

# A Proposed Genealogy of the Theory of Social Roles as the Basis of Legal Responsibility and Liability in the Work of H.L.A. Hart

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## **Abstract**

*Lying at the confluence of several social sciences, such as sociology, anthropology and psychology, as well as at the intersection of human intrapsychic life and its social life, the category of "social roles" is the subject of analysis of all these sciences and is used to explain many interrelated concepts that are meant to explain people's attitudes and actions in society, as well as the creation of social structures and society itself. It is to the English philosopher H.L.A. Hart that this multivalent category came into the world of law, and he gave it the status of the basis of legal responsibility and liability. So far, the Australian professor Peter Cane's exegesis has explained H.L.A. Hart's theory of social roles as the basis of responsibility and liability in law through the relations of authority that these roles imply. The present study proposes a new interpretation of this conception, which could have revolutionary implications in the general theory of legal responsibility and liability, if validated, through Talcott Parsons' sociological conception, by following the rigid structure of legal liability. The methodology of the study provides a comparison between Peter Cane's theory and the interpretation of social role theory as a basis of legal responsibility and liability through the sociological conception of Talcott Parsons.*

**Keywords:** social roles, authority relations, responsibility, legal accountability, H.L.A. Hart, Talcott Parsons, Peter Cane.

**JEL Classification:** K41, K42

## **1. The epistemological field of defining social roles**

The concept of "social role" is widespread in the social sciences, sometimes even occupying the *core concept* in sociology, social psychology or anthropology research, and in general, it serves as an umbrella for complementary approaches to explain multiple ideas or phenomena of the most diverse nature, which are concerned with the attitudes, choices and actions of people in society.

The literature even states that the social role is "the theoretical point of articulation between psychology and sociology" or that this concept is "a bridge between a person's intrapsychic life and social participation".<sup>2</sup> An inventory of the most eloquent definitions of the social role compiled by B.J. Biddle is as follows: "a set of particular norms organized around a function" (belonging to the authors F. L. Bates and C. C. Harvey) or "a comprehensive pattern of behavior and attitude" (R. H. Turner) or "behavior that refers to normative expectations associated with a position in a social

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<sup>2</sup> Bruce J. Biddle, *Role Theory: Expectations, Identities and Behaviors*, Elsevier Science, 2013, p. 11, Available at: <https://www.perlego.com/book/1897769/role-theory-expectations-identities-and-behaviors-pdf> (Accessed: 5 November 2023).

system" (V. L. Allen and E. Van de Vliert).<sup>3</sup> And as a corollary to these definitions, the author of the synthesis of social role theories himself defines it as "the science that deals with the behaviors of people in certain contexts and processes that produce, explain, or are affected by them."<sup>4</sup>

In spite of an epistemic disarray that can be found in the definitions given to this concept by different researchers on the basis of the methodological toolkit specific to each social science from which they come, *social role* theories generally start from some common premises, namely: the assumption that people occupy different social positions in society according to which they receive, dress or assume certain roles and/or statuses, as well as the expectations they project both in terms of their own actions and those of others.<sup>5</sup>

On the other hand, it has been observed that the theories of social roles presuppose an integrated approach of a set of elements in a true conceptual structure<sup>6</sup> which, in our opinion, are meant to create a more complex epistemic field of definition, because the *role* - as a metaphor or social representation - cannot be explained and configured *ut singuli*. Thus, as an expression of people's social behavior in society, social roles represent the prescriptive aspect of their social conduct<sup>7</sup>, i.e. the benchmark on the basis of which they can orient their actions towards well-defined goals and which provides necessary and comparative information with respect to other members of society, their position and roles.

In turn, the explanation of actions is itself a touchstone for the socio-human sciences and even for philosophy. In short, *action* means a change of state of a particular kind, which differs from physical changes, such as bodily movements, behaviors, reflex acts, in that it is subordinated to an *intention*<sup>8</sup> and - what is important for our study - is based on knowledge of existence as such and on the examination of the goals, interests and values that characterize man as a conscious being.<sup>9</sup> Therefore, human action has a motivational basis and a system of normative prescriptions (norms, values), and from a sociological point of view, social action is characterized by the elements of intentionality or voluntary commitment, rationality and institutionalization, i.e. the system of legitimation through specific institutions.<sup>10</sup> In this context, people establish links with others in which they can observe the behavior, options and choices of other members of society and thus become aware of their presence in a particular space.<sup>11</sup>

From this point of view, social relations represent the stable element of social ties, which unites (or divides according to interests, options, modes of action - *s.n.*) people into groups, where the social relation is a system of ties comprising two or more partners (individuals or groups), a contact, attitudes, interests and situations and even a

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<sup>3</sup> Idem, *Recent Developments in Role Theory*, Annual Review of Sociology, 12, 67-92, Available at: <http://dx.doi.org/10.1146/annurev.so.12.080186.000435> p. 69, accessed: 11.11.2023.

<sup>4</sup> Idem, *Role Theory...*, *op.cit.*, p. 4.

<sup>5</sup> Idem, *Recent Developments...* *op.cit.*, p. 67.

<sup>6</sup> Idem, *Role Theory...*, *op.cit.*, p. 18.

<sup>7</sup> Constantin Schifirneț, *Sociology*, 3rd edition, Comunicare.ro Publishing House, Bucharest, 2004, p. 41, available online: <http://elibrary.snsa.ro/wp-content/uploads/2020/04/Sociologie.pdf>, accessed: 11.11.2023.

<sup>8</sup> Andrei Marga, "Asupra logicii explicației acțiunilor", in Petru Ioan (coord.), *Cunoaștere, eficiență, acțiune*, Editura Politică, Bucharest, 1988, p. 191.

<sup>9</sup> Constantin Schifirneț, *op.cit.*, p. 31.

<sup>10</sup> Ibid, p. 34.

<sup>11</sup> Ibid, p. 42.

system of rights and obligations that they must realize.<sup>12</sup> Moreover, it is argued in sociology that social roles also fulfill a mediating function between institutional structures and the personal experiences of the members of a society<sup>13</sup>, oriented and prescribed as we have shown above.

