

Law's Measure: Aischines 3.199–200

In 330 BC, arguing against Ktesiphon's decree to honor Demosthenes, Aischines posed a puzzling analogy to describe the jury's decision: he pointed to the "little plank" (*σανίδιον*) that presented the decree alongside the laws that it violated, and he told the judges to use it as they would use a κανῶν in "construction" (*τεκτονική*); then he challenged Ktesiphon to read out those parallel texts and show that they are "consonant" (*συμφωνοῦντα*). Lykourgos used a similar device in his case against Leokrates (9). For explication, scholars sometimes invoke a commonplace of modern jurisprudence in the US: the court's decision in ruling a law invalid is simply a matter of laying the statute alongside the Constitution, to see if it "squares" (Gagarin 2014: 27–8). But that T-square method does not fit the ancient argument.

After all, Aischines' "plank" or *sanis* has a set of parallel texts, the targeted decree alongside the laws that contradict it: the *kanōn* he had in mind is not simply a straight-edge but a board or stele with material extending in two dimensions. We can reconstruct it from inscriptions (e.g., *IG i³ 474 and 475*) and a few extant fragments such as the "Salamis Stone" (first published, Dekoulakou-Sideris 1990): a worksite template including a straight ruler (a κανῶν in the strict sense) along with standard figures for the foot, cubit, and fathom. It was probably that familiar device that inspired Polykleitos to title his treatise on the human figure the *Kanōn*.

On this model Aischines' argument makes better sense. After all, in 330 the first count of the indictment, against crowning-before-accounting, had lost its edge. Instead Aischines had to portray Demosthenes as the author of Athenian defeat, a figure at odds with "all the laws" governing public honors—all those listed on his *σανίδιον*.

Edwin Carawan, CAC 2019, Hamilton ON

Mesure de la loi : Eschine 3.199–200

En 330 av. J.C., s'opposant au décret de Ctésiphon pour honorer Démosthène, Eschine fait une analogie déconcertante pour décrire la décision du tribunal : il montre la "planchette" (*σανίδιον*) qui présente le décret à côté des lois qu'il viole, et il dit aux juges de l'utiliser comme un κανῶν dans la "construction" (*τεκτονική*) ; puis il défie Ctésiphon de lire ces textes parallèles et d'en prouver qu'ils soient "en concordance" (*συμφωνοῦντα*). Lycurgue a utilisé un dispositif similaire dans son procès contre Léocrate (9). Pour l'expliquer, les érudits invoquent parfois un lieu commun de la jurisprudence moderne aux États-Unis : la décision du tribunal de déclarer une loi invalide est simplement une question de poser la loi à côté de la Constitution, pour voir si elle cadre (Gagarin 2014 : 27–8) avec cette dernière. Mais cette méthode de «l'équerre en té» ne correspond pas à l'ancien argument.

Après tout, la "planche" ou *sanis* d'Eschine a un ensemble de textes parallèles, le décret ciblé à côté des lois qui le contredisaient : le *kanōn* qu'il avait en tête n'était pas simplement une planche droite mais une planche ou une stèle dont le matériau s'étendait en deux dimensions. On peut le reconstituer à partir d'inscriptions (e.g., *IG i³ 474 and 475*) et de quelques fragments existants comme la "Pierre de Salamine" (première publication, Dekoulakou-Sideris 1990) : un étalon pour les chantiers comprenant une règle droite (un κανῶν au sens strict) et de figures standard pour le pied, la coudée, la brasse. C'est probablement cet appareil familier qui a inspiré Polyclète à intituler son traité sur la figure humaine *Kanōn*.

