

PLATONIC TEMPERANCE:  
THE HEART OF A HEALTHY CONSTITUTION

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**Abstract**

*Plato's notion of temperance, as elaborated in his dialogues the Republic and the Laws, is far removed from conventional modern thinking on the subject. Platonic temperance is as much a public as a private virtue. Its manifold meanings include restraint, moderation, order, equilibrium, harmony, measure, self-control and balance. Temperance in one or other of these senses underpins a number of key concepts which lie at the heart of modern constitutional theory and practice. These are the social contract, the separation of powers in the state, the notion of a mixed constitution and the rule of law, among others. All of these notions are Platonic in origin, although they are often incorrectly attributed to later writers. This article serves to identify and acknowledge Platonic temperance as the root of these key ideas, and the foundation of every sound constitution.*

Many modern constitutions are founded on the core values of dignity, equality, justice freedom and the rule of law. Underpinning these values is another which is yet more fundamental. It is seldom if ever articulated in modern political and constitutional discourse, yet no constitution and no state could long survive in its total absence. This master value is temperance, in the Platonic sense of the word. In order to substantiate this proposition, I shall examine Plato's notion of temperance in a number of contexts without, however, relating or applying it to any modern constitution, except in passing: the parallels and the lessons to be drawn will, I believe, be amply evident to the reader who seeks them.

The ideal state which Plato constructs in his dialogues the *Republic* and the *Laws*, embodies a set of four cardinal virtues.

These are wisdom, justice, courage and temperance.<sup>1</sup> It is with the last of these qualities that this article is mainly concerned.<sup>2</sup> History offers few, if any, examples of Plato's ideal state.<sup>3</sup> Accordingly, many modern scholars have tended to dismiss its four concomitant qualities — together with much else in Plato's philosophy — as utopian and of little practical value. Not only is this attitude sadly

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<sup>1</sup> See, for example, *Republic* 428d-433e.

<sup>2</sup> Plato, unlike Aristotle, does not see these four qualities as separate and distinct, but treats them rather as closely interrelated aspects of virtue as a single whole: *Laws* 693b-c, 692d-693b. Plato's notion of virtue as a single, unified whole is elaborated in his dialogues *Charmides* (at 161b-163d) and *Protagoras* (at 330d-333b). See further, on the unity of virtue in Plato (and on Aristotle's sharply different approach) A H Armstrong *An Introduction to Ancient Philosophy* 3ed Reprint (1965) 55-56.

Ancient Greek literature generally is shot through with the idea of temperance. Aeschylus for example, holds that evil and sin originate in prosperity. A man becomes rich and powerful; this breeds *hūbris* or insolent pride; and on this insolence retribution invariably follows. How then can we save ourselves from insolence and the *atē* which is its consequence? The remedy is moderation or *sōphrosynē*, the central idea of all Greek morality, 'the golden thread that runs through the virtues'. Avoid excess, keep to the mean, 'nothing too much'. These ideas — *atē*, the law of blood revenge, *hūbris*, *sōphrosynē*, run throughout Greek tragedy (R W Livingstone ed *the Pageant of Greece* (1923) 109).

<sup>3</sup> But the matter is not uncontroversial, and Will Durant (*The Story of Philosophy* 2ed (1937) ('Durant') 40-41) answers it decisively in Plato's favour:

'For a thousand years Europe was ruled by an order of guardians considerably like that which was visioned by our philosopher. During the Middle Ages it was customary to classify the population of Christendom into *laboratores* (workers), *bellatores* (soldiers) and *oratores* (clergy). The last group, though small in number, monopolized the interests and opportunities of culture, and ruled with almost unlimited sway half of the most powerful continent on the globe. The clergy, like Plato's guardians, were placed in authority not by the suffrages of the people, but by their talent as shown in ecclesiastical studies and administration, by their disposition to a life of meditation and simplicity .... Celibacy was part of the psychological structure of the power of the clergy; for on the one hand they were unimpeded by the narrowing egoism of the family, and on the other their apparent superiority to the call of the flesh added to the awe in which lay sinners held them .... [E]ven the educational "quadrivium" (arithmetic, geometry, astronomy and music) was modeled on the curriculum outlined in Plato. With this body of doctrine the people of Europe were ruled with hardly any resort to force; and they accepted this rule so readily that for a thousand years they contributed plentiful material support to their rulers, and asked for no voice in the government. Nor was this acquiescence confined to the general population; merchants and soldiers, feudal chieftains and civil powers all bent the knee to Rome. It was an aristocracy of no mean political sagacity; it built probably the most marvellous and powerful organization which the world has ever known.'

misconceived, but it also cuts us off from conscious recourse to Plato's nourishing wisdom, of which our troubled and directionless age is sorely in need. Fortunately, the Platonic virtues will not be denied: unacknowledged for the most part, they are, to a greater or lesser extent, at work in many living constitutions of today, even though those constitutions are far removed from the Platonic ideal.