For our part, we consider that the choices, modes and meanings of people's social actions raise the problem of their evaluation by means of a correlative concept, namely, the responsibility for intentional behavior caused by the agent's subjective desires, expectations and beliefs at their intersection with social norms, institutions, peer expectations, social values, structure and other elements of social reality. For if to explain a social phenomenon is to attribute it to actions whose meaning must be grasped, then to grasp the meaning of these actions is to identify their motives, that is - as Raymond Boudon points out - "to construct as coherently as possible a set of information about their past, their resources, their situation or the social context in which they move."<sup>14</sup>

Thus, the agent of action is free to choose between a legal and an illegal course of action, between a moral and an immoral course of action, between a possible and an impossible course of action, or between an efficient and an inefficient course of action, in other words, "he consciously and willingly commits himself to an action initiated by him or adheres to one initiated by others"<sup>15</sup> since, whatever he does or does not do, even if he should have acted, his action will refer to the norms of conduct existing in society that belong to several epistemic zones. We can therefore accept that, seen in this way, responsibility is a conscious and willful commitment to an action that takes place in the social environment, and is a "derivative of freedom of action."<sup>16</sup>

If at a general level, social structure represents a set of human and social interactions integrated into a system, to which it provides homogeneity and continuity, determining its identity and stability, we will take as benchmarks for our study the character of regularity and organization that it gives to social coexistence and the effect of stratification of people in society on professional, cultural, social status<sup>17</sup>, but also the constraints under which individuals act and which define the limits of the possible for agents of individual actions.<sup>18</sup>

Otherwise, inter-human social relations on the one hand, and on the other hand, the organization, hierarchization and constraints of society bring into question the question of *authority*. In the sphere of private social relations, there are relations of authority between the different social roles into which people enter (husband-wife, parents-children, employer-employee, etc.), and in an organized society, *authority* claims by virtue of the right to govern a correlative obligation of obedience on the part of all its members to respect general social norms under the condition of their political legitimacy.<sup>19</sup>

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<sup>12</sup> Ibid, p. 43.

<sup>13</sup> Ibid, p. 41.

<sup>14</sup> Raymond Boudon, *Perverse Effects and Social Order*, Translated by A.-L. Stoicea, R. Țurcanu, A. Babeș, M. Petrovici, EUROSONG&BOOK, Bucharest, p. 8-9.

<sup>15</sup> Mihai Florea, "Decizie și responsabilitate", in, C. Popa (coord.), *Existență, cunoaștere, acțiune*, Scientific Publishing House, Bucharest, 1971, p. 326.

<sup>16</sup> Ibid, p. 327.

<sup>17</sup> Constantin Schifirneț, *op.cit.*, p. 39.

<sup>18</sup> Raymond Boudon, *The effect...*, *op.cit.*, p. 18.

<sup>19</sup> Scott A. Hershovits, *The Role of Authority*, *Philosopher's Imprint* 11, no. 7 (2011): 1- 1- 19, p. 3, available online

Accordingly, the classical correlative concepts on which the analysis of social role theories is based are the *behavior* or *conduct* of the subject in human society, i.e. social action, the individual as an agent of social action or as a social actor, and the social norms that regulate them are the tools of socio-anthropological research. They can generate the social profile of the human individual, as a social actor or agent of social action, i.e. what sociology calls his social identity.<sup>20</sup>

At the same time, we believe that the question of the responsibility of social action can and should be integrated into the social identity profile of the human individual as a member of society, all the more so since H.L.A. Hart built his own theory of social roles on this. All the other correlative concepts that I have associated with the approach of defining social roles, i.e. the social environment, social relations, social values and structure, legitimate authority, whether private or public, and especially (legal) law, are also sociological concepts that exist in the background of any kind of analysis of man and society.

## 2. Research objectives

We have stated on another occasion that there is no approach to legal liability from the perspective of the general theory of law or of the branch sciences that does not recognize that this complex category of law cannot be defined and, above all, known and understood outside the etiological relationships with other concepts and categories belonging to other epistemic areas, on which it is based or to which it necessarily and necessarily relates.<sup>21</sup>

Therefore, man - as an anthropological and philosophical item, seen as an individual-member of society by sociology, is *personality*, *Self* and *I* for psychology and, at the same time, *personality*, respectively, *natural or legal person* in law. The social action of man as a social actor or agent of action, which is evaluated in terms of efficiency/inefficiency by sociology, in terms of correctness/incorrectness or morality/immorality from the perspective of ethics, becomes an *act* under the action of legal rules, being evaluated in terms of lawfulness/illegality from the perspective of law, which entails the imposition of an appropriate legal sanction depending on the legal nature of the rule violated in the event of non-compliance of the action of the subject of law with the provision of that rule.

Generalizing to the maximum the views presented in the legal literature on legal liability, we will retain some features of the conceptual analysis of legal liability with approximately axiomatic value. Specifically, legal liability is inextricably linked with unlawfulness, the application of coercive measures by the state to the active subject of the commission of the unlawful act, and the act of applying the coercive force of the state to the perpetrator of the unlawful act, which also contains the dose of blame/accountability directed at him.

From a genetic-social perspective, to these assertions is added the filiation of legal responsibility as a form of social responsibility, which would represent a dynamic

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at: <https://repository.law.umich.edu/articles/2240/>, accessed: 02.06.2024.

<sup>20</sup> Bruce J. Biddle, *Role Theory...*, *op.cit.*, p. 68.

<sup>21</sup> Lucian-Sorin Stănescu, *Prolegomena for a definition of the structural concept of legal liability*, in, "Perspectives of Law and Public Administration", Volume 10, Issue 1, March 2021, p. 15.

reciprocal connection between the individual and society, characterized by correlative rights and obligations to comply with the prescriptions of social norms, their execution generating either approval from society or stimulating the behaviour of compliance, while non-responsible behaviour (more precisely, with conscious ignorance of responsibility) that does not comply with social norms, thus violating public order, will generate the application of personal or material sanctions.<sup>22</sup>

From this perspective, one of the most provocative proposals to explain the origin of social responsibility and, consequently, of legal responsibility belongs to the English theorist and philosopher Herbert L.A. Hart (1907-1992). Starting from the semantic, but above all the practical, meanings of responsibility, and showing that the terms 'responsibility', 'responsible' and 'responsible for' are frequently used both in and outside the language of law, the English philosopher, in his famous work *Punishment and responsibility* (1968), outlined four types of responsibility, namely *role-responsibility*, *causal-responsibility*, *liability-responsibility* and *capacity-responsibility*.<sup>23</sup>

So, H.L.A. Hart is the one who translated the concept of social role into the field of law, explaining the concept of (*social*) *role responsibility* starting from the examples of the responsibilities that fall to a person in a particular social role or position (thus, the captain of a ship is responsible for its safety, the husband is responsible for the maintenance of his wife, the parents are responsible for the upbringing of children) and generalizing as follows: "whenever a person occupies a *distinct place* or *position* to which specific duties are attached to ensure the welfare of others or to promote the interests of the organization, it will be said in an appropriate way that he is responsible for the performance of those duties or is doing what is necessary to perform them."<sup>24</sup> In the view of P. Cane, a professor at the Australian National University and an exegete of H.L.A. Hart's work, Hart associated the ideas of "being a responsible person" and "acting responsibly" with the idea of "responsibilities that derive from one's social role."<sup>25</sup> Thus, the task before us is to verify the validity of this theory as the basis or foundation of a universal conception of social responsibility and its normative form, legal responsibility, or, in reality, it could be just a "fashion" to which H.L.A. Hart resorted, given the multiple uses that social scientists<sup>26</sup> have given to the "coat" of social roles, intended - it seems - to cover epistemic nebulous areas.

