



Rodolfo Sacco's Discovery of Mute Behaviour: A Semiotic Outlook

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Abstract

Rodolfo Sacco developed the idea of “mute behaviours” during his studies on mute law. The notion of “mute behaviours” denotes an action that is able to mould a legal relationship without any use of language. Certainly, this concept may give rise to some doubts in relation to the attribution—to a behaviour qualified as mute—of the capability to affect dynamics involving a plurality of people. Aiming to clarify the idea of “mute behaviours” by this point of view, the authors analysed the semiotic terminology used by Sacco himself to explain this notion and the issue of its silent nature. Therefore, the terms “signifying signs” and “symptoms”, deemed by Sacco—respectively—incompatible and compatible with the theory of mute behaviours were considered. The former term was traced back to the notion of conventional and arbitrary sign, the notion of the latter was reconstructed linking it to the concept of signs based on signification and suggesting a possible framework in view of the idea of “presentative meanings” developed by the philosopher Guido Morpurgo-Tagliabue. Clarified this dichotomy by a terminological analysis, the authors noticed—as affirmed by Rodolfo Sacco himself—the impossibility to ascribe the notion of gesture to the mute behaviour’s category, as some exegetes proposed. Consequently to this last remark, the authors tried to analyse the relationship between gestures and “mute behaviours”, identifying the category of “sema-pragmatic acts”, that includes gestures and may be seen as an intermediate phase between “mute behaviours” and legally relevant behaviours operated by speaking.

Keywords Mute behaviours · Mute law · Legal anthropology · Macro-history · Legal semiotics · Rodolfo Sacco

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1 What is a Mute Behaviour: a Short Introduction

The mute behaviour is a concept developed by Rodolfo Sacco during his studies on mute law, a notion to which it is closely related although autonomous from it. The phrase ‘mute behaviour’ first appeared in a Sacco’s essay [15] published in 1993¹ to designate behaviours capable of establishing and affecting legal relationships without resorting to language [21, p. 183].

An issue that needs to be addressed before analysing the concept is to explain why the expression ‘mute behaviour’ was chosen to translate into English the Italian phrase ‘atto muto’ used by Rodolfo Sacco.

In fact, the choice was not an easy one, since in addition to the well-known difficulties encountered in translating Romanistic legal terms into English, here is added the problem of preserving as best as possible a whole series of conceptual nuances that the Italian expression has and that are not without significance in the context of the author’s thinking. It must be considered—in fact—how the notion of mute behaviour is framed by Sacco in the perspective of macro-history,² and therefore designates as much the action of the man living in a contemporary Western legal system as that of the first hominids. Consequently, it would be unfortunate to choose terms such as ‘mute act-at-law’ or ‘mute legal act’ because of their reference to a dimension closely related to today’s positive law. In contrast, the Italian word ‘atto’ is used technically in the legal sphere (‘atto giuridico’ or legal act, ‘atto di autonomia privata’ or act of private autonomy), but it also has a broader meaning in being used to indicate acting in general. This makes the term in Italian very suitable for this specific use. Therefore, in translating it, it was preferred to opt for the term ‘behaviour’, sacrificing a closer semantic connection with law, but favouring the lien with the macro-historical view.

In order to translate the Italian adjective ‘muto’ used by Sacco in the phrase ‘atto muto’, we preferred to use the English lemma ‘mute’, rather than the English lemma ‘unspoken’, which was used in some cases.³ This is because—as will be seen later in this article—the latter term can lend itself to the misunderstanding of taking the mute behaviour as being merely a non-speaking act.

Looking at the figure of the mute behaviour in more detail, it can be seen that it is delineated—in relation to the level of hard facts—as an action aimed at a concrete material result [22]⁴ whose effects are determined not heteronomously, but by virtue of an instinctive rule that consists in the symmetry between the action and its effects [22, pp. 95–96, 20, p. 145]. As for the character of muteness, on the other hand,

¹ Specifically, this was the publication of a conference held in Trent (Italy) during the 1980s, see [22, p. 9 and n. 10].