I shall examine Platonic temperance as it is portrayed in the *Republic*<sup>4</sup> and the *Laws*.<sup>5</sup> But first, something must be said about Platonic virtue in general. Plato emphasises that virtue can never originate in the state: all of the cardinal virtues, including temperance<sup>6</sup>, originate in the individual and from the individual they pass into the fabric of the state. It follows that if the virtue of temperance is to grace the public life of the state, that virtue must through proper education be inculcated in the citizens from their earliest years.<sup>7</sup> It is therefore not surprising to find that the first two books of the *Laws* are given over almost entirely to the subject of education. The aim of all education (and of all legislation) is to produce a society characterised by temperance, both in its citizens and in its forms of government.<sup>8</sup> In this article, the focus will be on the public sphere of the state rather than on the private sphere of the individual citizen.

The English word 'temperance' can hardly be said to have had a good press. It has a disarming sound to it which makes it appear a lightweight in the midst of the other cardinal virtues. A common meaning of temperance, and a very limited one, is abstinence from alcoholic drinks.<sup>9</sup> This carries with it associations of Victorian prudery and strait-laced stuffiness. Even its broader sense of self-

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<sup>4</sup> Unless otherwise stated, I rely on the translation of the *Republic* in F M Cornford *The Republic of Plato* (1941) ('Cornford').

<sup>5</sup> See also Domanski 'Platonic Influence in the South African Constitution', due for publication in *THRHR* in 2003 ('Domanski 1'). Unless otherwise stated, I rely on the translation of the *Laws* in Trevor J Saunders *Plato: The Laws* (1970).

<sup>6</sup> See, for example, *Republic* 435e.

<sup>7</sup> As will appear later, temperance in this context means 'self-restraint' or 'self-control'.

<sup>8</sup> No less elevated is the position accorded to temperance in the Aristotelian *corpus*: it is the element common to all the virtues, by reason of which we call them virtues. Aristotle's theory, that all virtues are means or 'middles' lying between two extremes, is typical of the Greek instinct for moderation (*Nicomachean Ethics* 1106b16-27).

<sup>9</sup> For a discussion of temperance in this, its shallowest and most primitive sense, see A E Taylor *Plato: the man and his work* (1926) ('Taylor') 467-469.

restraint in one's conduct confines its scope to the individual.<sup>10</sup> Both these meanings of temperance, as we shall see, fall within the ambit of the Platonic notion. Yet both are narrower by far than *sōphrosynē*, the Greek word which Plato uses to denote this virtue in the *Republic* and the *Laws*.<sup>11</sup> Platonic temperance embraces the state as well as the individual, the whole as well as the parts; it has a vast sweep by comparison with two of the other cardinal virtues, wisdom and courage. These make the state wise and brave by residing each in one particular part of it. But temperance, where it is present, extends throughout the whole gamut of the state.<sup>12</sup> In the *Laws*, this virtue overshadows even justice.<sup>13</sup>

What, then, is Plato's notion of temperance? What is its relation to law in general, and to the constitution in particular? The descriptions given in the *Republic* include 'some sort of concord or harmony', 'a kind of orderliness', and 'a control of certain pleasures

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<sup>10</sup> Consider the Latin etymology. The meanings given for *temperantia* in Lewis and Short *A Latin Dictionary* (1879) include moderation, sobriety and discreetness.

A most significant shift in meaning of the English word 'temperance' took place between the 14<sup>th</sup> and 16<sup>th</sup> centuries. According to the *Oxford Dictionary of English Etymology* (1966), temperance signified self-restraint or moderation in the 14<sup>th</sup> century. By the 16<sup>th</sup> century, the meaning had narrowed considerably, with the emphasis now placed on moderation in food and drink. The primary entry in the *Shorter Oxford English Dictionary* 3 ed Revised (1956) reads: 'The practice or habit of retraining oneself in provocation, passion, desire etc; rational self-restraint. (One of the four cardinal virtues)'. Plato would have found little to quibble about here, save for one crucial feature shared by almost all modern definitions: the confinement of temperance to the realm of the individual. The *Illustrated London News* edition of Funk & Wagnall's *Standard Dictionary of the English Language* (1901) affords another example of this feature. Temperance is here defined in the first instance as '... the spirit and practice of rational self-control; habitual moderation'. Nowhere in these definitions is temperance understood as a public virtue, that is as a quality of the state.

<sup>11</sup> Plato's fullest treatment of the notion and definition of temperance occurs in his dialogue *Charmides*. There, however, *sōphrosynē* in the sense of self-control, is treated entirely at the level of the individual. This dialogue is therefore of little use in the present context, which is, for the most part, that of the state.