To this end, we will first review the sociological theories of social roles, briefly present H.L.A.'s theory of social role responsibilities. Hart, then we will practice the necessary dichotomies between the Western semantic meanings by comparison with the autochthonous ones with regard to legal liability, followed by an analysis of the meanings of the concepts with which operate or on the basis of which liability as a social and legal phenomenon can be explained from a double perspective, sociological and legal, and finally, to highlight some forms of expression of social roles in Romanian positive law and the comparison of their sociological and legal usefulness.

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<sup>22</sup> Dumitru Baltag, *Teoria răspunderii și responsabilității juridice*, Editura ULIM, Chișinău, 2007, p. 14-46.

<sup>23</sup> Herbert L.A. Hart, *Punishment and Responsibility*, Oxford University Press, 1968, p. 212.

<sup>24</sup> *Ibid.*

<sup>25</sup> Peter Cane, *Role Responsibility*, *J Ethics* (2016) 20:279-298, DOI 10.1007/s10892-016-9235-8, p. 280, available online at: <https://philpapers.org/rec/CANRR>, accessed: 02.06.2024.

<sup>26</sup> Bruce J. Biddle, *Recent developments...*, *op.cit.*, p. 70.

### 3. Study methodology

Therefore, the plurality of conceptions about the foundations and institutionalization of legal liability reveals the insufficiency of theories and arguments on the genesis of liability in society in general and, in particular, of legal liability as the finality of law. Therefore, we believe that the search for the "cause" of liability in a philosophical sense is far from being exhausted, and this implies, first of all, working with concepts belonging to several social sciences.

Apart from the fact that in the field of research on legal phenomena there is a tendency towards complex models that correlate the technical legal language with that of other social sciences<sup>27</sup>, epistemological borrowing is all the more justified in the genetic and comparative analysis between social role theories and the general theory of legal responsibility, given that both operate with common concepts, whose meanings or contents are different, which have the capacity to offer alternative, but competing or complementary explanations of human behavior or conduct. Or if it is argued that social role theories are methodologically neutral because they have been investigated with methodological tools belonging to almost all social sciences<sup>28</sup>, then approaching them from the perspective of law can only be their corollary.

In the development of social role theories, they have produced their own concepts such as *role, identity, social position or status, consensus, conformity and role conflict*, while law operates with concepts such as *obligation, rights, person* (natural or legal), *legal act*, as a species of social behavior or action, with its specific legal names: *offense, delict*, (misdemeanor), *licit, illicit, liability, legal sanction* (the latter taking different forms according to the branch of positive law to which it belongs, e.g. principal, complementary and accessory punishments, educational measures, in criminal law; ordering the restitution in kind of property, termination and rescission of contracts, undesignation of succession, ordering the payment of damages in civil law, unconstitutionality of a law in constitutional law, etc.).

The area of confluence of the two theories is found in the matrix of the binary *person-behavior* approach, regardless of whether the sociological approach to social roles assumes a set of human behaviors ordered by a set of subjects, as well as a set of classes of behaviors,<sup>29</sup> whereas law "fixes only a tendency of social existence - the tendency to anchor people's actions"<sup>30</sup> within a framework already defined by legal norms, thus reducing the sphere of human conduct as social action, in its commissive or omissive variants, to its illicit determinations, where "the reality of the illicit (....) is an 'ought' violated in one way or another and, through this violation, the perpetrator is penalized".<sup>31</sup> Conceptually speaking, the person is defined differently in social role theories and in legal theory and practice because the theorists of the first group of theories use the concepts of I, self, general roles, deviance and love<sup>32</sup>, while the law

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<sup>27</sup> Ion Craiovan, *A Treatise on the General Theory of Law*, 4<sup>th</sup> edition, revised and added, Universul Juridic Publishing House, Bucharest, p. 253.

<sup>28</sup> Bruce J. Biddle, *Role Theory...*, *op.cit.*, p. 13.

<sup>29</sup> *Ibid.*, p. 15.

<sup>30</sup> Mihai Florea, *Responsabilitatea actiunii sociale*, Scientific and Encyclopedic Publishing House, Bucharest, 1976, p. 15.

<sup>31</sup> Gheorghe Mihai, *Fundamentele dreptului. Teoria răspunderii juridice*, Vol. V, C.H. Beck, Bucharest, 2006, p. 174.

<sup>32</sup> Bruce J. Biddle, *Role Theory...*, *op.cit.*, p. 289.

defines the natural person by the category of human being, considered individually, as the holder of civil rights and obligations (according to art. 25, paragraph 2, Civil Code).

However, the ludic origins of social roles and the person or person seen as a social role are common. Ancient Greek theater appropriated ceremonial masks to embody various characters (*prosopon*) played by the actors who wore them on stage in front of the audience. The character was therefore not the same as the actor behind the mask. The Romans translated the term *prosopon*, which designated the character in Greek theater, by the word *persona*, which became `persona` in Romanian language and law. Therefore, quoting Professor Gheorghe Mihai, "the *person* - originally - would be the mask worn by the individual in public life (or the crowd of masks, in relation to the situations and relationships in which the individual is, enters or participates), as opposed to the one behind it, the bearer, in other words his or her self, his or her authenticity; someone (the personality) always appears differently: father in relation to the son, husband in relation to the wife, taxpayer in relation to the tax office, debtor in relation to the creditor, citizen in relation to the state, etc."<sup>33</sup>

Also, the origins of social role theories are to be found in the conditioning of the interpretation of roles by ancient actors according to certain scenarios, from which it was extrapolated that social behaviors in other contexts were also associated with roles and scenarios understood by social actors and, consequently, social role theories have as object of study a triad of concepts: Patterned and characteristic social behaviors, roles or identities that are assumed by social participants, and scripts or behavioral expectations that are understood by all and adhered to by all social actors.<sup>34</sup>

In the *person-behavior/behavior* analytic matrix (in its narrowed version for the usefulness of this study of social action), the points of conjunction between social role theories and law are found in the matter of intentionality and rationality of the person as agent of action or social actor. While sociology considers a behavior to be rational whenever it is able to offer an explanation for it that can be stated as follows: "It is understandable that actor X behaved in manner Y: Indeed, in the situation in which he found himself, he had good reasons to do Y"<sup>35</sup>, (Romanian) civil law considers that the person is the individual, in the sense of a being endowed with reason and conscience<sup>36</sup> or, more precisely, "the natural person is the individual, considered individually, as the holder of civil rights and obligations", according to art. 25, para. 2, Romanian Civil Code.

