsinane.

Altogether, recognition is a fairly complex project, and sometimes a deep one. Recognition is accomplished when the person arrives at a settled acknowledgment of the situation by adducing his wisdom: his accumulated, settled insights into how things are, how they are related, and how they are to be understood.

Recognition takes on a special character when one's self—the recognizing person—is the person to be recognized. The project then involves the self in a special way (we might call it “reflexive recognition”). As with other forms of recognition, this sort often involves recognition of relationships. It rests upon judgments as to “where one belongs” or “what one *belongs to*” or, more importantly still, *whom* one belongs to (family and country, for example). Furthermore, recognition of self entails recognition of where one stands morally. This is the case, for example, when one recognizes one's duties as a husband or wife, or when one recognizes one's parents and the obligations one has to them. In all such projects, reflexive recognition can plumb the depths of the heart. It may involve, as Aristotle states in the *Poetics*, “a change from ignorance to awareness of a bond of love or hate.”²⁰

As all of this may suggest, the most difficult, the darkest, the most tragic projects are those which lead to recognition of the self as morally flawed and as complicit in flawed affiliations, especially those of a familial or pseudo-familial nature.

IV. THE TRAGEDY OF *OEDIPUS THE KING*

The classic recognition episode in Greek tragedy unfolds in *Oedipus the King*, as Oedipus gradually realizes, to his horror, that the man he killed some years previously in a conflict at a crossroads was in fact his own father, Laius, and that the woman he subsequently married was also his own mother, Jocasta. The story is familiar: King Laius, frightened by a prophecy that he would one day be slain by his own son, sought the death of Oedipus in infancy; and Oedipus was therefore given over to die by exposure to the elements, abandoned on a mountain with his feet pinioned together. Rescued, Oedipus was raised by the king and queen of another country—Polybus and his wife—who concealed the fact that they were not his biological parents.

²⁰ ARISTOTLE, *Poetics*, *supra* note 2, at 2324.

When he grew older, Oedipus heard a prophecy that he was destined to kill his own father. Fleeing the kingdom to avoid this fate, he met a stranger at a crossroads—a stranger who was in fact his father, Laius, although Oedipus did not recognize him. (How could he have done? Any stranger might have been his father.). In a brawl, Oedipus killed this stranger, fulfilling part of the prophecy. As events then unfolded, he married Jocasta, although again Oedipus did not, of course, recognize her as his mother. (How could he have done? Any woman could have been his mother.).

All of this sets the scene for the horrible events which bring the tragic truth to light, as the prophet Teiresias, a messenger, and then a shepherd divulge piecemeal the events of Oedipus' family history, gradually making them evident despite Oedipus' resistance and his efforts to confabulate alternate interpretations.

The extreme power of this drama—the awe and horror that it evokes in every age, including our own—calls for some explaining. After all, how likely is it that similar events could occur today? Our contemporaries do not practice infanticide, nor do they expose their infants or hand them over to nameless shepherds, and thus do not risk the unexpected survival into adulthood of a child ignorant of his biological origins—not for precisely the reasons that applied in Oedipus' case anyway, though abortion is widely practiced in modern society. A modern Sophocles might pen the drama of a baby who survives a late-term abortion, and unbeknownst to the mother, is rescued by a merciful nurse, is placed for adoption through a pregnancy help shelter, and is raised by an adopting couple who conceal the fact that they are not the biological parents. Alternatively, this playwright might depict the case of someone whose biological mother has used the services of a surrogate to bear the child to maturity and then refused to accept the child as her own, concealing her identity thereafter, as the confidentiality laws of some jurisdictions would permit.