<sup>12</sup> *Republic* 431-432a.

<sup>13</sup> Cornford 120. Yet in Plato's unitary notion of virtue, temperance and justice are inseparable parts of a single whole. Thus the ideal statesman 'will constantly be applying his intelligence to find ways for justice, self-control and goodness in all its manifestations to enter his fellow-citizens' minds, and for injustice, self-indulgence and baseness in all its manifestations to leave': *Gorgias* 504d transl. Waterfield.

and appetites'.<sup>14</sup> In the ideal state, the effect of temperance is that the multifarious appetites and pleasures and pains of the multitude are controlled by the wisdom of the rulers.<sup>15</sup>

Temperance as portrayed here would hold little appeal for modern democrats, who would dismiss it as paternalistic and as calculated to entrench inequality in the state. Plato, however, proceeds to give a definition which is considerably more attuned to modern political and constitutional thinking. Temperance, according to this definition, is a unanimity or a harmonious agreement between the governors and the governed on the question of which of the two ought to rule.<sup>16</sup> This definition presupposes that temperance resides in both classes of citizens, the governors and the governed: it extends, therefore, throughout the whole gamut of the state, producing a consonance of all its elements from the weakest to the strongest.<sup>17</sup> Implicit in this definition is a recognition of the vital principle of freedom, that is, of government with the consent of the governed.<sup>18</sup> This principle is, of course, implemented under the present political dispensation in South Africa.

I turn now from the *Republic* to examine Plato's treatment of temperance in the *Laws*. The contrast between these dialogues is dramatic: whereas the former postulates an ideal state ruled directly by moral philosophers, the latter depicts a society permeated by the rule of law. In the *Laws*, immutable laws control most aspects of public and private life, from civil and legal administration to marriage, religion and sport. And, just as justice is the life-blood of the *Republic*, so temperance is that of the *Laws*. In the *Republic*, Plato does little more than define temperance, whereas the *Laws* presents a detailed picture of the subtlety, richness and vitality of this

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<sup>14</sup> *Republic* 430e. Examples of temperance in the last-mentioned form of self-restraint are not far to seek, even at the level of government. In this country, for example, government spending has been successfully contained in recent years by the application of fiscal discipline.

<sup>15</sup> *Republic* 431c-d.

<sup>16</sup> *Republic* 431d-e. For a discussion of the traditional Chinese concept of *li*, which bears a remarkable resemblance to Platonic temperance and justice, see S P Sinha *Jurisprudence: Legal Philosophy in a Nutshell* (1993), and Geoffrey McCormack *The Spirit of Traditional Chinese Law* (1996) *passim*. For example of the influence of Platonic temperance on Western medieval political thought, see Murray F Markland ed *John of Salisbury: Policraticus* (1979) bk IV *passim*.

<sup>17</sup> *Republic* 432a.

<sup>18</sup> Cornford 125.

quality.<sup>19</sup> *Sōphrosynē* features here in all its manifold meanings, which are nevertheless cognate: they include restraint, moderation, order, equilibrium, harmony, measure, self-control and balance. We shall encounter all of these meanings below. Not surprisingly, therefore, it is with the *Laws* that the bulk of this article is concerned.

In Plato's hierarchy of benefits and values in legislation,<sup>20</sup> temperance ranks highly. It is described in relation to the individual as the habitual self-control of a soul that uses reason. This brings out two key features of this virtue. First, like the other virtues, it is under the dominion of and entirely dependent on reason, which is supreme. Thus any temperate action is also reasonable. Secondly, temperance, in the form of self-control, is habitual when reason rules the soul. Reason, then, is fundamental to any consideration of temperance.<sup>21</sup>

Reason in the state is embodied and made manifest in the common law, the body of judgments handed down by the courts. The development of the common law is driven by the doctrine of *stare decisis*. The common law, the repository of reason in the state, exerts a moderating, restraining and refining influence on the legal system. It has, therefore, a vital part to play, even under a constitutional dispensation. The South African Constitution contains provisions which allow the common law to make its influence felt in the constitutional arena.<sup>22</sup> In provisions such as these, the operation of Platonic temperance, under the sovereignty of reason, is clearly discernible.

Where the citizens lack temperance founded on reason, both the individual and the state are doomed to ultimate failure.<sup>23</sup> The lesson for the lawgiver is that he must strive to instil self-control and inner harmony in the citizens from their earliest years. Even the best political institutions are doomed to failure if the citizens lack *sōphrosynē*.<sup>24</sup>

The lawgiver's duty is to supervise and organize the entire life of the state. This goes well beyond regulating the conduct of the

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<sup>19</sup> There are writers who claim that this dialogue shows Plato in decline, beset by the crabbed attitudes of old age. Durant (at 47), for example, speaks of the 'disillusioned conservatism' of the *Laws*. But to discard the wealth of wisdom contained in the *Laws* on such shallow grounds would be foolish in the extreme.