#### 4. Role concept and social role theories

Theories concerned with studying and analyzing social roles refer first to the concept of role. In turn, this too has generated multiple approaches, so that in a brief overview, the classical ones define role as: "a differentiated position in terms of a given social structure" (Levy, 1952); "what the actor does in relation to others" (Parsons, 1951); "a subjectively consistent series of conditioned responses" (Contrell, 1942); an integrated set or minimal set of social norms (Bates, 1956) or, somewhat newer, as "what

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<sup>33</sup> Gheorghe Mihai, *op.cit.*, p. 16-18.

<sup>34</sup> Bruce J. Biddle, *Recent Developments... op.cit.*, p. 68.

<sup>35</sup> Raymond Boudon, "Acțiunea", in, R. Boudon (coord.) *et alii*, *Sociologie*, translated by D. Vasiliu and A. Ene, Humanitas Publishing House, Bucharest, 1996, p. 39.

<sup>36</sup> Gheorghe Mihai, *op.cit.*, p. 19.

persons do or how they act as occupants of positions" (Newcomb, 1951); "what actors undertake... seen in a functional context" (Parsons, 1951).<sup>37</sup>

**Functional role theory.** This theory has focused on the characteristic behaviors of people who occupy social positions within a stable social system in which roles are conceived as normative expectations that prescribe and explain these behaviors. The functionalist theory of T. Parsons (*The Social System*, 1951), dominated social role theories until the mid-1970s. Justifiably, criticisms of this theory have come from the inconsistency of the premises established by Parsons, namely, that social systems are unstable social systems that are organisms that change their state and composition, that many roles are not necessarily associated with social functions or positions, and that social norms may or may not be shared by role occupants and may or may not lead to conformity or sanctioning.<sup>38</sup>

**Symbolic role interactionist theory.** Symbolic interactionism in social role theory began with the research of George Mead (*Mind, Self and Society*, 1934) and emphasized the individuality of social actors and the role development resulting from social interaction. Interactionists believe that effective social roles reflect the norms, attitudes and contextual requirements that lead to the actors' understanding of the evolving situation. An important idea for our study is that the norms accepted by actors are those associated with accepted social positions. Interactionists have studied role relations, negotiation, assumption and the stress caused by them, as well as how different social roles modify or influence the goals and self-concept of the people involved. In more recent interactionist research, the focus has shifted to learning about rules (1974), roles and personhood (1978), strategies for developing role propositions (1979), and the effects of others' responses on the interpretation of role behavior (Turner & Shosid, 1976).

Criticisms of this theory have speculated about ignoring expectations of others and structural constraints on expectations and roles and what we need to understand about the relationship between expectations and behavior.<sup>39</sup>

**Structural role theory.** Ralph Linton's formulation of the role concept influenced anthropological and structuralist studies, which led to the development of mathematically expressed theories of structured role relationships (Burt, 1976, Mandel, 1982). These studies shift the focus from actor behavior and expectations to social structures, conceived as stable organizations of groups of people, called "social positions" or "statuses", who share the same patterned behaviors ("roles"), which are directed to other sets of people in the structure. Because of the mathematical language in which they are expressed and the prioritization of the social environment over the analysis of individual behaviors, these theories have not spread rapidly in the social sciences.<sup>40</sup>

**Organizational role theory.** Starting with the work of Gross (1954) and Kahn *et al.* (1964), the efforts of theorists in this stream have been directed towards constructing a role theory focused on pre-planned, task-oriented and hierarchical social systems. They assume that roles within these organizations are associated with identified social positions and are generated by normative expectations, but norms may vary across

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<sup>37</sup> Bruce J. Biddle, *Role Theory...*, *op.cit.*, p. 56.

<sup>38</sup> Idem, *Recent Developments...* *op.cit.*, p. 72.

<sup>39</sup> Ibid, p. 72.

<sup>40</sup> Ibid, p. 73.



individuals and may reflect both the formal requirements of organizations and informal group pressures.

Given multiple sources of norms, individuals are subject to role conflicts in which they must combat norms antithetical to their behavior. These role conflicts produce tensions and must be resolved if their goal is for people to be happy and the organization to thrive. More recent work devoted to this stream (V.L. Allen and E. Van de Vliert, 1983) focuses on the problems that arise when the actor has to cope with changes in social position or in expectations about the actor's position.

Such experiences cause tensions, and the theories look for those variables that affect the social actor's choice of strategies to cope with the change situation. The vulnerabilities of these theories lie in the fact that their premises, i.e., organizations seen as stable and rational entities, the identical nature of all conflicts within the organization being that of role conflict, and that once resolved the individual will be happy and productive, are not absolute and have failed the test of practical verification.<sup>41</sup>

**Cognitive role theory.** Much of the empirical research on social roles has been associated with cognitive psychology and has focused on role expectations and actor behavior. They paid attention to the social conditions that give rise to expectations, techniques for measuring expectations, and the impact of expectations on social behavior.

Within this group of theories, several sub-domains of research have developed over time. A first field has emerged around the study of role-playing, starting with the work of Moreno (1934). In his conception, role-playing begins when a person begins to imitate the games of others, but it occurs naturally in children's behavior and can be used effectively in various educational and psychological therapies. Another sub-domain has developed around group norms and the role of the leader (Moreland&Levine, 1982). The third sub-domain is the theories of anticipatory expectations, which are less normative in nature and more like beliefs about the likely behavior of both its subjects and others. Initially this group of theories was used in the treatment of psychiatric disorders, but nowadays it is used in the improvement of family interactions (Mancuso & Adams Webber, 1982).

The fourth sub-domain has emerged around the issue of role assumption, building on research by Mead (1934) and Piaget (1926). Later, techniques were developed to measure the degree of sophistication of role assumption with increasing age (Eisenberg&Leon, 1983). This multiple division of research directions within cognitive role theories has made it unnecessary to develop integrative work, with the exception of Biddle (1979), who addresses the concepts of *role*, *social position*, *status*, *expectation*, and other derivative concepts, as related to individual expectations and social system theory. Biddle assumes that role expectations can arise simultaneously in at least three modes of thinking: norms, preferences, and beliefs, all of which affect social behavior and are implicated in role generation.

Criticisms of cognitive role theories refer to their being too applied to the specifics of American society and social behavior and ignoring the dynamic and evolutionary character of human interaction.<sup>42</sup>

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<sup>41</sup> Ibid, p. 75.

<sup>42</sup> Ibid, p. 77.

