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A Trust Network Model for Social Rights Fulfilment

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Abstract – In this paper, I use the social science scholarship on trust to develop a new model for understanding social rights fulfilment in contemporary social democracies. Drawing on – and applying to the social rights context – an idea from that scholarship which I call the “network conception of trust”, I argue that we may fairly conceive of social rights fulfilment in such democracies as a network of interconnected and interdependent trust-based relationships between citizens, state actors and non-state actors. From this network model, it follows that for any relationship involved in social rights fulfilment (like that between citizens and the elected branches of government), we must understand trust as a product of that relationship’s social context. And given the recognised value of citizens’ trust in government to contemporary democracies, I suggest that this network model has significant implications for social rights law.

Keywords: trust, social rights, constitutional law

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1. *Introduction*

Legal scholars often call for more attention to be paid to the concept of trust in our study of law.¹ Their principal justification for such calls is the well-established link between trust and cooperation. For example, in the relationship between citizens and government in contemporary democracies, this link has been argued (supported by empirical work) to translate into social stability, economic welfare and effective governance.² Ceding to such scholarly calls, this paper examines a contentious area of legal scholarship – the fulfilment of constitutional social rights –

¹ For examples of such scholarly calls, see Frank B Cross, 'Law and Trust' (2005) 93 *Georgetown LJ* 1457; Matthew Harding, 'Manifesting Trust' (2009) 29 *OJLS* 245; Tom R Tyler, 'Trust and Law Abidingness: A Proactive Model of Social Regulation' (2001) 81 *Boston U L Rev* 361. For other legal scholarship drawing upon trust, see Anthony J Bellia, Jr, 'Promises, Trust, and Contract Law' (2002) 47 *American J of Jurisprudence* 25; Margaret M Blair and Lynn A Stout, 'Trust, Trustworthiness, and the Behavioral Foundations of Corporate Law' (2001) 149 *U of Pennsylvania L Rev* 1735; Roger Cotterrell, 'Trusting in Law: Legal and Moral Concepts of Trust' (1993) 46 *CLP* 75; Mark A Hall, 'Law, Medicine, and Trust' (2002) 55 *Stanford L Rev* 463; Mark A Hall, 'The Importance of Trust for Ethics, Law, and Public Policy' (2005) 14 *Cambridge Q of Healthcare Ethics* 156; Matthew Harding, 'Responding to Trust' (2011) 24 *Ratio Juris* 75; Matthew Harding, 'Trust and Fiduciary Law' (2013) 33 *OJLS* 81.

² Russell J Dalton, *Democratic Challenges, Democratic Choices: The Erosion of Political Support in Advanced Industrial Democracies* (OUP 2004); Pippa Norris, 'Conclusion: The Growth of Critical Citizens and Its Consequences' in Pippa Norris (ed), *Critical Citizens: Global Support for Democratic Government* (OUP 1999); Bo Rothstein, *Just Institutions Matter* (Cambridge University Press 1998). For additional empirical support, see also Tom R Tyler and Peter Degoey, 'Trust in Organizational Authorities: The Influence of Motive Attributions on Willingness to Accept Decision' in Roderick M Kramer and Tom R Tyler (eds), *Trust in Organizations: Frontiers of Theory and Research* (Sage Publications 1996); Sofie Marien and Marc Hooghe, 'Does Political Trust Matter? An Empirical Investigation into the Relation Between Political Trust and Support for Compliance' (2011) 50 *Eur J of Political Research* 267. As most of this work focuses on citizens' trust in the executive and legislative branches of government, in referring to "government", I am referring specifically to these two branches.

in terms of trust.³ While trust has been used to study many fields of law, no commentator has done so to date in the social rights field. Thus, this paper is my attempt to begin filling this gap in the social rights literature. A trust-based examination of social rights law is especially necessary given the particular importance of the trust-cooperation link to social policy. In this regard, it has been argued (also backed by empirics) that citizens' trust in government is vital to financing the welfare state (in terms of citizens' tax compliance) and to encouraging citizens' support for social policies.⁴ And because such taxes and support are necessary for governments to provide social goods and services, there is a good argument that trust is imperative to the future of social rights.

³ The focus of this paper is *constitutional* social rights: that is, those social rights which are protected under a national constitution – either expressly or implicitly (and read into the relevant constitution by a court). In referring to “social rights”, I am concerned mainly with rights to health, housing, education and social security; and in line with the orthodoxy in the social rights literature, I am not concerned with labour rights. Moreover, it is well-recognised that social rights give rise to a tripartite set of duties on government: to respect (a duty of non-interference), to protect (a duty to prevent interference or denial by third parties) and to fulfil (a duty to positively provide). I am concerned with the latter and therefore, “social rights” refers specifically to positive social rights.

⁴ For the relationship between trust and financing the welfare state, see Nathalie Morel and Joakim Palme, ‘Financing the Welfare State and the Politics of Taxation’ in Brent Greve (ed), *The Routledge Handbook of the Welfare State* (Routledge 2013); Joseph S Nye, Jr, ‘Introduction: The Decline of Confidence in Government’ in Joseph S Nye, Jr, Philip D Zelikow and David C King (eds), *Why People Don't Trust Government* (Harvard University Press 1997); John T Scholz and Mark Lubell, ‘Trust and Taxpaying: Testing the Heuristic Approach to Collective Action’ (1998) 42 *American J of Political Science* 398; Stefan Svallfors, ‘Introduction’ in Stefan Svallfors (ed), *The Political Sociology of the Welfare State: Institutions, Social Cleavages and Orientations* (Stanford University Press 2007); Eric M Uslaner, ‘Tax Evasion, Trust, and the Strong Arm of the Law’ in Nicolas Hayoz and Simon Hug (eds), *Tax Evasion, Trust and State Capacities* (Peter Lang 2007). For the relationship between trust and citizens' support for social policies, see Virginia A Chanley, Thomas J Rudolph and Wendy M Rahn, ‘The Origins and Consequences of Public Trust in Government’ (2000) 64 *Public Opinion Q* 239; Marc J Hetherington, *Why Trust Matters: Declining Political Trust and the Demise of American Liberalism* (Princeton University Press 2005); Thomas J Rudolph, ‘Political Trust, Ideology, and Public Support for Tax Cuts’ (2009) 73 *Public Opinion Q* 144.

In this paper, I use trust to develop a new model for understanding the fulfilment of constitutional social rights in contemporary social democracies.⁵ Drawing on an idea which has been expressed in many disciplines (which I call the “network conception of trust”) and applying it to the social rights context, I argue that we may fairly conceive of social rights fulfilment in such democracies as a network of “trust relationships” (ie relationships in which trust may arise). These trust relationships exist between citizens, state actors and non-state actors.⁶ In this network (the “social rights network”), the trust relationships between these parties are both interconnected, so as to assume a network configuration, as well as interdependent, such that trust in a given trust relationship depends on the other relationships constituting the network.

From this network model, it follows that for any relationship involved in social rights fulfilment, we must understand trust as a product of that relationship’s social context. For example, trust in the relationship between citizens and the elected branches of government with respect to the fulfilment of social rights must be understood as depending not only on that relationship, but also on the other relationships to which citizens and the elected branches are also party.⁷ And

⁵ I am assuming a social democracy in which social rights are constitutionalised (and so, owed to citizens); thus, I do not address why the state owes its citizens social rights or the role which trust plays in the state granting such rights. For relevant work on those issues, see Laura S Underkuffler, ‘Property, Sovereignty, and the Public Trust’ (2017) 18 *Theoretical Inquiries in Law* 329; Laura S Underkuffler, ‘Fiduciary Theory: The Missing Piece for Positive Rights’ in Evan Criddle et al (eds), *Fiduciary Government* (Cambridge University Press 2018) (forthcoming). My assumption in this regard is, as I note later, consistent with the shift in the social rights literature away from the issues of social rights’ constitutionalisation and justiciability to judicial approaches for enforcing such rights. Consequently, I make this assumption in recognition of this shift as well as in an effort to continue moving the conversation forward.

⁶ As I note in Part 3 of this paper, I do not mean “citizens” in the sense of citizenship as legal status. Rather, I use the term to refer to that group of individuals who are afforded the constitutional protection of social rights.

⁷ In referring to the “elected branches” of government, I am referring specifically to the legislative and executive branches. Thus, I am assuming an unelected judiciary and so, exclude the judiciary from the elected branches. Moreover, I use “elected branches of government” and “elected branches” interchangeably from here.

given the recognised value of citizens' trust in government to contemporary democracies, I suggest that the network model has significant implications for social rights law.

I develop the model around this relationship between citizens and the elected branches with respect to the fulfilment of social rights (what I will refer to from here as the "citizen-government relationship"). My justification for doing so is threefold. First, I justify my choice based on the recognised value of citizens' trust in government to contemporary democracies. Given such value, I am particularly interested in this form of trust. Second, while various state and non-state actors do play key roles in social rights fulfilment (as I will explain), I think that it is reasonable to suggest that the elected branches have primary responsibility for such fulfilment. And hence, a network model for social rights fulfilment should revolve around this relationship. Lastly, in developing the model, I seek to introduce the "network conception of trust" to social rights law. My primary aim in doing so is to contribute to the growing literature on the enforcement of social rights by courts. Since the focus of that literature is on how courts mediate the citizen-government relationship, I want to build the network model around that relationship.

