

THE MANDATE SYSTEM AS A MESSIANIC ALTERNATIVE IN THE ULTRA-RELIGIOUS JURISPRUDENCE OF RABBI DR ISAAC BREUER

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Dr Rabbi Isaac Breuer, a German jurist and Jewish rabbi, represented the ultra-orthodox community in Palestine before the international committees which considered the future of the Palestine Mandate. In his work, Breuer criticised the concept of sovereignty and introduced an alternative regime for global governance of developing peoples. His unique position, as analysed in this article, can contribute to contemporary debates surrounding the role of sovereigns as trustees of humanity, sovereignty and international law and ways of promoting global peace and human welfare.

By introducing Breuer's thought, this article seeks to contribute additional sources – both Jewish and universal – to these ongoing debates. Letting these neglected voices in international legal history enrich the debate can convince us, once again, of the importance of the periphery and of peripheral voices for the development, vitality and relevance of international law.

Breuer's model replaces the notions of 'sovereignty' and 'rights' with those of internalised obligations and subservience to law and justice. Limiting any national aspirations to total sovereignty, he implored the United Nations to refrain from elevating the Jewish national home to statehood. Opposing the Zionist position, he insisted that the Mandatory power and international institutions would enable two nations to develop side by side, in what he termed 'the state of peace', under international trusteeship.

We carefully draw on Breuer's insights to reflect on present debates on trusteeship, sovereignty and the management of areas devastated by conflict.

Keywords: Rabbi Breuer, sovereignty, Mandate, trust, Israel, Palestine, Judaism, League of Nations

1. INTRODUCTION

The United Nations (UN) trusteeship system, established to replace and extend the mandate system, recruited mandatory powers to administer territories and populations 'on behalf of the League'.¹ Its responsibility was to foster 'international peace and security'² by maintaining 'law and order within

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The article is based on a sub-chapter of my thesis, *The Attitudes of Jewish Law towards International Law: Analyzing the Jewish Legal Materials and Processes*, PhD thesis, Tel Aviv University, 2012, written under the supervision of Professors Arye Edre'i and Orna Ben-Naftali. I thank them and participants at various conferences where I have presented papers on Breuer. A detailed analysis of Breuer's arguments regarding international law was published in Hebrew, in Amos Israel-Vleeschhouwer, 'Ultra-Orthodox Critique of Sovereignty, Individualism and the Concept of Human Rights: The Legal Thought of Rabbi Dr Isaac Breuer' (2011) 15 *Hamishpat* [*College of Management Law Journal*] 607. I also thank the reviewer and Professor Ronen for helpful critique, and Caroline Block for superb language editing.

¹ Covenant of the League of Nations (entered into force 10 January 1920) Cmd 153 (1920) *League of Nations Official Journal* 3, art 22; Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press 2008) 306–07.

² Charter of the United Nations (entered into force 24 October 1945) 1 UNTS 16, art 76(a); Covenant of the League of Nations, *ibid*, preamble. For the transition from the mandate system to UN trusteeship see Wilde, *ibid*.

the trust territory',³ and to guide the local population towards self-sufficiency and independence. The latter objective sought to bring non-administrated areas, *terra nullius*, and indigenous populations, into the League of (civilised) Nations.

The trustee/mandate system thus reinforces the established international order based on nation states. It follows that the administration of each administrated entity is temporary, as was the role of the Trusteeship Council. Indeed, the Council suspended operation in 1994, because there were no longer any trust territories.⁴ Nevertheless, the UN decided to preserve the Council's structure, primarily because of the difficulty of amending the Charter, but perhaps also in anticipation of future needs. Arguably, the number of disintegrating states, states in major transition processes, and post-state non-governed territories that have emerged in recent years (Syria and Iraq, among others) may provide good reasons to rekindle debates on mandates and trusteeships.

Professor Benvenisti, in his article regarding sovereigns as trustees of humanity,⁵ argues that sovereigns owe responsibility to distant non-citizen humans, to humanity and to the world. This article has spurred a renewed interest in the idea of trusteeship in international law in a globalised context. Even though the subsequent debate focuses mainly on contemporary obligations of sovereign states in international interventions, sharing resources and the treatment of non-citizens in states, the debate has also rekindled some interest in the mandate system and the Trusteeship Council.⁶

This article will introduce an alternative interpretation of the mandate/trusteeship system based on a critique of sovereignty. Unlike Benvenisti, who takes sovereignty for granted but reinterprets its legal and moral base and meaning, I will present the concept of 'sacred trust of civilisation'⁷ as an *alternative* to sovereignty, and also suggest a different goal for these 'trusts' – that of preparing peoples for specifically non-sovereign national independence, rather than for national sovereignty.

This is the view championed by Rabbi Dr Isaac Breuer, a German-trained jurist and practising international lawyer who represented the Jewish ultra-orthodox communities (Agudat Yisrael) in Palestine before the international committees until his death in 1946.⁸ In this article, I will also present Breuer's messianic perception of the mandate as an antecedent of contemporary global trusteeship, and discuss some of the implications of this peripheral and utopian reading of the mandate.

³ Charter of the United Nations (n 2) art 84.

⁴ United Nations, 'Trusteeship Council', <http://www.un.org/en/mainbodies/trusteeship>.

⁵ Eyal Benvenisti, 'Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders' (2013) 107 *American Journal of International Law* 295.

⁶ Benvenisti's article inspired a conference and a topical issue in (2015) 16(2) *Theoretical Inquiries in Law*.

⁷ Covenant of the League of Nations (n 1) art 22.

⁸ Rivka Horwitz, 'Introduction' in Isaac Breuer, *Tsi'yunei Derech [Roadsigns]* (Mossad Harav Kook 2007) (in Hebrew); Alan Mittleman, 'Two Orthodox Jewish Theories of Rights: Sol Roth and Isaac Breuer' (1991) 3 *Jewish Political Studies Review* 97; Matthias Morgenstern, *From Frankfurt to Jerusalem: Isaac Breuer and the History of the Secession Dispute in Modern Jewish Orthodoxy* (Brill 2002); Rivka Horwitz (ed), *Yitschak Breuer: I'yunim Be'Mishnato [Isaac Breuer: The Man and his Thought]* (Bar Ilan 1988) (in Hebrew). All translations from Hebrew are mine.

Breuer was the grandson of Rabbi Samson Rafael Hirsch, founder of the German neo-orthodox movement. He was ordained as a rabbi at age 20 and learned law and philosophy at the universities of Strasburg and Marburg,⁹ coming to define his philosophy of Judaism as neo-Kantian¹⁰ with a strong emphasis on insights from history. He participated in the First World War from 1915 to 1918 and practised law in Frankfurt until his emigration to Palestine in 1936.¹¹ From its very beginning, he was involved with Agudat Yisrael, a political organisation of ultra-orthodox Jews founded in Kattowitz (Poland) in 1912. He also founded and led the sub-organisation for orthodox workers, Poalei Agudat Yisrael, and represented the ultra-orthodox communities in Palestine as well as this organisation before the Peel and Anglo-American commissions on Palestine.¹²

Although Breuer's views were not accepted by most ultra-orthodox rabbis and activists, and are not representative of these communities or organisations, he was chosen and trusted to act as a political leader and represent Poalei Agudat Yisrael on his own terms.¹³ In fact, in retrospect, his political positions did faithfully represent the ultra-orthodox position, although his philosophy was largely ignored by his contemporaries. It seems that with regard to the Mandate, his anti-Zionist critique and his critique of sovereignty, which are the focus of this article, he represents an authentic voice within the ultra-orthodox discourse of the time.

2. THE MANDATES AS A CRITIQUE OF SOVEREIGNTY

The International Court of Justice (ICJ) has stated that 'the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned'.¹⁴ This is commonly understood to mean sovereign statehood.¹⁵ Thus, the mandate/trusteeship system is commonly presented as not simply based on the sovereignty of the trustee but as also promoting the sovereignty of those entrusted nations that are considered to be so prepared. An alternative reading would focus on the somewhat ambiguous formulation of Article 22 of the Covenant of the League of Nations,¹⁶ which promotes 'the principle that *the well-being and development of*

⁹ His dissertation was published as Isaac Breuer, *Der Rechtsbegriff auf Grundlage der Stammerschen Sozialphilosophie* (Reuther and Reichard 1912) (in German).

¹⁰ George Y Kohler, 'Is there a God *an Sich*?: Isaac Breuer on Kant's *noumena*' (2012) 36 *American Jewish Studies Review* 121 (and the literature in note 1).

¹¹ According to one version, an earlier visit to Palestine convinced him of the messianic meaning of living in Israel, seeing the fulfilment of the prophecy of Ezekiel (36:8): 'But you, mountains of Israel, will produce branches and fruit for my people Israel, for they will soon come home'. Other accounts stress the inability to practise law, and the persecution by the Nazis.

¹² Alan L Mittleman, *Between Kant and Kabbalah: An Introduction to Isaac Breuer's Philosophy of Judaism* (State University of New York 1990). A detailed bibliography appears in Isaac Breuer, *Concepts of Judaism* (Israel Universities Press 1974) 339.

¹³ Eliezer Schweid, 'Medinat HaTora Bemishnato Shel Yitschak Breuer' ['The State of Torah in Isaac Breuer's Writings'] in Horwitz (n 8) 125, 146 (his views do not represent the Agudat Yisrael consensus).

¹⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion [1971], ICJ Rep 16, [53].

¹⁵ Wilde (n 1); regarding Palestine see UNGA Res 181(II) (29 November 1947), 'Future Government of Palestine', UN Doc A/RES/181(II).