Further modern parallels are suggested by the generation-crossing confusions in Oedipus' family. Jocasta's children with Oedipus were also her grandchildren. Oedipus' children with Jocasta were also his half-brothers and half-sisters.²¹ Professor Margaret Somerville has recently reported a Canadian case in which the grandmother of a baby was also its mother: she was the biological grandmother and also be-

²¹ See SOPHOCLES, *Oedipus the King*, in SOPHOCLES: THE THEBAN PLAYS 1, 21 lines 455–58 (David Grenet trans., 1994) [hereinafter *Oedipus the King* (Greene trans.)]:

He shall be proved father and brother both
 To his own children in his house, to her
 that gave him birth, a son and husband both

came, because she assisted her daughter's pregnancy by carrying the embryo to term, the surrogate mother.²²

Oedipus the King is a drama about unfolding knowledge.²³ It reflects that familiar, deeply human experience which leads beyond current developments and brings to light the clues to the hidden past.²⁴ It is a drama about how the search for knowledge can be distorted and how it can miscarry.

Oedipus the King is also a tragedy of ignorance of family. It is a tragedy of nonrecognition of fundamental familial relationships. The "recognition tragedy" of *Oedipus* unfolds because of the disordered condition of his birth family, the disruption of the natural evolution of familial recognition, and the rupture, owing to his abandonment by Laius and Jocasta, of the natural development of the relationship between parent and child. It is this circumstance that is the basis for the question posed to *Oedipus* by the prophet Teiresias quoted at the beginning of this article:

Dost know thy lineage? Nay, thou know'st it not,
And all unwitting art a double foe
To thine own kin, the living and the dead.²⁵

It is owing to our being acknowledged by our parents, kept by our parents, and raised by our parents, that we recognize our parents. This recognition is founded on their being *recognizable*: in other words, being members of a category (mother, father, parent) whose borders have not been hopelessly blurred.

It is owing to practices of familial recognition that we learn the *art* of recognition. Family life: its intimacy across the years, the opportunities it affords for candid discussion and for the observation of the unfolding effects of speech and action—sustains, as no other circumstances can, conditions conducive to the most comprehensive sorts of

²² Margaret Somerville, *When Granny Gives Birth to Her Grandson, Something's Wrong*, GLOBE & MAIL, available at <http://www.theglobeandmail.com/news/opinions/opinion/when-granny-gives-birth-to-her-grandson-theres-something-wrong/article1913695/> (last visited Feb. 22, 2011).

²³ Cf. Charles Segal, *Introduction to Oedipus the King*, in SOPHOCLES: THE THEBAN PLAYS xi, xxiii (David Grene trans., 1994), *supra* (noting various puns and double entendres on *Oedipus*' name, several of which involve the term "know" and cognates).

²⁴ See Charles Segal, *Life's Tragic Shape: Plot, Design, and Destiny*, in BLOOM'S MODERN CRITICAL INTERPRETATIONS: SOPHOCLES' OEDIPUS REX 205, 213 (Harold Bloom ed., updated ed. 2007) ("The *Oedipus* is almost unique among Greek tragedies in telling its story in reverse. Nearly every crucial event in the action has already happened. The action is therefore almost all retrospective action – that is, it depicts how the characters (and the spectators too) see and understand in the present events that took place in the past.").

²⁵ *Oedipus the King* (Storr trans.), *supra* note 1, at 41, lines 417–20.

recognition. In our parents' eyes we better recognize ourselves, day by day. In family life, we initiate the continuous review of self which is thereafter sustained by thoughtful persons throughout their lives. The faculties of reason that underlie recognition—memory, discernment and judgment—take root and grow first in that seedbed of the cognitive virtues.

In *Oedipus the King*, Sophocles places his hands upon cords which wind into the very heart of the human condition. First, he touches upon the sacrality of the family bond. The tragedy of Oedipus reflects the circumstance that family and familial recognition make us what we are. *Oedipus the King* also portrays the curses of familial failure—or, putting the matter in a more modern way, the lasting, lifelong, trans-generational effects (sometimes even the fatal effects) that ensue when familial bonds are disrupted, distorted or corrupted.