² By this specific term Sacco of his own devising indicates the time frame comprising prehistory, proto-history and history, which he sees as the object of legal anthropology, cf. [21, p. 18] and [7, p. 30].

³ With respect to the use of the adjectives ‘mute’ and ‘unspoken’ cited here cf. [18].

⁴ The focus on the concrete material dimension of behaviour should not lead one to reducing the concept of mute behaviour to the concept of “brute fact”, cf. [1, 6].

it consists—for Sacco—in the absence of a linguistic dimension in its coming into being by the agent⁵ [22, p. 10].

Thus, considering the figure formulated by Sacco, one can certainly detect its intersubjective dimension, arising from its role as an instrument capable of both creating and terminating legal relationships [21, p. 183]. However, this last aspect cannot but lead to some perplexity when placed in relation to the character of muteness of the behaviour. Indeed, the idea of a behaviour devoid of any linguistic meaning and yet capable of bringing into being legally relevant situations may not—apparently—be entirely convincing.

To help illuminate this specific point—in this article—an attempt will be made to clarify the terminology and concepts used by Sacco with respect to the mute behaviour.

2 Semiotics and Semantics of the Mute Behaviour: Signifying Sign and Symptom

Rodolfo Sacco—as mentioned more briefly in the previous paragraph—attributes to the term ‘mute’ used in the phrase ‘mute behaviour’ the meaning of the absence of a linguistic dimension of the behaviour in question. He describes this feature of the behaviour in more detail as the lack of “[...] a statement operated by signifying signs, even when the material behaviour is the clear symptom of a will of the subject” [22, p. 16], taking care to emphasise the difference between the notions of symptom and sign [22, p. 16].

Therefore, wanting to question the character of muteness of the behaviour, it is imperative to focus on the terms ‘signifying sign’ and ‘symptom’ (respectively, ‘segno significante’ and ‘sintomo’ in Italian) and try to understand what their meaning is for Sacco, keeping in mind how he considers the former, but not the latter, incompatible with the absence of linguistic dimension proper to the mute behaviour [22, p. 16].

2.1 The Notion of “Signifying Sign” in Sacco

Beginning by analysing the concept of ‘signifying sign’ in Rodolfo Sacco, one can see how he tends to link the notion of sign with an idea of conventionality and arbitrariness. It is possible to find this when he describes language as “[...] an instrument of communication that uses signs (each endowed with an arbitrarily chosen meaning) [...]” [22, p. 13], or when he emphasises the arbitrary character of the choice of graphic signs proper to an alphabet [22, p. 13].

This tendency extends beyond the realm of language strictly understood and can also be seen with respect to sign language, about which Sacco [22, p.14] states:

⁵ There is thus—as Sacco himself said—a difference between the meaning of the adjective ‘mute’ when applied to the noun ‘behaviour’ (‘atto’) and when applied to the noun ‘law’ (‘diritto’). In fact, in the latter case, mute indicates the unconscious nature of the norm cf. [22, p. 10 and 3].

“Where there is sign there is word, with all its connotations: sign signifies a thought, sensitively externalises it, taking advantage of correspondences, conventionally fixed and intuitable, between individual sensible elements and the concepts with which the thought in question is structured.”

These considerations lead—on the whole—to note how Sacco’s conception of sign corresponds to the classical notion of “[...] sign as *aliquid pro aliquo*” [25, p. 17]. His conception of sign can be further specified: it is clear how it is constituted by an arbitrary and conventional code between signified and signifier.⁶ This conception does not seem free of relations with Ferdinand de Saussure’s own idea of sign,⁷ at least in two respects: the closeness between the two authors’ own notions per se and Saussure’s probable influence on Sacco.

With respect to the first aspect, it can be seen that the two conceptions of sign are both founded on the idea of arbitrariness [22, p. 14 and 23, pp. 85–88].