## 5. Social roles, responsibility and legal liability in the work of H.L.A. Hart

Herbert Lionel Adolphus Hart (1907-1992) was one of the most prominent legal philosophers of the 20th century, being famous for at least two important works, *The Concept of Law* (Oxford University Press, 1961) and *Punishment and Responsibility* (Oxford University Press, 1968), the first of which was translated into Romanian by the translator Ștefan Lupu under the title *The Concept of Law* and was published by Sigma Publishing House, Chisinau, 1999.

The concept of responsibility is a major preoccupation in the work of H.L.A. Hart, so that after writing a first work devoted to this question, *The Ascription of Responsibility and Rights*, (Proceedings of the Aristotelian Society, 1949), he returns to the subject at length in *Punishment and Responsibility*, (Oxford University Press, 1968).

However, the ninth chapter of the book, devoted to the problem of responsibility, entitled *Responsibility and Retribution*, is an *addendum* to the previous eight chapters, which had not been published previously, as the author himself states in the introduction to the book, voluntarily abandoning his first study on responsibility, which he now considered anachronistic, considering the criticism he had received in the meantime to be justified. In 1968, Hart had been working for about 20 years on the question of responsibility and its forms of expression in positive law, which he dealt with in the philosophical paradigm of the criteria for distinguishing the mere physical movement of the human body from human action<sup>43</sup>, and so a genealogy of his conception of responsibility is worth a recomposition, even if only a brief one.

## 6. The influence of the sociological conceptions of Talcott Parsons and Robert K. Merton on the idea of social roles as the basis of legal responsibility and liability in H.L.A. Hart's theory

Although the philosophy of H.L.A. Hart is said to have been influenced by the representatives of legal positivism, John Austin (1790-1859) and Hans Kelsen (1881-1973), we cannot omit from the context that in the 1950<sup>s</sup> of the last century, Talcott Parsons (1902-1979) and Robert K. Merton (1910-2003) were launching their main theories, which would later become the functionalist paradigm of society, through two works with similar content: *The Social System*, (Routledge&Kegan Paul Ltd., 1951) and *Social Theory and Social Structure. Toward the Codification and Research* (Columbia University, 1949), both of which were later reprinted.

In T. Parsons' conception, a social system consists of a plurality of individual actors interacting with each other in a situation that has at least one physical or environmental aspect, actors who are motivated according to a tendency to "maximize satisfaction" and whose relationship to their situations, including with each other, is defined and mediated by a system of structured and shared symbols at the general level<sup>44</sup>, where the sense of voluntarism of action is given by the *self-motivation* of each individual social actor, acting in accordance with his or her goals and interests and

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<sup>43</sup> Herbert L.A. Hart, *The Ascription of Responsibility*, Proceedings of the Aristotelian Society, New Series, Vol. 49 (1948 -1949), pp. 171-194, Published By: Oxford University Press, p. 188, available online at: <http://www.horty.umiacs.io/courses/readings/hart-1948-ascription.pdf>, accessed: 11.11.2023.

<sup>44</sup> Talcott Parsons, *The Social System*, 2<sup>nd</sup> ed, Brian S. Turner (Preface to the New Edition), Routledge, 1991, p. 46.

normative norms.<sup>45</sup>

In his turn, Robert K. Merton is the one who introduces into the explanation of the functioning of the social mechanism the category of multiple roles that are associated with a single social status of the individual. By derivation from the simple idea of Ralph Linton, who associated a social status with a single role, Merton states that a given social status does not imply a single social role for its holder, but a series of associated roles, which link the holder to other statuses, associated roles and their holders, and this connection creates the social structure.<sup>46</sup> Thus, as in Parsons' conception, individual action is no longer seen simply as a response to certain stimuli within a particular situation, the social actor is the one who develops a complex system of expectations in relation to multiple situations encountered, which ultimately have the capacity to affect his or her very choices of action.<sup>47</sup>

What interests us from the perspective of this study is the observation that the mechanisms of the individual's personality are also affected by the system of social relations in which the actor evolves, as the holder of his action, in the sense that "the properties of the personality system are constituted by the roles of which it is supposed to be composed."<sup>48</sup> If social structure is a form of interactive relations and expectations formulated openly or implicitly by the other members of society, more precisely, of interactions between the holders of social actions, which are oriented in relation to subsystems of norms, values and interests, the problem is to find the meaning of these human actions in the social context, as well as the emergence of responsibility for them, as well as the assumption or rejection of legal responsibility for their consequences. In this sense, social roles are fulfilled through a permanent reference to a set of normative expectations emanating from the value system of society, expectations that define the proper, permissible and appropriate behavior of social actors.<sup>49</sup>

Now, Hart's main thesis on the problem of responsibility in his *The Ascription of Responsibility and Rights*, (Proceedings of the Aristotelian Society, 1949) starts from the proposition that human action is attributive and binding, and the statements "you did this", "I did that" are, in the first place, primary statements by which we either assume or admit legal responsibility (*liability*), which leads to the application of a legal sanction (civil, in the British sense, but also valid in criminal law, where the consequence is a "punishment" - *n.*) or we reject it and attribute responsibility to someone else.<sup>50</sup>

Until his second major work, devoted to the problem of responsibility and legal responsibility together with punishment, *Punishment and Responsibility* (1968), Hart did not revisit this theme and did not raise the question of social roles and their function in generating responsibility and legal responsibility, although during this time he developed

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<sup>45</sup> Richard Ormerod (2019): *The history and ideas of sociological functionalism: Talcott Parsons, modern sociological theory, and the relevance for OR*. Available from: [https://www.researchgate.net/publication/335718401\\_The\\_history\\_and\\_ideas\\_of\\_sociological\\_functionalism\\_Talcott\\_Parsons\\_modern\\_sociological\\_theory\\_and\\_the\\_relevance\\_for\\_OR#fullTextFileContent](https://www.researchgate.net/publication/335718401_The_history_and_ideas_of_sociological_functionalism_Talcott_Parsons_modern_sociological_theory_and_the_relevance_for_OR#fullTextFileContent), p. 188, accessed on: 23.11.2023.

<sup>46</sup> Robert K. Merton, "The Role-Set Problems in Sociological Theory", in *The British Journal of Sociology*, Vol. 8, No. 2 (June 1957), p. 111, available online at: <http://www.jstor.org/stable/587363>, accessed on: 17.05.2024.

<sup>47</sup> Richard Ormerod, *op.cit.*, p. 189.

<sup>48</sup> *Ibid*, p. 190.

<sup>49</sup> Lucia Dumitrescu-Codreanu, *The Sociological System of T. Parsons*, Scientific Publishing House, Bucharest, 1973, p. 85.