<sup>20</sup> *Laws* 631b-e. See also Domanski 1 *passim*.

<sup>21</sup> The relation of temperance to reason is graphically depicted in Plato's famous image of the golden cord of reason: *Laws* 644d-645b.

<sup>22</sup> Sections 39(2) and 39(3) of the *Constitution of the Republic of South Africa Act 108 of 1996* ('The Constitution').

<sup>23</sup> *Laws* 689d-e.

<sup>24</sup> *Laws* 693b-c.

citizens in the external world. The lawgiver must acquaint himself with the pains, pleasures, desires, passions and emotional disturbances of the citizens. He must use the laws themselves as instruments for the proper distribution of praise and blame. He must supervise the way the citizens acquire money and spend it; he must keep a sharp eye on the various methods they use to make and dissolve (voluntarily or under duress) their associations with one another, noting which methods are proper and which are not. Honours are to be conferred upon those who comply with the laws, and specified penalties imposed on the disobedient. All his regulations must be welded into a rational whole, demonstrably inspired by considerations of justice and self-restraint, not of wealth and ambition.<sup>25</sup>

The duties of the legislator to harmonize the rules of the legal system into a coherent whole, and to use the laws as instruments for allocating praise and blame, rewards and punishments, are founded on the ordering and balancing functions of temperance.

But does Plato not demand too high a level of social involvement and intervention on the part of the legislator? Is there not here a tendency to over-legislate, which would ironically violate Platonic temperance? Does not the code built up in such painstaking detail by Plato in the *Laws* far exceed the simple demands of the rule of Law? Does an ideal state really need so many laws? One mark of temperance or self-control in a legislator would be the strength to resist the urge to over-legislate. Plato's legislator appears to succumb to this urge. He is not alone, for in modern states we find an endlessly growing body of national, provincial and municipal legislation. It becomes increasingly difficult for legal practitioners, let alone lay citizens, to navigate through this intricate maze of legislation in order to discover exactly what the law requires in a particular case. This lack of self-restraint on the part of a legislator, especially when coupled with inadequate law enforcement, tends inevitably to diminish the ordinary citizen's respect for the law. It follows that temperance has a vital role to play in the field of legislation.<sup>26</sup>

Other aspects of the legislator's work must likewise be governed by temperance if the state is to prosper. Consider, for example, the not uncommon scenario of a country in which the political rivalry between the rulers and their opponents poses a threat of conflict, perhaps even of what Plato considers to be the

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<sup>25</sup> *Laws* 631e-632c.

<sup>26</sup> See Tracy-Lynn Field 'Some groundwork towards a South African theory of legislation' *SA Public Law* 17 (2002) 22..

greatest of public evils, namely civil war. How ought government to deal with a volatile and dangerous situation of this nature, of which the South Africa of the early 1990's was an obvious example? Plato's answer<sup>27</sup> is that the legislator who seeks the victory of one contending party over another is not a true legislator. The best legislator is rather he who reconciles political rivals without killing any of the quarrelling citizens. By laying down regulations to guide them in the future, he will be able to ensure that they remain on friendly terms with each other.<sup>28</sup>

Such a leader who brings harmony to the state, will take civil or internal strife more seriously than external war. Being a true legislator, he seeks the greatest good, which is peace and goodwill among men. His priority, therefore, in a situation of civil strife, will be to restore the state to unity as quickly as possible. He will not wish to see peace achieved through the barrel of a gun, where one side may be destroyed through the victory of the other. Rather, he seeks to achieve peace and friendship as the product of reconciliation between contending sides.<sup>29</sup>

As Stalley puts it, therefore, the idea that the aim of legislation should be the victory of the better elements of the state is replaced in Plato by the ideal of harmony through law.<sup>30</sup> Platonic temperance, in the form of moderation, balance, restraint and harmony, lies at the heart of the true legislator's work.<sup>31</sup>

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<sup>27</sup> *Laws* 627c-628e.

<sup>28</sup> The South African Constitutions of 1993 and 1996 come strongly to mind here. So too does later South African legislation providing for the establishment of the Truth and Reconciliation Commission. These statutes and others are all fruits of Platonic temperance in the form of self-restraint and moderation.

<sup>29</sup> This passage accurately describes the work of F W de Klerk and Nelson Mandela, two distinguished South African practitioners of Platonic temperance in recent times. See also Plato's description of the true statesman in *Laws* 711e-712a: the hallmarks of such a leader are wise judgement and self-restraint.

<sup>30</sup> R F Stalley *An Introduction to Plato's Laws* (1983) ('Stalley') 55.

