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Caught Not by Surprise: Captatio in Roman Satire and Law

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Abstract
What constitutes the legacies left behind by the Roman Empire and who has been empowered to evaluate their value and legitimacy? The Romans left wills, expressions of the most solemn and honest emotions prompted by a sense of duty and declarations which insured one’s remembrance in life and death. The authors left evaluations, through which the frequent appearance of certain topoi characterized vivid aspects of daily life and expected societal practices. Scholars are left conflicted. To reconstruct the social world of family, friends, enemies, and community members, it is necessary to interact with both literary and legal texts to understand the intentions of the testatores when drafting and revising their final wishes. In hoping to remain attuned to assumptions of typified Roman life, this essay aims to connect practiced legal undertakings and established characterization of the parasite to the condemnation of captatio in the first centuries BCE and CE.

Aurelia ornata femina signatura testamentum sumpserat pulcherrimas tunicas. Regulus cum uenisset ad signandum, ‘Rogo,’ inquit ‘has mihi leges.’ Aurelia ludere hominem putabat, ille serio instabat; ne multa, coegit mulierem aperire tabulas ac sibi tunicas quas erat induta legare (Pliny, Letters and Panegyricus, 1:2.20.10-11).1

CAPTATIO, LEGACY-HUNTING

The infamous Marcus Aquilius Regulus, a delator in the reign of Nero as described by Pliny, arrived at the ceremony for the signing of the will of the noble lady Aurelia. Upon seeing her beautiful tunic, presumably made of high-quality silk,2 he forced her to open her will and to leave him the tunic that she has put on. Aurelia considered such a request to be a joke, as contemporary and modern audiences would largely agree, but Regulus insisted. His persistence was driven by greed and nurtured in a socio-historical context where such a peculiar practice of legacy-hunting (captatio) was widely and tactfully carried out in accordance with the law, at least in literature.

The contemporary term captatio originated from a bait-fishing metaphor that, as most widely accepted, may be attributed to Satire 2.5 of Horace where Tiresias advises Odysseus to hunt for legacies (captare testamentum) and learn from successful examples of captatores such as Nasica (2.5.57). In this passage, Horace firmly and vividly establishes a metaphor where legacy-hunters (captatores) fish everywhere to bait and capture the testaments of rich old people (testatores).

Dixi equidem et dico: captes astutus ubique testamenta senum, neu, si vafer unus et alter insidiatorum praeroso fugerit hamo, aut spem deponas aut artem illusus omittas (Horace, Sermones, 2.5.23-6)3

1 "The honoured lady Aurelia had dressed in her most beautiful tunics for the signing of her testament. When Regulus had arrived for the signing ceremony, he said “I ask that you leave these clothes to me.” Aurelia thought the man was joking, but he insisted with earnest; to cut a long story short, he forced the woman to open the tablets and to leave him the tunics which she had put on.” Regulus asking for Aurelia’s clothing made clear of his intention to seel the clothes, the nature of their relationship as feigned intimacy, and perhaps how he forced (coegit) Aurelia to agree as he was privy to intimate details that might ruin her reputation.

2 The value of Aurelia’s fabric was likely significant, which further emphasizes the greed and obstinacy of Regulus. For further reading on the cut and value of silk garments, see: Wilhelm Adolf Becker, Gallus, oder Römische Scenen aus der Zeit des Augustus zur genaueren Kenntniss des römischen Privatlebens (Leipzig: F. Fleischer, 1863), 3:203-19.

3 “Well I have told and I tell you now: you ought to fish artfully everywhere for the wills of old men, and though if one or another cunning one should escape your plan after nibbling the bait off the hook, though
This practice of hunting for inheritance described by Horace is denounced as servile by Cicero and deeply concerned Martial. It is indeed ironic, as Cicero points out in his Paradoxa Stoicorum, that the greed for wealth enslaves freedmen who eagerly subjugate themselves to conditions of harshest servitude (cupiditate peculii nullam condicionem recusant durnissimae servitutis) (5.39). These freedmen, in their pursuits as legacy-hunters, would partake in all the actions of an indolent slave (servi inertis): agrees to whatever the master says, carries out whatever is declared, attends him eagerly, sits by his side, and offers him presents (loquitur ad voluntatem, quidquid denuntiatum est facit, assectatur assisit munerator) (Cicero, Paradoxa Stoicorum, 5.39). Part of this phenomenon may have arisen from the fact that recently freed slaves are usually without significant means and had to live by their wits.4 They could have turned to the “profession” of legacy-hunting to quickly accumulate wealth, at which point they often made a show of their riches in attempts to appear as masters.5