With regard to the second aspect, it must be premised how it allows one to further strengthen the idea of the concept of ‘sign’ in Rodolfo Sacco understood as a conventional and arbitrary sign, suggesting an influence of Saussure on this specific semiotic aspect. One can certainly detect an ideal connection between Saussure and Sacco as far as the field of interpretation is concerned, although it is unsure how much one can speak—in this field—properly of an influence of the former on the latter.⁸ With more specific regard to semiotics, the idea of an influence of the Helvetic linguist, on the other hand, turns out to be more proposable. This can be reasonably suggested, not only by the continuous reference to a fundamental concept of the Saussurian sign, such as arbitrariness, but also by the fact that it is substantially taken up—without conceptual variations of any kind—the theory of “speech circuit” (*circuit de parole*), to help illustrate the notion of sign.⁹

So, in summary, Sacco’s idea of ‘signifying sign’ turns out to be that of a sign based on an arbitrary and conventional semiotic code, and this conception of his has considerable proximity to Saussure’s own conception of sign, as well as probable influence from it.

Having thus delineated the signifying sign for Rodolfo Sacco, we can proceed to reconstruct the notion of symptom, but first it is important to make a point.

Indeed, it must be noted that assuming the incompatibility between mute behaviour and ‘signifying sign’ [22, p. 16] defined as an arbitrary conventional sign, it is inescapable to exclude the orientations that tended to see mute behaviours as gestures, due to the conventional nature of the latter. They were—moreover—already

⁶ See [22, p. 14] with [25, pp. 29–31].

⁷ It is not useless to recall that Ferdinand de Saussure conceived the sign as the arbitrary union of concept and acoustic image.

⁸ Specifically, Sacco’s theory of interpretation – which denies the idea of the objective meaning of the text—was formulated by him in 1947, before he came into contact with Saussure’s thought, [22, p. 48, n. 93], but it is quite interesting how he does not fail to cite Saussure in a 1999 work on interpretation [19, pp. 182–183 and n. 29].

⁹ See [22, p. 14] with [23, pp. 21–22]. The Saussure passage in question was well known to Rodolfo Sacco, who cited it in [19, pp. 182–183 and n. 29].

explicitly ruled out by Rodolfo Sacco himself, precisely because of the linguistic value that gestures—unlike mute behaviours—have [22, pp. 14–16].

However, this solution—which is basically obligatory—is not entirely satisfactory: in fact, there are various examples of situation in which both mute behaviours and basically gestural behaviours may be used to mould legal relationships. This undoubtedly entails problematic issues, which will be attempted to address, at least in part, in Sect. 3.

2.2 The Reconstruction of the Concept of “Symptom”

Turning to consider the concept of ‘symptom’ used by Sacco [22, p. 16], it is useful to gather some data on it. This concept certainly has an intersubjective dimension, as is evident from the fact that mute behaviours are described as phenomena with which legal relationships are “[...] conformed [...]” [21, p. 183], that is, situations involving a plurality of subjects. To this it should be added that the symptom has a semiotic dimension, in that it is apparently able to refer to something, that is, to be an “[...] *aliquid pro aliquo*” [25, p. 17], thus falling within what was for the ancients the description of the sign. This can be seen in the passage where the mute behaviour is mentioned, referring to the “[...] material behaviour [...]” as “[...] a clear symptom of a will of the subject” [22, p. 16]. However, this ability to refer to something else cannot be—obviously—grounded in a conventional semiotic code, as with the ‘signifying sign’, on pain of flattening on the latter concept. So, it is necessary to find another explanation for this ability of the symptom to refer to something other than itself. Regarding this, semiotic studies offer a possible solution: the idea of sign based on signification [25, pp. 5–7].¹⁰ By this expression, generally, is meant that situation in which the referral from the signifier to the signified does not take place because of a pre-established code, but because of an inference or maxims of experience used by the interpreting subject [25, pp. 5–7]. Moreover, some semioticians include pure perceptual experience in the scope of signification as we shall see below.