¹⁶ Covenant of the League of Nations (n 1) (emphasis added).

such peoples form a sacred trust of civilisation'. A similar ambiguity, in which neither statehood nor sovereignty are clearly defined as a goal, can be found in another ICJ ruling which states that the mandates were created 'in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilization'.¹⁷

This section will introduce Breuer's general critique of sovereignty, his alternative ideal of non-sovereign nationhood and its submission to law and justice, and its application to international law and the mandate system.

2.1. THE EVIL AND HERESY OF SOVEREIGNTY

As the terms 'heresy' and 'evil' imply, Breuer's argument is embedded in religious thought, but he did not perceive his argument to be strictly 'Jewish'. Breuer held that God is universal, that '[t]he God of Israel is the god of all humanity'¹⁸ and, further, that Judaism has a legacy for all humanity. On this matter, he wrote: 'Judaism can only be an historical phenomenon if it has unique answers to the great questions that bother the peoples of the world'.¹⁹ The argument is 'Jewish' in that it is based on Breuer's reading of the Bible, Jewish sources, and his analysis of history which focuses on Jewish destiny and a Jewish interpretation of the world's history.²⁰ However, Breuer's argument should appeal to adherents of other religions who place the ideas of God, justice or the law above that of the king, state or people. He believed it would also be convincing (if to a lesser extent) to non-religious people who place justice and humanity before states and individuals (as can be deduced from his arguments before the UN Commission, discussed below). For them, religious vocabulary would have to be replaced with equivalent terms.

Breuer's point of departure is that as sovereignty does not allow any supreme commanding law, sovereign individuals and sovereign states constitute heresy against any rule of law, especially divine law. State sovereignty is the root of war²¹ and the basis for social injustice, because 'the sovereign has no morality ... between sovereigns there cannot be law and justice'.²² Further, as the power and magnitude of states increases, so does the heresy and evil resulting from sovereignty. Therefore, 'when nations declare sovereignty, that they are goals, war is

¹⁷ *International Status of South-West Africa*, Advisory Opinion [1950] ICJ Rep 128, 132.

¹⁸ Isaac Breuer, *Moria: Foundations for Jewish Religious National Education* (Nezach 1945) 48 (in Hebrew); compare with the Introduction to *Moria*, and with Breuer (n 8) 111.

¹⁹ Isaac Breuer, *HaKuzari HaHadash: Derech El HaYahadut [The New Kuzari]* (Isaac Breuer Foundation 2008) 364 (in Hebrew, original in German, *Der Neue Kusari: Ein Weg zum Judentum* (Verlag der Rabbiner Hirsch Gesellschaft 1934)).

²⁰ See in his biography, *Mein Weg* (first published 1946, Hebrew trans Michael Shwarz 1988) and the books detailing his historio-philosophical reading in Breuer (n 18); Isaac Breuer, *Nahliel* (Mossad Harav Kook 1982) (in Hebrew). See David N Myers, *Resisting History: Historicism and Its Discontents in German-Jewish Thought* (Princeton University Press 2003) 136, 141; Shoval Shafat, 'The Political Theology of Isaac Breuer' in Christoph Schmidt and Eli Sheinfeld (eds), *God Was Not Silent: Jewish Modernism and Political Theology* (Van Leer Jerusalem Institute 2009) 122 (in Hebrew).

²¹ Isaac Breuer, 'Die Wurzel des Krieges' in *Jüdische Monatshefte III* (1916) 214–28.

²² Breuer (n 18) 47.

unavoidable. ... Social peace becomes utopia. The blood of humanity is [the responsibility of] nationality. Nations are the world's animals of prey'.²³

In the world of sovereign states, politics trumps justice. In politics, power trumps law. Accordingly, sovereignty and law are in constant conflict. Breuer seems to accept Carl Schmitt's²⁴ famous analysis,²⁵ but draws an opposite conclusion,²⁶ preferring law over sovereignty. He argues that strong sovereignty is also a basis for church–state tensions, but instead of creating religious rights to protect religions and religious people, he proposes to weaken the state.

Sovereignty tends to ignore justice and law, as is evident both in international problems (war) and in intrastate evil ('social peace', 'the social problem'). A sovereign state is not committed even to its own citizens, and may change its attitude towards them as it sees fit, repeatedly disadvantaging the weak. Breuer repeatedly connects these internal and external injustices as unavoidable consequences of national sovereignty,²⁷ insisting that sovereign states endanger the well-being of every individual, community and society, and indeed world peace and humanity in general.

Taking the notion that sovereignty is evil to its logical conclusion, Breuer argues that in the interest of 'the people's well-being' (one goal of the mandate), the mandate cannot and will not lead to full sovereignty, as such sovereignty also harms the interests of humanity in general and contradicts the 'sacred trust of civilisation'. Breuer noted that all of the documents – Article 22, the Balfour Declaration and the Palestine Mandate – omitted the expressions 'state' and 'sovereign'. The Palestine Mandate stated the goal to be 'self-determination and independence', and the Balfour Declaration²⁸ used the term 'a *national home* for the Jewish people'. Thus, in addition to his critique and alternative proposal, Breuer presents his position as a genuine and legitimate alternative interpretation of the mandate documents.

2.2. NON-SOVEREIGN 'SELF-DETERMINATION AND INDEPENDENCE'

Breuer objects to the idea of a single universal global society under one government, as such a government would be sovereign and therefore inevitably heretical and evil.²⁹ Moreover, he feels

²³ Breuer (n 19) 56, see also 59: nations being formed by blood.

²⁴ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (first published 1922 in German, University of Chicago Press 1985).

²⁵ Udi E Greenberg, 'Orthodox Violence: "Critique of Violence" and Walter Benjamin's Jewish Political Theology' (2008) 4 *History of European Ideas* 324, 332.

²⁶ We do not know much about the interactions between Breuer and Schmitt, nor about the extent of Breuer's familiarity with Schmitt's ideas and writings: Shafat (n 20).

²⁷ cf Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press 1998); Giorgio Agamben, *State of Exception* (University of Chicago Press 2005).

²⁸ Letter from the United Kingdom Foreign Secretary, Arthur James Balfour, to Baron Walter Rothschild, 2 November 1917 (*The Times*, 17 November 1917), incorporated (with full text) into the Treaty of Peace between the British Empire and Allied Powers and Turkey (signed 10 August 1920), art 95. This treaty was later annulled. The preamble to the British Mandate for Palestine (confirmed by the Council of the League of Nations on 24 July 1922, effective 28 September 1923, (1922) 3 *League of Nations Official Journal* 1007) incorporates the Declaration without citing it: Avalon Project, http://avalon.law.yale.edu/20th_century/palmanda.asp; Leonard Stein, *The Balfour Declaration* (Simon and Schuster 1961) 470.

²⁹ See below, 3.1.

that legal variation between nations is crucial for the application of justice on earth. There are, and should be, he claims, different ways of implementing the ‘good’ according to different conditions, cultures and preferences,³⁰ and the only way in which these various visions can be justly implemented is through and by law. The goals of ‘self-determination’ and ‘independence’ of various nations are crucial, and local cultures, populations and institutions have to be developed towards just legal systems and forms of governance.

Modern legal theory promoted man-centred law, human-made law. Such law, by definition, requires enforcement, requiring a sovereign, necessarily descending to *violent force*.³¹ As these laws serve to balance power and not to serve justice, they are only ‘just’ in a limited way, and will result in human suffering. Breuer warns of the danger of tyranny, which exists in any sovereign state.³² He explicitly refutes reliance on democracy – the sovereignty of sovereign people – as sufficient protection from such a deterministic descent into violence.³³ Instead, Breuer offers an alternative social and political organisation. Rather than law serving society, he conceives of society as created by law and shaped by it. Law and justice thus precede both individuals and states, and trump their interests. Thus, the creation of non-sovereign, law-abiding states would permit the expression of particular cultures as unique forms of human organisation, while escaping the dangers of tyranny.

The term ‘non-sovereign states’ is senseless in some political philosophies for which sovereignty is a necessary component of statehood. This term, however, expresses Breuer’s intention with precision – for he uses the term ‘the state of the Torah’ to describe a well-developed self-government, committed to global justice, restricted by the rule of law, and voluntarily ready to serve humanity.³⁴ While for others, like Carl Schmitt, ‘partial’ or ‘limited’ sovereignty is senseless, as the essence of sovereignty is its limitlessness,³⁵ Breuer uses these terms explicitly and intentionally. ‘Non-sovereign’ in this article should be perceived as the negation of full sovereignty, while ‘limited’ or ‘restricted’ sovereignty refers to governments that negate ‘full’ sovereignty. In the same way, I will use ‘limited’ nationality to indicate national identity and ideology which is not total, and which is subservient to justice and an inherent and cooperating member of humanity. As I understand it, Breuer uses the restricting terms to allude to both a certain form of limited nationality and sovereignty, and to a whole range of forms of government. Although most contemporary states have varying levels and forms of limited sovereignty (such as a strong rule of law, de jure obligations under international law and extensive de facto compliance with its norms, recognition of human rights and environmental laws), in Breuer’s time the options were more

³⁰ ‘A state is needed, so human interaction can be directed to serve divine justice’: Breuer (n 8) 127.

³¹ cf Thomas Hobbes, *Leviathan* (first published 1651, Yale University Press 2010).

³² ‘[A] bit of Nazism is present in each sovereign nation, each sovereign state’: Breuer (n 18) 238; cf Breuer (n 8) 146.

³³ ‘Just divine justice can restrain these forces, as even democracy is not enough’: Breuer (n 18) 241; cf *ibid* 14–15; Breuer (n 19) 377–78.

³⁴ Schweid (n 13).