<sup>31</sup> If civil war is to be avoided, says Plato (*Laws* 744d), temperance must also inform the work of the legislator in the economic sphere:

'We maintain that if a state is to avoid the greatest plague of all — I mean civil war, though civil disintegration would be a better term — extreme poverty and wealth must not be allowed to arise in any section of the citizen-body, because both lead to both these disasters. That is why the legislator must now announce acceptable limits of wealth and poverty.'

This call for manipulation of the economy, though founded on moderation and balance, runs strongly counter to capitalist liberal thinking.



Plato in the *Laws* does not hide his admiration for Sparta, conqueror of Athens in the Peloponnesian War. He turns to Spartan constitutional history<sup>32</sup> in order to show that without concord between reason and the emotions in the individual, and between rulers and ruled in the state, political chaos and disintegration must follow. The worst kind of discord in a state occurs where the people disobey their rulers and laws.<sup>33</sup>

Plato relates how the kings of Sparta, Argos and Messene, all newly-founded states and members of the Dorian League, swore never to stiffen their rule as time went by. Their subjects in turn undertook, provided the rulers kept their side of the bargain, never themselves to overthrow the kingships nor tolerate any attempt by others to do so.<sup>34</sup>

This compact between rulers and subjects, in which we discern the roots of the social contract,<sup>35</sup> plainly embodied Platonic temperance as it was defined earlier.<sup>36</sup> Given such an auspicious beginning, one would hardly have expected this foundation and its legislation to end in dismal failure: three states were founded, but in two of them, Argos and Messene, the political system and the legal code were quickly corrupted. Only the third settlement, that of Sparta, survived.<sup>37</sup> For Plato, the cause of the destruction of Argos and Messene was crass ignorance and folly on the part of their kings, who were infected by greed in defiance of the law of the land, and of the oaths they had sworn to their subjects.<sup>38</sup> This lack of harmony put the whole arrangement jarringly off key and out of tune: hence its destruction.<sup>39</sup> The result of their folly was that the people were no longer willing to obey their rulers or the laws. Plato holds that when a monarchy is overthrown (and indeed when any other kind of authority is destroyed at any time), no one but the rulers themselves are to blame.<sup>40</sup> In the case of the Dorian League it was intemperate conduct, in violation of their compact with their subjects, that caused the downfall of the kings of Argos and Messene.

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<sup>32</sup> *Laws* 689d-e.

<sup>33</sup> *Laws* 689c.

<sup>34</sup> *Laws* 684b. Plato's account may be apocryphal. If it is, that fact in no way detracts from the force of his conclusions.

<sup>35</sup> Plato, the originator of this notion, addresses it directly and develops it in the *Crito*. See Domanski 'The address of the laws of Athens in Plato's *Crito*' ('Domanski 2') *passim*.

<sup>36</sup> *Republic* 431d-e: see note 16 and text thereto.

<sup>37</sup> *Laws* 685a.

<sup>38</sup> *Laws* 688e-689c.

<sup>39</sup> *Laws* 691a.

<sup>40</sup> *Laws* 683e.

Why, then did Sparta survive without sharing the fate of her partners in the League? Plato opens the debate on this question with a vivid description of temperance in the form of measure or balance.<sup>41</sup>

If you neglect the rule of proportion and fit excessively large sails to small ships, or give too much food to a small body, or too high authority to a soul that doesn't measure up to it, the result is always disastrous. Body and soul become puffed up: disease breaks out in the one and, in the other, arrogance quickly leads to injustice .... The mortal soul simply does not exist ....., which by dint of its natural qualities will ever make a success of supreme authority among men while it is still young and responsible to no-one. Full of folly, the worst of diseases, it inevitably has its judgment corrupted, and incurs the enmity of its closest friends; and once that happens, its total ruin and the loss of all its power soon follow. A first-class lawgiver's job is to have a sense of proportion and to guard against this danger.

The final sentence of this passage points to what happened in the case of Sparta. In what may well be the earliest account of the doctrine of separation of powers in Western literature, Plato examines the workings of the Spartan constitution.<sup>42</sup> First, the single line of kings was replaced by a dual kingship, so as to restrict its powers to more reasonable proportions.<sup>43</sup> Secondly, the obstinacy and vigour of the Spartans were tempered by the prudent influence of age: twenty-eight elders were given the same authority in making important decisions as the kings.<sup>44</sup> Thirdly, the restless energy of the government was further bridled by the power of the ephors: these were five annually elected officials who, in addition to wide executive and judicial powers, exercised close control over the conduct of the kings.<sup>45</sup> Thus each element in the Spartan constitution acted as a check or restraint on the others. This is the formula that, in Plato's view, turned the Spartan kingship into a blend of the right elements and ensured the stability of the state. It is this division of powers,

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<sup>41</sup> *Laws* 691 c-e.