V. RESPONSES AND REACTIONS TO OCCASIONS FOR TRAGIC RECOGNITION

What may be the alternatives available to one who is gradually confronted by the unfolding of a tale that invites unpleasant recognition, especially recognition of *one's self* in one's most intimate, familial affiliations? What might ensue when recognition may embrace the sad, the delictual, the bad, and the disgraceful? What follows upon that which is termed, in *Oedipus the King*, the "terrible speech . . . [the] terrible hearing?"²⁶

I present two alternatives: some people face it, and some refuse to face it. Some people apprehend the truth as it comes to light, clearly discern its unwelcome implications as they unfold, and unflinchingly acknowledge the conclusions that inevitably must be drawn. So also do some societies and their legal systems face the unpleasant facts. Other people and societies evasively seek ignorance or, if necessary, go so far as to blind themselves to the truth.

The first line of response is exemplified by King David, who has (like Oedipus) committed a dreadful contravention of the laws of conjugal morality, and who also is made to listen to terrible words:

²⁶ *Oedipus the King* (Greene trans.), *supra* note 21, at 50, lines 1169–70:

"HERDSMAN: O God, I am on the brink of frightful speech.

"OEDIPUS: And I of frightful hearing, But I must hear."

The Greek here translated "frightful" is "δευνο," and can be translated "terrible," which is why that word is used in the text, *supra*.

Late one afternoon, David rose from his couch and strolled on the roof of the royal palace; and from the roof he saw a woman bathing. The woman was very beautiful, and the king sent someone to make inquiries about the woman. He reported, "She is Bathsheba daughter of Eliam [and] wife of Uriah the Hittite." David sent messengers to fetch her; she came to him and he lay with her. . . .

David wrote a letter to Joab . . . as follows: "Place Uriah in the front line where the fighting is fiercest; then fall back so that he may be killed." So . . . Joab . . . stationed Uriah at the point where he knew that there were able warriors. The men of the city sallied out and attacked . . . Uriah the Hittite was among those who died.

. . . .

But the LORD was displeased with what David had done, and the LORD sent Nathan to David. He came to him and said, "There were two men in the same city, one rich and one poor. The rich man had very large flocks and herds, but the poor man had only one little ewe lamb that he had bought. He tended it and it grew up together with him and his children: it used to share his morsel of bread, drink from his cup, and nestle in his bosom; it was like a daughter to him. One day, a traveler came to the rich man, but he was loath to take anything from his own flocks or herds to prepare a meal for the guest who had come to him; so he took the poor man's lamb and prepared it for the man who had come to him."

David flew into a rage against the man, and said to Nathan, "As the LORD lives, the man who did this deserves to die! He shall pay for the lamb four times over, because he did such a thing and showed no pity." And Nathan said to David, "That man is you!"²⁷

This last, dreadful pronouncement bears some distant likeness to a statement uttered by Teiresias to Oedipus:

I say you are the murderer of the king
Whose murderer you seek.²⁸

It springs the trap.

David and Oedipus are both kings. Each presides, as he believes, over an inquiry into a severe wrong. Each, when the trap springs, is

²⁷ 2 *Samuel* 11:2–12:7 (The Jewish Study Bible, 2004).

²⁸ *Oedipus the King* (Greene trans.), *supra* note 21, at 35, lines 362–63.

obliged to identify himself as the culprit he seeks. David and Oedipus respond in different ways, however, and can therefore serve as illustrations of two alternate roads that may be followed after such a discovery.

A. *The Davidic Response*

David admits his guilt.²⁹ He offers no excuses and in no way obscures or distorts the insight that Nathan has demanded of him. The Lord punishes him with the mortal illness of his son. David fasts, weeps, prays, and deeply repents. The child dies. David seeks confirmation of his son's death. Having acknowledged his sin, he can recognize this as his just punishment. He ceases to fast and goes on with his life.³⁰ He is thoroughly realistic. He recognizes the situation for what it is.

David's recognition has social and political aspects. When the child dies, the servants fear to reveal it.³¹ David insists on learning the truth. He asks; they tell him.³² David insists on recognizing the truth when others would connive at concealing it. When David ceases to fast, his courtiers ask for an explanation and he gives one:

While the child was still alive, I fasted and wept because I thought: "Who knows? The LORD may have pity on me, and the child may live! But now that he is dead, why should I fast? Can I bring him back again? I shall go to him, but he can never come back to me."³³

David emerges as one who, as great heads of state in crises often do, depicts the course and culmination of a crisis with bold strokes, encouraging and promoting clarity of recognition. David goes even further than most of the great and displays recognition of his own merited distress. Such a leader promotes, in his nation, practices of honest and clear *social recognition*. He promotes—as do the Davidic *Psalms*—appreciation of the law.