³⁵ Hobbes (n 31); Schmitt (n 24); ‘Sovereignty’, *Encyclopaedia Britannica*, <http://www.britannica.com/topic/sovereignty>; Jorge Emilio Núñez, ‘About the Impossibility of Absolute State Sovereignty: The Early Years’ (2014) 27 *International Journal for the Semiotics of Law [Revue internationale de Sémiotique juridique]* 645.

limited. Breuer's notion of a limited state certainly included a full legal system expressing local culture and preferences as well as legal, administrative and governing institutions.³⁶

Breuer argues that relative nationality is the direct result of the divine revelation of an infinite and good law. This law and the rule of law are then freely accepted and internalised by all individuals and inherently restrict any form of government formed by them.³⁷ This divine revelation puts human power hierarchy into perspective, and causes those in power to restrict themselves and serve God, justice and society.³⁸ It appears that Breuer recognises that despite his preference for divine law, a strong tradition of natural law, voluntarily accepted and widely recognised, has a similar (if somewhat weaker) potential of restricting sovereignty,³⁹ as it can lead to a widely accepted and internalised rule of law with a deep commitment to justice, whether global or local. Breuer's recognition that just and restricting law is not confined to the Jewish or divinely revealed law is evident in his analysis of the French Revolution as a rare moment in history when public commitment to ideas succeeded in opposing the sovereign, and the submission of any future government to the Revolution's triad of values was widely accepted. According to his analysis, the Revolution failed as a result of a combination of personal interests and extreme nationalism, which undermined its stated commitment to law and justice.⁴⁰ However, he sees the temporary success of the Revolution as a first step for future political organisations to build on, without the need to wait for divine revelation.⁴¹

Breuer himself did not wait for divine revelation. He took it upon himself to analyse and publish the failures and dangers of sovereignty, and to present an alternative. His commitment to advancing utopia by human action, instead of waiting for a messiah from heaven, is one of the issues that caused friction between him and his ultra-orthodox surroundings (and explains some of his appeal to religious Zionists). He focused on education and using his unique position to set a political example – either by creating the 'Torah-state' he envisioned or by at least presenting a position of selflessness in service of justice in international fora. Indeed, Breuer's preference for divine law does not imply that he perceived such law to be monolithic, clear and never changing. Rather, Breuer understood Jewish law as celebrating controversy and variations, and as adapting and evolving.⁴² Thus, Breuer envisioned the Torah-state's jurisprudence, and any future just transnational divine law, as inclusive of multiple legitimate legal options.

³⁶ 'The nation as society carries law, and the state is the ultimate servant of the law': Isaac Breuer, 'Shnei Maklot HaRo'im' ['The Two Sticks of the Herders'] in Breuer (n 18) 123, 127.

³⁷ 'When a nation experiences revelation total nationality disappears. Instead, a relative nationality appears. It submits itself readily to god, then to justice and law': Breuer (n 8) 197, 193 for strong relative nationality.

³⁸ Deuteronomy 17: 14–20; Micha Goodman, *Moses' Final Oration* (Kinneret Zmora-Bitan Dvir 2014) 63–80 (in Hebrew).

³⁹ The decline of natural law and its replacement by positive law emphasised the self-centredness of the state; cf Breuer (n 19) 107, 285. The bureaucratic and military power of the state brought about new proportions of human suffering in both its domestic and international actions.

⁴⁰ Breuer (n 18) 193.

⁴¹ 'Since the French Revolution ... the question of the rule of law between nations is constantly on the table ... [t]urning the state of power and tyranny ... into a state of law and justice, that preserves its citizens rights and assumes the relations of states that swallow each other as predators, *under a supra-national and supra-governmental* ... these are two sides of the problem of law': Breuer (n 8) 131 (emphasis added).

⁴² A treatment of Breuer's Jewish law is beyond the scope of this article: cf Breuer (n 18) 70–71.

2.3. INTERNATIONAL LAW AND THE MANDATE SYSTEM

Breuer refers to the First World War as the ‘First Messianic War’ because it forced nations to realise the need for an alternative way in which to organise humanity.⁴³ Both the collapse of the old order based on sovereignty and the immense suffering thus engendered were undeniable: ‘From this atmosphere grew the League of Nations’ whose goal was to ‘eradicate evil and let law and justice reign’.⁴⁴ It strove to organise all states under one law, which Breuer saw as similar to the prophecies of all kings living under divine law.⁴⁵ Taken together, the goals of the League of Nations were revolutionary: (i) the goal of global peace; (ii) ensuring that the peace and well-being of the weak was equal to that of the strong;⁴⁶ and (iii) preferring law and justice over interests.⁴⁷ Unfortunately, the sovereign states could not accept that ‘[l]aw and justice do not accept any higher authority’. As states were the centre of the new international legal regime, the new system reverted to the previous order.⁴⁸ The resulting peace was therefore a *peace of victors*, which continued the war by political means.⁴⁹

Breuer criticised the international law created in this atmosphere, declaring it not law at all, as ‘law’ demands subservience from individuals, nations and states: ‘Really, [international law] is no law at all ... not formally and not essentially. Formally only an enforceable order is law. Essentially only law that is directed to justice is law. ... Inter-state law is very weak’.⁵⁰

Despite its deficiencies, the League of Nations was a great step forward in that it sought to let ‘law and justice rule the world, and protect everybody’.⁵¹ This greatness is evident in the innovative idea of the mandate system, as perceived by Breuer. For Breuer, the mandate system enabled people to create national homes, yet remain outside the world’s violent political relations. He refused to see the mandate as a phase in a transitory process to statehood. The mandate system could have been a permanent solution for people entitled to self-determination, who want to be culturally and legally self-sufficient, and who seek independence without using force. This was exactly the goal, purpose and quest of the Jewish people, as Breuer saw it, in coming home to God’s land. He perceived the willingness of the international powers to offer, safeguard and promote such a homeland as a miracle and a revelation.⁵²

⁴³ Breuer (n 18) 194 preceded Kennedy in arguing that the First World War was not a break in a process of progress, but a direct continuation of the preceding processes: David Kennedy, ‘The Move to Institutions’ (1987) 8 *Cardozo Law Review* 841.

⁴⁴ Breuer (n 18) 195–97.

⁴⁵ Breuer (n 8) 131–33, 199–200.

⁴⁶ *ibid* 125–26, 200. Note that Breuer proposes to judge international law (and any legal system) through its treatment of its weakest subjects, an idea now promoted by feminist and third world critical approaches to international law.

⁴⁷ Breuer (n 18) 195–96.

⁴⁸ *ibid* 230–36.

⁴⁹ Breuer, *Mein Weg* (n 20) 91. (‘States bowed to [so-called] law and justice only *after* they filled their bellies with the peace agreement ... Also animals of prey love law and justice – when they are not hungry’).

⁵⁰ Breuer (n 18) 30; cf therefore, ‘[t]he League of Nations is not a *legal* league, but a *contractual* one – and agreements cannot save humanity – only law and justice can’: *ibid* 233–36.

⁵¹ *ibid* 196.

⁵² *ibid*.

3. DECLINING SOVEREIGNTY AND THE NON-SOVEREIGN TRUSTEE

As Benvenisti himself noted,⁵³ the focus on the sovereign trustee may increase the danger of colonialism, and the concept of trust should include furthering the interests, culture and voices of the entrusted peoples.⁵⁴ Breuer, however, goes further and raises the possibility that some people will want to redefine the goals, the structure and the essence of the trust system itself. Accepting that a nation might decline sovereignty would require a change in the essence of the mandate as generally understood. It would also change the role and actions of the trustee and the structure and role of international institutions. One of the more radical results of such a redefinition of the mandate would be Breuer's concept of a non-sovereign trustee, as discussed in the second part of this section.

3.1. WHEN PEOPLE WANT A NON-SOVEREIGN NATIONAL HOME

Breuer argued that Jews are prohibited from striving for sovereignty.⁵⁵ Because Jewish law and politics are inherently subservient to a universal divine law, the mandate/trustee system must be developed into a permanent structure of governance.

In Breuer's religious view of history, the creation of the League of Nations divinely coincided with the Jewish return to Palestine, and the convergence of these two developments is the mandate system.⁵⁶ He saw this as a sign of divine providence, because '[t]he problem of the Jews and the problem of law in international relations – are one problem',⁵⁷ and the Mandate is a solution to this one problem. Jews were to be the first nation seeking non-sovereign self-determination, inherently subservient to international law and to external legal institutions and systems. The Jewish organisation would not crave independent power, and would dedicate its communal organisation to the implementation and promotion of justice.⁵⁸

Breuer anticipates critique and stresses the legitimacy of his perception of sovereignty and its utility. He holds⁵⁹ that limited sovereignty 'is the legitimate sovereignty'. He then adds that such

⁵³ Eyal Benvenisti, 'The Paradoxes of Sovereigns as Trustees of Humanity: Concluding Remarks' (2015) 16 *Theoretical Inquiries in Law* 535.

⁵⁴ Evan J Criddle, 'Three Grotian Theories of Humanitarian Intervention' (2015) 16 *Theoretical Inquiries in Law* 473; Evan Fox-Decent and Ian Dahlman, 'Sovereignty as Trusteeship and Indigenous Peoples' (2015) 16 *Theoretical Inquiries in Law* 507.

⁵⁵ Schweid (n 13) based on 1 Samuel 8: 5; 12–15. cf Goodman (n 38). There is controversy in Jewish law and philosophy regarding sovereignty: Aviezer Ravitsky, *Dat U'Medina Bemahshavet Yisrael [Church and State in Jewish Thought]* (The Israel Democracy Institute 1998) (in Hebrew); David M Feuchtwanger, 'Between Theology and Politics: Two Biblical Models as a Basis for Jewish Political Thought' (2012) 72 *Daat* 195 (in Hebrew). Breuer seems to identify with Abravanel's critique of kings, even if he only partially accepts his preference for a self-perfecting anarchist society: Benzion Netanyahu, *Don Isaac Abravanel: Statesman and Philosopher* (5th edn, Cornell University 1998) 189–94.