Sur ce modèle, l'argument d'Eschine est plus logique. Après tout, en 330, le premier chef d'accusation, contre le couronnement-avant-comptabilisation, avait perdu de son acuité. Au lieu de cela, Eschine a dû dépeindre Démosthène comme l'auteur de la défaite athénienne, une figure en contradiction avec "toutes les lois" régissant les honneurs publics – toutes celles énumérées sur son *σανίδιον*. [tra. Susana Seba Higby]

Aischines 3.199ff: Οὐ γὰρ ἀόριστον ἔστι τὸ δίκαιον, ἀλλ' ὡρισμένον τοῖς νόμοις τοῖς ὑμετέροις. Ὡσπερ γὰρ ἐν τῇ τεκτονικῇ, ὅταν εἰδέναι βουλώμεθα τὸ ὄρθον καὶ τὸ μή, τὸν κανόνα προσφέρομεν, φῶ διαγιγνώσκεται, (200) οὕτω καὶ ἐν ταῖς γραφαῖς ταῖς τῶν παρανόμων παράκειται κανὼν τοῦ δικαίου τούτη τὸ σανίδιον, τὸ ψήφισμα καὶ οἱ παραγεγραμμένοι νόμοι. Ταῦτα συμφωνοῦντα ἀλλήλοις ἐπιδείξας κατάβαινε· ... (201) Ἐπειδὴν προελθὼν ἐνταυθοῦ Κτησιφῶν διεξέλθῃ πρὸς ὑμᾶς τοῦτο δὴ τὸ συντεταγμένον αὐτῷ προοίμιον, ἔπειτ' ἐνδιατρίβῃ καὶ μὴ ἀπολογῆται, ὑπομνήσατ' αὐτὸν ἀθορύβως τὸ σανίδιον λαβεῖν καὶ τοὺς νόμους τῷ ψηφίσματι παραναγγῦναι. Ἐὰν δὲ μὴ προσποιῆται ὑμῶν ἀκούειν, μηδὲ ὑμεῖς ἐκείνου ἐθέλετε ἀκούειν.

Justice is not indefinite but defined by your laws: Just as in construction, when we want to know what is **right** and what is not, we apply a *kanōn* to decide it. (200) So, too, in *graphai paranomōn*, this *sanidion* is presented as a **canon of justice** (showing) the decree and the laws listed beside it. (So) show (us) that these are in **harmony** and (then) step down ...
 (201) When Ktesiphon comes forward and recites to you that prologue that was assigned to him, and carries on with no (proper) defense, remind him, politely, to take the *sanidion* and read the laws alongside his decree. And if he pretends not to hear you, refuse to hear him!

Le droit n'est point obscur, il est défini par vos lois. Quand il s'agit de constructions, pour connaître ce qui est droit et ce qui ne l'est pas, on applique la règle, qui permet de s'en assurer; (200) de même, das les procès en illégalité on dispose d'une règle de droit, c'est cette tablette qui porte inscrit le décret avec les lois en regard. Démontre que ces textes son d'accord, et quitte la tribune. ... (201) Lorsque Ctésiphon se présentera à cette tribune et vous débitera cet exorde qu'on a composé pour lui, puis s'engagera dans de longs développements étrangers à sa défense. rappelez-lui, sans éléver la voix, de prendre la tablette et de lire les lois et le décret pour les comparer. S'il fait semblant de ne pas vous entendre, refusez, vous aussi, de l'écouter.

Mock-up of the *sanis* as cited in Aischines' legal argument

Ktesiphon's decree as quoted and paraphrased <i>passim</i> : Demosthenes is to be crowned in the theatre at the Dionysia for exceptional service as wall-builder, paying the contribution for his tribe out of pocket, and because "he carries on saying and doing what is best for the polis."	15-16) general law regarding accountability, listing exhaustively offices accountable. 19) even trierarchs are accountable, though they receive no public funds ... 22) laws indicating that no one is exempt. 22-3) Law(s) describing <i>inter alia</i> how a man who received no money and spent none shall so report: "nothing in the city is unaccountable." 27-8) Demosthenes' decree of 337, for wall-builders chosen by tribes. 30-1) Laws that prescribe accounting for regular offices <i>and</i> those chosen by tribe, trittys, or deme to handle public moneys. 47-8) Laws read to substantiate rules against tribal, personal, or foreign honors in the theatre. 50) Against "falsehood" in the people's decrees (?)
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Supreme Court Justice Owen Roberts in *United States v. Butler*, issued early in 1936 (p. 297 US 62), invalidating the Agricultural Adjustment Act of 1933:

"When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch has only one duty—to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former."