<sup>50</sup> Herbert L.A. Hart, *The Ascription of Responsibility...*, *op.cit.*, p. 184.

his main works, *Causation in the Law* (Oxford University Press, 1959, with A.M. Honore) and *The Concept of Law* (Oxford University Press, 1961). In 1968, in Chapter IX of *Punishment and Responsibility*, the English philosopher establishes that there are four types of causes of responsibility, namely *Role-Responsibility*, *Causal-Responsibility*, *Capacity-Responsibility* and strict legal liability (materialized by legal sanctions - *n.a.*) derived from responsibility as a state of being (*Liability-Responsibility*).<sup>51</sup>

In the same year, T. Parsons was called by the *American Sociological Review*, in its August 1968, issue 4, "a Buddha-like personality of sociology"<sup>52</sup> or this is precisely what justifies us to believe that the new theory of responsibility and, implicitly, of legal responsibility (as we understand it in the Romanian general theory of law and in positive law - *n.a.*) that H.L.A. Hart exposes in the latter work is an expression of the influence that Parsonsism exerts at that time on sociology, but also on other social sciences.

In T. Parsons' conception, society appears as a structure of institutionalized roles, legitimized and governed by collective values and norms, each social actor having to fulfill such a role through his or her actions, which are commanded by society to the individual in order to preserve all its members and itself.<sup>53</sup> Individual action is bounded and directed in this institutionalized network of roles and has two aspects: the social position situates the actor in the social system in relation to other actors and determines his social *status*, and the processual aspect identifies what the social actor does in his relation to others seen in the context of his functional significance, this is his social *role*.<sup>54</sup> And, more precisely, according to R. Ormerod's definition, the social actor is a social entity, an organized system of all his *statuses* and *roles* as a social object and as the author of a system of role-activities<sup>55</sup>, i.e. of multiple activities that derive from a role.

Following in the footsteps of M. Weber, for whom the interpretation of social action, as the object of sociology, represents "the causal explanation of its course and consequences"<sup>56</sup>, which led to the qualification of his analysis of social action as one from the perspective of responsibility<sup>57</sup>, H.L.A Hart is the one who associates the quality of responsible person with the responsible meaning of social action and, in particular, with the responsibilities that derive from the social role<sup>58</sup> that the social actor holds.

Although in his first work on the problem of responsibility, Hart sets out to show that "the whole philosophical analysis of the concept of human action has been inadequate" because statements about it have traditionally been regarded as descriptive, when in fact their main function was attributive (*ascriptive*), literally an operation of assigning responsibility for such activity<sup>59</sup>, he does not refer to the social role as the basis or cause of responsibility. Since the concept of *human agency* is the theoretical product

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<sup>51</sup> Idem, *Punishment...*, *op.cit.*, p. 212.

<sup>52</sup> Lucia Dumitrescu-Codreanu, *Introduction*, *op.cit.*, p. 1.

<sup>53</sup> *Ibid.*, p. 68.

<sup>54</sup> Richard Ormerod, *op.cit.*, p. 189.

<sup>55</sup> *Ibid.*

<sup>56</sup> Gabriel Nagăț, *Conceptul weberian al explicației sociologice*, in "Revista Română de Sociologie", new series, year XI, no. 5-6, București, 2000, available online: <https://www.revistadesociologie.ro/pdf-uri/nr.5-6-2000/art4.pdf>, p. 441, accessed: 14.11. 2023.

<sup>57</sup> Ion Tudosescu, *The Structure of Social Action*, Political Publishing House, Bucharest, 1972, p. 34.

<sup>58</sup> Herbert L.A. Hart, *Punishment...*, *op.cit.*, p. 212.

<sup>59</sup> Idem, *The Ascription of Responsibility...*, *op.cit.*, p. 184.

of sociology (and sometimes economics, if we consider Ludwig von Mises, for example), we can assume that Hart refers to all these theories, or at least to the most important of them, although he does not specifically name any of them.

In Hart's conception, in the relationship between action and responsibility, the latter can be understood as a component of a broader category consisting of both "duties and obligations"<sup>60</sup>, preserving until the end of the chapter a semantic and epistemic ambiguity between these terms, to the same extent that he equalizes the category of 'responsibility' with the multiple forms of 'responsibilities' when he starts from the example of the ship captain who is responsible for the safety of his ship, this being the responsibility that belongs to him or one of his responsibilities. What Hart calls "a responsible person" (i.e. "a man who takes his duties seriously") or "responsible behavior" (i.e. "behaving like a man who takes his duties seriously and makes serious efforts to fulfill them") requires reference to responsibility derived from a particular role.

In this sense, he states that the meaning of the concept of "role" that he has in mind differs from that of sociologists, which is an institutionalized one (as a result of a generalization that establishes it), because he extends the concept to minor occupations or functions of the individual in certain contexts in which not all the duties that are incumbent on him are also generative of responsibilities.<sup>61</sup> Hart exemplifies this dichotomy using the criteria of complexity and duration over time, so that the duties of a role that are considered responsibilities are those that define a 'sphere of responsibility' requiring attention and care or diligence over a long period of time, whereas duties of short duration, which are usually elementary, i.e. to do or not to do a specific act on a specific occasion or in a specific conjuncture are not called responsibilities.<sup>62</sup>

H.L.A. Hart's concept of responsibility consists of two component operations or functions: the attribution of responsibility and the responsibility itself (both Hart and Cane break down the concept of responsibility into three components, namely, "attribution", "responsibility" and "responsibility", but it is more difficult to explain Hart's conception of responsibility by the same item - *n.s.*). Attribution refers to the fact that an agent (A) has been responsible for a past event or occurrence (X). Responsibility refers to a relation in which an agent (A) is obliged to account to another entity (B) for his or her involvement (A) in the phenomenon (X).

Accordingly, the entity to which agent A will be held accountable for the event or occurrence in which he was involved (not in criminal law, where the uncontrolled occurrence or event excludes the liability of the perpetrator, who is only liable for his intentional or culpable action prohibited by criminal law - *n.a.*). By virtue of this power, entity B may have the power to apply or create a disadvantage to agent A, i.e. a sanction in reaction to his involvement in event X.<sup>63</sup> In addition to this trihotomy of the concept of responsibility in Hart's conception, Professor P. Cane points out that the responsibility derived from or attached to social roles is based on the concept of authority, which is different from that of capacity (which also exists in Romanian law, being "legal capacity" - *n.d.*), the latter being a limiting condition of legal responsibility.

The Australian exegete exemplifies the responsibility derived from the social

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<sup>60</sup> P. Cane, *op.cit.*, p. 280.

<sup>61</sup> H.L.A. Hart, *Punishment....*, *op.cit.*, p. 215.