⁵⁶ Breuer (n 18) 195–97.

⁵⁷ Breuer (n 8) 125–27.

⁵⁸ The 'Jewish state that is the organization of the visionary will ... the state has no passions ... and is far from all unholiness because death does not reach it. Power and force have no value in its eyes. The vision of justice is its decisive value': Breuer, *Nahliel* (n 20) 311–15.

⁵⁹ Breuer (n 8) 202.

sovereignty is ‘the true liberty’. I argue that he means that the restriction of sovereignty enhances and ensures the freedoms of the people. In this, he alludes to *Mishna Avot*: ‘There is no free man except one that involves himself in Torah learning’,⁶⁰ interpreting this to mean that only in being commanded is one free. The voluntary submission of the self to what are perceived to be ‘good’ laws, enables individuals and states to act, innovate and expand human experience without fear of doing wrong or hurting, without fear of being wronged as a result of one’s actions and without feeling restricted. Such ‘good’ laws thus expand one’s freedom to pursue worthy goals, desires and ambitions. Additionally, limited sovereignty is stronger and more durable than total sovereignty, as exemplified by Jewish endurance outside ‘normal’ history, seemingly untouched by history’s destructive forces.⁶¹

The Mandate frees the Jews from having to use force because it includes the commitment to create a Jewish homeland, while ensuring the peaceful resolution of conflicts through (international) law.⁶² Thus, for Breuer, the presence of Palestinians/Arabs in Palestine is not a problem, but a moral and religious opportunity. Their presence creates the potential to set an example, showing how a Jewish concept of self-restricted nationality can converge with the values and principles of the mandate system. If only both Jews and Arabs would agree to disarm,⁶³ create non-sovereign institutions of self-government and settle all disputes under just transnational law, they could live together as two nations, expressing their cultures and preferences side by side, and in peace. Such an example, set in the Holy Land,⁶⁴ would have great impact on the world at large.⁶⁵

As the main challenge of the Mandate is the peaceful resolution of a nationalist conflict, Breuer argued that the Jewish community should tone down its nationalism. It should accept, and actively seek, international jurisdiction and governance, forgoing any striving for Jewish sovereignty in favour of the promotion of justice.⁶⁶ Breuer convinced his party and presented exactly this

⁶⁰ *Mishna Avot*, 6.2.

⁶¹ Breuer (n 8) 193; Myers (n 20) 146. This endurance and non-reliance on territory and sovereignty interested the Dalai-Lama and the Tibetan leadership: Roger Kamenetz, *The Jew in the Lotus: A Poet’s Rediscovery of Jewish Identity in Buddhist India* (Harper 1994).

⁶² Breuer (n 18) 197.

⁶³ In his principled opposition to using violence for national conquest, Breuer was not alone. For concurring national religious opinions, see Eli Holzer, *A Double-Edged Sword: Military Activism in the Thought of Religious Zionism* (Hartman Institute 2009) (in Hebrew).

⁶⁴ ‘The mandate is the result of wonderful optimism. The vision of law and justice will bring eternal peace to the land of the king of peace’: Breuer (n 18) 235–36. Rabbi Dr Breuer uses the expression ‘the land of the king of peace’, ‘the king of peace’ being one of the Jewish names for God. As he also refers to it as ‘the land of the League of Nations’ (this is repeated throughout his writings, eg, Breuer (n 18) 230–36, especially 235, see also 197), the expression invokes the association that the League is the king of peace and even semi-divine. As Jewish law prohibits selling the land of Israel to non-Jews, recognising the League’s authority over the land, and referring it to Jewish sovereignty, is a significant concession. Finally, superimposing the real ownership by God on practical international ownership is a courageous religious, cultural, educational and political step.

⁶⁵ Breuer (n 18) 230–36: ‘Two nations – law and justice will decide between them – and will let them live in peace and fraternity side by side. This land will be the epitome for all lands, showing the harmony of justice, and the practical force of law. ... The idea was inspiring, the dream beautiful’.

⁶⁶ Breuer promotes the creation of a Jewish homeland, a religious, idealistic Torah-state, and supports concentrating a significant part of the Jewish people in one location. In this sense, his solution is different from the network structure of nationality, which was another Jewish solution at that time; cf Moria Paz, ‘States and Networks in the Formation of International Law’ (2011) 26 *American University International Law Review* 1241; Moria Paz,

position when appearing before the international committees. However, it seems that these committees did not fully understand this radical position.⁶⁷ I therefore quote his words at some length in the accompanying notes.

He challenged the members of the UN Commission to change their frame of mind and implement his vision.⁶⁸ The Commission should act as an international tribunal, seeking a just solution that will create two national, self-sufficient, independent and vibrant entities, able to fully express their culture, having significant but limited self-governance. These entities will submit themselves to international rule as implemented by a semi-mandatory power. Breuer challenged the Commission to make just decisions without regard to politics, whether ‘favouring’ the Jewish or the Arab side. Indeed, when a Commission member remarked that if a nation will not submit to the Commission’s decision, the United Nations would be obliged to make the Mandatory power enforce the decision, Breuer readily agreed. Justice should be voluntarily accepted, but if not, it should be enforced. Indeed, only by using force to enforce justice can the crude use of force by sovereigns be avoided.⁶⁹

Breuer not only demanded that the Jewish state be limited by international law; he also made an important symbolic request before the Commission regarding the name of a Jewish state. He urged them to refrain from declaring it a ‘Jewish’ state or calling it a Jewish nationalistic name (like ‘Israel’), and instead suggested that the name of the state in Palestine should be ‘Peace’, the ‘state of the peace’.⁷⁰

Breuer laments the reaction of the Jewish community in Palestine to the Mandate, and its development under it. Instead of embracing the idea of relative and limited sovereignty, the community strove for sovereign independence.⁷¹ Instead of submitting to justice, it turned to force

‘A Non-Territorial Ethnic-Religious Network and the Making of Human Rights Law: The Alliance Israélite Universelle’ (2010) 4 *Interdisciplinary Journal of Human Rights Law* 1.

⁶⁷ Anglo-American Committee of Inquiry Report to the United States Government and His Majesty’s Government in the United Kingdom, 20 April 1946, Lausanne (Switzerland), Cmd. 6808 (HMSO 1946) (especially Ch v), available at the Avalon Project, http://avalon.law.yale.edu/20th_century/angcov.asp.

⁶⁸ ‘We [the international Agudat Yisrael organization and the Jewish ultra-orthodox community in Israel] believe that our demand is the demand of international law and international justice. ... The Arab-Jewish problem is not a question of international politics nor a question of power, but a question of law ... only law can bring peace to this land ... hopefully you will decide according to objective law what is just and enforce your decision’: Testimony before the UN Commission, 1946, cited in Horwitz (n 8) 200–08.

⁶⁹ *ibid* 207–8: ‘I believe that this will be the role of the United Nations. If the decision is that a certain solution is just, then justice should be enforced. ... enforcement of justice is not violence ... that is the (only) legitimate role of force. ... We are against using force ... using force will bring us all to be the victims of atomic weapons. If law and justice will not rule in this world, we are all doomed. We request to start in this land the implementation of law and justice between two peoples’.

⁷⁰ ‘We [Agudat Yisrael] demand [to call it] the state of peace. The state that insists on the name of justice, and on the name of justice alone. Therefore she [Agudat Yisrael] declines using in the name of the state the name of any nation [like Israel] ... The commission cancels the absolute nation state, and enables to think about a state of Justice. The people of Israel declared that it does not want to control the Arab people, therefore the name of the state also needs to separate itself from any suspicion of conquest’: Breuer (n 8) 231–32.

⁷¹ Breuer (n 19) 154–55; cf Breuer (n 8) 199–201. Breuer says that limited sovereignty is easy in the desert but difficult in a territory and state (*ibid* 198), especially under the influence of other people’s striving for sovereignty: Mordechai Breuer, ‘People and State in Isaac Breuer’s Theory’ in Horwitz (ed) (n 8) 163, 170.

and violence. Even though Breuer acknowledges the parallel role of the Palestinian partners in this turn of events, he focuses on the choices of the Jewish population.

Breuer's position, of course, contradicts the goals and ideas of the Zionist movement, in both its secular and religious forms. He repeatedly states that 'there is no bigger contradiction than between Judaism and the sovereign state'.⁷² In addition to its potential, or even inevitable evil, Zionism is, of course, also heresy in his eyes. In criticising Zionism as heresy, Breuer continues and re-enacts Rabbi Hirsch's struggle against the Reform movement.⁷³ In distancing the orthodox community from the majority Zionist movement, he reminds us of the *Austrittsgemeinde* (the separate community) his grandfather had promoted in Frankfurt. Breuer's opposition to Zionism is unlike that of the Satmar Rabbi, Yoel Teitelbaum, who opposed Zionism because of its reliance on human actions. Breuer supported human action in history, held that God reveals itself in history, and acknowledged the success of the return of Jews to Zion and its religious significance. He urged the orthodox leaders to take responsibility and lead the Jewish community in Palestine and cope with the technological, cultural, legal and political changes, expressing his confidence in their ability to do so from an orthodox point of view and his total commitment to their rulings.