My development of this network model proceeds in three parts. Parts 2 and 3 lay the model's groundwork. In Part 2, I use the conceptual scholarship on trust to contend that trust arises in a relationship constituted by three elements – control, discretion/uncertainty and vulnerability. And I define the relationship resulting therefrom as a "trust relationship". Then, in Part 3, I turn my attention to the citizen-government relationship. Applying the foregoing three elements to that relationship, I characterise it as a trust relationship – and thus as a relationship in which trust may arise. Lastly, Part 4 of the paper completes the model. Following from my characterisation of the citizen-government relationship as a trust relationship, I apply to that relationship the "network conception of trust". According to this "network conception", trust arises in, and depends on, complex structures or networks of relationships. So, applying the network conception to the citizen-government relationship, I argue that in contemporary social democracies, the citizen-government relationship exists in a network of relationships (the "social

rights network”), and that trust in that relationship (and for that matter, any trust relationship in the social rights network) ultimately depends on the other relationships constituting the network.

2. *Defining a “Trust Relationship”*

Following the lead of prominent writers on trust, I choose to conceptualise trust in this paper as relational. By this I mean that trust is a property of a social relationship.⁸ That relationship is of a three-part form comprised of a trustee (A), a truster (B) and a good or service (X), where the relationship takes the form of “B trusts A with respect to X”. And following on from this, to say that B “trusts” A with respect to X means, at least at a very general level, that B holds positive expectations about A’s motivations towards B as well as his competence with respect to X.⁹

Based on my reading of the trust scholarship from various disciplines, I suggest that three elements are essential for trust to arise in that relationship: (i) A must maintain *control* over a good

⁸ James Coleman, *Foundations of Social Theory* (Harvard University Press 1994); Karen S Cook and Alexandra Gerbasi, ‘Trust’ in Peter Hedstrom and Peter S Bearman (eds), *The Oxford Handbook of Analytical Sociology* (OUP 2009); Karen S Cook and Russell Hardin, ‘Norms of Cooperativeness and Networks of Trust’ in Michael Hechter and Karl-Dieter Opp (eds), *Social Norms* (Russell Sage Foundation 2001); Susan P Shapiro, ‘The Social Control of Impersonal Trust’ (1987) 93 *American J of Sociology* 623.

⁹ It is beyond the scope of this paper to offer a thorough conceptualisation of trust, including a review of the diverse definitions of trust in the various bodies of literature. However, for conceptual work supporting this general understanding of the concept of trust, see Jack Barbalet, ‘A Characterization of Trust, and Its Consequences’ (2009) 38 *Theory and Society* 367, 371-72; Bernard Barber, *The Logic and Limits of Trust* (Rutgers University Press 1983) 15-21; Henry Farrell, ‘Institutions and Midlevel Explanations of Trust’ in Karen S Cook, Margaret Levi and Russell Hardin (eds), *Whom Can We Trust? How Groups, Networks, and Institutions Make Trust Possible* (Russell Sage Foundation 2009) 128-29; Niklas Luhmann, ‘Familiarity, Confidence, Trust: Problems and Alternatives’ in Diego Gambetta (ed), *Trust: Making and Breaking Cooperative Relations* (Basil Blackwell 1988) 97; Piotr Sztompka, *Trust: A Sociological Theory* (Cambridge University Press 1999) 26. It should also be noted that this conceptualisation of trust is cognitive in nature; there are, however, affective and behavioural components to trust which are not covered here.

or service (X); (ii) A must hold *discretion* in exercising his control over X, thus rendering B *uncertain* of how A will exercise said control; and (iii) B must need or want X, which coupled with A's control and discretion over X, renders B *vulnerable* to A. These three relational elements constitute what I call a "trust relationship". To be clear, by "trust relationship" I do not mean a relationship in which trust in fact exists (what may be distinguished as a "trusting relationship"). Rather, I mean a relationship in which it is possible for trust to arise. In other words, though trust may theoretically arise in a "trust relationship", it may or may not, in actuality, exist therein.

In the social rights context, the identities of the trustee and the truster (A and B) as well as the definition of the good or service (X) depend on the specific sub-context. In my later consideration and application of trust to specific relationships, I will be able to address more closely the identities of A and B, as well as the precise definition of X. However, I will make some general remarks here to provide some perspective for the discussion in this part. The potential actors which A and B may represent include both individuals and institutions.¹⁰ This conclusion finds support in the positions adopted by several reputable writers on trust.¹¹ As for X, its definition depends on both the relationship and the social right at issue. In the citizen-government relationship, for example, X may represent any one of the many social goods and services which are the subject of social rights. Understandably, those goods' and services' precise nature depends on the social right; but generally, X in the citizen-government relationship denotes physical goods, personnel, infrastructure, equipment, and benefits or services.

¹⁰ cf Karen S Cook, Russell Hardin and Margaret Levi, *Cooperation Without Trust?* (Russell Sage Foundation 2005).

¹¹ Barber (n 9) 18; Farrell (n 9) 133; Rom Harré, 'Trust and its Surrogates' in Mark E Warren (ed), *Democracy and Trust* (Cambridge University Press 1999) 259-60; Jörg Sydow, 'Understanding the Constitution of Interorganizational Trust' in Christel Lane and Reinhard Bachmann (eds), *Trust Within and Between Organizations: Conceptual Issues and Empirical Applications* (OUP 1998) 43-44.

A. *The Trustee's Control Over a Good or Service*

The first element of a trust relationship is that the trustee (A) maintains control over a good or service (X) (which the truster (B) needs or wants). Different circumstances may give rise to A's control over X. These include the cost of X (such that A but not B has the financial means to afford X), the scarcity of X (such that A but not B has access to X) and B giving control of X to A (such that B has given A the responsibility of taking care of X). Many writers on trust erroneously assume that A's control over X stems from the latter – B giving him control. Russell Hardin has criticised this assumption, identifying it as a slippage between “trusting” and “entrusting” (where the latter – B giving A control – is better captured by the concept of “entrusting”).¹² I agree with Hardin's criticism. As he has said, ‘I can trust you to do something that I have not (even could not have) entrusted to you ... trusting and entrusting are not equivalent or even parallel, although we might use the two terms as though they were interchangeable, especially in contexts in which both might apply’.¹³ Therefore, although B must maintain control over X, the source of B's control need not be a grant of control from A.

B. *The Trustee's Discretion and the Truster's Uncertainty*

The trustee (A), in addition to maintaining control over the good or service (X), must also hold discretion in exercising that control. Although writers on trust describe this element in slightly different ways, the substance is the same: A must not be so constrained by external factors that he no longer has free will in exercising his control. Diego Gambetta has said that trust necessitates that ‘agents have a degree of freedom to disappoint our expectations’ and that there ‘be the

¹² Russell Hardin, ‘Conceptions and Explanations of Trust’ in Karen S Cook (ed), *Trust in Society* (Russell Sage Foundation 2001) 17.

¹³ *ibid* 17.

possibility of exit, betrayal, defection'.¹⁴ For Roger Cotterrell, trust requires discretion to act 'in unforeseen circumstances or in relation to new situations'.¹⁵ And according to Matthew Harding, trust 'recogni[s]es and responds to the freedom of individuals to make choices'.¹⁶

A's discretion in exercising control over X creates corresponding uncertainty for B. Uncertainty reflects the inability of B to predict the outcome of her interaction with A.¹⁷ Accordingly, B is uncertain whether she will obtain X from A. Discretion and uncertainty are directly related: more discretion afforded to A yields a wider range of possible courses of action for A in exercising his control over X which, in turn, yields more uncertainty for B.

By imposing constraints on A, we reduce A's discretion and in turn, reduce the degree of uncertainty for B: B is better able to predict the outcome of her interaction with A based on her knowledge that A is constrained by external factors. Trust based on this knowledge has been called "impersonal trust",¹⁸ or "secondary trust".¹⁹ However, where no constraints have been imposed on A, in trusting A, B must rely only on beliefs she holds about A's character. These beliefs will stem from information which B possesses about A such as his past behaviours. Trust based on such beliefs has been described instead as "personal trust",²⁰ or "primary trust".²¹

¹⁴ Diego Gambetta, 'Can We Trust Trust?' in Diego Gambetta (ed), *Trust: Making and Breaking Cooperative Relations* (Basil Blackwell 1988) 218-19.

¹⁵ Cotterrell (n 1) 77-78.

¹⁶ Harding, 'Manifesting Trust' (n 1) 246.

¹⁷ Carol A Heimer, 'Solving the Problem of Trust' in Karen S Cook (ed), *Trust in Society* (Russell Sage Foundation 2001) 42.

¹⁸ Philip Pettit, 'Republican Theory and Political Trust' in Valerie Braithwaite and Margaret Levi (eds), *Trust and Governance* (Russell Sage Foundation 1998) 298-99.

¹⁹ Sztompka (n 9) 87.

²⁰ Pettit (n 18) 296.

²¹ Sztompka (n 9) 46-47.

C. *The Resulting Vulnerability of the Trustee*

Lastly, the good or service (X) is something which the trustee (B) either needs or wants. This fact, coupled with the other two elements, renders B vulnerable to the trustor (A). Since X is of necessity or value to B, its provision to B contributes to B's well-being. And because A has control and discretion over X, B is placed in a position of vulnerability: it is possible that A may act in a way which is in B's interests (so as to further her well-being) but since A is a free agent with discretion, he may also act to harm B's interests in their interaction.²² Put in the simplest of terms, A may provide B with X (a good or service which she needs or wants) but because A has discretion in exercising his control over X, it is also possible that A may not provide B with X.²³

3. *The Citizen-Government Relationship: A Trust Relationship*

Next, I turn my attention to how the citizen-government relationship satisfies these three elements. But first, I shall elaborate upon what I mean by the citizen-government relationship. In social democracies, there is a relationship between citizens and the elected branches of government with respect to social welfare. Citizens pay taxes to the state and using the revenue collected from those taxes, the state provides citizens with a range of social goods and services by delivering social

²² Philip Pettit, 'The Cunning of Trust' (2006) 24 *Philosophy and Public Affairs* 202, 208.