This reading of the concept of ‘symptom’ still needs—however—some further investigation. This can be done by turning our attention toward what is the ideal—typical figure of mute behaviour—occupation—¹¹in order to look for matches. To this can be added the possible useful contributions of certain semiotic theories regarding the concept of sign grounded on signification.

Dealing with the figure of occupation, it is useful to premise that Sacco admits that “[...] material behaviour [...]” [22, p. 16]—thus the very act in which the mute behaviour consists of—, can be “[...] the clear symptom of a will of the subject” [22, p. 16]. Consequently, semiotic remarks made on material behaviour will

¹⁰ Cf. also [25, p. 4] where Volli uses this term to refer to the “[...] richness of meaning”.

¹¹ The centrality of analyses on the figure of occupation to the (interrelated) concepts of autonomous non-negotiated act and mute behaviour results from the continuous recurrence of this figure as a typical example, see [16, 20, 22, pp. 95–103].

be relevant to the concept of ‘symptom’ and if they relate to occupation—used by Sacco as a model of the mute behaviour—should be reasonably generalisable.

Looking at the mute behaviour of occupation, it is possible to note how Sacco argues that “a will is inferred with certainty from the behaviour, namely, a will to perform a de facto activity” [22, p. 96]. Thus, it is possible to detect that the act consisting of a certain activity allows another subject to derive the information that an agent wants that specific fact and its closely related consequences.

This appears to be absolutely in accordance with some of the examples—more exquisitely semiotic—reported by Sacco to show how any fact can inform [22, p. 15]. These include the presence of the sun in the sky, from which the fact that it is daytime is inferred, or the fact that the roe deer grazes, an element from which it is inferred that it uses grass for nourishment [22, p. 15].

Therefore, if there is no shortage of feedback to the framing of the ‘symptom’ as a sign based on signification, a further—and more precise—look at semiotics may offer insights into the situation.

Specifically, it could be useful to take into account—for the purpose of semiotic analysis of the mute behaviour—some considerations of the philosopher Guido Morpurgo-Tagliabue. He paid considerable attention to the distinction between the notion of ‘signifying’ and ‘communicating’¹² [11, p. 71] and criticised the tendency to necessarily reduce the former to the latter [24]. Following this orientation he formulated three semiotic categories, far removed from the more widely used division into semiotics—syntactics, semantics and pragmatics—that is due to Morris [13]. Morpurgo-Tagliabue’s categories are the following: semantics, semantology and semiosis [24]. Semantics—being essentially different from Morris’ conception—concerns the pre-linguistic dimension of signification,¹³ which in Morpurgo-Tagliabue is represented by “presentative meanings”, i.e. the meaning of an object in its immediate perception (“This is a cherry tree”). Semantology—a neologism coined by Morpurgo-Tagliabue—concerns the inferential dimension of reference between two meanings, the first of which is configured as a signifier and the second one a signified (an example is: “The reddening of the litmus paper is a sign of an acid reaction”) [11, p. 76]. Lastly, according to Morpurgo-Tagliabue, semiosis concerns the linguistic dimension of substitution [10, 12, 24, pp. 60–63], which is typical of verbal and iconic language.

While semiosis, which, as mentioned above, focuses on conventional signs, and semantology, which concerns the dimension of reference, are of no particular relevance to the mute behaviour, semantics and presentational meanings are of considerable interest.

In fact, as told before, with the term ‘presentative meanings’ Morpurgo-Tagliabue indicates those phenomena that present themselves to the individual independently of his ability to translate them into linguistic expressions. He designates these phenomena as a situation of “[...] ‘inherence’ of the meaning to the thing [...]” and

¹² According to Morpurgo-Tagliabue [11, p. 71]: “Things mean, signs communicate”.

¹³ In this sense there can be found some proximity to Benveniste’s notion of semantics, see [24, p. 59 and n. 2] and [2].