THE SOCIAL CONTEXT FOR CAPTATORES

The Roman will was a ceremonial declaration, a product of personal expectations and public evaluations. Based on a paradox to respect the wishes of a diseased who ceased to wield power, the will was believed to be an expression of honest emotion as Pliny writes: “creditur vulgo testamenta hominum spectulum esse morum” (Epist. 8.18.1).6 At a minimum, the perception of freedom in testaments (licentia testamentorum) allowed for commendation and denunciation with security. Though the motivating factor for establishing a will may be a sense of aristocratic duty, the power of control that ridiculed, do not either give up hope or drop the art.” Though Horace may have coined the term, description of such fortune-hunting practices appeared in Plautus around 200 BCE in Miles Gloriosus and was present in Lucian also. Condemnation of such a practice was mostly associated with literature of the late first century BCE and first two centuries CE, particularly with Martial and Juvenal as discussed later in the paper.

5 Some literary examples of such a portrait may be found in Juvenal’s First Satire, 101-116 as well as in Petronius’ Satyricon where the freedman Trimalchio constantly tries to put on magnificent displays of his wealth that are instead rather vain and insolent.
6 “It is believed generally, that the testament of a man is a looking-glass of his character”; see also Lucian Nigr. 30.

The extent to which captatio is referenced in literary works of the first two centuries C.E. illustrates its prevalence, and perhaps normalization, as a method of acquiring property. Such quantitative observation unfortunately reveals little about the reasons behind its emergence. As no Roman will has survived in its complete form, judicious power has been granted to inferences based on available and quantifiable data.11 Moreover, satirical works undoubtedly present their unique challenges when sourcing for a realistic and complete account of ancient life, as writers often concerned themselves with types of behaviour extracted from a conglomeration of otherwise mundane individuals. In order to be attentive to the social context and nature of sources, legal and literary evidence ought also be incorporated under a framework of morality. Captatio may well be legally permissible, but in violation of the ethics

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7 Champlin argues that “a duty of testation” was ingrained in the ideology of the Roman aristocracy (Champlin 1992, 55). How much the actions of the upper ordines deserves further investigation, but it is very possible there existed “plenty of people who were neither vastly rich nor grindingly poor but had a bit of this and that to leave”, see J. Crook, “Intestacy in Roman Society,” PCPS 199 (1973): 39.
8 “Catullus, you tell me that I am an heir to you. I do not believe it unless I read it, Catullus.”
9 Petronius, Satyricon, 71.
11 Edward Champlin, Final Judgments: Duty and Emotions in Roman Wills, 200 B.C.-A.D. 250, (Berkeley: University of California Press, 1992), p. 29. Cicero’s writings (Top. 4), Gaius Institutiones, and the Dgset provide some textual evidence around the legality of testamenta. There is also the preserved formula of an emancipatorius will and testamentan of Manlius Theodorus in Maspero 3.67312. Legal texts are, however, difficult to extract information about social and economic reality as jurists offer terse analyses lacking specificity of factual circumstances.
The carefully chosen prey of legacy-hunting are wealthy, single or heirless, senile, and oftentimes female. In this period of the Roman Empire, women were able to acquire and enlarge their patrimony similarly to their male counterparts. Apart from their accrued revenue through real estate or commerce, women in particular possessed their wealth in mundus muliebris (“womanly ornaments”) as termed by the magistrates. These items including clothing, jewelry, and household utensils often project a luxurious lifestyle and are especially sought-after because they are easily distributed in divisible units. Juvenal demonstrates that such objects are much coveted because they may be easily pawned to finance luxurious banquets (Satires 11, 1-26). As another gender distinction between testatores, well-to-do women were often more affluent than their male counterparts because they were not required to spend on the cursus honorum.