²³ It may be argued that what I am calling "vulnerability" is more accurately described as "dependence". This is probably true. However, in using "vulnerability", I cite two justifications. First, and primarily, I use "vulnerability" to be consistent with the trust literature (which overwhelmingly uses that term as opposed to "dependence"). Second, philosophers Susan Dodds and Margaret Urban Walker have both defined dependence as a form of vulnerability – that is, vulnerability to a specific person given a certain relationship: Susan Dodds, 'Dependence, Care, and Vulnerability' in Catriona MacKenzie, Wendy Rogers and Susan Dodds (eds), *Vulnerability: New Essays in Ethics and Feminist Philosophy* (OUP 2013); Margaret Urban Walker, *Moral Understandings: A Feminist Study in Ethics* (OUP 2008). Thus, under their definitions, "vulnerability" is not technically incorrect.

programmes. Constitutional social rights afford citizens constitutional protection vis-à-vis such goods and services (and establish corresponding state obligations).²⁴

As social rights scholars have consistently emphasised, both of the elected branches play an important role in fulfilling social rights.²⁵ The legislative branch contributes amendments to and promulgates the primary legislation which defines the parameters of state-delivered social programmes.²⁶ It also endorses the budget which allows the state to fund, and accordingly deliver, the programmes at issue. The executive – in which I include civil servants as well as the various administrative agencies relevant to social welfare – prepares the bulk of primary legislation which is introduced to the legislature, and then, thereafter, supplements, amplifies and implements that social welfare legislation through a broad range of administrative action.²⁷

Now, when I say “citizens” I do not mean it in the sense of citizenship as legal status. Rather, I use the term to refer to those individuals who, under the relevant constitution, are afforded the protection of social rights. Thus, depending on the jurisdiction at issue, “citizens” may include residents and/or individuals of other legal status.²⁸ Additionally, I have chosen to collapse the legislative and executive branches into one actor (the elected branches) and, in what

²⁴ Such rights may guarantee citizens the social goods and services themselves or they may guarantee citizens “access” (or some equivalent) to the social goods and services at issue.

²⁵ Cécile Fabre, *Social Rights Under the Constitution: Government and the Decent Life* (OUP 2003); Jeff King, *Judging Social Rights* (Cambridge University Press 2012); Patrick Macklem, ‘Social Rights in Canada’ in Daphne Barak-Erez and Aeyal M Gross (eds), *Exploring Social Rights: Between Theory and Practice* (Hart Publishing 2007); Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press 2008); Katharine Young, *Constituting Economic and Social Rights* (OUP 2012).

²⁶ King, *ibid* 41, 44.

²⁷ *ibid* 44-48; Lorne Sossin, ‘Boldly Going Where No Law Has Gone Before: Call Centres, Intake Scripts, Database Fields, and Discretionary Justice in Social Assistance’ (2004) 42 Osgoode Hall LJ 363, 364-65.

²⁸ That said, it is beyond the scope of this paper to consider who, as a matter of international and constitutional law, should be afforded the protection of constitutional social rights.

follows, into one trust relationship (the citizen-government relationship) for a few reasons. To repeat, the social rights literature to which I most seek to contribute is that pertaining to enforcement by courts. Because the orthodoxy in that literature is to focus on the tripartite relationship between citizens, the elected branches and courts, it makes sense to follow that orthodoxy – at least to some extent. Further, from a practical perspective, most of the conceptual scholarship on political trust, upon which I am relying for my analysis in this part, does not draw much of a distinction between the legislature and the executive. There is, rather, a tendency in that scholarship to speak of the relationship between citizens and government at a general level. So, I think that it is best for me to maintain my analysis in this paper at an equally general level, making reference to the distinction between these branches only where necessary.

With that said, I will quickly reconfigure the citizen-government relationship to fit the three-part form (ie the A-B-X relationship) which I outlined in Part 2. A and B (the trustee and the truster) represent the elected branches and citizens, respectively. The elected branches (A) include, as I have already explained, both the legislature and the executive. And X represents the many social goods and services which I outlined in Part 2 as being the subject of social rights.

A. *The Elected Branches' Control Over Social Goods and Services*

The first element of a trust relationship – control – is quite manifest in the citizen-government relationship. In any social democracy, the elected branches maintain some degree of control over social goods and services which citizens need and/or want. Social rights are said to promise those social goods and services which citizens need in order to lead a decent life.²⁹ Accordingly, I will proceed under the assumption that in the citizen-government relationship, the social goods and services at issue are *needed* by citizens. The elected branches' control over these social goods and services is exercised via the various legislative and administrative steps which I described earlier,

²⁹ Fabre (n 25) 7; King (n 25) 17.

including the preparation, development and promulgation of primary legislation, the preparation and approval of the budget, and subsequent administrative action. These legislative and administrative steps, taken collectively, are prerequisites to the state-delivered social programmes which grant citizens access to the social goods and services which they need.

Granted, the nature of the elected branches' control is nuanced. First, the source of that control is debatable. There is a good argument that the source of the elected branches' control is citizens' taxes. In this regard, Charles Reich argued long ago that owing to citizens' obligation to pay taxes to the state, social rights should be seen as property rights.³⁰ If we accept Reich's argument, citizens are giving the elected branches control over these social goods and services, thereby entrusting them with the social goods and services which they need. However, as I said in Part 2, while such giving of control (or entrusting) is one source of control, it is not a requirement for this element. All that a trust relationship requires is that the elected branches, by whatever means, do exert control over those goods and services. This is the case here. Second, the elected branches may maintain either direct or indirect control over the social goods and services. In some jurisdictions and with some social rights, the elected branches maintain direct control: they produce physical goods, employ personnel, own equipment and infrastructure, or administer benefits and services directly to citizens. In others, they maintain indirect control by, for example, operating funding programmes. And finally, the elected branches' control may be either exclusive or partial: that is, the elected branches may be citizens' only possible means of obtaining the social goods and services (exclusive control) or they may be one of multiple means (partial control). In contemporary social democracies, providers of social goods and services rarely find themselves confined to the public system; they usually have some option of offering their goods and services privately. And the consequence of this option is the elected branches only maintaining partial

³⁰ Charles A Reich, 'The New Property' (1964) 73 *The Yale LJ* 733. See also John Allett, 'New Liberalism & the New Property Doctrine: Welfare Rights as Property Rights' (1987) 20 *Polity* 57.

control over the social goods and services which citizens need. That said, neither of the latter distinctions (direct/indirect and exclusive/partial) changes the fact that the elected branches maintain control over social goods and services – they merely alter its type.

Thus, the first element of a trust relationship is duly satisfied in the citizen-government relationship: regardless of the nuanced nature of the elected branches' control, including that control's source and precise type, in contemporary social democracies, the elected branches do indeed maintain some degree of control over the social goods and services which citizens need.

B. *The Elected Branches' Discretion and Citizens' Uncertainty*

In any social democracy, the elected branches, on top of maintaining control over social goods and services, also hold discretion in exercising that control.³¹ In his influential book *Discretionary Justice*, Kenneth Culp Davis has defined “discretion” in politics as follows: ‘A public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction’.³² Under this definition, the legislature undoubtedly exercises much discretion.³³ Both in exercising its power of the purse and in promulgating primary legislation, the legislature is, in Davis’s words, left ‘free to make a choice among possible courses of action or inaction’. Among other things, it can choose to approve (or not) the executive’s proposed budget and it can choose to promulgate (or not or propose amendments to) legislation

³¹ Note that, for the purpose of this part, I leave aside any constraints on the elected branches’ discretion which may be imposed by courts.

³² Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* (Louisiana State University Press 1969) 4. For similar definitions of discretion, see Denis J Galligan, *Discretionary Powers: A Legal Study of Official Discretion* (Clarendon Press 1986) 21; Robert E Goodin, *Reasons for Welfare: The Political Theory of the Welfare State* (Princeton University Press 1988) 186; Jeffrey Jowell, ‘The Legal Control of Administrative Discretion’ (1973) 18 PL 178, 179.

³³ Xenophon Contiades and Alkmene Fotiadou, ‘Social Rights in the Age of Proportionality: Global Economic Crisis and Constitutional Litigation’ (2012) 10 Intl J of Constitutional L 660, 667-68; King (n 25) 250-86.

put before it.³⁴ The executive also has wide discretion.³⁵ Lorne Sossin has helpfully classified three levels of discretion which are exercised by administrative decision-makers.³⁶ The first is legal discretion, referring to legislative grants of authority in which administrative decision-makers are given an express choice. Here, the legislature expressly delegates its discretion to administrative decision-makers because they are in a better position to make the decision at hand (though the legislature usually specifies an overall purpose). Second, administrative decision-makers exercise interpretive discretion. Unlike the first, interpretive discretion is not expressly delegated by the legislature but arises from vague or ambiguous language in the relevant statutes.³⁷ And finally, administrative decision-makers exercise discretion through what Sossin has called “administrative choices”.³⁸ These choices include how a citizen applies for benefits, which documents must be produced and verified, how decisions on eligibility are reached, the requisite training and qualifications of decision-makers, and the extent of personal contact between decision-makers and applicants. Thus, at each of the above levels, administrative decision-makers are, per Davis’s

³⁴ While the legislature’s discretion can be restrained by constitutional limits, including express social rights language, given the vagueness with which social rights are often formulated, such restraint is likely to be minimal. For example, Jeff King has stressed that social rights are inescapably vague owing to the fact that they often impose qualified obligations on the state: King, *ibid* 100-06.