"[...] phenomena of 'semantic integration' [...]" [24, pp. 61–62]. In particular, we believe that latter notion turns out to be fruitful for deepening the theme of the mute behaviour. With the expression 'semantic integration' Morpurgo-Tagliabue indicates that situation in which one element is led back to another, not because of an inference, but because of an established experience of the subject who perceives it.¹⁴ An example of this phenomenon of semantic integration occurs when a person instantly connects the footprint of an animal with the idea of the animal itself, due to the tight connection between the footprint and the animal in the past experiences cf. [24, pp. 61–62]. This notion is very effective in describing—on the level of signification—the connection made by those who see the mute behaviour performed by the agent subject, between the material conduct and the goals pursued.

Consequently, we think it is possible to say—to recapitulate—that the 'signifying sign' in the sense understood by Sacco is, semiotically, a sign based on a conventional code.¹⁵ The 'symptom,' on the other hand, is for him a datum from which information can be derived by virtue of signification, without the need for convention. This makes it very close to and most likely to be framed with Morpurgo-Tagliabue's concept of presentational meaning in its declination of semantic integration.

In conclusion, the mute behaviour is—as mentioned—constituted by behaviour that is a "symptom" in the terms we have tried to outline. Consequently, the mute behaviour is characterised negatively by the absence of a prior convention that states its meaning [22, p. 14], it is therefore not a signifying sign as Sacco understands it, in short, it does not convey a message. Instead, it is positively characterised—because of its nature as a "symptom"—by the fact that it has a "[...] richness of meaning"¹⁶ for those who find themselves before it [22, pp. 16 and 96]. The adjective 'mute' (in Italian 'muto') used by Sacco with respect to the behaviour thus indicates the absence of linguistic meaning based on arbitrary convention [22, p. 16], but not the lack of sense [22, pp. 15–16]. As a result of this, an intersubjective—albeit reduced—dimension of the mute behaviour is possible.

3 Heterogeneity of the Manifestations of the Mute Behaviours and Pragmatics of Legal Acts

As mentioned in Sect. 2.1. the mute behaviours listed by Sacco are manifold in nature and form. We can say this looking at the Sacco's list of mute behaviours which is very long. It should also be noted that "the most significant among them come from archaic eras (they do not need articulate language!)."¹⁷

Among the examples of "mute" behaviours, reported by Sacco [21, p. 183], here are a few:

¹⁴ The example cited is one who instantly connects the footprint of an animal (in this case a hare) to the idea of an animal itself, cf. [24, p. 62].

¹⁵ See [22, p. 14] and [25, pp. 29–31].

¹⁶ Cf. [25, p. 4] who uses this expression to refer to the "[...] signification [...]".

¹⁷ [21, p. 297]. On "law without articulated language," see [17, pp. 24–28].

[...] occupation [...], abandonment of the thing, delivery, tacit acceptance of inheritance, [...] acceptance of an order by sending the goods, distribution of products or titles of entitlements by means of automatic devices, de facto partnership, de facto employment relationship, de facto marital-uxority relationship, de facto parental relationship.

The two examples of mute behaviours that are most familiar to the jurists and oldest are the following: occupation (the taking of possession) and the dereliction (the abandonment).

The concrete material behaviour of the occupying subject constitutes a symptom from which third parties can derive the will of the action and of its immediate consequences, i.e. the creation of a situation of power (control) over the occupied thing. [22, p. 96]. Analogously, in the case of dereliction, the action of the derelicting subject constitutes a symptom from which the will of the action to cease the situation of power (control) over a thing can be derived [20, pp. 156–157; 22, p. 101].

In both cases there is no meaning attributed by a linguistic or other convention, but these actions have a meaning (sense) based on experience.

This makes it clear how is reasonable to frame both the concrete material behaviours of occupation and dereliction as presentative meanings and how the attribution of a certain meaning (sense) can be framed as a phenomenon of semantic integration [cf 24, pp. 61–62].