Under these circumstances, regardless of gender, childlessness became an important criterion for the extent of one’s influence. Childlessness was not always a choice, as infant mortality rates were high and many refused marriage for strategic utility of legacies. Though Juvenal discusses exceptional individuals who preferred to followed the Lex Julia by procuring a dear heir (dulcem heredium), many more accepted the risks of childlessness in exchange for the advantages: large turtle doves, crested mullets, fortune-hunting meat market (tollere dulcem/ cogitatio heredom, cariturus turtur magnus/ mullorumque iubis et captatore macello) (Satire 6, 38-40). In addition to material gifts, childlessness attracted frequent visitors, a visible indicator of influence and reputation, and allowed access to achieving the pinnacle of power and authority (auctoritas summa et potentia) (Pliny the Elder, Natural History, 4:14.1.5). As Juvenal illustrates, no one ever kills even a quail for a father (columinis nulla umquam pro patre cadet) whereas people would promise a hundred oxen (promittant hecatomby) if wealthy yet childless Gallita and Pacius began to feel a hint of fever (sentire calorem si coepit locuples Gallita et Piacius orbii) (Satire 12, 97-101). Though the advantages of childlessness has even been used by Seneca to comfort Marcia mourning the loss of her son (Moral Essays, 2:19.2), Pliny the Younger praises the exceptional Asinius Rufus (homo eximius) as he has fulfilled his civic duty for having several children.

Sunt ei liberi plures. Nam in hoc quoque functus est

12 There of course exists broader questions of the sources made available to modern scholars when extracting information about social and economic reality from legal or literary texts, not excluding the bias of representation of the upper-class and the gap between default legal provisions and practiced reality. See Champlin, 1992.
13 The representation of male captatores and female tetsatores often represent an inversion of expected social codes that emphasizes the extreme polarity of a relationship founded on dramatically opposed motivations. The sexuality of older women were often ridiculed in classical literature and captatio presents an especially interesting context where the female power of seduction lies in their wealth. For examples of where the man assumes the role of a prostitute because of the ugliness and lustfulness of an older woman who must pay for the man’s service, see Epigram 29 of Book 11 and Epigram 75 of Book 7 for accounts from the male perspective.
14 Though widows are often assumed to be poor and less female testaments are mentioned, it is not sufficient to conclude that women were significantly disadvantaged socio-economically. Though it is true the agnatic circle is favoured when handing down patrimony, girls of the agnatic circle is favoured when handing down patrimony, girls of the male line are not necessarily disfavoured compared to their brothers. For further reading on inheritance law for women, see John A. Crook’s “Women in Roman Succession,” in The Family in Ancient Rome: New Perspectives, ed. Beryl Rawson (London: Croom Helm, 1986), 58-82.
15 Though from the over 1000 literary, legal, papyrological, and epigraphic sources that survive of Roman testaments, speculations necessarily based on inferences of available reality suggest that men outnumbered women almost four to one among testatores with determinable sex. This may be taken to assume that women owned less property proportionately to men and “inheritance must have been the main means of acquiring property” as argued by Edward Champlin, Final Judgments: Duty and Emotions in Roman Wills, 200 B.C.-A.D. 250, (Berkeley: University of California Press, 1992), pp. 46-9.
17 It might not have been unheard of for a male to attend the salutatines of rich women, as Juvenal describes of a praetor who was hoping for a testament or marriage (Satires 3, 125-6).
18 Augustanian marriage legislations were partially created as a reaction to the decreasing upper-class birth rates, though they were met with resistance from the elites despite delators being rewarded a share of confiscated patrimony. See Norr, ”Planung in der Antike,” 312.
19 Similar ideas appear at Satire 4, 18-19; 5.97.
20 Tacitus particularly highlights Calvia Crispinilla, who became powerful (potens) because of her wealth and childlessness in both peaceful and warring times (The Histories, I.73).
21 Though it is widely agreed that childlessness brough auctoritas, potentia, praemia, gratia, pretia, regnum and much more benefits, it may also be interesting to discuss the heritability of consulship. Consuls with more consular forebears are shown to produce more sons who were consuls or praetors than novus homo, and in some cases the failure to produce a son may have been biological and not political. See Keith Hopkins, Death and Renewal, (Cambridge University Press, 1983).
optimi civis officio, quod fecunditate uxoris large frui voluit, eo saeculo quo plerisque etiam singulos filios orbitatis praemia graves faciunt. Quibus ille despectis, avi quoque nomen adsumpsit (Pliny the Younger, Letters and Panegyricus 1:4.15.3)²²

For an heirless rich Roman to exercise their power to bequeath property and designate legatees unrelated by kinship, the social phenomenon of captatio must not have existed as an unilateral pursuit.