²⁹ 2 *Samuel* 12:13 (The Jewish Study Bible, 2004) ("David said to Nathan: 'I stand guilty before the Lord!'"). The notes to this edition of the Bible invite the reader to compare the evasive comments of Saul when Samuel convicts him of disobedience to the Lord in 1 *Samuel* 15.

³⁰ The narrative in this paragraph is based on 2 *Samuel* 12:13–23 (Jewish Study Bible, 2004).

³¹ *Id.* at 12:18 ("'[H]ow can we tell him that the child is dead? He might do something terrible.'").

³² *Id.* at 12:19.

³³ *Id.* at 12:22.

B. *The Oedipal Response*

The second line of response to an occasion for recognition—to the “terrible speech” and the “terrible hearing”—may be exemplified by Oedipus, who (after evasive strategies designed to deflect knowledge of the awful truth) cannot bear what comes into view. He blinds himself. The deepest horror of the tragedy of Oedipus lies not in his unknowing attack on his own family, but rather in his attack on himself—his attack on his own ability or willingness to see and understand—his attack on recognition itself.

Oedipus’ responses, like David’s, have social and political aspects. As did David, so does Oedipus encounter discouragement and resistance from those who think it better that he not learn the truth. Teiresias and the Old Shepherd must have the facts dragged out of them. Jocasta, in what are almost her last words to Oedipus, promotes existential ignorance: “mayst thou ne’er discover who thou art!”³⁴

Oedipus blinds himself—according to one interpretation—so that in the next world, when he encounters Laius and Jocasta in the Stygian fields, he will not have to bear the sight of their horrified gaze.³⁵ He cannot bear their recognition of the circumstances any more than he can tolerate his own. He asks Creon to banish him to a place where no one will ever speak to him again.³⁶ The avoidance of recognition is a widespread policy of those in Oedipus’s Thebes and, unlike David, Oedipus promotes this doomed effort for a long time.

C. *Social and Legal Responses*

The position of a disordered society before the law can rightly be compared to the position of David before Nathan or Oedipus before Teiresias. A society, like a king, may be confronted with the occasion for reflexive recognition with likely unpleasant results, and may, similarly, be required to choose between two alternatives. One alternative is to face up to the situation, like David; the other is to deny, avoid or in some other way escape the intolerable gaze of familial authority and the pronouncements of law. A disordered society that persists in

³⁴ *Oedipus the King* (Storr trans.), *supra* note 1, at 99, line 1069.

³⁵ See *id.* at 125, lines 1373–75, in which Oedipus states:

“ . . . [H]ad I sight, I know not with what eyes
I could have met my father in the shades,
Or my poor mother”

³⁶ See *Oedipus the King* (Greene trans.), *supra* note 21, at 59, line 1437 (“to where I may not hear a human voice.”).

shameful practices will inevitably seek a course that seems to achieve the latter results.

Of course society has no physical eyes to put out, nor can it seek the sentence of banishment to some foreign lands. It can, however, metaphorically put out its own eyes and deafen its ears by diminishing its capacity to see the truth clearly and by refusing to listen. It can suppress those who would display the truth and distort the language and linguistic practices of those who might report it. It may, for example, define the terms used in its statutes and judicial authorities to the point of incoherence.

A miscreant who is a private individual, or but one official, may think it necessary to flee the law and its oracles; but miscreants who are themselves the guardians of the social order—the parents and the judges: the keepers of the law—seem to have the power to evade recognition by distorting the law itself. They may, with tragic results, interfere with the, so to speak, seriousness or *gravitas* of legal discourse—with the firmness of the law, the discernment of the law, the vocabulary or the terminology of the law, what we might almost term the “eyes” of the law—and thus with the law’s capacity for recognition.