Another example—very interesting as it concerns a more complex and continuous behaviour over time, as opposed to occupation and dereliction—is the example of partnership by conduct [cf. 20, pp. 181–188 and 22, p. 103]. For Sacco, it is “[...] structured in spontaneous factual behaviours and creates confusion of assets, liabilities and reliances” [20, p. 182] and as its roots in the earliest eras of the human being when collective hunting was the main means of subsistence for community [20, pp.183–185 and 22, p. 103]. It is precisely by looking at this type of community that Sacco identifies principles that have survived into later eras.¹⁸ They can be summed up in the idea that whoever contributes to the collective behaviour of partnership is, de facto, participating in it.¹⁹ Consequently, it seems to be possible to say that those who act together with others towards a common goal are engaging in behaviour that is interpreted by an onlooker as participation in a social bond.

This, as we already said, is not based on a code that attributes a conventional meaning to the behaviour, but rather on an experience that makes it possible to attribute a meaning to it in terms of a presentative meaning and semantic integration.

¹⁸ For example, Sacco mentions the example of the establishment of a partnership through “[...] the conduct carried out in common [...]”, example on which writes the Roman jurist Modestinus [20, p. 186].

¹⁹ In the earliest case reported by Sacco, those who participate in the hunt also share the prey [20, pp. 183–185].

In Rodolfo Sacco's work, "mute behaviours" constitute one of the two terms of a paradigmatic opposition within a macro-historical perspective²⁰: speaking acts vs. mute behaviours.

The concept of "mute behaviour" is articulated through two steps.

We will review the *two* passages of Sacco's argument, which takes place in the context of a macro-history of law.

First passage: Sacco explicitly recognises the role played by "word" as an essential tool for formulating and conforming legal relationships. Examples: promise, gift, covenant, partnership, will.

Sacco writes [21, p. 183]:

The cultures of man that we are given to know formulate and conform by means of the instrument "word" the legal relationships that agree to the parties concerned: the commitment to give a thing in exchange for a thing; the generous transfer of ownership of a good; the covenant whereby one of the two will not hunt [...] except upstream, and the other will not hunt except downstream; the establishment of a company; the will and testament.

Second passage: Sacco places side by side and contrasts the "speaking" act (in the jurists' lexicon: the "declaration") with a different and more archaic²¹ instrument of autonomy: the "mute" behaviour.

According to Sacco [21, p. 193]:⁸

The cultures of humans still lacking articulated language, and the cultures we know, conformed or conform legal relationships without resorting to speech; to this end they give execution to the legal relationship they want to create (or cease to execute the legal relationship they want to extinguish).

However, when looking at specific cases, the distinction between speaking acts and mute behaviours is not as clear-cut as it might appear at first sight. Indeed, in certain cases, it is possible to use both the instrument of mute behaviours and that of the speaking acts to achieve the same practical goal (as we will see *infra*). In addition to this it has to be said that sometimes non-verbal behaviours, which nevertheless have a conventional meaning, can also be used for the same purposes. The most important manifestation of this phenomenon is the gesture.

In order to derive elements that may be useful in clarifying the position of gestures and conventional non-gestural behaviours with respect to the mute behaviours and the speaking acts, it is necessary to investigate the pragmatics of mute behaviours.²²

²⁰ Rodolfo Sacco's book, *Antropologia giuridica* (2007), bears the subtitle: *Contribution to a Macro-history of Law*.

²¹ From most ancient times, according to Sacco, as seen in Sect. 1., man "constitutes legal relationships by executing these relationships." [21, p. 183]. Writing about this topic Sacco speaks of an intuitive "symmetry between the structure of the act and its effects" [22, pp. 96–97]. The latter words cannot but evoke that instinctive law (*instinktives Recht*) Karl Marx speaks of regarding the permissibility of collecting fallen wood. cf. [9].

²² Cf. [6].

3.1 Two Dichotomies in the Pragmatics of the Mute Behaviours

The set of mute behaviours enumerated by Sacco is not a homogeneous set. We will show the non-homogeneity (heterogeneity) of the mute behaviours enumerated by Sacco through the enunciation of two dichotomies:

- (i) *First dichotomy: essentially* mute behaviours vs. *accidentally* mute behaviours.
- (ii) *Second dichotomy: mute behaviours* vs. non-verbal semantic behaviours.