<sup>42</sup> *Laws* 691e.

<sup>43</sup> Compare the analogous transition in Rome in 509BC from a monarchy to a dual consulship.

<sup>44</sup> Compare the analogous (though not identical) role of the Senate in the Roman Republic.

<sup>45</sup> *Laws* 692a.

founded on temperance in the form of balance and proportion, that secured the survival of Sparta while her partner states were disintegrating.<sup>46</sup> The legislators of Argos and Messene lacked experience and judgment: their fatal mistake was to rely on oaths to restrain the soul of a young king who had assumed so much unbridled power that the prospect of a tyranny could never be ruled out.<sup>47</sup>

Plato's conclusion on this topic is that legislation providing for powerful or extreme authority is a mistake.<sup>48</sup> A state ought to be free and wise and enjoy internal harmony, and this is what the lawgiver must aim at in his legislation.<sup>49</sup>

There are, according to Plato, two mother-constitutions, which have given birth to all the others.<sup>50</sup> These two are monarchy and democracy. The former was taken to extremes by the Persian monarchs Cambyses and Xerxes, whose demise was the result of their unbridled power, lust for pleasure and unduly repressive regimes. The corruption of the Persians increased year-by-year, because the authoritarian rulers deprived the people of liberty.<sup>51</sup> As a result, they destroyed all friendship and community of spirit in the state. Once those are gone, the policy of rulers is framed not in the interests of their subjects, but to buttress their own authority.

Democracy, in contrast, was taken to extremes by the rulers of Athens. An excess of liberty was the cause of the corruption and collapse of Athenian democracy. The Athenian experience showed, in Stalley's view, that liberty without authority is vastly inferior to a moderate form of control.<sup>52</sup> The same writer points out that the

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<sup>46</sup> Much the same can be said of the part played by the Republican Constitution in ensuring the survival of Rome and her emergence as the dominant power in Italy: see Domanski 1 note 100. These analogies between Sparta and Rome are most striking and are worthy of close comparative study. Are there not similar analogies between these and other ancient constitutions?

<sup>47</sup> *Laws* 692b.

<sup>48</sup> *Laws* 693b-c.

<sup>49</sup> For practical examples of the operation of Platonic temperance in the South African Constitution, see Domanski 1 text to notes 100-122. According to Stalley (at 56): 'The idea that moderation can be secured through a constitution in which different elements act as a check on one another is of immense historical importance. It is, perhaps, the major contribution of the *Laws* to political theory.'

<sup>50</sup> *Laws* 693d.

<sup>51</sup> *Laws* 697d.

<sup>52</sup> Stalley 76.

Athenians prospered for as long as they obeyed their laws and declined when they abandoned them.<sup>53</sup>

It is absolutely vital, says Plato, for a political system to combine monarchy and democracy, so as to achieve a balance between them, if the state is to enjoy freedom, unity and wisdom.<sup>54</sup> Here Plato gives perhaps the earliest formulation of a mixed constitution in Western political and legal thought. Such a constitution is an expression of temperance in the form of balance and moderation. By the same token, self-restraint is an indispensable attribute of a true ruler: in its absence, he is disqualified from a appointment to exalted political office, even if he possesses all other virtues.<sup>55</sup> Temperance in the form of self-control on the part of the rulers is therefore essential to the well-being, stability and peace of the state.<sup>56</sup> Thus when government combines restraint with liberty, moderate authoritarianism with moderate freedom, the result is tremendous progress.<sup>57</sup>

How then is the ideal of a proper balance between monarchy and democracy to be achieved? The answer, surely, is to be found in the separation of powers in the state: the Spartan constitution, discussed earlier, embodied this vital feature, which enabled it to survive the demise of the Dorian League.<sup>58</sup>

There are commentators, however, who would deny that Plato's model of the temperate state is capable of realization in practice. Consider, for example, this view:<sup>59</sup>

[One] can think of musical harmonies both as midpoints between extremes, and as reconciling conflicting elements. One may be able to apply such notions to

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<sup>53</sup> Stalley 80.

<sup>54</sup> *Laws* 693d-e. Here Plato is, of course, speaking of the real world, not of some ideal state.

<sup>55</sup> *Laws* 696b-c.

<sup>56</sup> *Laws* 696e, 697b-c. Stalley (at 56) puts it thus: 'We possess *sôphrosynê* if reason governs our passions and keeps us in the way of moderation. Understood in this wide sense, *sôphrosynê* is the *raison d'être* of the social and educational institutions described in the later books [of the *Laws*]: Plato has much to say about the formative influence of temperance on the make-up of the true political leader. He says (*Laws* 762d-e): 'No-one will ever make a commendable master without having been a servant first; one should be proud, not so much of ruling as of serving well — and serving the laws, above all'. The balance struck here between serving and ruling is a fine example of Platonic temperance in operation.