³⁵ Robert E Goodin, ‘Welfare, Rights and Discretion’ (1986) 6 OJLS 232; Richard M Titmuss, ‘Welfare “Rights”, Law and Discretion’ (1971) 42 *The Political Q* 113.

³⁶ Sossin (n 27).

³⁷ As explained by Henriette Sinding Aasen and her colleagues, ‘Legislation pertaining to welfare is often formulated in general or vague terms and with broad object clauses, which leave room for a substantial degree of professional discretion in the application of the law’: Henriette Sinding Aasen et al, ‘Juridification and Social Citizenship: International Law, Democracy and Professional Discretion’ in Henriette Sinding Aasen et al (eds), *Juridification and Social Citizenship in the Welfare State* (Edward Elgar 2014) 296.

³⁸ Sossin (n 27) 364-65.

definition, given a ‘choice among possible courses of action or inaction’ – whether that choice be express, implicit or “administrative”.

The discretion exercised by both elected branches of government gives rise to inevitable uncertainty for citizens. This uncertainty too exists on multiple levels. Inescapably, whenever a political decision is made, there is the uncertainty that a citizen will not receive what she wants from the political process. Governing necessarily involves balancing competing demands and setting priorities, and frequently one demand is fulfilled by the elected branches at the expense of another.³⁹ In social rights matters, there is a limited budget available to the elected branches in funding and delivering social goods and services. Governments cannot fund and deliver every social good and service to every citizen.⁴⁰ Hence, as an inevitable consequence thereof, some citizens will be left unhappy or dissatisfied with the political process’s outcome.

However, and in my view more troubling, there is an additional type of uncertainty: that a citizen’s interests will be discounted, or worse, disregarded. In those cases where a citizen has not received what she wants from the political process, it does not necessarily follow that her interests have been discounted or disregarded: her interests may have been duly considered by the elected branches but, in making their political decisions, the elected branches may have decided that what the citizen wanted was not the “right” or “best” decision. Nevertheless, because the elected branches do have the discretion which I have just described, the reverse may be equally true: the citizen’s interests may have been indeed discounted or disregarded. For one thing, the elected branches may discount or disregard a citizen’s interests in favour of their staff’s interests. As

³⁹ Jane Mansbridge, ‘Social and Cultural Causes of Dissatisfaction with U.S. Government’ in Joseph S Nye Jr, Philip D Zelikow and David C King (eds), *Why People Don’t Trust Government* (Harvard University Press 1997) 134. Conor Gearty has called this form of uncertainty the ‘defect in politics’: Conor Gearty, ‘Against Judicial Enforcement’ in Conor Gearty and Virginia Mantouvalou (eds), *Debating Social Rights* (Hart Publishing 2010) 53-54.

⁴⁰ Mark E Warren, ‘Democratic Theory and Trust’ in Mark E Warren (ed), *Democracy and Trust* (Cambridge University Press 1999) 311.

Margaret Levi has emphasised, both bureaucrats and politicians have their own interests when they make political decisions: for bureaucrats it is to maximise budgets and power, and for politicians it is to maximise votes.⁴¹ When these actors' interests conflict with the interests of citizens (generally or a specific subset), there is the uncertainty that the elected branches' decisions will be made in a way which furthers these actors' interests.⁴² For another, even if we assume good faith from bureaucrats and politicians, these actors may nonetheless discount or disregard a citizen's interests because of neglect.⁴³ Owing to a lack of experience or basic ignorance on their part, bureaucrats and politicians may not be aware of or fully understand the plight of the citizen (or the group to which she belongs) and so, fail to protect her interests.

We may thus fairly conclude that the citizen-government relationship satisfies the second element of a trust relationship: in contemporary social democracies, the legislature and the executive hold discretion in exercising their control over social goods and services which citizens need, and correspondingly, citizens are left uncertain of how said control will be exercised.

C. Citizens' Vulnerability to the Elected Branches

Lastly, in the citizen-government relationship, citizens are vulnerable to the elected branches (at least to some extent). Extrapolating from what I said in Part 2, citizens' vulnerability follows from the combined effect of two features of the citizen-government relationship: first, the control and discretion which the elected branches have over social goods and services (ie the first two elements of a trust relationship); and second, citizens' need for those social goods and services. Because citizens need the social goods and services, they contribute to citizens' well-being; and because the

⁴¹ Margaret Levi, 'A State of Trust' in Valerie Braithwaite and Margaret Levi (eds), *Trust and Governance* (Russell Sage Foundation 1998) 95.

⁴² Warren (n 40) 311-13.

⁴³ King (n 25) 166-67.

elected branches have control and discretion over those goods and services, the elected branches hold power over citizens. The elected branches, in exercising their control, may or may not choose to provide the social goods and services to citizens; and as a result, citizens may not be able to obtain those goods and services which contribute to their well-being – at least not from the state. Accordingly, citizens are vulnerable to the elected branches.

Granted, citizens are not equally vulnerable to the elected branches. However, for the purpose of this part, I leave aside such inequality of vulnerability. While I fully acknowledge that this inequality can and does exist, the fact remains that all citizens are vulnerable to the elected branches, at least to some extent. If the social goods and services at issue are, generally speaking and on the whole, things which citizens need, and the elected branches have control and discretion over those goods and services, citizens are inevitably vulnerable. Accordingly, the citizen-government relationship also satisfies the third and final element of a trust relationship.

4. *Constitutional Social Rights Fulfilment as a Network of Trust Relationships*

Owing to my characterisation of the citizen-government relationship in Part 3 as a trust relationship (ie a relationship in which trust may arise), I suggest that it is subject to an idea from the social science scholarship on trust which I will describe as the “network conception of trust”.

A. *Introducing the “Network Conception of Trust”*

What I am calling the “network conception of trust” does not belong to a single author or a single discipline.⁴⁴ Rather, it is a broad idea which has been expressed by numerous writers on trust across

⁴⁴ That said, the expression “network conception of trust” is drawn from a piece by Cook and Hardin (n 8).

disciplines, including sociology,⁴⁵ economics,⁴⁶ philosophy,⁴⁷ political theory,⁴⁸ and management.⁴⁹ Based on my reading, these writers' arguments (though dissimilar in some respects) do share two fundamental features which I will use to define this network conception. First, these scholars agree that in contemporary societies, relationships in which trust may arise are embedded in a rich social context. That social context is comprised of complex structures or "networks" of social relationships.⁵⁰ Second, these scholars agree that trust in such a relationship depends on the other relationships constituting the network in which the former is embedded.

This network conception of trust is expressed most clearly in the work of sociologists and political theorists Karen Cook and Russell Hardin.⁵¹ Cook and Hardin have sought to build on, and apply to trust, the scholarship of sociologist Richard Emerson on the concept of power.⁵² For

⁴⁵ Coleman (n 8); Cook and Gerbasi (n 8); *ibid*; Mark S Granovetter, 'The Strength of Weak Ties' (1973) 78 *American J of Sociology* 1360; Jocelyn Pixley, 'Impersonal Trust in Global Mediating Organizations' (1999) 42 *Sociological Perspectives* 647; Shapiro (n 8); Lynne Zucker, 'Production of Trust: Institutional Sources of Economic Structure, 1840 to 1920' (1986) 8 *Research in Organizational Behavior* 53.

⁴⁶ Partha Dasgupta, 'Trust as a Commodity' in Diego Gambetta (ed), *Trust: Making and Breaking Cooperative Relations* (Basil Blackwell 1988); Mark Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness' (1985) 91 *American J of Sociology* 481.

⁴⁷ Annette C Baier, *Moral Prejudices: Essays on Ethics* (Harvard University Press 1995).

⁴⁸ Cook, Hardin and Levi (n 10); Cotterrell (n 1); Farrell (n 9); Levi (n 41).

⁴⁹ Sydow (n 11).

⁵⁰ Some writers, rather than using the term "network", have opted for alternative terms, including "system" or "mosaic": see Coleman (n 8) for the former and Dasgupta (n 46) for the latter. However, the vast majority of writers have adopted the "network" terminology and accordingly, I have done so as well.

⁵¹ Cook and Hardin (n 8). See also Cook, Hardin and Levi (n 10).