3.1.1 First Dichotomy: Essentially Mute Behaviours vs. Accidentally Mute Behaviours

The first of the two dichotomies through which we intend to show the non-homogeneity (heterogeneity) of mute behaviours identified by Sacco is as follows: *essentially* mute behaviours vs. *accidentally* mute behaviours.²³

Let us now compare two examples of mute behaviours, both of which are found in the list of mute behaviours formulated by Sacco:

- (i) occupation (taking possession);
- (ii) acceptance of an order.

They are heterogeneous mute behaviours.

While in occupation, that we describe *supra*, the performance of the material act (the material apprehension of the object) is a *necessary* condition for occupation to occur, on the other hand, in the acceptance of an order, the material performance of the act (the sending of the goods) is not a *necessary condition* but a *sufficient* condition for acceptance of the order to occur.

In other words, it is another to *immediately implement an act*, and another to *mediately* implement an act (by activating a condition of the act).

One possible test to distinguish the *immediate* implementation of a mute behaviour from the activation of a condition of the act, is to ask (in the two cases we mentioned of occupation and acceptance of an order), whether the act can be accomplished *verbally*.

Indeed, on one hand we can see how the acceptance of the order can take place in the manner proper to the mute behaviour, that is, by means of a concrete material behaviour that brings about the situation desired by the parties. At the same, however, it is possible for the acceptance to take place by means of a speaking behaviour, for example, saying 'I hereby accept the order'.

Not so, however, in the case of occupation. Such an act, in fact, cannot be accomplished by saying 'I hereby occupy'.

Occupation (taking possession) cannot be accomplished except by *materially* accomplishing the occupation itself. (Occupation must be *done*, not *said*).

²³ The use of this phenomenological distinction was suggested to Paolo Di Lucia by a conversation with Michele Prandi, whom we thank.

'Acceptance' and 'occupation' are etymologically related verbs (Latin: *capere*), but while acceptance is a *performative* act, occupation is not.

3.1.2 Second Dichotomy: Mute Behaviours vs. Non-Verbal Semantic Behaviours

The essentially mute behaviour (occupation, dereliction) is not amenable to being performed verbally. But the essentially mute behaviour is susceptible to being converted into a non-verbal semantic act.

Here is an example of such a conversion: the example of the occupation of the abandoned city, taken from David Hume (1711–1776) [cf. 8]:

Two *Grecian* colonies, leaving their native country, in search of new seats, were inform'd that a city near them was deserted by its inhabitants. To know the truth of this report, they dispatch'd at once two messengers, one from each colony; who finding on their approach, that their information was true, began a race together with an intention to take possession of the city, each of them for his countrymen. One of these messengers, finding that he was not an equal match for the other, launch'd his spear at the gates of the city, and was so fortunate as to fix it there before the arrival of his companion. This produc'd a dispute betwixt the two colonies, which of them was the proprietor of the empty city; and this dispute still subsists among the philosophers.

3.2 An Alternative to the "Speaking Act vs. Mute Behaviour" Alternative: the "Sema-Pragmatic" Act

In the phenomenology of legal experience, as Sacco points out, we encounter "speaking" acts and "mute" behaviours.

But is the concept of the mute behaviour complementary to the concept of the speaking act?

Our answer is negative: *tertium datur*.

Starting from Hume's example about the Greek colonies, mentioned under Sect. 3.1.2., it is possible to observe how certain non-verbal behaviours can already present a semantic characterization, in the traditional semiotic sense.

Moreover, from this same example it is possible to delineate a class of facts that fall neither properly within the class of mute behaviours nor within the class of speaking acts.