<sup>57</sup> *Laws* 701e.

<sup>58</sup> Plato's remarks in *Laws* 712e-713a show that he regards the Spartan constitution as a living embodiment of temperance at the political level.

<sup>59</sup> Stalley 79.

health, since health does depend on maintaining the right temperature and the right ratios among the chemical constituents of one's body. But they offer no guidance when applied to the soul or to political systems. No doubt the virtue and well-being of a state depend on the acceptance of some form of law and order, but forms of political order cannot be expressed in numerical ratios, and in any case there is no one form of order which is objectively right, laid down in the nature of things. Thus in politics and ethics, the doctrine of measure lacks the scientific status it has elsewhere.

This argument is shot through with the secular mindset which bedevils too much modern scholarly writing on Plato's dialogues. That mindset is incapable of comprehending texts which are in essence spiritual; it can appreciate the operation of a quality like temperance at a crude, mathematically measurable, physical level, but not at higher, more subtle levels. Indeed, it denies the very existence of these higher levels, which it dismisses as 'unscientific.' This poisonous, relativistic mindset denies the absolute, objective validity of Plato's value system.<sup>60</sup>

Platonic temperance cannot be measured (and thus confined) with slide rule or calculator, but it is nevertheless real. With its foundation in reason, it is specifically applicable to the soul and to political systems alike, irrespective of time, place and circumstances. Thus the fruits of Platonic temperance, such as the notions of separation of powers, the mixed constitution, and the rule of law (to be discussed below), have all stood the test of time and remain indispensable features of modern constitutional jurisprudence, although their Platonic origin is seldom acknowledged.

I turn now to consider one of the finest fruits of Plato's genius: the notion of the rule of law. Increasingly under threat today in Southern Africa and elsewhere, the rule of law implies limitations on legislative power, safeguards against abuse of executive power, and equality before the law. It means more than that government maintains and enforces law and order, but that government is, itself,

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<sup>60</sup> To the extent that this widespread outlook of moral relativism undermines our trust in the reality of absolute truth, it is responsible for contemporary human insecurity and misery.

subject to rules of law and cannot itself disregard the law.<sup>61</sup> It means the supremacy of regular as opposed to arbitrary power.<sup>62</sup>

These are modern formulations of the idea. For Plato, *sōphrosynē*, whether it takes the form of self-control under the dominion of reason in the individual, or the rule of law in the state, is simply temperance, albeit in different guises. So too is each of the other Platonic virtues an indivisible whole, whether it operates in the individual or in the state. Here is the key passage in which Plato sets forth the rationale of the rule of Law:<sup>63</sup>

'It is vital that men should lay down laws for themselves and live in obedience to them, otherwise they will be indistinguishable from wild animals of the utmost savagery. The reason is this: no man has sufficient natural gifts *both* to discern what benefits men in their social relationships *and* to be constantly ready and able to put his knowledge to the best practical use. The first difficulty is to realize that the proper object of true political skill is not the interest of private individuals but the common good. This is what knits a state together, whereas private interests make it disintegrate. If the public interest is well served rather than the private, then the individual and the community alike are benefited. The second difficulty is that even if a man did get an adequate theoretical grasp of the truth of all this, he might then attain a position of absolute control over a state, with no one to call him to account. In these circumstances he would never have the courage of his convictions; he would never devote his life to promoting the welfare of the community as his first concern, making his private interests take second place to the public good. His human nature will always drive him to look to his own advantage and the lining of his own pocket. An irrational avoidance of pain and pursuit of pleasure will dominate his character, so that he will prefer these two aims to better and more righteous paths. Blindness, self-imposed, will ultimately lead the man's whole being, and the entire state, into a morass of evil. But if ever by the grace of God some natural genius were born, and then had the chance to assume such power, he would have no need of laws to control him. Knowledge is unsurpassed by any law or regulation; reason, if it is genuine and really enjoys its natural freedom, should have universal power: it is not right that it should be under the control of anything else, as though it were some sort of slave. But as it is, such a character is nowhere to be found, except a hint of it here and there. That is why we need to choose the second alternative, law and

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<sup>61</sup> David M Walker *The Oxford Companion to Law* (1980) 1093.

<sup>62</sup> *Black's Law Dictionary* 7ed (1999) 1332.

<sup>63</sup> *Laws* 874e-875d.

regulation, which embody general principles, but cannot provide for every individual case.'

It is therefore through the agency of the rule of law in the state that temperance or restraint is brought into our public life. There is no alternative, because we have few leaders in whom true knowledge and genuine reason ensure that they will at all times promote the common good at the expense of their private, individual interests. Had we such living embodiments of self-restraint for our leaders, we could safely dispense with the rule of law in the state. In the real world, however, the rule of law is indispensable. In Plato's words:<sup>64</sup>

Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.