⁵² Richard M Emerson, 'Power-Dependence Relations' (1962) 27 *American Sociological Rev* 31; Richard M Emerson, 'Power-Dependence Relations: Two Experiments' (1964) 27 *Sociometry* 282; Karen S Cook and Richard M Emerson, 'Power, Equity and Commitment in Exchange Networks' (1978) 43 *American Sociological Rev* 721;

Emerson, a key flaw in the sociological power research up to the point in time in which he was working (the 1960s) was ‘the implicit treatment of power as though it were an attribute of a person or a group (“X is an influential person,” “Y is a powerful group,” etc.)’.⁵³ Breaking with this orthodoxy in the power literature, he argued that power is better seen as ‘a property of the social relation’, thereby shifting the focus of analysis on power from the individual to the relationship.⁵⁴ Following on from his relational understanding of power, Emerson and his colleagues theorised that so-called power-dependence relationships (or what they more broadly called “exchange relations”) “connect” with one another to form an “exchange network”.⁵⁵ By “connect”, they meant that two exchange relations were contingent on one another or interdependent. They explained, “Two exchange relations between actors A-B and actors A-C are connected to form the minimal network B-A-C to the degree that exchange in one relation is contingent on exchange (or nonexchange) in the other relation’.⁵⁶ Cook and Hardin have proposed that Emerson’s work on power offers an appropriate model for a theory of trust. As they have put it, Emerson’s work ‘does for the concept, power, what can be done for the concept, trust. It shifts the framework surrounding the study of power from that of an attribute of an individual ... to that of a property of a social relation’.⁵⁷ Paralleling Emerson, Cook and Hardin have adopted a relational understanding of trust.⁵⁸ They have conceptualised it, like I have, as a three-part relationship

Karen S Cook et al, ‘The Distribution of Power in Exchange Networks: Theory and Experimental Results’ (1983)

89 *American J of Sociology* 275.

⁵³ Emerson, ‘Power-Dependence Relations’, *ibid* 31.

⁵⁴ *ibid* 32.

⁵⁵ For a summary, see Karen S Cook et al, ‘Social Exchange Theory’ in John DeLamater and Amanda Ward (eds), *Handbook of Social Psychology* (Springer 2013) 64.

⁵⁶ Karen S Cook et al, ‘The Distribution of Power in Exchange Networks: Theory and Experimental Results’ (1983) 89 *American J of Sociology* 275, 277.

⁵⁷ Cook and Hardin (n 8) 331.

⁵⁸ *ibid* 332. See also Cook, Hardin and Levi (n 10) 2.

involving a truster (A), a trustee (B) and some relatively defined matter (x), with the relationship taking the form of ‘A trusts B to do x’.⁵⁹ Accordingly, they have suggested that trust depends on relational considerations, including the nature of the truster’s interests, the trustee’s interests, their knowledge of one another and other attributes such as gender or age. But at the same time – and the key point here – Cook and Hardin have suggested that the ‘commonplace discussion of trust between two individuals as though they were abstracted from their social context misses too much of what is at stake to make sense of social relations’.⁶⁰ Instead, they have argued that trust is best conceived of as ‘embedded in a network of relations’, and so, it also depends ‘on the larger context of our social relations and the broader network of relations that surrounds us’.⁶¹ Put simply, and in their words, trust is ‘a function of iterated or ongoing interactions’ in which the truster and the trustee are involved.⁶²

Sociologist James Coleman, in his influential book *Foundations of Social Theory*, has similarly developed what may be considered a network conception of trust. Like Cook and Hardin, Coleman has conceived of trust as arising in a relationship (or “relation” in his words) between a “trustor” and a trustee.⁶³ Coleman has argued that such trust relations exist in structures which he has called “systems of trust”. For Coleman, these “systems” encompass groups of two- or three-party relations.⁶⁴ Specifically, he has identified three such systems (mutual trust, intermediaries in trust and third-party trust) and has suggested that within each system, trust in a trust relation depends on another trust relation; or to put it in slightly different, more active language, one trust relation impacts trust in another. A mutual trust system, according to Coleman, involves two actors

⁵⁹ Cook and Hardin, *ibid* 331.

⁶⁰ *ibid* 330.

⁶¹ *ibid* 330-31.

⁶² *ibid* 330-31.

⁶³ Coleman (n 8) 96.

⁶⁴ *ibid* 177.

being in two trust relations with one another (each actor occupying the role of trustor in one of those relations). He has suggested that the mutual trust system fosters trust in a trust relation by increasing the likelihood that the trustee in that relation will keep the trust (out of fear that if he does not, the trustor (who is the trustee in the second trust relation) will not keep her trust). In an intermediary in trust system, an actor outside the immediate trust relation serves as both the trustee for one party to the trust relation and as trustor for the other party, thereby acting as an intermediary between the two parties. Coleman has identified three kinds of intermediaries (advisors, guarantors and entrepreneurs). I shall briefly elaborate upon one intermediary – “the advisor” – as it is relevant to my later analysis. The advisor is an actor outside the immediate trust relation who essentially advises the trustor to trust the trustee. As Coleman has explained, the trustor’s relationship with the advisor fosters her trust in the trustee because the trustor ‘trusts the advisor’s judgment, leading him to place trust in the ability and integrity of the trustee’.⁶⁵ And finally, a third-party system involves a situation where a trustor accepts a promise from a third party to aid in her transaction with the trustee. According to Coleman, the trustor’s relation with the third party impacts her trust in the trustee because it allows her to transact with the trustee in circumstances where she would not otherwise. Moreover, Coleman has recognised that trust also arises in larger systems (ie involving more than two or three parties). And in such larger systems, he has suggested that the three smaller systems above serve as “building blocks” which are used to construct the larger system.⁶⁶

One final example of a network conception of trust which I find helpful to the analysis in this paper is that of sociologist Susan Shapiro.⁶⁷ Like the above scholars, Shapiro has conceived of trust as arising in a relationship (specifically an agency relationship ‘in which principals ... invest

⁶⁵ *ibid* 181.

⁶⁶ *ibid* 188.

⁶⁷ Shapiro (n 8).

resources, authority, or responsibility in another [an agent] to act on their behalf for some uncertain future return’).⁶⁸ However, Shapiro’s network argument is much more targeted in scope than that of either Cook and Hardin or Coleman. She is focused on a specific type of network or system – the embedding of a trust relationship in a network of relationships between the truster and a defined set of third parties who impose social control measures on the trustee in his relationship with the truster (eg professional associations). Shapiro has called these third parties “guardians of trust”. She has claimed that through such social control measures, a guardian of trust (and more precisely, his relationship with the truster) fosters trust between the truster and the trustee, with the resulting trust being “impersonal trust” (a term which should be recalled from Part 2).⁶⁹ Moreover, Shapiro, like Coleman and his systems of trust, has recognised that such truster-guardian relationships usually form part of ‘a complicated matrix of social-control strategies’.⁷⁰ Thus, in Shapiro’s theory (in parallel to Coleman’s and Cook and Hardin’s work), trust in a trust relationship ultimately depends on the network of relationships (here, the network of truster-guardian relationships) in which the former trust relationship is embedded.

B. *The Network Conception Follows from a Relational View of Trust*

As Cook and Hardin have made clear, the network conception follows from a relational view of trust.⁷¹ The relational view is to be distinguished from a competing view which considers trust a trait or a disposition of an individual actor.⁷² In that view, the unit of analysis is the individual – that is, the truster. Focusing on the individual, that view envisages trust as depending on a single

⁶⁸ *ibid* 626. As I indicated earlier, I do not agree with this characterisation of a trust relationship as it necessitates that the trustee’s control over the good or service result from the truster entrusting.

⁶⁹ *ibid* 636 (fn 18).

⁷⁰ *ibid* 644-45.

⁷¹ Cook and Hardin (n 8) 330-31.

⁷² Hardin (n 12). See also Cook and Gerbasi (n 8) 220.

factor which is internal to the truster: whether she has a specific trait or disposition towards trusting others. If the truster has this trait or disposition, she is a “trusting” person and so, trust exists.⁷³ Therefore, trust is a *psychological* phenomenon.⁷⁴ In the relational view, in contrast, trust is treated as a property of a social relationship.⁷⁵ The unit of analysis is the relationship rather than the individual truster, and so, trust depends on that relationship.⁷⁶ In other words, trust, in the relational view, is a *social* phenomenon. Now, of course, trust depends on things internal to the relationship, including the nature of the good or service at issue in the relationship and the truster’s knowledge of or familiarity with the trustee.⁷⁷ However, at the same time, and as the above writers on trust have stressed, social relationships in contemporary societies are embedded in a rich social context. And because of such embeddedness, to use the apt words of sociologist Mark Granovetter, ‘to construe them as independent is a grievous misunderstanding’.⁷⁸ So, trust (as a property of a social relationship) depends not only on factors internal to that relationship, but also on external factors – including the network of relationships in which it is embedded.

As will be recalled from Part 2, in this paper, I have adopted such a relational view of trust. Like Cook and Hardin, I have conceived of trust as arising in a three-part relationship between a truster (B), a trustee (A) and some good or service (X). And that relationship is built on the three elements of control, discretion/uncertainty and vulnerability. It will also be recalled from Part 3 that I characterised the citizen-government relationship as such a trust relationship. From these two points, coupled with the foregoing discussion of the network conception of trust following

⁷³ Hardin, *ibid* 12-13.

⁷⁴ Reinhard Bachmann and Andrew C Inkpen, ‘Understanding Institutional-Based Trust Building Processes in Inter-Organizational Relationships’ (2011) 32 *Organization Studies* 281, 282.

⁷⁵ Cook and Hardin (n 8) 330-31. See also Cook and Gerbasi (n 8) 220; Levi (n 41) 78.

⁷⁶ Cook and Gerbasi, *ibid* 220; Cook and Hardin, *ibid* 331.

⁷⁷ Cook and Hardin, *ibid* 331, 334.

⁷⁸ Granovetter (n 45) 482.

from a relational view, I suggest that it follows, in turn, that the network conception of trust is appropriately applied to the citizen-government relationship. And applying it to the citizen-government relationship, I make two claims: first, I claim that in contemporary social democracies, the citizen-government relationship is embedded in a network of trust relationships which exist between citizens, state actors (including the elected branches) and non-state actors; and second, I claim that trust in the citizen-government relationship (and for that matter, any trust relationship in the network) depends on this overall network of relationships.