<sup>62</sup> *Ibid.*

<sup>63</sup> Peter Cane, *op.cit.*, p. 280.

role by way of ministerial responsibility which is not in a causal relationship with a minister's ability and control over the performance of public duties by the officials under his or her subordination or the loss of collective trust may lie entirely outside the direct and immediate control of the government such as, for example, the outcome of a by-election that alters the balance of power between the government and the opposition in parliament.<sup>64</sup>

Summarizing, Peter Cane argues that social role responsibility is a distinct form of the category of responsibility, whose basis or cause is the concept of "authority" without being wholly detached from the conditions of the capacity and control of an agent in a particular role, and also that this form of responsibility is present in any normative system, where normative systems are understood "as products of the natural, human capacity to think and reason normatively."<sup>65</sup> For our purposes, we can say that Hart does not use the argument from authority in demonstrating role responsibility or, more precisely, social role as the ground or cause of responsibility, whether moral responsibility or its positivized expression in law through legal responsibility.

The question that Hart asks is whether a person becomes liable to punishment for an action that he or she has performed, which is also the transfer of responsibility to the sphere of law by verifying that all the conditions for criminal legal liability are satisfied. Finally, Hart recognizes that although in some contexts *responsibility* and legal liability (*strict liability* in civil law or *legal responsibility* in public law) are used with the same meaning, to say that a person is legally responsible for an action or injury is to say that his or her connection with the action or injury is sufficient under the law to attract legal liability, and therefore he or she will be liable to be punished for it (in criminal law - *n.a.*) or to be made to pay compensation (in civil law - *a.n.*).<sup>66</sup>

Thus, Hart admits, situations in which the assertion that a man is responsible and therefore liable to punishment (of course only on condition of having committed a crime - *ed.*) can be circumscribed by social-role responsibility (i.e. those situations in which the agent of the action fulfills a certain function in relation to which he commits a certain crime), again using the example of the captain of a ship who is responsible for its safety and if he were to lose or destroy the ship, he would be liable to punishment if he acted in that way (which Hart explains by means of *capacity-responsibility*).<sup>67</sup>

In any case, the considerations that Hart makes in the postscript on responsibility within the other three categories of causes of liability, i.e. *Causal-Responsibility*, *Capacity-Responsibility* and *Liability-Responsibility*, are - in our view - not related to *Role-Responsibility*. The meaning of these considerations lies in the semantic and epistemic distinction between responsibility and legal (usually criminal, in his examples) liability. Hart thus observes that: 'although the abstract expressions "*responsibility*" and "*liability*" are virtually equivalent in many contexts, and the statement that a man is responsible for his actions, for an act or an injury, does not usually have the same meaning as the statement that he is liable to be punished or made to pay compensation for that act or injury, but refers to a narrower and more specific matter.'<sup>68</sup>

Finally, Hart concludes that "we may summarize this long discussion of legal

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<sup>64</sup> Ibid, p. 289.

<sup>65</sup> Ibid, p. 292-293.

<sup>66</sup> Ibid, p. 222.

<sup>67</sup> Ibid, p. 224.

<sup>68</sup> H.L.A. Hart, *Punishment....*, *op.cit.*, p. 223.

liability by saying that, although in certain general contexts responsibility and liability in law (legal liability) have the same meaning, to say that a man is legally responsible for an action or injury is to say that his connection with the action or injury is sufficient under the law to attract liability." (corresponding positive law - *a.n.*).<sup>69</sup>

From this point of view we have the feeling that the problem of responsibility derived or attached to the social role and, implicitly, of legal responsibility derived from social roles (in fact, derived from actions - called *deeds, offenses or acts* in positive law - prohibited by law or generating harm by persons in different social functions or positions) is left in abeyance or, at least, in the economy of *the addendum* entitled *Responsibility and Retribution*, the emphasis does not fall on this new theory that H.L.A. Hart proposed in his 1968 work *Punishment and Responsibility*, in spite of its originality and heterodoxy in relation to other approaches to the causes of responsibility and legal liability, and the multiple relations between the two concepts.

### **7. Professor Peter Cane's interpretation of social role theory as the basis of legal responsibility and liability in the work of H.L.A. Hart**

In his work on the exegesis of Hart's conception of role responsibility, entitled *Role Responsibility* (2016), Professor Peter Cane aims to explore the epistemic nature of role responsibility and the relations between the obligations that flow from a social role and issues of causation, capacity and responsibility, thus delimiting the latter from the former, which are the common object of ethical, social<sup>70</sup>, and legal (*a.n.*) research. He departs from the philosophical question from which all these researches claim to be based, namely "how to reconcile the practices of empowerment and accountability with causal determinism, i.e. the omnipotence of God", arguing that the basis (foundation or cause - *a.n.*) of social role responsibility is the concept of "*authority*", as opposed to that of "*capacity*", which is a common condition of both responsibility, understood as a moral duty or obligation, and legal responsibility.<sup>71</sup>

In his view, the concept of "authority" implies the power of a person within a regulatory system to alter the position of another person within that system and exemplifies this with the legal power to contract (in Romanian law, the capacity to contract as part of civil legal capacity - *a.n.*), as well as the authority attached to the role of a minister (in the British constitutional system), which gives a minister the power to alter the constitutional, political and legal positions of other persons subject to that authority.<sup>72</sup>

Cane believes that authority, as the basis of responsibility, is much more concerned with the consequences of action than with the action or behavior of the agent of action, and this view is even based on H.L.A. Hart's own assertions about the specific duties of those who occupy certain positions within organizations and who are intended to promote the goals of those organizations. Moreover, the very purpose of creating roles and functions of authority and power is to promote certain outcomes.<sup>73</sup> Accordingly, the prerogative of authority would be such as to supersede the requirement of personal

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<sup>69</sup> Ibid, p. 222.

<sup>70</sup> P. Cane, *op.cit.*, p. 282.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, p. 290.

<sup>73</sup> Ibid, p. 294.

capacity of the agent of the action in question, whether or not he or she could have acted otherwise, or, in other words: "one of the important normative functions of social and institutional roles and functions is to attribute the failure to take positive action to ensure particular outcomes, regardless of personal culpability and causation."<sup>74</sup>

The corollary of this assertion would be that, insofar as both Hart and Cane point out that responsibility does not contain sanctions, since it is a state into which we either enter voluntarily or into which it is conferred on us independently of our will, in the case of role responsibility based on the attribute of authority liability by operation of law could be attached to the failure to fulfill or the wrongful performance of the responsibilities arising from that role, regardless of whether or not, from the point of view of personal capacity, the agent of action in a given role could freely and voluntarily have acted otherwise.<sup>75</sup> In this respect, Cane refers to forms of vicarious responsibility, *which* are exceptions to the forms of capacity-responsibility, in which the actor is responsible only for his or her actions and mental states.