Constitution of the United States ...	H.R. 3835, May 12, 1933: Be it enacted...
Article I. ... Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; [followed by a list of powers, none affecting domestic commerce or agriculture. §9 provides for regulation of interstate commerce.]	Title I—Agricultural Adjustment Declaration of Emergency That the present acute economic emergency being in part the consequence of a sever and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declare that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest , have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.



"The T-square rule was directed against scholars associated with the legal realism movement, who at the time were arguing that the tenets of legal positivism and judicial objectivism, which had dominated the court's thinking for more than half a century, served primarily to justify the justices' personal views regarding the sanctity of private property and free enterprise."

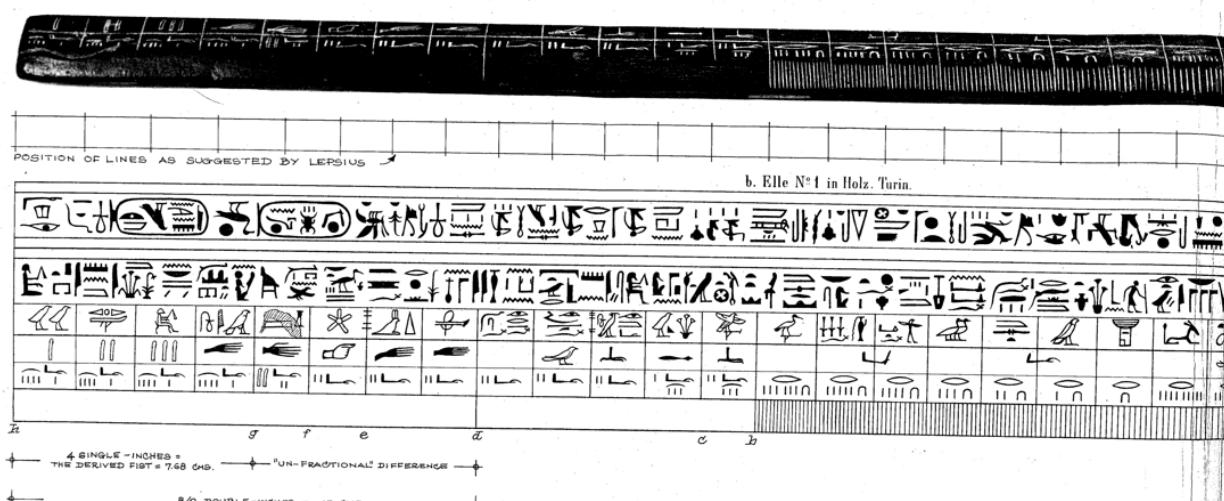
Michael Gagarin, "Eikos arguments," in V.Wohl ed. *Probabilities, Hypotheticals, and Counterfactuals* (2014) 28.

Lykourgos Against Leokrates 9: δεῖ γενέσθαι μὴ μόνον τοῦ νῦν ἀδικήματος δικαστάς, ἀλλὰ καὶ νομοθέτας· ὅσα μὲν γὰρ τῶν ἀδικημάτων νόμος τις διώρικε, ῥάδιον **τούτῳ κανόνι χρωμένονς** κολάζειν τοὺς παρανομοῦντας· ὅσα δὲ [μὴ] σφόδρα περιείληφεν ἐνī ὄνόματι προσαγορεύσας, μείζω δὲ τούτων τις ἡδίκηκεν, ἅπασι δ' ὁμοίως ἔνοχός ἐστιν, ἀναγκαῖον τὴν ὑμετέραν κρίσιν καταλείπεσθαι παράδειγμα τοῖς ἐπιγιγνομένοις

... ils vous faut être aujourd’hui, non seulement juges du crime, mais aussi législateurs. Pour les délits que la loi a qualifiés, il est facile, grâce à cette définition, de châtier les coupables; mais quand il s’agit de cas qui n’ont pas été spécifiés par une dénomination particulière, et quand un homme a commis des crimes qui les dépassent tous et qu’il est prévenu de tous à la fois, il est nécessaire que votre sentence passe avec force de loi à la postérité. (Durrbach transl. 1932)

You must serve not only as judges of the matter at hand but also as lawmakers. For whatever offenses a law has defined, it's easy to punish the offenders by **using (the statute) as a *kanōn*.** But certainly where (the law) has addressed (wrongs) collectively, by one name, and someone has done wrong greater than these (listed) and is guilty of them all alike, your judgment must remain as a precedent for those hereafter.