THE BAITS FED BY TESTATORES

It is not uncommon for the legacy-hunters to be trapped themselves. The gifting habits of legacy hunters placed a heavy financial burden on the captatores, especially when the testatores are living out a longer life than expected. Martial speaks to such a phenomenon of legacy-hunters arriving at their financial ruin in Epigrams 1:5.39 where the speaker complains of the fact that Charinus seals his final testament thirty times per year (supremas tibi triciens in anno signanti tabulas) and has thus caused the speaker to have emptied cashboxes and purse after feeding his patron with a mendacious cough (mentitur... tusis).

Supremas tibi triciens in anno
signanti tabulas, Charine, misi
Hyblaeis madidas thymis placentas.
defeci: miserere iam, Charine:
signa rarius, aut semel fac illud,
mentitur tua quod subinde tussis.
excussi loculosque sacculumque:
Croeso divitior licet fuissem,
Iro pauperior forem, Charine,
si conchem totiens meam comesses.
(Martial, Epigrams 1:5.39)²³

In this case, the testator set a trap purposefully for the legacy-hunters. Much like how the rebel general Vindex used to take a drug that produced an artificially paler countenance, the testatores played this hunting game with a set of implicit rules to achieve their goal of securing social prestige. In Martial’s time, testaments were frequently adjusted as the patrimony of the upper ordines fluctuated. As one example, a bon vivant senator under Nero unashamedly admits to depleting his patrimony on extravagant dining experiences and consequently adjusted his testaments several times (Tacitus, Annals 15.54).

Besides, the eventual inheritance might reveal itself as a disappointment. Such is the case of Bithynicus to Fabius in Martial’s Epigrams 2:9.8, where the secured testament may be smaller than expected since the testator put on a deceivingly conspicuous front. Juvenal even mocks a certain Aurelia who depended upon reselling the luxury food products gifted to her by a legacy-hunter, as her sole subsistence (Satire 5, 97-8).

LEGACY HUNTING IN JUVENAL’S FIFTH SATIRE

Describing Juvenal’s fifth satire as “a dinner party” would be a gross oversimplification as further understanding of the practice of captatio, as it evolved around the patron-client relationship at a cena, helps elucidate inherent connectivity between Juvenal’s satirical works.²⁴ Between Virro and Trebius, the characters highlight exchange between patron and client that is motivated by greed and corruption. For Virro, his practical frugality is marked by inhumanity; whereas for Trebius, his delusional extravagance captures him without dignity and self-respect. Under what circumstances would Virro treat Trebius as a friend (amicus) and be given toasts in his name as a brother (frater)? Surely, an equestrian fortune given by a god or man kinder than fate would turn Trebius from a nobody into a great man (quadringenta tibi si quis deus aut similis dis/ et milior fatis donaret homuncio, quantus/ ex nihilo) (Juvenal, Satire 5, 132-4).

if I had been wealthier than Croesus, I should be poorer than Irus, Charinus, if you were eating my beans this often.”

22 “He has several children. For in this also he has performed his duty of a good citizen, that he has chosen to enjoy the blessings of a fruitful marriage, in a time when the rewards of childlessness make even one child a burden to most. Rufus would scorn such advantages, and in fact received the title of grandfather.”

23 “To you signing your last will thirty times a year, Charinus, I sent cheesecakes soaked with Hybla’s thyme. My means have failed: have pity now, Charinus. Seal less often, or do it once for all, that which your cough often feigns. I have shaken out my cash boxes and my purse: even

... o nummi, vobis hunc praestat honorem, vos estis frater. dominus tamen et domini rex si vis tum fieri, nullus tibi parvulus aula luserit Aeneas nec filia dulcor illo. iucundum et carum sterilis facit uxor amicum. sed tua nunc Mycale pariat licet et pueros tres in gremium patris fundat semel, ipse loquaci gaudebit nido, viridem thoraca iubebit adferri minimasque nuces assemque rogatum, ad mensam quotiens parasitus venerit infans. (Juvenal, Satire 5, 136-145)

The indicatives used for the distribution of presents (gaudebit, iubebit, licet) suggests that the events described after nunc (“as it is”) at line 141 takes place in reality, as compared to the subjunctives (donaret, fieres, vis, luserit) used to construct the fictitious situation of a rich Virro. If the subjunctives pariat and fundat which depends on licet were to be taken as a hypothetical clause, then subjunctives should instead be employed in the main clause. As such, the passage describes the reality where dominus Virro presents gifts to the three children of poor Trebius.