C. *Constructing the “Social Rights Network”*

I shall begin with my first claim: that the citizen-government relationship is embedded in a network of trust relationships between citizens, state actors and non-state actors.⁷⁹ To make out this claim, I will show how the citizen-government relationship interconnects with a number of different parties and relationships to form a network configuration. Thus, I will walk the reader through the construction of the network (what I will call from here the “social rights network”).

But before I do, I will define the boundaries of the social rights network. In contemporary social democracies, the fulfilment of social rights involves an ever-larger cast of characters and array of relationships. Because of increasing globalisation, privatisation and public interest

⁷⁹ The fact that the relationships in the network are *trust* relationships is relevant because, as trust relationships, the extent to which a truster’s trust in a trustee depends on another relationship of which she is part may depend, in turn, on the extent to which she trusts the trustee in that second relationship. Coleman makes this point in his discussion of “the advisor” as an intermediary in trust. He explains that the truster’s relationship with the advisor impacts his trust relationship with the trustee because she *trusts* the advisor. Presumably, if the truster does not trust the advisor, her relationship with the advisor will not impact her trust in the trustee. At the same time, I see no reason why, nor find any conclusion in the trust scholarship that, trust in a trust relationship only depends on the *trust* relationships in its social context or network. And it is conceivable that some of the relationships in the network which I call the “social rights network” would not satisfy the three elements of a trust relationship.

litigation, courts and other decision-makers, extra-governmental parties such as private industry, lawyers, legal aid bodies, non-governmental and international organisations, as well as foreign governments, have come to play a role in the overall process. In my view, all these parties and the relationships between them, citizens and the elected branches would constitute the rich social context in which the citizen-government relationship is embedded and accordingly, the full network of relationships for social rights. Now, it would be impossible to analyse all these parties and the relationships between them in the limited space of this paper. Fortunately, my aim is not to do so. Instead, my aim, it will be recalled, is to introduce the network conception of trust to social rights law. Given this relatively narrow objective, I will limit my consideration of the social rights network to three parties in the network and the relationships between them. They are: private providers of social goods and services; the media; and the courts.⁸⁰ I have chosen these three parties for two principal reasons: first, they provide good illustrations by which I may introduce and apply the network conception of trust to social rights law; and second, as I will explain shortly, these parties play pivotal roles in social rights fulfilment and therefore, it makes sense to include them in any thoughtful analysis of this field.⁸¹

(i) Private providers of social goods and services

In contemporary social democracies, the provision of social goods and services by the state is dependent on those who directly provide those goods and services. Governments may either

⁸⁰ My brief analysis of the parties which I have chosen should not be taken as a thorough analysis of their complex roles in the process of social rights fulfilment. I fully acknowledge that their respective roles in this process are significantly more complicated than I can accommodate in this paper.

⁸¹ I stress that the “social rights network” undoubtedly consists of relationships beyond those which I identify in this part. Such relationships include not only relationships with new parties (ie other than the five parties which I analyse) but also new configurations of these five parties beyond those which I expressly identify.

employ such providers or, as is more commonly the case, outsource to them.⁸² At the same time, as I mentioned in Part 3 with respect to the exclusive/partial control distinction, these providers rarely find themselves confined to the public system. In most cases, they, as an overall group, have the opportunity to offer their goods and services privately. A provider may have the option of offering her services concurrently in the public system as well as privately, or she may be compelled to choose one. In either case, there is likely to exist a cohort of providers who offer their goods and services privately. This cohort of providers is the focus here.

The existence of this cohort of providers has an important ramification for citizens. It means the availability of a private market, the effect of which is that citizens (technically speaking) are not wholly dependent on the elected branches for the social goods and services which they need; they have the option of obtaining them from sources alternative to the elected branches (private providers). For simplicity, I will refer to such providers as “alternative sources”. Where a private market is available, in addition to the citizen-government relationship, citizens also have a relationship with the alternative source. By this I do not mean that citizens have opted for (or are even in a financial position to opt for) the alternative source; I mean simply that the alternative source is technically available to citizens, making it part of the rich social context in which the citizen-government relationship is embedded.

The relationship between citizens and the alternative source (the “alternative source relationship”) may be fairly characterised as a trust relationship. The alternative source, like the elected branches, maintains *control* over the social good or service which citizens need. This is what makes it an “alternative” source. Further, in most cases, the alternative source also holds some

⁸² Stephen Goldsmith and William D Eggers, *Governing by Network: The New Shape of the Public Sector* (Brookings Institution Press 2004) 13-14.

discretion in exercising said control vis-à-vis citizens.⁸³ Thus, citizens *cannot be certain* about their interaction with the alternative source. And lastly, given the alternative source's control and discretion over social goods and services, coupled with citizens' need for them, citizens are *vulnerable* to the alternative source. To provide some level of concreteness to this scenario, let us make use of a defined good or service: primary education. Consistent with what I said earlier about the common concurrence of public systems and private markets, in most contemporary social democracies, primary education is available both publicly (through a public education system) as well as privately. The latter may be delivered by private educational institutions or by private tutors. In this example, the alternative source represents one of these private institutions or private tutors and citizens technically have the option of sending their children to a public institution (as part of the public system) or, alternatively, to the private institution or tutor.

Now, the foregoing analysis has captured one category of relationships in social welfare: the relationships between consumers of social goods and services (citizens) and their providers (the elected branches and the alternative sources). However, these parties are also involved in another category of relationships. In contemporary social democracies, as the elected branches (in addition to their role as provider) also serve as a representative of citizens via the democratic process, they are responsible for regulating the relationship between citizens and the alternative sources of social goods and services.⁸⁴ Such regulation includes licensing and setting standards of practice, overseeing the liberty of alternative sources to set fees or select to whom they deliver their services, restricting the power of alternative sources' professional associations to sanction

⁸³ This discretion will vary by sub-context and will depend upon regulation, professional standards and ethical considerations. However, by way of example, in education, private educational institutions have discretion over the standards for admission, who they admit, the courses they offer, the grading scheme and the awarding of diplomas.

⁸⁴ Varun Gauri and Daniel M Brinks, 'Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights' in Varun Gauri and Daniel M Brinks (eds), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2010) 10-11.

their members, and imposing criminal liability.⁸⁵ And given this role, the elected branches are, in addition to being in relationships with citizens, also in relationships with the alternative sources.

Like the citizen-government and alternative source relationships, I also think that it is fair to characterise such relationships as trust relationships. For example, we may conceive of the relationship between the elected branches and an alternative source as a trust relationship in which the elected branches are *truster* and the alternative source is *trustee*.⁸⁶ This conception makes sense if we recognise, as Bernard Barber has, that the truster in a trust relationship does not need to be the direct recipient of the good or service at issue in the relationship.⁸⁷ For instance, a parent may be in a trust relationship with a third party for a good or service which his or her child will receive. This would be the case in our primary education example. So, how are the three elements of a trust relationship satisfied? The alternative source continues to maintain *control* and *discretion* in exercising control over the social good or service which citizens need. However, in *this* relationship it is the elected branches (rather than citizens) who are uncertain: they are *uncertain* about the alternative source's interaction *with citizens*. And because the elected branches represent citizens (who are vulnerable to the alternative source as I just described), the elected branches too are *vulnerable* to the alternative source: unfavourable behaviour by the alternative source toward citizens opens the elected branches up to negative repercussions at the hands of citizens, including, but not limited to, the possibility of being voted out of power.

(ii) The media

⁸⁵ *ibid* 10.

⁸⁶ Consistent with what I said earlier about other configurations, we may also conceive of a trust relationship operating in the reverse direction, wherein the alternative source is *truster* and the elected branches are *trustee*.

⁸⁷ Barber (n 9) 17.

I turn next to an undervalued party in the social rights literature – the media. Scholars of political science and media studies have recognised that in contemporary democracies, the media plays a fundamental role in the relationship between citizens and their governments.⁸⁸ The media provides a key, if not the primary, source of information for citizens about politics.⁸⁹ As such, scholars have theorised (as well as empirically shown) that the media can (and does) have a tremendous impact on citizens' knowledge of and attitudes toward political actors and policies.⁹⁰

The relationship between citizens and the media too may be fairly characterised as a trust relationship. The media *controls* a good or service which citizens need and/or want: political information. However, the media is not simply a channel through which information flows; it has *discretion* in what information it conveys and how it conveys that information to the public. At the same time, the media has self-serving interests: it may be partisan to a particular political party or ideology and, like any commercial industry which strives for self-preservation and profit, it has an interest in increasing the size of its audience. Given these interests, coupled with the media's control and discretion, citizens *cannot be certain* of their interaction with the media (ie what political information it will convey and how it will convey it). Finally, citizens' need and/or want for

⁸⁸ Kees Aarts, Audun Fladmoe and Jesper Stromback, 'Media, Political Trust, and Political Knowledge' in Toril Aalberg and James Curran (eds), *How Media Inform Democracy: A Comparative Approach* (Routledge 2012) 98-99; Mark Bovens and Anchrit Wille, 'Falling or Fluctuating Trust Levels? The Case of the Netherlands' in Sonja Zmerli and Marc Hooghe (eds), *Political Trust: Why Context Matters* (ECPR Press 2011) 59; Patricia Moy and Muzammil M Hussain, 'Media Influences on Political Trust and Engagement' in George C Edwards III, Lawrence R Jacobs and Robert Y Shapiro (eds), *The Oxford Handbook of American Public Opinion and the Media* (OUP 2011) 222-23; Nye, Jr (n 4) 15-17; Joseph S Nye, Jr and Philip D Zelikow, 'Conclusion: Reflections, Conjectures and Puzzles' in Joseph S Nye Jr, Philip D Zelikow and David C King (eds), *Why People Don't Trust Government* (Harvard University Press 1997) 261-75.