E. Lorenzen, *Technological Studies in Ancient Metrology* (Copenhagen 1966)



"A Metrological Relief from Salamis,"
I. Dekoulakou-Sideris
AJA 94 (1990) 445-51.

aka, the "Salamis Stone"

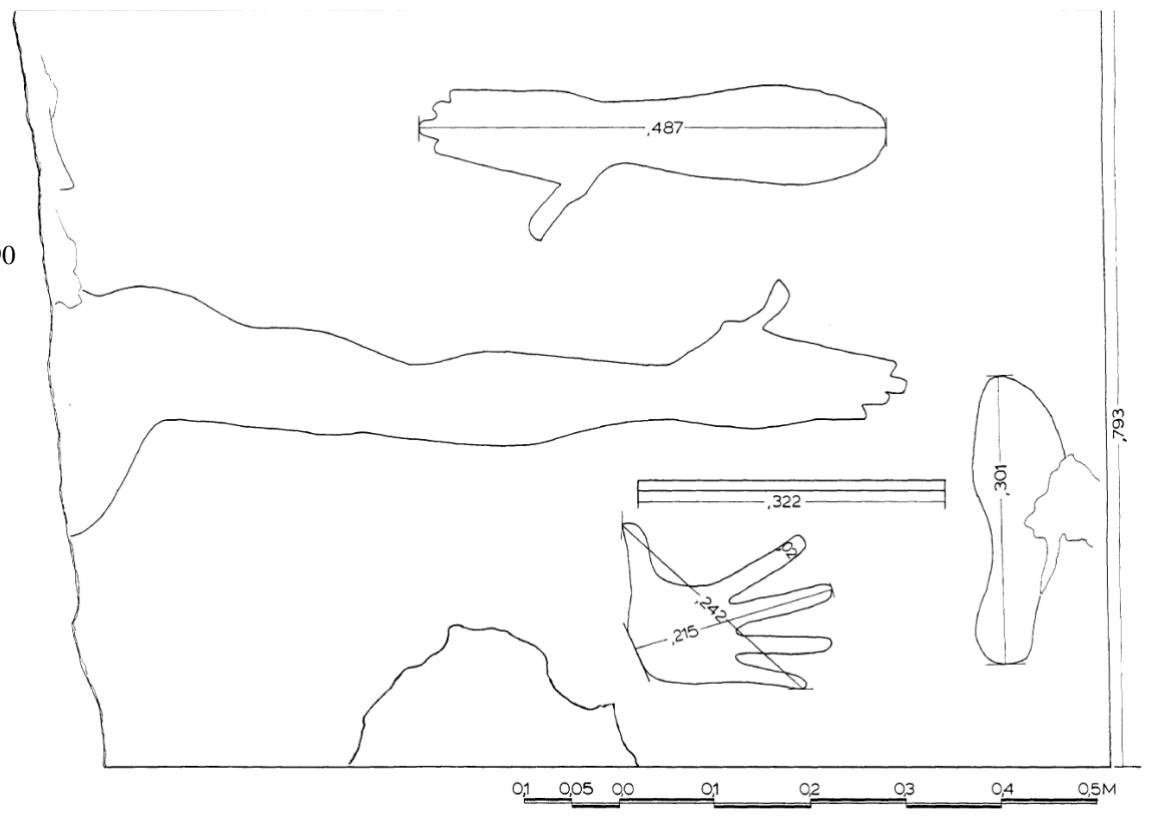


Fig. 2. The metrological relief found in the Chapel of St. Demetrios



Fig. 4. Metrological relief, Ashmolean Museum, Oxford

Measures on the
Salamis Stone, from
Dekoulakou-Sideris 1990



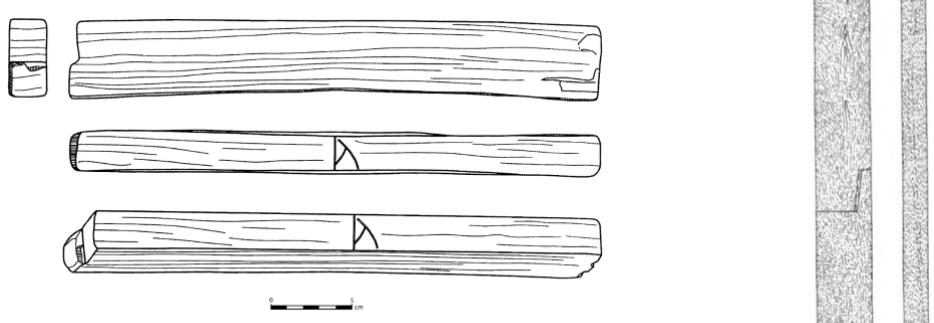


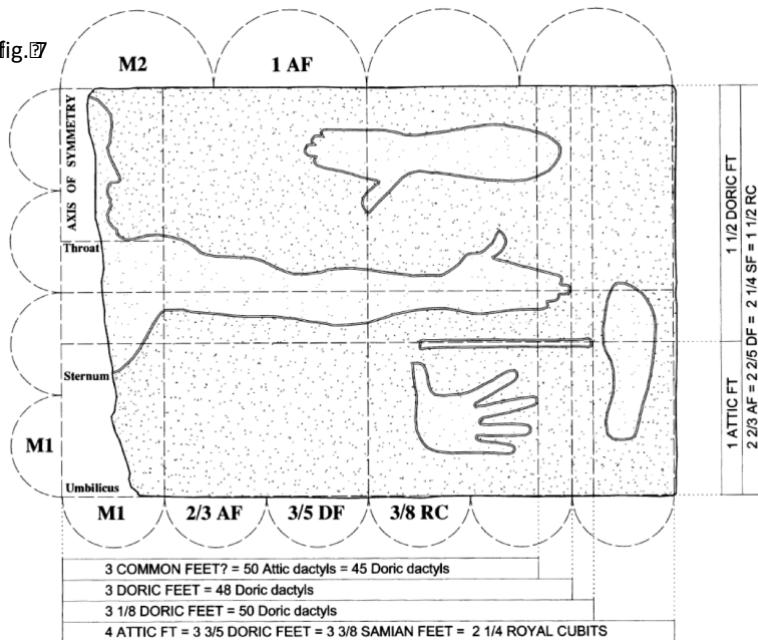