Normally, nuts serve as literary topoi to highlight the generosity of the masters who would distribute them to the children of his clients to play with or eat in festive settings. For one, Pliny values walnuts for sparsiones because of their large size. As such, Virro’s ostensibly kind gestures are undercut by the description of minimae. The host’s stinginess is further illustrated as he provides an as, the smallest unit of coinage, only when they are begged for (rogatum). This perhaps references Satire 1 where a patron’s concern over being cheated by clients in distribution of sportula is highlighted (1.97-99). The strict accounting accentuates the distrust and humiliation of clients by their patrons that is paralleled here in a chiasmus at 144 framing the gifts between derogatory descriptions (minimasque nuces assemque rogatum). Further, the choice of gifting a thorax viridis has foreign and effeminate connotations, though it may also reference the popular factio prasina in chariot-racing or as the incomplete product of a double-dyed Tyrian purple tunic.

Such perversion of a traditional cena aimed to bring together patrons and clients as equals emphasizes the subsequent perversion of amicitia by greed and money. Indeed, legacy-hunting presents all the outward characteristics of a long-established and socially-accepted amicitia.

PARASITES’ FOOD FOR THOUGHT

Amico aliquis aegro adsidet: probamus. At hoc hereditatis causa facit: vultur est, cadaver expectat. Eadem aut turpia sunt aut honesta; refert, quare aut quemadmodum fiant. (Seneca, Epistles, 95.43)

Motivation may help distinguish a desire-driven captatio from an amicus deserving of rewards. In practice, however, the distinction is more than difficult to identify. Does this mean there were not any identifiable legacy-hunters? Should scholars then not concern themselves about their existence or distinction? The beginning of an answer may surface from the reciprocal nature of the predatory relationship, which is still similar to the bonds between amici, that justifies its categorization as a negative subset or representation of acceptable amicitia.
Though the prevalence of legacy-hunting in literature is uncontested, some have argued that such literary evidence should be discounted when judging the frequency of its occurrence in reality. Under this framework, captatio is valued as a powerful metaphor which summarizes Roman apprehension of corruption. To use legacy hunting as both cause and result of social decline, captatio may have been elevated beyond their tangible existence in society — legacy hunting was thus employed as a satirical and moral condemnation of the greed of friendship.

A similar literary type, the parasite, may then shine light on the intentions of ramifications of captatio. Transplanted from Greek to Roman comedy first, the parasite was originally a stage character that crawled into satires and orations because of their identification as conglomerate of repulsive traits. Though Frank argues that “there is no evidence that these creatures had as yet made their way to Rome” as Fraenkel and Hight sees the parasite as “import product” and “foreign to the audience of Plautus,” the popularity of its imagery in Rome suggests its adoption and adaptation.

For Latin authors and their audience, the stock character of the parasite grew to embody the unhealthy and problematic aspects of the Roman system of patronage. Whereas Greek parasites often arrived uninvited (akletos) and entertained for food, Roman exploititations demanded that the comic character wait and wish for an invitation. Besides caricature hunger, the parasite craves patronal benefits as a cliens. The parasite was thus widely employed to voice concerns over degeneration of Roman society, with patronage as the root cause of evil. The social consciousness of Roman society of a normalized institution, able to dominate daily routines because of its unobtrusive nature, is judged by satirists. Juvenal is especially frank when labelling a type of Roman cliens as parasitus.


**TRUTH THROUGH FICTION**

If “parasite” is to be taken as a characterizing type within satire, and not regarded as an individual, then the figure of a parasite is an insult. As a label of behaviour, the parasite would not have a concrete counterpart in reality. The evocation of the figure of parasite is then a representation, with an effort of interpretation and an intended effect of embodiment. Juvenal portrays the parasite as an unreliable witness willing to gratify their patrons and fulfill their appetite even through perjury, not unlike Cicero’s claims in Pro Flacco.