⁸⁹ Aarts, Fladmoe and Stromback, *ibid* 98-99, 103-04; Nye, Jr and Zelikow, *ibid* 261.

⁹⁰ Richard Gunther and Anthony Mughan, *Democracy and the Media: A Comparative Perspective* (Cambridge University Press 2000) 16-20; Nye, Jr and Zelikow, *ibid* 274.

political information (and more importantly, the impact which that political information has on their knowledge of political actors and policies), renders citizens *vulnerable* to the media.

The elected branches are also in a trust relationship with the media. After all, they (and their policies) are the subject of the political information which the media conveys; and often, the media controls that information because the elected branches have entrusted it to them.⁹¹ The good or service over which the media has *control* is again political information; but what the elected branches need and/or want is for the media to convey that information to citizens in a way which casts them in a positive light. Otherwise, they again may suffer negative repercussions from citizens. However, the media has *discretion* both as to substance and style: thus, the elected branches *cannot be certain* of what information the media will convey to the public or how it will convey that information. And because the information conveyed by the media has significant impact on citizens' political attitudes, the elected branches are also *vulnerable* to the media.

(iii) The courts

Last but not least, I come to the courts. The justiciability of social rights was once the subject of an intense debate among scholars, jurists and politicians. However, in the last few decades, it has (for the most part) been accepted that courts have at least some role to play. Such acceptance was perhaps inevitable given that an increasing number of constitutions now include express and justiciable social rights provisions, several courts have accepted social rights' justiciability and, in many jurisdictions without express provisions, courts have recognised implicit constitutional protection for social rights.⁹² Thus, as Anashri Pillay has summarised, 'The weight of academic,

⁹¹ Again, we may conceive of a trust relationship operating in the reverse direction.

⁹² With respect to the inclusion of social rights in national constitutions, see the Toronto Initiative for Economic and Social Rights dataset which is available at <http://www.tiesr.org/data.html>. It documents the presence of various economic and social rights in 195 national constitutions across the globe, as well as the status of these rights as justiciable or aspirational. See also Courtney Jung, Ran Hirschl and Evan Rosevear, 'Economic and Social Rights in

judicial and political opinion in this area has moved away from justiciability to a consideration of the most effective judicial approaches' for enforcing social rights.⁹³ Hence, it is my view that we should accept (as it appears most have) that social rights are justiciable and that courts have a role to play in the social rights arena. And if we so accept, we should also accept that courts form part of the rich social context within which the citizen-government relationship is embedded.

But even if we do not accept such a role for courts, I think that this conclusion (that courts form part of the citizen-government relationship's social context) still follows. Regardless of what we think the courts should be doing, it is undeniable that in recent years, courts have played a role in this area: with increasing frequency, litigants have brought social rights matters before courts, and courts have decided their cases. In fact, scholars have described these last few decades as witnessing an "explosion" of social rights litigation.⁹⁴ In my view, this proliferation of litigation

National Constitutions' (2014) 62 *American J of Comparative L* 1043. With respect to courts reading social rights into their national constitutions, see, for example, the cases of Germany (*Hartz IV*, BVerfG, Case No 1 BvL, 1/09, 125 BVerfGE 175); India (*Olga Tellis & Ors v Bombay Municipal Corporation* [1985] 2 Supp SCR 51); Israel (*Hassan v National Insurance Institute* [2012] HCJ 10662/04).

⁹³ Anashri Pillay, 'Economic and Social Rights Adjudication: Developing Principles of Judicial Restraint in South Africa and the United Kingdom' [2013] PL 599, 599. See also David Landau, 'The Reality of Social Rights Enforcement' (2012) 53 *Harvard Intl LJ* 189, 190, 196: 'For all practical purposes, the debate about whether to include social rights in constitutions is over ... Most of the more recent work in the field has focused on the specific question of *how* social rights should be enforced rather than the older question of *whether* they should be included in constitutional texts in the first place'; Colm O'Cinneide, 'The Problematic of Social Rights – Uniformity and Diversity in the Development of Social Rights Review' in Liora Lazarus, Christopher McCrudden and Nigel Bowles (ed), *Reasoning Rights: Comparative Judicial Engagement* (Hart Publishing 2014), 310: 'However, it is clear that key constitutional actors in many states (including legislators, judges and academic commentators) are becoming more accepting of the possibility that judicial protection of social rights may be a worthwhile addition to the repertoire of modern constitutionalism'.

⁹⁴ Daniel M Brinks and Varun Gauri, 'The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights' (2014) 12 *Perspectives on Politics* 375, 376. See also Malcolm Langford, César Rodríguez-

means that courts form part of the social rights network. In the words of Daniel Brinks and Varun Gauri, ‘for good or ill – or, more accurately, for good *and* ill ... – the language of rights, the mechanism of courts, the intervention of lawyers, and the cumbersome tools of the law have become a permanent and prominent part of the policy-making landscape’.⁹⁵

Given that social rights adjudication involves courts reviewing governmental decisions on social welfare, we can say that, at a minimum, courts occupy a position in the social rights network between citizens and the elected branches. Such adjudication usually involves citizens, either acting alone or relying upon representatives, turning to the courts when dissatisfied with the process or the results of governmental decision-making. To date, citizens have challenged, among other things, decisions not to fund/deliver social programmes; where funded or delivered, the eligibility criteria for the programmes; and lastly, the programmes’ implementation.

Again, I think that it is fair to characterise the relationship between citizens and the courts arising out of social rights adjudication as a trust relationship. The courts have *control* over something which citizens need: a ruling in their favour vis-à-vis the social goods and services which they need. Put simply, that ruling brings citizens closer to those goods and services. The courts also have *discretion* in delivering their rulings.⁹⁶ As Ronald Dworkin put it years ago, ‘the general

Garavito and Julieta Rossi (eds), *Social Rights Judgments and the Politics of Compliance: Making it Stick* (Cambridge University Press 2017). Of note, in 2009, Malcolm Langford made the point that ‘[i]f we were to speculate on the total number of decisions that have invoked constitutional and international [social] rights, a figure of at least one to two hundred thousand might be in order’: Malcolm Langford, ‘Domestic Adjudication and Economic, Social and Cultural Rights: A Socio-Legal Review’ (2009) 6 Intl J on Human Rights 91, 91.

⁹⁵ Daniel M Brinks and Varun Gauri, ‘A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World’ in Varun Gauri and Daniel M Brinks (eds), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2010) 303.

⁹⁶ On judicial discretion generally, see Ronald Dworkin, ‘Judicial Discretion’ (1963) 60 The J of Philosophy 624; Ronald M Dworkin, ‘The Model of Rules’ (1967) 35 The U of Chicago L Rev 14; Ronald M Dworkin, ‘Social Rules

proposition, that the exercise of judicial choice or discretion within areas circumscribed more or less tightly by rules is not an occasional misfiring but a characteristic feature of the legal process, is today almost a law school cliché'.⁹⁷ This discretion relates not only to a court's interpretation of social rights but also to its granting of remedies for rights violations. Because of this discretion, citizens *cannot be certain* of how courts will rule; and given their need for a favourable ruling, citizens are *vulnerable* to the courts.

Further, when citizens choose to litigate their claims, the courts become a truster in their own respect – that is, in their relationship with the elected branches.⁹⁸ This trust relationship arises out of the fact that, in contemporary constitutional democracies, the courts must rely on the elected branches to enforce their constitutional decisions. Although a court's ruling may seek to impact the elected branches' exercise of control and discretion over social goods and services, the ultimate decision remains that of the elected branches. For instance, a court may rule that a citizen (or group of citizens) is entitled to a particular social good or service and order the elected branches to fund and/or deliver that good or service; but without the elected branches' ensuing decision to actually fund/deliver, the court's ruling is largely meaningless. For this reason, I think that we may fairly say that courts *cannot be certain* of how the elected branches will respond to their rulings. And finally, courts are *vulnerable* to the elected branches. That vulnerability chiefly assumes the form of institutional credibility: if the courts' rulings are not followed by the elected branches, it diminishes their credibility in the eyes of the elected branches as well as the public.⁹⁹ And to make matters

and Legal Theory' (1972) 81 The Yale LJ 855; Kent Greenawalt, 'Discretion and Judicial Discretion: The Elusive Quest for the Fetters That Bind Judges' (1975) 75 Columbia L Rev 359.

⁹⁷ Dworkin, 'Judicial Discretion', *ibid* 624.

⁹⁸ Once again, we may conceive of a trust relationship operating in the reverse direction.