Under forms of vicarious liability, a person could only be liable for the conduct of another person if he could and should have controlled the latter. It should be pointed out that Professor Cane draws a parallel between these forms of vicarious liability and the forms of vicarious liability also existing in law, which are exceptions to the dogma of personal and subjective liability (at least in criminal law - *a.n.*), whereas in civil law the rule in tort is liability for one's own act (in relation to which liability for the act of another is a form of vicarious liability). The principle of liability for one's own act presupposes as an absolute prerequisite that the person has (legal) capacity and full control over his or her own conduct, and Professor P. Cane refers to the distinctions of the 'criminal and civil paradigms of liability' which he discusses in his monograph *Responsibility in Law and Morality* (2002).

In view of these considerations, Hart's exegesis points out, responsibility derived from social roles can be attributed to a person in such a role for the behavior of another person only by virtue of the authority he or she has over the latter (with the tautological argument that: "the authority can be responsible for the role by the mere fact of having authority"<sup>76</sup>) and regardless of the capacity of control that the person endowed with authority has over the behavior of the direct perpetrator.<sup>77</sup> To summarize Peter Cane's exegesis, we believe that, even from a minimalist point of view, it is even more provocative than H.L.A. Hart's theory itself, but it represents only one hypostasis that the complexity of the exploration of social role theory entails, and not indeniably and, above all, exhaustively, the origin or the ultimate argument of the new foundation of legal responsibility and liability that the English philosopher proposes.

First of all, Cane classifies the English philosopher's theory of social role responsibility as one that proposes a distinct basis of responsibility and, consequently, of positive legal responsibility, insofar as culpable failure to fulfill the special obligations deriving from the social role of the agent of action can attract legal sanctions. From this perspective, the authority vested in the person in a social role is the indispensable attribute of this concept, which is capable of triggering moral responsibility and, where

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<sup>74</sup> Ibid, p. 298.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid, p. 290.

<sup>77</sup> Ibid, p. 298.



appropriate, legal liability, which has the power to impose legal sanctions in the event of failure to fulfill those 'special obligations'<sup>78</sup>, specific to that role. In other words, the reciprocal would not be valid in the absence of the capacity of authority, i.e. to impose one's will and take decisions for or on behalf of another or on behalf of other persons, or it can be assumed that not all social roles are endowed with this capacity.

More precisely, either all people who act in the social framework in order to realize their interests fulfill and enter into certain social roles, or, if these are only institutionalized and endowed with the attribute of authority through which the role-holders exercise their power and monopoly of decision over other people, then we can assume that the agents of social actions that do not have authority do not fulfill social roles. Or in this case, if our reasoning is correct, the theory would no longer be valid at the level of the social system in the sense projected by Parsons, in which "the structure of the relations between the actors involved in the interactive process is what essentially constitutes the structure of the social system."<sup>79</sup>

## 8. Conclusions

Returning to one of our earlier observations, we consider that H.L.A. Hart did not argue his theory of the social role as the basis of legal responsibility and liability exclusively on the basis of the idea of authority, except insofar as this attribute, which a person invested or entered into such a role possesses, is in turn part of its "props".

In only one place could the relations of authority be brought up, namely in the chapter *Responsibility -Liability*, where Hart sets out the criteria (conditions) of legal liability, these being: the psychological or mental conditions under which the action was committed; the causal or other forms of connection between the act and the injury; and the connection with the agent of the action or the personal connection that makes a person punishable or liable to pay for the acts of another.<sup>80</sup>

In this respect, Hart states that under the principle of personal liability, forms of vicarious liability are not allowed in criminal law (except for the example in English criminal law of the innkeeper who would be liable to punishment if his employees sold alcoholic beverages in his inn after hours, even without his knowledge and against his orders).<sup>81</sup> This solution is not admitted in this hypothesis in Romanian criminal law, where there is, however, a form of indirect liability through improper participation in the commission of a crime (Article 52 of the Romanian Criminal Code), which is based on or, at least, influenced by the theory of the mediated perpetrator. Under this form of criminal participation, the instigator or accomplice to the commission of an offense that the immediate perpetrator commits with or without fault will be punished with the penalty prescribed by law for that intentional offense.<sup>82</sup>

In our opinion, this would be the place to analyze the relations of authority between the person who, by exercising his influence or power, conventional or

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<sup>78</sup> Ibid, p. 302.

<sup>79</sup> Richard Ormerod, *op.cit.*, p. 190.

<sup>80</sup> H.L.A. Hart, *Punishment...., op.cit.*, p. 225.

<sup>81</sup> Ibid.

<sup>82</sup> See, at length, Dorel Herinean, *Criminal Participation. Analiza unor cazuri particulare*, in, "Penalmentele Relevante", no. 2/2018, p. 65-77, available online at: <https://www.revista.penalmente.ro/wp-content/uploads/2019/02/Herinean.pdf>, accessed: 02.06.2024.

unconventional, over another person, directly causes the latter to commit the act, so that the punishment for the intentional crime would be applied indirectly, not to the immediate perpetrator of the crime, but to the person who caused him by authority to commit the activity punishable by law. Hart, however, does not develop the subject in this direction, nor does Cane go on to this analysis, the latter restricting himself to the analysis of conventional authority relations that exist within organizations or public institutions, limiting the framework of his analytical approach to the authority attached to institutionalized social roles, without going in the direction developed by Joseph Raz (1939-2022), the author of the theory of authority (*The Morality of Freedom*, 1986), (*The Authority of Law: Essays on Law and Morality*, 1986), whom he also evokes at one point, but in the sense of continuing to explain law in the manner of Hart from the perspective of the motivations of social action (*Practical Reason and Norms*, 1975).<sup>83</sup>

The merit of Cane's exegesis remains that of having revealed the significance of Hart's theory of social roles as a new basis of moral responsibility, deriving from the prerogative of authority with which persons in these roles are invested, but also of legal responsibility, insofar as failure to fulfill the special obligations attached to them entails legal sanctions, whether criminal, civil or administrative. The aim of our study has not been to challenge Professor Peter Cane's interpretation, but to contextualize H.L.A. Hart's theory of social roles as the basis of legal responsibility and liability in order to search for the most appropriate theoretical roots that influenced its penetration into the world of law and, in particular, into the general theory of legal responsibility and liability.

The natural consequence of this comparative theoretical approach consists in verifying the validity of H.L.A. Hart's theory of social roles as the basis of legal responsibility and liability in positive law, which we set out to achieve in the paper "The influence of H.L.A. Hart's conception of social roles on the general theory of legal responsibility and liability and its reflection in (Romanian) positive law".

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<sup>83</sup> P. Cane, *op.cit.*, 295.

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