An illuminating example of a legal act that falls neither under the category of mute behaviours nor under the category of speaking acts is the handshake («Handschlag»; «Palmata»), investigated by the Italian jurist Luciano Musselli in his essay entitled: *Diritto e civiltà rurale in alta Italia: la conclusione del contratto per stretta di mano* («Law and Rural Civilisation in Upper Italy: the Conclusion of Contract by Handshake» («Handschlag»; «Palmata»), 1989, cf. [14].

Since a semantic dimension (from Aristotle *lógos semantíkós*) is connected to the category of legal acts to which the handshake belongs (acts that are neither mute behaviours nor speaking acts), we will call the set of these acts that do not fall under

either of the two categories of acts identified by Sacco (mute behaviours and speaking acts): *sema-pragmatic* acts.

3.3 Two Theses on Sema-Pragmatic Acts in Law

On *sema-pragmatic* acts we state two theses (one *negative* thesis, one *positive* thesis):

- (i) *negative* thesis: sema-pragmatic acts are *not* accomplished through the performance of speaking acts;
- (ii) *positive* thesis: sema-pragmatic acts *are* made possible (like speaking acts) by a (conventional and arbitrary) semiotic code.

This can easily be seen in the mentioned example of the handshake (“*Palmata*”, *Handschlag*): there is no verbal expression whatsoever but only a concrete material act, which, differently from mute behaviour, does not produce a situation at which both parties aim. However, by virtue of an arbitrary convention shared by the parties, this behaviour establishes a legal relationship between the parties.

As we have seen in the specific example of the act of handshaking called ‘*Palmata*’, ‘*Handschlag*’, sema-pragmatic acts seem to be *hermaphroditic acts*: as *coded* acts (they have a semiotic code that determines the semantic value of them) they are like *speaking acts*, but insofar as they are not verbalised, they are like *mute behaviours*.

To the class of sema-pragmatic acts it seems possible to add the sphere of gestures investigated by the ethnologist Giuseppe Cocchiara, who has given various examples of gestural behaviours, among which the kiss, specifically the bridal kiss,²⁴ that is particularly relevant to legal relationships [4, p. 58].

The existence of sema-pragmatic acts (including gestures) is particularly significant if we inscribe the phenomenon in the *macro-historical* perspective that is Rodolfo Sacco’s own.

In fact, it has been seen that the boundary between mute behaviours and gestures is more blurred and it is therefore legitimate to suggest a framing of gestures (and therefore sema-pragmatic acts) in an intermediate stage between the mute behaviour and the legally relevant behaviour expressed through speech.

The trichotomy of the concept of legal acts into the three concepts of (i) speaking acts, (ii) mute behaviours, and (iii) sema-pragmatic acts would be inscribed in a pragmatic theory of the legal act [6].

²⁴ Further interesting examples can be found in analyses of nuptial rites [5] and gestural language.

4 Conclusions

So, in summary, as explained in Sect. 1, the mute behaviour is for Sacco a human behaviour or an action that determines the establishment, modification or termination of a legal relationship without resorting to linguistic dimension. From a semiotic perspective to better understand the nature of the mute behaviour, it was necessary to analyse the terminology used by Sacco ('signifying sign' and 'symptom') to delineate the proper dimension of the mute behaviour. Thus, signifying sign was traced back to the notion of conventional and arbitrary sign and consequently an attempt was made to reconstruct the notion of symptom, which unlike the notion of signifying sign is compatible with the concept of the mute behaviour. The symptom was thus linked to conceptions of sign based on "signification" and found a particularly happy framing in the ideas of "presentational meaning" and "semantic integration" elaborated by the philosopher Guido Morpurgo-Tagliabue.

Due to the exclusion of conventional signs from the scope of the mute behaviour, an attempt was made to analyse the relationship between the latter and the phenomenon of gesture which is grounded on a conventional code considering also how prior to 2015 various orientations had tended to equate them. This led to highlighting a category of acts—sema-pragmatic acts—that can have significance in Sacco's macro-historical view as an intermediate stage between the mute behaviours and the legally relevant acts that are performed through the use of speech.

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Declarations

Conflict of interest The authors have no competing interests to declare that are relevant to the content of this article.

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