⁹⁹ Young (n 25) 161.

worse, the judiciary may suffer repercussions from the elected branches, including a lack of cooperation in the future, a reduction in resources, or worse, impeachment.¹⁰⁰

D. *The Dependence of Trust on the “Social Rights Network”*

This brings me to my second claim: that trust in the citizen-government relationship depends on the social rights network. This claim follows from a straightforward application of the second fundamental feature of the network conception of trust to the citizen-government relationship. If trust in a trust relationship depends on the network of relationships in which that relationship is embedded (as contended in the relevant social science scholarship), applying this feature to the citizen-government relationship means that trust in *that* relationship (as a trust relationship) depends on the network of relationships in which *it* is embedded. And seeing as – based on the above constructive analysis – the network in which the citizen-government relationship is embedded is the “social rights network”, then that means that trust in the citizen-government relationship depends on the social rights network. Put simply, citizens’ trust in the elected branches with respect to social rights depends on the various relationships which constitute the social rights network.¹⁰¹ Or, to rephrase this claim using slightly more active language: we can expect the relationships which constitute the social rights network to be able to impact (including, in the right circumstances, to foster) trust in the citizen-government relationship.¹⁰²

¹⁰⁰ Frank B Cross, ‘The Error of Positive Rights’ (2001) UCLA L Rev 857, 887-89. In particular, Cross has noted that the courts ‘are politically vulnerable institutions that have powerful reasons to be cautious in imposing restrictions on the other branches’: 887-88.

¹⁰¹ By necessary implication from this claim, the same can be said of any trust relationship in the network.

¹⁰² The claim that I make here is theoretical. It draws from the work of the many writers on trust who I identified at the outset of this part as advocating a network conception of trust and it applies that work to the citizen-government relationship. In my view, these writers’ work – taken together to form what I have called the network conception of trust – supports my claim. However, to be fair, if we wanted to say with greater certainty that a

It is beyond the scope of this paper to go further than the above claim by offering an analysis of *how*, if at all, we can expect each relationship in the social rights network to be able to impact trust in the citizen-government relationship. Based on my reading of the above writers on trust, it is likely that different trust relationships would be expected to impact trust in the citizen-government relationship via different paths. Thus, just as it would be impossible to analyse all the parties and relationships constituting the social rights network, it would be equally impossible to analyse all these paths. Fortunately, again, my aim is not to do so. To repeat, my aim is to introduce the network conception of trust to social rights law. Therefore, in what follows, I will provide a couple of examples to illustrate this dependence of trust on the social rights network.

First, consider the interaction between the citizen-government relationship and the relationship between citizens and the media (which we can call the “citizen-media relationship”). An application of the claim made here to these relationships suggests that we can expect the citizen-media relationship to be able to impact trust in the citizen-government relationship: after all, the citizen-media relationship forms part of the social rights network. Actually, there is much empirical support for this claim at a general level (ie not in the specific social rights context).¹⁰³ However, accepting this claim as applied to this context, we are left with the question of how the citizen-media relationship can impact trust in the citizen-government relationship. I think that Coleman’s idea of “the advisor” as an intermediary in trust provides a reasonable explanation. To re-summarise, Coleman has argued that where a truster has a relationship with a third party (the advisor) who advises her to trust a trustee, to the extent that the truster trusts the advisor’s judgment, that relationship fosters trust between her and the trustee. In fact, Coleman has

specific relationship in the social rights network *does* impact trust in the citizen-government relationship, we should conduct an empirical investigation. Granted, significant challenges would be in store for such an investigation, including difficulties measuring trust (as conceptualised) and controlling for the impact of a single relationship.

¹⁰³ As a representative sample, see (and the studies referenced in these works) Aarts, Fladmoe and Stromback (n 88) 98-99; Bovens and Wille (n 88) 59; Moy and Hussain (n 88) 222-23.

specifically identified the media as such an advisor in contemporary societies.¹⁰⁴ Applying Coleman’s idea to the social rights context: where the media, through its conveyance of political information to citizens, portrays the elected branches positively, I think that it is fair to say that the media “advises” citizens to trust the elected branches. And assuming that citizens trust the media (which is obviously not a given but I will assume it to be true for the present purpose), based on Coleman’s argument, the media’s advice to trust the elected branches (and so, the citizen-media relationship) can be expected to foster citizens’ trust in the elected branches.

For a second example, let us turn briefly to social rights enforcement by courts and the two relationships which lie at its core: the citizen-government relationship and the relationship between citizens and the courts arising out of social rights adjudication (the “citizen-court relationship”). Like the citizen-media relationship, we can expect the citizen-court relationship – as part of the social rights network – to be able to impact trust in the citizen-government relationship. But again, how? Here, I think that a reasonable path is offered by Shapiro’s “guardians of trust” idea.¹⁰⁵ Shapiro’s work forms part of a body of literature which contends that institutions ‘can be made to support trust between persons [and/or institutions] by making them trustworthy’.¹⁰⁶ As the term itself suggests, trustworthiness means that a trustee in a trust relationship is worthy of the truster’s trust. It thus represents the likelihood that the trustee will

¹⁰⁴ Coleman (n 8) 194.

¹⁰⁵ It should be noted that there are other conceivable paths. For example, similar to the media, the courts may serve as an “advisor”, effectively advising citizens in their judgments to trust the elected branches.

¹⁰⁶ Russell Hardin, ‘Trustworthiness’ (1996) 107 *Ethics* 26, 43. See also Pettit (n 18); Shapiro (n 8). Generally speaking, the dependence aspect of the network model describes that upon which trust in the citizen-government relationship depends – that is, other relationships in the social rights network. Consequently, it postulates when citizens *are likely* to trust the elected branches. It does not (at least not necessarily) describe when citizens *ought* to trust the elected branches. The network model only deals with the issue of when citizens ought to trust the elected branches when the path via which trust in the citizen-government relationship is impacted is that of trustworthiness.

fulfil the truster's trust. So, if trust is (as I have generally defined it) positive expectations held by the truster about the trustee's motivations towards her as well as the trustee's competence with respect to the relevant good or service (X), trustworthiness denotes that the trustee is likely to act in accordance with those expectations. Accordingly, as Russell Hardin has recognised, 'The best device for creating trust is [or at least should be] to establish and support trustworthiness'.¹⁰⁷ Hardin has explained the relationship between trustworthiness and the fostering of a truster's trust as follows: a truster's learning to trust a trustee depends on the success of her trusting – she will learn to trust the trustee if her trust in him proves to be well-placed. And the success of her trusting depends, in turn, on the trustee's trustworthiness – if the trustee is trustworthy, the truster's trust in him will likely prove to be well-placed. Consequently, 'we can imagine that enhancing trustworthiness in general will increase levels of trust' in a trust relationship.¹⁰⁸

In line with Hardin's understanding of the trust-trustworthiness relationship, Shapiro, it will be recalled, has argued that institutions can foster trust in a trust relationship by imposing constraints (or social control measures) on the trustee which promote his trustworthiness: the trust resulting from the imposition of such constraints being impersonal trust and the institution imposing said constraints acting as a "guardian of trust".¹⁰⁹ In developing her argument, Shapiro specifically identifies as such "guardians of trust" professional associations, regulatory watchdogs and certified public accountants. I suggest that the same general idea can be applied to the courts in social rights adjudication. That is, courts – by imposing constraints on the elected branches which promote those branches' trustworthiness vis-à-vis social rights – should be able to foster citizens' trust in them with respect to those rights. By imposing such constraints, courts should

¹⁰⁷ Hardin, *ibid* 29.

¹⁰⁸ *ibid* 32.

¹⁰⁹ Shapiro (n 8). See also *ibid*; Pettit (n 18).

increase the likelihood of the elected branches' fulfilling citizens' trust – making their trust likely to be well-placed and hence, fostering impersonal trust in the citizen-government relationship.

5. *Conclusion and Implications of the Network Model*

In this paper, I have developed a model conceiving of social rights fulfilment in contemporary social democracies as a network of interconnected and interdependent trust relationships between citizens, state actors and non-state actors. I have observed that from this model, it follows that for any relationship involved in social rights fulfilment (like the citizen-government relationship), we must understand trust as a product of that relationship's social context.

In conclusion, I want to highlight the implications of the network model for social rights enforcement by courts. As I noted in my discussion of the courts, the current debate on social rights enforcement centres on judicial approaches for enforcing social rights: that is, on *how* courts should enforce these rights. In my view, the network model is relevant to this debate. Pursuant to the model, we can expect the citizen-court relationship arising out of social rights adjudication to be able to foster citizens' trust in the elected branches with respect to social rights; and it can do so (at least theoretically speaking) by imposing trustworthiness-promoting constraints on the elected branches. Given this proposition, coupled with the recognised value of citizens' trust in government to contemporary democracies, the network model supports the following conclusion: social rights adjudication offers us a means by which we can realise that value. Put concisely, via social rights adjudication, we should be able to foster citizens' trust in government and so, generate the valuable ends of such trust (including citizens' tax compliance and their support for social policies). And consequently, assuming we want to realise that value (and that we deem adjudication a suitable means by which to realise it), the network model offers useful insights for the question of how courts should enforce social rights. Specifically, there is an argument to be made that courts should enforce these rights in the way I have described above: by imposing constraints on the elected branches which promote their trustworthiness.

That argument is well beyond the scope of this paper. It would necessitate a more thorough conceptualisation of trust in the citizen-government relationship than I was able to provide here (so as to, in turn, conceptualise trustworthiness in the relationship) as well as an expounding of the precise kinds of judicial constraint which would promote the elected branches' trustworthiness. It would also demand a more fulsome justificatory analysis on the benefits of fostering citizens' trust in the elected branches with respect to social rights. I must therefore leave that argument for another day. That said, my discussion in this paper, by developing the network model, offers an important foundation for that future argument, not to mention a new way of understanding social rights fulfilment in contemporary social democracies.