Fig. 2. The builder's rule, showing the lower rule (bottom), the upper rule marked with the alpha (top), and projection of the lower rule (left) (drawing by S. Haad).

Wooden *kanon* and *gnomon* (square) ca. 400 BCE,
from a shipwreck near Israel: Stieglitz AJA 110 (2006)



Fig. 4. The builder's square. The notched mark at the blade center delineated fractions along both edges. The blade ideally measures 277.5 mm (see table 3) (modified from Udell 2003, fig. 17a).

M. Wilson Jones
(2000) AJA 104: Fig. 7



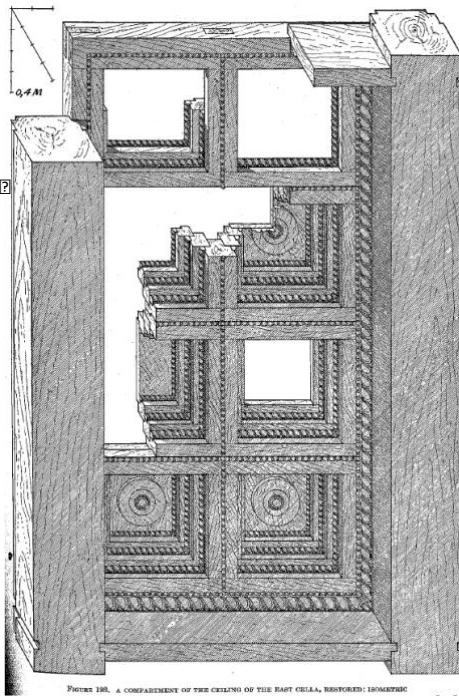
IG i³ 475 (409/8) 215-22:

... τὸν πλαισίον τὸν τετρά-[γό]νον, [τετ]άρον ὄντον, τὸς ὄνυχας ἐ-[γ]κολλέ[σα]ντι καὶ ἔχομαλίσαντι πρ-[ὸς] τὸ γ [κανό]να τὸλ λίθινον, ἡέκαστον [τρ]ισδ[ραχ]μον :ΔΗ+ : τὰ κυμάτια τὰ [μι]κρά, [δέκ]α ὄντα, κολλέσαντι καὶ ἀν-[α]χσέ[σαν]τι πρὸς τὸ γ κανόνα τὸλ λίθι-[νο]ν, ἡ[έκασ]τον τρισδραχμον

Stevens, et al., *Erechtheum* (1927), p. 339

"For gluing in the mouldings
of the square frames, four in number,
and for truing them up,
tested by the stone straight-edge,
at three drachmae each, 12 drachmae.
For gluing in the small cymatia, ten in number
and smoothing them, tested by the **stone straight-edge**
at three drachmae each ...

G.P. Stevens, et al., 1927.
Erechtheum, Ceiling of
east cella
Based on IG³ 475 (409/8)
with IG³ 474. 246–9.



"For gluing in the mouldings
of the square frames, four in number,
and for truing them up,
tested by the stone straight-edge,
at three drachmae each, 12 drachmae.
For gluing in the small symmetria, ten in number
and smoothing them, **tested by the stone straight-edge**
at three drachmae each ...

65 ... τέκτοσιν καθ' ἐμέραν ...

. . . : κ-
ανόνας ἀναχσέσαντι καὶ ἐργα[ζ]ομ-
ένοι κατ' ἐμέραν, ἡεμερον̄ :Δ̄: Γέ[ρνι :Δ̄:]
70 καθ' ἐμέραν κανόνα διαρρυ[θμίσαντι]
δυοῖν ἡεμέραιν Μικίον̄ [:Η-:]

"To carpenters working by the day

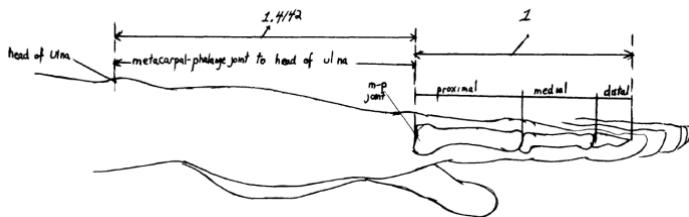
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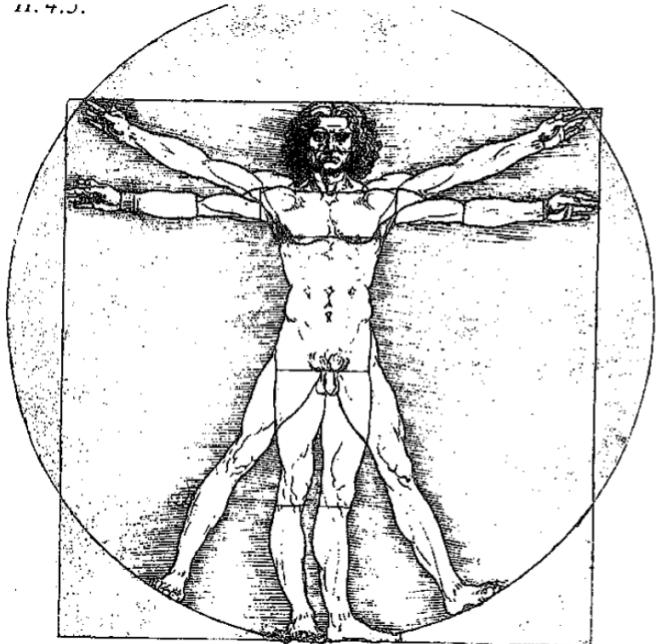
For making and trimming **straight-edges**, work by the day, 10 days, to Gerys, 10 drachmae. For **truing up a straight edge**, work by the day, two days, to Mikion, 2 drachmae ..."