Neither Benvenisti nor his critiques can envision a people entitled to sovereignty in contemporary legal terms, but not wanting it. Such a people – choosing to depend on permanent active international involvement – might also be perceived as a burden, requiring institutional investment and an ongoing effort. For jurists from strong sovereign nations it would be difficult to imagine the benefits of non-sovereignty. From the periphery, as a member of a minority community which had long suffered at the hand of sovereign states, Breuer enriches the debate. He insisted that the Jewish people would contribute significantly to global peace and prosperity exactly from such a non-sovereign position, the benefits outweighing the costs.

3.2. THE NON-SOVEREIGN TRUSTEE AND INTERNATIONAL LAW

Breuer also details the implications of his vision for the Mandatory power and for international institutions. Instead of deciding between the relative rights of the Palestinian and Jewish people for a state, the UN Commission should decide to evolve the Mandate into a permanent form, and supplement it with substantial laws, just institutions and international forces to enable this evolution and enforce it, as needed.⁷⁴ Bringing Palestinian–Jewish disputes before the League of Nations and subsequently before the UN would then force these institutions to take on additional responsibility, to acquire

⁷² Breuer (n 8) 196; Breuer, *Mein Weg* (n 20) 58–59. In a prophetic paragraph he criticises Zionism: 'Who guarantees that Zionism won't become a small nation that will have eternal struggles and constant spilling of blood? Nationalism will taint Israel with innocent blood, as it has the English nation': Breuer (n 19) 57, 59, Pt IV.

⁷³ With similar motivation to Samson Raphael Hirsch, who wrote his book (*Horeb: A Philosophy of Jewish Laws and Observances* (7th edn, Soncino Press 2002)) to strengthen the belief of young people of his time and prevent their exit to reformism, Breuer wrote *The New Kuzari* (n 19) with Zionism in mind.

⁷⁴ 'We hope both nations will agree that law should decide ... we want to start the rule of law and justice here in this land ... not the power will decide what justice is, but justice will decide who can use power and for what it might be used': Testimony before the UN Commission, 1946 (n 68) 203–08. Breuer adds 'how difficult is it to explain this concept of statehood [to the peoples and my people alike]'.

experience and to prepare themselves for achieving justice and enforcing it. The Jewish side of the dispute should model acceptance of the rulings – either willingly or by submission to legitimate enforcement.⁷⁵

I will raise a few questions regarding Breuer's perception of mandatory powers, following his critique of sovereign power:

- (1) The mandate system gave power to sovereign states (such as the United Kingdom) over people. With Breuer's inherent and justified suspicion of states, who guards the guardians?⁷⁶
- (2) How far does Breuer's trust in international legal systems and institutions extend? Are they infallible? If not, how can a nation achieve justice when wronged?
- (3) Is the mandate system sufficiently stable and viable in the long term? If not, into what might such a system evolve?

Before answering these three questions, it is important to note that Breuer was very aware of the failures of the League of Nations and the dire consequences for the Jewish people. At least from late 1942 onwards, Breuer seems to know not only about the persecution he himself has suffered but also about the pursuit of the total extermination of the Jews. As a methodological aside, I note that while Breuer explicitly answers these questions only from an exclusively ideological position, he also had a practical side. This being the case, I will seek to derive his more practical answers from his actions, his legal political arguments as expressed in international fora,⁷⁷ and his religious, political and legal arguments in the internal Jewish discourse.⁷⁸

1. *Who will guard the guardians?*

Breuer stresses that the mandatory power serves as the trustee of humanity and of civilisation, more than for the parties involved,⁷⁹ who are the trust's beneficiaries.

According to Breuer, the correct locus for defining justice is humanity at large rather than a specific society. It focuses on the common humanity of all individuals, rather than the rights of each and every individual. Man is not the ultimate end, nor is the state. Only the idea of serving God or justice (or both) is a worthy end. The concept of service, trust and the focus on humanity and justice lead to a regime of obligations.⁸⁰ Accepting power as an obligation inherently limits the trustee's sovereignty, thus preventing abuse. Where only law can wield power, an imbalance

⁷⁵ Breuer, *Our Grandfather* (private publication 1996, on file with author) 77; Breuer (n 18) 148.

⁷⁶ Benvenisti (n 53) assigns trust to the trustee, because a sovereign trustee is not to be trusted.

⁷⁷ Agudat Yisrael, although probably not Breuer himself, was deeply involved in the creation of the national minorities system in Poland after the First World War. For the Jews as minority see Oscar Isaiah Janowsky, *The Jews and Minority Rights (1898–1919)* (Columbia University Press 1933); for the influence of Breuer's peers see Tobias Grill, 'The Politicisation of Traditional Polish Jewry: Orthodox German Rabbis and the Founding of Agudas Ho-Ortodoksim and Dos yidishe vort in Gouvernement-General Warsaw, 1916–18' (2009) 39 *East European Jewish Affairs* 227.

⁷⁸ Schweid (n 13) 143.

⁷⁹ Yacov Baror, 'Breuer the Jurist' in Horwitz (ed) (n 8) 67, 73.

⁸⁰ Breuer (n 8) 97.

of power becomes less threatening.⁸¹ People and states then both exist in society by submitting to certain rules, with limited and relational sovereignty.⁸² I will now present Breuer's view regarding people, and then extrapolate to states and international law.

Breuer held that in a utopian world the obligations and roles of different groups (men vis-à-vis women; Jews and non-Jews) are different.⁸³ These differences will not be based on power relations and oppression, but will develop from the various ways in which people act out their voluntarily internalised roles in the world and express them. Those with power will never abuse it, but feel obligated to care – *noblesse oblige*. Apparent differences in status will not be a cause for shame, because such status differences will be negligible in the context of communally serving God and justice, and will only serve to define one's obligations to others.⁸⁴

Similarly, in a global mandate system, nations have varying levels of status and different roles in the international arena. Nations that internalise limited sovereignty might shoulder the burden and obligation of mandatory trusteeship without abusing it (*noblesse oblige*), and foster the full development of national societies under international governance. As they would only employ legally legitimised power in the name of justice, they would be able to do so without descending into tyranny.

Breuer regards the United Kingdom and the Allies who fought the Nazis as such selfless trustees of humanity, who have earned a level of trust so that their United Nations will operate more effectively than did the League of Nations. His belief in the trustees is optimistic in the same way that Chapter 7 of the UN Charter, the collective use of power and the UN Security Council are based on the same appreciation of the Allies.⁸⁵ Having sacrificed so much, carried the obligations so far and given up so much of their own sovereignty for the combined war effort, they had Breuer's trust. It is with such trustees and a developed global mandate system that some nations – first and foremost the Jewish nation – might choose to remain powerless, under this protection, in order to fulfil *their* role in the international orchestra.

Breuer saw multiple parallel processes reinforcing and balancing each other:

- (1) Trusteeship includes carrying responsibilities, investing selflessly in others, experiencing power-as-obligation on a continuous basis, interaction with international bodies

⁸¹ *ibid*: 'If morality reigns alone in the governance of human society, then the concept of legally achieved power has no place'.

⁸² For more see Mittleman (n 8); Mittleman (n 12) last chapter.

⁸³ Breuer's version of a regime of obligations is non-liberal, opposing human 'rights', even as he envisions it as non-oppressive. For Breuer, law precedes society. Therefore, there are no inherent rights of man, as there are if man precedes society. Values such as equality, liberty and 'human rights' are very important, but they are not rights. Obeying laws and fulfilling obligations willingly is the supreme mission – equality, and even more so fraternity, being one of the important obligations. He specifically endorses differences between men and women, Jews and non-Jews, and even free men and *slaves*. Women, non-Jews and slaves will accept their 'different' 'roles' voluntarily (see nn 80–81).

⁸⁴ Breuer (n 8) 97–120.

⁸⁵ The expression 'trustee of civilisation' invokes elitism and colonialist connotations. I think Breuer would agree to the expression 'trustee of humanity' in terms of goals and justifications, but he would add that 'humanity' is an amorphous entity, devoid of power, while 'civilisation' invokes the image of institutions and power – thus giving important roles to both expressions.

and accountability towards them. Benvenisti held that trusteeship enhances the trustee's sovereignty, or at least depends on its existence.⁸⁶ Following Breuer, I offer that the continuous experience would influence the states holding the trusts, limiting their sovereignty.

- (2) Having multiple trustees, and varied trusts, might create a race to the top between the trustees, hopefully not in terms of gaining global influence, but in terms of the best subservience to the international community, institutions and justice.⁸⁷ These two together will influence changing the concept of sovereignty in the international community of nations, promoting its limitation in the service of justice.⁸⁸
- (3) A third congruent process would be an abundance of peoples who seek only limited sovereignty – non-sovereign national homelands societies and restricted states which enable peoples to develop side by side, with peaceful conflict resolution between them.
- (4) International tribunals will gain experience in ruling in conflicts, acquiring legitimacy and reputation.
- (5) International institutions (such as the Trusteeship Council) will gain experience, legitimacy and reputation in global and local governance.
- (6) Successful enforcement by third parties in the service of the tribunals and institutions will promise quick and exact implementation of the rulings, ensuring the rule of justice.⁸⁹

Both voluntarily limiting sovereignty as trustees and choosing powerlessness under law for the sake of justice are very powerful actions, but their viability relies on education. Only if the majority of a nation's population perceives justice as a supreme interest, and only if law (whether divine, natural or international) is perceived as self-evidently binding, will people agree to voluntary submission and compliance with the law. On the international level, one nation's readiness would also depend on the degree of education in the bordering nations, as well as the global situation in general. Breuer criticised the absence of law and justice in national curricula. In order to educate so as to comply with global law and justice, a curriculum of law and justice would need to be formulated and enacted. However, the same powers that refuse to submit the state to justice will typically refrain from educating their citizens about such ideas.⁹⁰ Breuer

⁸⁶ Benvenisti (n 5).

⁸⁷ eg, which peace force has the best human rights record, which power has the best track in human intervention, etc.