*Si te propositi nondum pudet atque eadem est mens, ut bona summa putes aliens vivere quadra, si potes illa pati quae nec Sarmentus iniquas Caesaris ad mensas nec vilis Gabba tulisset, quamvis iurato metuam tibi credere testi. (Juvenal, Satire, 5.1-5)*

The condemnation of this parasitic practice is extended by Juvenal in Satire 12, where legacy-hunters are criticized in a broader context of religious sacrifices. Just as captator presents gifts to their restator in exchange for a fortune, humans provide sacrifices to the gods in order to extort divine favour. Given this parallel, it is unsurprising that Juvenal may be able to combine philosophical denunciation of ritualistic sacrifice with satirical criticism of amoral legacy-hunting as they are both plagued by corruption.

37 Cicero attacks the credibility of witnesses against his client by suggesting that their testimonies may be tempered by food like parasites as “Mithridates influences that crowd not through authority, but he was keeping their food troughs full” (qui [sc. Mithridates] multitudinem illam non auctoritate sua, sed sagina tebeat, Flac. 17). Though such characterization is only a side remark, but in Pro Cæcina, Cicero proves a case on reasonable probability by directly undermining his opponent Aebutius by arguing that he is a dependent who “feeds on” a patron or patroness (alere) (Caecin. 13-14).
38 “If you are not yet ashamed of your life-plan and you persist in your view that the highest good is to live in another’s dining table (crumbs), if you are able (to endure) treatment which not even Sarmentus nor cheap Gabba would have put up with at the unequal tables of Caesar, I would fear to trust your word even if you were on oath.”
The details they provide, here as they pertain to legacy-hunting, are as realistic as fictitious. The smallest details may accurately reflect social phenomena but are thus employed strategically to achieve the poet’s purposes. While a great degree of characterization exists especially in Roman satires, they reveal vivid aspects of Roman life. In the case of captatio, its sheer volume of appearance in literary works justifies its significance and relevance in contemporary dialogue and consciousness.

Firmly regarded as a topos for social decline, corruption, loss of humanity, and deterioration of patron-client relationships, the imagery of legacy-hunting may be invoked by Roman satirists in exceptionally specific and nebulous settings. Beyond its social significance, more attention may be given to the use of captatio as a metaliteral device. After all, the connection between parasite and poet has been made as Martial laments that he is too busy attending to his patron that he has scarcely written a page in a month (Epigrams, 11.24). If one may escape the net set out to trap those captivated by deterrations, the imagery of legacy-hunting may be invoked by Roman satirists in exceptionally specific and nebulous settings. Beyond its social significance, more attention may be given to the use of captatio as a metaliteral device. After all, the connection between parasite and poet has been made as Martial laments that he is too busy attending to his patron that he has scarcely written a page in a month (Epigrams, 11.24). If one may escape the net set out to trap those captivated by determined destinations and lured by promises of rewards, one may gain more in the end — whether that be a monetary, literary, or scholarly legacy.

... expectent ergo tribuni, vincant divitiae, sacro ne cedat honori nuper in hanc urben pedibus qui venerat albis, quandoquidem inter nos sanctissimam divitiarum maiestas, etsi funesta Pecunia templo nondum habitat, nullas nummorum ereximus aras, ut colitur Pax atque Fides, Victoria, Virtus quaeque salutato crepitat Concordia nido.

(Juvenal, Satire 1, 109-116)

40. For more on how satire may or may not be used to justify historical reality, see Damon, C. 1997. The Mask of the Parasite: A Pathology of Roman Patronage. Ann Arbor, MI.
41. Legacy hunting appears in contexts with literary significance, through evocation of familiar Homeric scenes and earlier poets, the metaphor of captatio may be used to express concern of literary production as discussed especially in chapter 5 in Heather A. Woods. "Hunting Literary Legacies: Captatio in Roman Satire." PhD diss., University of Minnesota, 2012.
42. "Thus let the Tribunes wait, let riches rule supreme, lest the man who has arrived recently in this city with whitened feet surrender to sacrosanct office, seeing that among us the majesty of riches is the most venerable, even if deadly Money does not yet live in a temple, altars of coins have not been set up, as Peace is worshipped, and Loyalty, Victory, Virtue, and Concord who clatters when her nest is hailed."