Copy of the *Doryphoros* in Naples

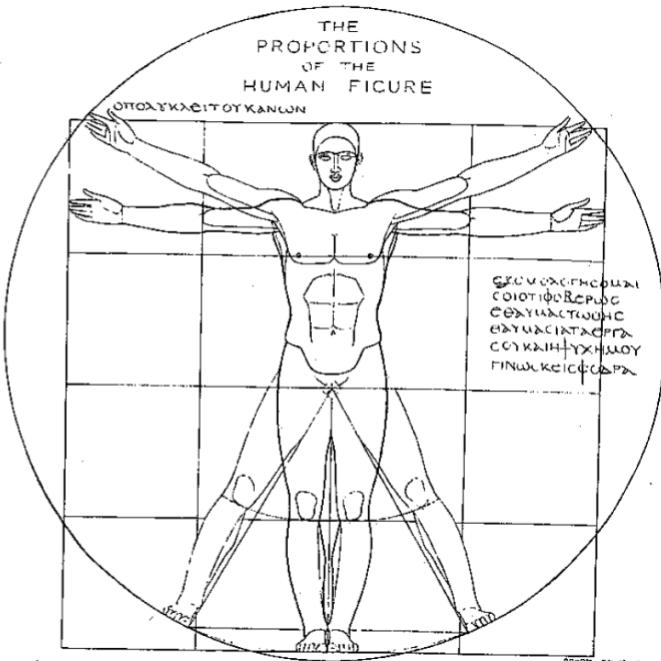
Galen *de plac. Hipp. et Plac.* 5.3: "Chrysippus holds beauty to consist, not in the commensurability of elements, but in the commensurability of the parts/members (of the body): that is to say, in the commensurability of finger to finger, and of all these fingers with the metacarpal and carpal [or 'palm and wrist']; and of these with the ulna (forearm), and of the ulna with the upper arm; and of all these with the whole, as it is set forth in the **Canon of Polykleitos**."

Tobin trans., in "The Canon of Polykleitos," *AJA* 79 (1975) 308-9 n. 9, with illustration,





Vitruvian Man was conceived by Leonardo da Vinci



ό Πολυκλείτου Κανών, J. Gibson & R. Bonomi (1857)

Demosthenes *On the Crown* 121-2

Aren't you ashamed of bringing a nuisance suit, not one for any real crime, shuffling the laws around and snatching bits-and-pieces, when it's only right to read complete statutes for those who have sworn to vote according to the laws?!

And as you do so, you say what traits the "man of the people" must have, ***just like someone who has ordered a statue by contract, and then when he receives the order he finds it not fitting the specifications,*** (as though) men of the people are recognized by some formula and not by deeds and policies.

ἀλλ' οὐδ' αἰσχύνει φθόνου δίκην εἰσάγων, οὐκ ἀδικήματος οὐδενός, καὶ νόμους μεταποιῶν, τῶν δ' ἀφαιρῶν μέρη, οὐδὲ δλους δίκαιον ἦν ἀναγιγνώσκεσθαι τοῖς γ' ὁμωμοκόσιν κατὰ τὸν (122) νόμους ψηφιεῖσθαι; ἔπειτα τοιαῦτα ποιῶν λέγεις πόσα δεῖ προσεῖναι τῷ δημοτικῷ, ***ἄσπερ ἀνδριάντ' ἐκδεδωκὼς κατὰ συγγραφήν, εἴτ' οὐκ ἔχονθ' ἀ προσῆκεν ἐκ τῆς συγγραφῆς κομιζόμενος,*** ἢ λόγῳ τὸν δημοτικόν, ἀλλ' οὐ τοῖς πράγμασι καὶ τοῖς πολιτεύμασιν γιγνωσκομένους.

Vous ne rougissez pas d'accuser par envie celui que vous ne pouvez convaincre de crime? Vous n'avez pas honte, tantôt d'altérer les loix, tantôt d'en supprimer une partie, & cela devant Juges, qui ont fait serment de (122) juger selon les loix? Et vous osez ensuite tracer le portrait du Républicain? —***portrait semblable à une statue qui seroit toute difference du modele donné au Sculpeur***— oubliant que le bon Républicain se connoît, non à ses discours, mais à ses œuvres?

[Millot 1764]