⁸⁸ Breuer (n 8) 195; Breuer, *Nahliel* (n 20) 311; Breuer (n 19) 366 and all of Pt III.

⁸⁹ I think this is the kind of process envisioned by the drafters of the UN Charter (n 2). States will disarm themselves, refrain from using force and minimise their actions of self-defence only if there is a strong, effective and evidently just usage of collective power. Every such voluntary weakening would reduce the costs of the collective system, making it more effective and creating a positive feedback mechanism. However, distrust and reluctance to disarm and voluntarily weaken oneself lead to inability to act collectively, and raises the cost of each intervention. Thus, failure to initiate such a positive feedback mechanism actually initiated an opposing, negative feedback mechanism.

⁹⁰ Breuer (n 18) 234–36; Breuer, *Nahliel* (n 20) 426–28. Breuer thought that the lack of real international law prevented education based on such law. We now know that even with a significant body of recognised and legitimate law, education can still be a problem.

invested effort in influencing his fellow Jews and the members of the international committees, desperately trying to make them listen to his distinctive voice.

2. *Injustice*

Breuer takes into account that the Jewish collective might lose cases in the international legal processes.⁹¹ He declares that willingly submitting to justice should be perceived as a guaranteed win.

Breuer explicitly holds⁹² that the Jewish community and other people should yield to the international tribunals and institutions even if they are wrong, in the name of subservience to justice. He trusts institutions that strive for justice, and correct themselves. More deeply, he holds that the injustice and human suffering from sovereign states – wars and internal injustice – will always, inherently and substantially, be more harmful than any wrong of the trustee system or international tribunals could be. Therefore, Breuer urges the Jewish community to accept, and even to encourage, forceful enforcement of judgments on themselves.

3. *Stability and viability*

Breuer holds that any time under the mandate system is better than any sovereignty. He acknowledges the tendency of systems to collapse into tyranny and sovereignty (like the French Revolution and the League of Nations).

Breuer stresses the flexibility of the mandate system. It enables and facilitates *multiple forms* of mandate that fit the nations that submit to the mandates and the trustee states. Each decision on a mandate, agreements between parties and agreements between international organisations and trustees can and should be tuned and adapted to meet specific cultural needs.⁹³ Such adaptation is crucial in order to enable the maximum contribution of unique national traits to global prosperity and justice. This adaptation will also foster compliance by the trustee and the cooperation of the regulated nations.

Surely Breuer did not perceive the mandates as utopian. His utopia is the rule of divine law, most likely without states at all. There are multiple possible paths between the Palestine Mandate and this global non-sovereign utopia, and these paths are to be revealed and *tested* in history. He offers clear criteria for testing such political and legal arrangements, institutions and systems: any proposal based on sovereignty would be considered a regression, while any subsequent development which opposes sovereignty and fosters limited nationality under law and justice would be considered a legitimate heir of the Trustee Council/mandate system, and any advance towards those goals would be considered a step forward.

⁹¹ Isaac Breuer, 'Testimony before the Anglo-American 1937 Inquiry Commission on Palestine' in Horwitz (ed) (n 8) 203–08.

⁹² See nn 69–70, 74 and accompanying text.

⁹³ Criddle (n 54) and Fox-Decent and Dahlman (n 54) stressed this regarding the entrusted peoples. To this, I would add the need to tailor the mandates to the various trustees as well.

4. INSIGHTS FROM THE JEWISH PERIPHERY

This section seeks to enrich the idea of the ‘trustee of humanity’ by introducing additional sources for the idea.⁹⁴ Because of the importance of history in Breuer’s theory and theology, he based his argument on readings of human history:⁹⁵ the Bible (4.1. below) and Jewish and global history (4.2.). In section 4.3. I will revisit the role of peripheral thinking regarding the trustee idea.

4.1. BIBLICAL SOURCES FOR NON-SOVEREIGNTY

Proposing biblical sources for modern western political ideas is part of two greater projects: (i) political Hebraism,⁹⁶ and (ii) the engagement of religion and religious sources in international jurisprudence.⁹⁷ Breuer held that the first chapters of Genesis deal with the question of sovereignty, assigning great universal value to this universal message.

Genesis starts with the creation of the first human. His singularity is the basis for humanism, justice and fraternity, which are embedded in nature. However, individuals might derive a different conclusion from their singularity, with each regarding himself as sovereign.⁹⁸ For Breuer, the sin of Eden, of *disobeying law* by eating, had as its goal to ‘be like God’ – that is, to be a human sovereign not to be commanded.⁹⁹ Therefore sovereign individualism is heresy.¹⁰⁰ It is also the basis for evil, because ‘between sovereigns there cannot be law and justice, and the sovereign has no morality’.¹⁰¹ In Genesis, the land quickly fills up with such sovereigns, who fight and commit evil (Genesis 6, 1–13) – humanity in the state of nature. Into *this* world of sovereigns

⁹⁴ The *Theoretical Inquiries in Law* theme issue on trusteeship (n 6) was subtitled: ‘Historical Antecedents and Their Impact on International Law’. One could, of course, also add biblical and rabbinic sources supporting sovereignty and enriching trusteeship in other ways.

⁹⁵ Breuer (n 18).

⁹⁶ Fania Oz-Salzberger, ‘The Political Thought of John Locke and the Significance of Political Hebraism: Then and Now’ in Gordon Schochet, Fania Oz-Salzberger and Meirav Jones (eds), *Political Hebraism: Judaic Sources in Early Modern Political Thought* (Shalem Center 2008) 231; Jonathan Jacobs, ‘Return to the Sources: Political Hebraism and the Making of Modern Politics’ (2006) 1 *Hebraic Political Studies* 328.

⁹⁷ Mark W Janis and Carolyn Evans, *Religion and International Law* (Martinus Nijhoff 2004); Amos Israel-Vleeschhouwer, ‘Engaging Religious Laws, Players and Communities: Confronting Religious Dis-Empowerment’ in Kyriaki Topidi and Lauren Fielder (eds), *Religion as Empowerment: Global Legal Perspectives* (Routledge 2016) 149–81.

⁹⁸ Jewish sources derive multiple meanings from the fact that the first human was singular, created last: ‘every human has to say – the world was created for me’ and ‘if one would say, for me the world was created – the response would be – even the mosquito was here before you’: Maimonides, Code Mishne Tora, the book of Judges, the laws of Sanhedrin 12:3.

⁹⁹ ‘[A]s soon as you eat ... you will be like God who knows good and bad’ (Genesis 3, 5, JPS trans 1985); Breuer (n 18) 46. Seeing oneself as sovereign in relation to the divine creates ‘human history [that] is the history between the will of the blessed holiness and the will of (hu)man’: *ibid.*

¹⁰⁰ ‘Breuer ... assert(s) that neither rights nor persons precede a social reality constituted by duties and obligations seeking to ground personhood in moral relationality rather than autonomy. ... [He] thereby negate[s] the modern project of ascribing rights’: Mittleman (n 12) 97.

¹⁰¹ Mentioned above, text to note 22; here cited in its original context: Breuer (n 18) 47. Breuer expounds on this insight, and connects it with contemporary jurisprudential and philosophical literature.

God brought the flood. The divine reaction to the state of nature between sovereigns is to start from scratch, this time prefacing the creation of society with the seven Noahide laws on which society can be built: 'The flood broke the pride of his sovereignty ... [and] God revealed the seven laws of Noah that are the goal – the minimal needed for every moral social life'.¹⁰² Breuer stresses that the laws were a prior requirement to restarting humanity, positing the idea of law as the basis for society.¹⁰³

However, according to the biblical text, humans did not give up so easily and reacted to God's power by combining their forces against God, attempting to create a global sovereign state in one tower of all humanity. Breuer employs a close reading¹⁰⁴ of Genesis: 'They did not call it (the tower) in Gods' name, but in their own – we will make *ourselves* a name'.¹⁰⁵ For Breuer, a single global state (a term he uses) can be based only on hubris, heresy and evil. Individual sovereignty can be conquered only by a stronger sovereignty,¹⁰⁶ which is inherently more dangerous and heretical.

A global state is also untenable in the long term because of human diversity, and the story of Babel ends with the dispersion and division of humanity into nations, which starts 'history' as defined by the struggle between sovereign states. Breuer explains, in a typically ironic expression, that there is no need for another flood because states bring floods of blood upon themselves: 'The cruel and vicious waters of the states, stormy with and in their sovereignty, are enough. These waters turn to – blood'.¹⁰⁷

Breuer traces the development of sovereignty and anti-sovereignty in the Bible through the books of Judges, Samuel and Kings, leading up to the prophets who posit themselves as the opposition to sovereign kings. They speak up in the name of law and justice, calling on the Kings to restrict themselves, to submit to God and to serve Him and humanity by ensuring social justice, thereby creating a world without war.¹⁰⁸

The kingdom of Israel – the pure example of total sovereignty – collapsed, its tribes dispersed, never to be known again. The Judean kingdom included kernels of the alternative ideal of Jewish restricted nationhood, subservient to the prophets and God. A limited nationhood, independent of political power and sovereignty, was further developed under the Hellenistic and Roman conquests, and beyond. Despite the atrocities and disasters of these periods, this development enhanced Jewish resilience and cultural power. As opposed to pro-monarchy and pro-sovereignty Jewish traditions, this Jewish reading that opposes sovereignty, monarchy and statehood in the Bible has been under-represented.¹⁰⁹ It is precisely the return to Israel without

¹⁰² *ibid* 48, 'Introduction'; cf Breuer (n 8) 111.

¹⁰³ Remember that in Genesis (18: 25), Abraham accuses God of not doing justice. God, and therefore all authorities, kings and states, are subservient to law and accountable.