A state may be said to be governed in accordance with law if the government recognises the rule of law, that is, the government acts in accordance with general rules; these rules apply to all alike and are made public in some way; and disputes are settled by some non-arbitrary procedure. Observance of the rule of law, understood in this sense, certainly restrains government and may prevent some of the worst injustices. But if the government can change the laws at will, it can hardly be said to be the servant of the laws.<sup>65</sup> Plato sees clearly that talk of the supremacy of law then becomes meaningless, and he devotes considerable attention to the need to build into the laws a resistance to being reversed or overthrown.<sup>66</sup>

The influence of Platonic temperance on constitutional theory is not exhausted by the important examples discussed up to this point. A small sample of additional examples remains to be considered.

Attention is given in the *Laws* to the important relation between custom and law.<sup>67</sup> Unwritten ancestral customs are said to be the bonds of the entire social framework, linking all written and established laws with those yet to be passed. Ancestral customs

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<sup>64</sup> *Laws* 715d.

<sup>65</sup> *Stalley* 81.

<sup>66</sup> See, on this problem and on the Nocturnal Council (the organ of Plato's model state responsible for protecting the laws against repeal), *Laws* 960d and 962c.

<sup>67</sup> *Laws* 793b-d.

dating from time immemorial, by virtue of being soundly established and instinctively observed, shield and protect existing law. Customs, as much as laws, are needed to bind a state together, and the permanence of the one kind of norm depends on that of the other. Therefore, says Plato, 'we ought not to be surprised to see a flood of apparently unimportant customs or usages making our legal code a bit on the long side'.<sup>68</sup> In this context, temperance acts to bolster, strengthen and support the law through the agency of custom and tradition.<sup>69</sup>

Temperance also plays a key role in what Plato regards as the correct way to legislate,<sup>70</sup> which is to combine persuasion, on the one hand, with compulsion and chastisement on the other.<sup>71</sup> A law combining compulsion and persuasion is twice as valuable for practical purposes as a law administering compulsion neat. Most legislators, according to Plato, never mix in persuasion with force when they brew their laws, but administer compulsion neat.<sup>72</sup> What are the means by which this combination is to be achieved in practice? The legislator must see to it that the rules of positive law (the compulsive element) are always supplied with preambles (the persuasive element). The rationale is that those to whom his law is addressed will then accept his commands in a more co-operative frame of mind and with a correspondingly greater readiness to learn, than would otherwise be the case.<sup>73</sup> Platonic temperance features here as the element which strikes the balance between compulsion and persuasion in lawmaking. Through its agency, the legislator averts the dangers of rigidity and paternalism.

What if a government official proves so inadequate to the dignity and weight of his office that he behaves less than honestly? Who will be capable of making a person like that go straight again? It is 'desperately difficult', says Plato,<sup>74</sup> to find someone of high moral standards to exercise authority over the authorities, but try we must. His remedy is to create the office of Scrutineer, which he regards as the single most crucial factor determining whether a state survives or disintegrates. The Scrutineers act as ethical watchdogs over

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<sup>68</sup> *Laws* 793d.

<sup>69</sup> The role of custom is recognized in section 39(3) of the South African Constitution..

<sup>70</sup> *Laws* 718a-723d *passim*

<sup>71</sup> *Laws* 718b.

<sup>72</sup> *Laws* 722b.

<sup>73</sup> *Laws* 723a-b. However, Plato adds (at 723c-d) that it would be wrong to demand that both major laws and minor rules should invariably be headed by a preamble.

<sup>74</sup> *Laws* 945b-e.



government. If they are of higher moral calibre than the officials they scrutinize, and display irreproachable impartiality and integrity, the entire state and country flourishes and prospers.<sup>75</sup> This restraining function of the Scrutineers is a key element in a constitutional system of checks and balances, and a prime example of Platonic temperance in operation.

As a final example of Platonic temperance, consider the role of the judge as it is portrayed in the *Laws*:<sup>76</sup> no judge shall hold court without being liable to be called to account for his actions. The accountability of judges, a matter on which Plato does not elaborate in depth is an important restraint on judicial conduct.<sup>77</sup>

The ineluctable conclusion is that every sound constitution must, consciously or unconsciously, be founded on Platonic temperance. For the most part, this foundation has gone unrecognised and unacknowledged through the centuries. This article has sought to do no more than to shed light on what may previously have been overlooked or ignored.

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<sup>75</sup> *Ibid.* The closest counterpart to the Scrutineer in the South African Constitution is the Public Protector: see section 182 of the Constitution.

<sup>76</sup> *Laws* 761e.

<sup>77</sup> Holding judges accountable is, however, not without its dangers, for it may open the door to political interference in the judicial sphere.