¹⁰⁴ Julian Wolfreys, *Readings: Acts of Close Reading in Literary Theory* (Edinburgh University Press 2000).

¹⁰⁵ Breuer (n 18) 49, 29. Naming is significant for Breuer (cf text accompanying n 70).

¹⁰⁶ cf Hobbes (n 31) I, Ch 13.

¹⁰⁷ Breuer (n 18) 29; to be more precise, they shed the blood of individuals and humanity for the state.

¹⁰⁸ A detailed analysis of Breuer's readings is beyond the scope of this article.

¹⁰⁹ These are two competing Jewish narratives regarding sovereignty and trusteeship. King David is presented as a philosopher-king who accepts rebuke from the prophets and is under the law. This kingdom's sovereignty

the return of the Jewish kingdom (and the development of international law and state accountability) that convinces Breuer that this is a messianic process.

This tradition has many implications for the discourse regarding states as trustees for humanity, as detailed above. As opposed to ‘sovereignty as trusteeship’, obligations stem from subservience, not from power and sovereignty, and only justice can justify the enforcement and the overall importance of the rule of law.

4.2. JEWISH READINGS OF HISTORY AS A SOURCE FOR THE DISCOURSE ABOUT SOVEREIGNTY

Breuer’s historical analysis is based on a Jewish view of history, the view of an experienced non-player, a spectator and, arguably, of an object and victim of the unfolding events. Throughout Breuer’s career the Jewish voice was the voice of a minority, and the ultra-orthodox voice was a minority vis-à-vis the voices of Jewish Zionism.

For Breuer, the Jewish people represented the opposite of sovereign nationality, in its laws and throughout its history in exile. With no territory,¹¹⁰ no will for expansion and refusing any coercive force, it lived in, with, by and for the law. It developed that law and sought to build communities around the idea of subservience to law and justice. Its perception of nationhood, connecting the dispersed communities, was built on this unifying law and legal discourse.¹¹¹ In Breuer’s words, Jewish nationalism ‘does not serve itself as a god, but is ready to submit itself to the divine will’.¹¹²

Breuer understood that totalitarian Nazism sought to destroy both the idea of law and the Jews who carry the idea of law without sovereignty, of a relative nationality that serves humanity. The war of the Allies against the Nazis is also the war against the ideas the Nazis held, and against the potential that exists in all cultures.¹¹³ Breuer yearns for an ideological victory over the Nazis, in which the idea of tyrant sovereignty will be replaced by a global community of societies serving justice.¹¹⁴

Following historical processes from the periphery, events repeatedly reinforce his convictions. Breuer’s position is a periphery within a periphery, a minority within a minority, and this influences his point of view. He is not part of the Jewish national political leadership and is therefore less influenced by the processes initiated by the Mandate that push the Jewish population towards

collapsed and was lost. Jewish liturgy includes craving for kingship in both the selfless and serving version and the strong and sovereign version. Besides the prayer for the return of kingship, the liturgy emphasises the yearning for the direct and exclusive sovereignty of God.

¹¹⁰ cf ‘Geist und Epochen der Jüdischen Geschichte’, *Franz Rosenzweig: Der Mensch und Sein Werk, Gesammelte Schriften, III* (Martinus Nijhoff 1984) 527, stating that Jewish history, as opposed to that of most nations, does not start in its ‘homeland’; nor is the law revealed in it. Thus, Jewish identity did not originate in the territory of Israel; nor does it depend on living within it. Breuer agrees that Jewish identity does not depend on sovereignty and territory, but he repeatedly states the importance of the connection of Jews with the land of Israel, and the development of the Jewish community in Palestine, disagreeing with Rosenzweig’s more diasporic worldview.

¹¹¹ As said the tenth century Rabbi Saadia Gaon: ‘Our nation is a nation only by virtue of its Torah (law)’: Saadia Gaon, *The Book of Beliefs and Opinions* (Yale University Press 1987), Pt III, Ch 7. In its original context it is part of the proof that the Torah is eternal. Because the Jewish people are promised eternity, and because the nation’s existence depends on the Torah, *ipso facto*, the Torah is eternal.

¹¹² Breuer (n 8) 197; Shafat (n 20) 124–25.

¹¹³ Breuer (n 18) 241.

¹¹⁴ Breuer (n 8) 129.

statehood. He also experienced the League of Nations from the perspective of a member of a national minority, seeing the protection mechanism take shape, develop and fail. Thus, his enchantment does not blind him to the institution's inherent and systemic deficiencies, as seen from his flawed 'Jerusalem'; yet he cannot help but see the even worse consequences of sovereignty.

4.3. THE PERIPHERAL VIEW OF INTERNATIONAL LAW AND TRUSTESHIP

This 'view from the periphery' could potentially contribute to a richer and more nuanced understanding of the mandate system, in theory and in practice.¹¹⁵ Breuer acted at the periphery of the nexus between Zionism, the United Kingdom and the international community, and felt like a minority within a minority (and even there, in his own community, he was in the minority). His double periphery enabled him to see and emphasise aspects less obvious to other players enchanted by sovereignty. Neglected at the time, his writings could shed light on current debates that reflect on the mandate system. Can we attribute his unique contribution to the peripheral view? We could suggest other characteristics such as his Jewishness and religiosity¹¹⁶ as alternative or supplemental causes. Both have been offered as factors that influence jurists, in theory and in practice.¹¹⁷ Breuer himself characterises his position as Jewish in origin, but applicable in other traditions, religious or otherwise. I argue that his peripheral point of view had a significant impact on his understanding of the mandate system.

It is hard to differentiate between the factors, as many Jews were and are influenced by Jewish culture, by religiosity and by being on the periphery of the international events; all may have contributed to the special perception of international law. My argument for the impact of the peripheral point of view is based partially on the similarities between Breuer and two other rabbis who discussed international law before the Second World War, and the differences between these three and other jurists – theoreticians and practitioners – from Jewish descent, who acted in both Jewish and international centres. Living in the centre of events of a Westphalian system, most Jews – religious and secular alike – tended to accept its basic assumptions. Therefore, without discounting the impact of religion in general, and the huge impact of Jewish sources and culture on Breuer in particular, I argue that looking at a system from the periphery reveals aspects which are hard to notice from the centre, as I will now briefly discuss.

In my research regarding prevailing attitudes in Jewish law towards international law, I found only three rabbis who formulated a coherent and comprehensive opinion before 1940. All three lived or acted at the periphery of the Jewish political events of their time (1900–46). All three

¹¹⁵ of the role of the semi-peripheral jurist in universalising international law in Arnulf Becker Lorca, 'Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation' (2010) 51 *Harvard International Law Journal* 475. Ideas, instruments or institutions from the periphery can transform the centre: Loveday Hodson, 'Women's Rights and the Periphery: CEDAW's Optional Protocol' (2014) 25 *European Journal of International Law* 561, 567.

¹¹⁶ Another factor is the German context, which certainly influenced Breuer.

¹¹⁷ For jurists from Jewish descent see Reut Yael Paz, *A Gateway Between a Distant God and a Cruel World: The Contribution of Jewish German-Speaking Scholars to International Law* (Martinus Nijhoff 2012). For religion and international law see above (n 97); Richard A Falk, *Religion and Humane Global Governance* (Palgrave 2001).

were influenced by the culture and jurisprudence in their respective localities, much like Breuer was influenced by his studies and experiences in Germany. Consequently, they disagree on many theoretical, religious and practical issues regarding the Jewish attitude towards international law. However, all three share the following positions:

- they all criticised international law as overly state-centric, neglectful of individuals and preferring states over peoples, groups and justice;
- they all celebrated the idea of the League of Nations but criticised its weaknesses; and
- all three promoted the subservience of the Jewish people and state to the idea of world peace, and to international justice and governance.¹¹⁸

The similarities between the three rabbis are striking. All support international law, international institutions and limited sovereignty, anticipating subsequent trends in international law. They were heavily influenced by their surroundings but reached similar (though not identical) conclusions, based on different Jewish sources and different forms of argument. Their Jewishness cannot explain this, as most Jews at the time were very nationalistic, mostly missing the significance of international law. Others, especially international jurists of Jewish descent, supported universal international law, based on the sovereignty of states. This is true also for most non-Jewish religious jurists of the time. It is the peripheral viewpoint of these three rabbis, I argue, which was crucial for their unique positions, in the same way that it contributed to their ability to recognise the significance of the development of international law for the Jews and the world. On this basis, this article joins the call to listen to peripheral voices in international legal discourses. Multiple views of legal institutions attest to the way in which a rule or institution is perceived throughout societies. Peripheral perceptions, interpretations and implementations of international law can help us to understand to what extent international norms are accepted, as well as the range of interpretations given to them.

Religious texts and communities are an important sub-type of periphery, offering multiple ideological lenses through which to look anew at concepts and entrenched convictions in international law. As non-state actors, religious leaders and communities are less invested in accepted and mainstream discourse and are influenced by different political incentives,¹¹⁹ their unique peripheral views on international norms and institutions can accentuate certain aspects (which exist or potentially exist) and ignore or downplay others.

¹¹⁸ Amos Israel-Vleeschhouwer, *The Attitudes of Jewish Law towards International Law: Analyzing the Jewish Legal Materials and Processes*, PhD thesis, Tel Aviv University, 2012, Ch 1; Amos Israel-Vleeschhouwer and Dafna Bezalel-Horev, 'The Redemption of Man, Israel and the World: Local Leadership and Transnational Legal Views of Rabbi Chalfon Moshe HaCohen from Gerba' (2013) 29 *Dinei Israel* 217 (in Hebrew); Amos Israel-Vleeschhouwer and Shaya Rothberg, 'International Law, the State and Man in the Philosophy and Psika (Jewish Legal Decisions) of Rabbi Hayim Hirschenson' in Aviad HaCohen, Elishai Ben-Yitshak and Hagai Vinizky (eds), *Tehilat Olam: Principles in Jewish Laws of State* (forthcoming 2016) (in Hebrew).

¹¹⁹ Those on the periphery do not suffer from the endowment effect. It is easier to see the advantages of limited sovereignty from the position of no sovereignty than from a position of power. That is, it is easier to agree to restrict oneself if by this, you gain power and recognition, than to give up power and endanger your status by restricting your existing sovereignty: Daniel Kahneman, Jack L Knetsch and Richard H Thaler, 'Experimental Tests of the Endowment Effect and the Coase Theorem' (1990) 98 *Journal of Political Economy* 1325.

5. CONCLUDING THOUGHTS

One could argue that the ‘golden rule’ – ‘What is hateful to you, do not do unto others’ – is the most commonly agreed moral rule. However, when it comes into conflict with one’s own interests it is also relatively rarely adhered to, or at least very difficult to uphold. Jewish lore presents a version of the rule as the essence of the whole law of the Torah.¹²⁰ If people let law reign supreme over interests and feelings, a just society is a viable and achievable goal. Adhering to the golden rule in international relations requires subordinating the sovereignty of the state. Breuer argues that the mandate system is a tool to develop nationality without developing an insatiable thirst for power, which would not necessarily result in war and injustice. Willing subservience to an international mandate is trading power for strength and endurance, replacing nationalist pride for national integrity and ensuring not only world peace, but also social justice.¹²¹ In this conclusion I will discuss the practical implications of making this trade.

5.1. BETWEEN IDEALISM AND PRAGMATISM

Breuer’s ideal of peoples willingly giving up the idea of sovereignty is difficult for a non-religious audience to accept; it seems that Breuer offers a Utopia only for believers. While some students, opponents and academics have presented him as stern, ideological, separatist and perfectionist, this misses his activism and political career, which include a pragmatic and realist aspect. In fact, Breuer worked hard, with all of the time and resources he had available to him, in pursuit of his utopian vision. This is evident in his recognition of the mandate system, born out of necessity, as a potential divine revelation, even without regarding the international institutions of his time as utopian.

Breuer’s support for these partial solutions, and partial theoretical and moral advances, is not merely pragmatism. It was based on the notion of these ideas and institutions as a possible path between the ‘is’ and the ‘ought’. Breuer fully recognised these partial improvements and solutions if, *and only if*, he felt they correctly analysed the problem. If they opposed total sovereignty and paved a way to further alternatives, these solutions, imperfect as they are, were considered good enough to be enforced.

5.2. POSSIBLE CONTEMPORARY IMPLICATIONS

5.2.1. EUROPE

The conditions set by the European Union (EU) for the eastern European states to join the EU¹²² convey a contemporary manifestation of limited sovereignty. While UN membership required merely that states be ‘peace-loving states’, ‘which accept the obligations contained in the present

¹²⁰ Babylonian Talmud, Shabbat 31a.

¹²¹ This basic jurisprudential insight was revealed in the Jewish traditional text (*ibid*) through the question of a non-Jew, answered by a Jew who came from the periphery (Babel) to the Jewish centre in Palestine (see, eg, Babylonian Talmud, Yoma 35b.).

¹²² EC Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union (December 1991) (1993) 4 *European Journal of International Law* 72.

Charter ... able and willing to carry out these obligations',¹²³ the EU established new standards.¹²⁴ Becoming part of the EU requires subscribing to 'the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, *especially with regard to the rule of law, democracy and human rights*'.¹²⁵ Note the order of commitments, which I will discuss below. Joining the EU not only includes subscribing to supranational laws and norms (such as a commitment to respect minorities), but also submission to powerful regional judicial review and compliance with rulings of the European Court of Human Rights (ECtHR).

In the ensuing vetting process, strong sovereign states convinced weak states to give up an element of their sovereignty in order to enjoy the benefits of EU membership. In effect, this was a manifestation of benevolent strong states using their power to guide nations, without violence or exploitation, to limited but strong national political expression, without striving for full sovereignty.

However, this is only part of the picture. The established states, now in the role of guides, underwent a similar process voluntarily. The United Kingdom's subscription to membership of the EU and the jurisdiction of the ECtHR changed the well-established British legal and political system by restricting the sovereignty of its Parliament.¹²⁶ The EU states restricted their own sovereignty, intervened in a major conflict (Yugoslavia) in the name of humanity and justice, and then used soft power¹²⁷ vis-à-vis the candidate states.

EU members have set an example by relinquishing some of their sovereignty in creating the EU, and thus could easily recommend and demand the same from aspiring candidates. This is an interesting manifestation of the idea of voluntary weakness as a source for political and cultural (non-violent) power, and is also precisely what Breuer urged the Jewish people in Palestine to do. Breuer, who championed the establishment of strong international institutions that promote justice and hold states accountable, would see the high status of the ECtHR as an important evolution of his ideas.

5.2.2. THE TRUSTEESHIP COUNCIL AND THE MANDATE SYSTEM

I think that Breuer would see the resurgence of the idea of 'trustees of humanity' as very positive. He would less like its connection with sovereignty, even though contemporary sovereignty is (a little) more restricted by international rule of law and global justice than the term implied in his time. Breuer can be seen as an antecedent to voices in contemporary debates, and as a voice still worth listening to across the years.

For Breuer, obligations towards humanity and justice stem neither from agreement regarding the distribution of power nor from the sovereignty of the state. It is obligation, rather than power,

¹²³ UN Charter (n 2) art 4(1).

¹²⁴ The recognition of states also became a question of norms and law, not simply a question of policy: Roland Rich, 'Recognition of States: The Collapse of Yugoslavia and the Soviet Union' (1993) 4 *European Journal of International Law* 36.

¹²⁵ EC Declaration (n 122) (emphasis added).

¹²⁶ Vernon Bogdanor, *The New British Constitution* (Hart 2009) 57.

¹²⁷ For the concept of soft power see Joseph S Nye, *Soft Power: The Means to Success in World Politics* (PublicAffairs 2004).

that precedes the state and is the *raison d'être* of its establishment. It is the existence of major problems and needs, which can be addressed only by states, which justifies the creation of states and should guide their development and use of power.

In the case of humanitarian intervention,¹²⁸ use of force raises questions of the justification and prevention of excessive force and the abuse of power. Two developments – the trend towards coalitions and the growing need for an institutional decision – seem to be congruent with Breuer's analysis. Both serve to restrict each state's power, and give a legal justification for the restricted and regulated use of power. The coalitions, which replace the mechanism in the UN Charter for collective use of force, require negotiation and compromise, ensuring more rational decision making, and restricting abuse for particular domestic interests. Further, the publication involved enables global oversight, political and juridical review and feedback from public opinion. The Russian demand to precede the action to disarm Syria of its chemical weapons with a decision by the Security Council also served to achieve similar objectives.¹²⁹ I argue that these are manifestations of Breuer's principles of limited sovereignty, the supremacy of justice, humanity and the importance of the institutions that seek to promote them. Following Breuer, I would, however, suggest the need to change terms. In contemporary discourse it seems self-evident and justified for states to further their own needs and interests, and express their sovereignty. This is why now, more than ever, we might benefit from a reframing such as that proposed by Breuer, in which citizens of states will perceive global obligations, and the subservience of state needs to international needs and norms, as self-evident.¹³⁰

In light of these developments, the international reaction to the collapse of states and the re-emergence of areas without effective government poses a different global challenge, mentioned in the introduction to this article. These areas are the focus of humanitarian crises, war crimes and crimes against humanity. The present article supports proposals to renew the concept of the Trusteeship Council and assign to it a significant role in managing those territories, using evolved versions of the original trustee system.¹³¹ As both the question of the sovereignty of the trustee

¹²⁸ cf Benvenisti (n 5).

¹²⁹ UNSC Res 2118 (27 September 2013), UN Doc S/RES/2118; and UNSC Res 2235 (7 August 2015), UN Doc S/RES/2235; Vladimir V Putin, 'A Plea for Caution from Russia', *The New York Times*, 11 September 2013, http://www.nytimes.com/2013/09/12/opinion/putin-plea-for-caution-from-russia-on-syria.html?_r=0; Julian Borger and Patrick Wintour, 'Russia Calls on Syria to Hand Over Chemical Weapons', *The Guardian*, 9 September 2013, <https://www.theguardian.com/world/2013/sep/09/russia-syria-hand-over-chemical-weapons>.

¹³⁰ Some of these processes are already happening in states like the Netherlands. Serving international justice and humanitarian needs is portrayed as one of the three goals and responsibilities of the army, <https://www.rijksoverheid.nl/ministeries/ministerie-van-defensie>.

¹³¹ Saira Mohamed, 'From Keeping Peace to Building Peace: A Proposal for a Revitalized United Nations Trusteeship Council' (2005) 105 *Columbia Law Review* 809; Paul Kennedy, 'UN Trusteeship Council Could Finally Find a Role in Postwar Iraq', *Global Policy Forum*, 9 May 2013, <https://www.globalpolicy.org/component/content/article/168-general/34794.html>; 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', December 2001, 43, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>; Lou Pingeot and Wolfgang Obenland, 'In Whose Name? A Critical View on the Responsibility to Protect', May 2014, https://www.globalpolicy.org/images/pdfs/images/pdfs/In_whose_name_web.pdf.

and the sovereignty of the administrated populations and territories loom large in this debate, Breuer's critique and insights, developed and adapted through historical analysis within his theoretical framework as proposed in this article, have the potential to enrich this debate.