There is, at minimum, an Israeli and a Palestinian narrative, and there’s quite a lot of diversity within those,” James Pearce ’11 told an audience of fellow students and Duke Law faculty on March 31, shortly after he and 10 classmates returned from a research trip to Jerusalem and the West Bank. The trip was sponsored by the Center for International and Comparative Law, which Bradley co-directs.

Over eight days they toured the disputed area, talking to Palestinian and Israeli residents, government officials, lawyers, activists, academics, and international aid workers, observing how the international law, international human rights law, and history they had been researching in preparation for the trip played out on the ground.

“The trip “brought the dispute to life in a way that simply reading about it couldn’t because we were able to see the people whose lives are actually shaped by these different policy positions and decisions every day,” said Sarah Boyce ’12. “It reminded us that there really are strong policy positions on both sides. It was a little like reading a Supreme Court case where you feel just as strongly that the majority and dissent are
right. But it could be frustrating for those of us who were looking for a way to reconcile the two narratives.”

Still, that is exactly what the students are attempting to do in a substantive paper, the collaborative project for the seminar and the capstone of an educational experience that brought to life the operation and limitations of the law.

**Translating international human rights law**

Challenging students to approach a highly contentious issue with objectivity was Bradley’s goal in developing the seminar, conceived after he first toured Israel and the West Bank in 2009.

“There is pedagogic value in having students navigate through politicized issues in an objective and balanced manner that considers the roles and limitations of law and legal analysis,” said Bradley, the Richard A. Horvitz Professor of Law. A leading scholar of international law, he saw in the dispute a rich “translational” experience in law — an opportunity for students to immerse themselves in the principles of international human rights law and translate them into very specific issues. That sort of experiential learning is a hallmark of a Duke Law education and a part of the overall mission of Duke University.

It also mirrors the type of work that might be done by U.S. State Department lawyers, said Bradley, who served as counselor on international law in the Office of the Legal Adviser in 2004.

“I’m sure the Legal Adviser’s Office has worked on these issues because the United States has to determine what position to take,” he said. “A lot of diplomacy involves quiet discussions with the Israelis or the Palestinians, but policymakers need advice from the lawyers in the State Department about the relationship between these contested issues and international law.”

During the first eight weeks of the semester, Bradley guided his students through a rigorous syllabus of reading and discussion on the history of the Israel-Palestine conflict, the status of Jerusalem, and applicable aspects of international law and international human rights law.

Readings addressed aspects of modern Israeli and Palestinian history and the various approaches international actors such as the United Nations and the European Union have taken to the dispute; hearing from guest lecturers and students who have lived in or visited the Middle East helped the group grasp some of the cultural sensitivities and nuances involved.

Each student conducted in-depth research and wrote a short paper on a relevant subject. These covered areas such as the contested sovereignty over Jerusalem, the applicability of the Fourth Geneva Convention, and the law of occupation; pertinent regional laws and practices for proving ownership of land and distribution and delivery of municipal services; processes for obtaining building and demolition permits; evictions; regulation and control of Jerusalem’s holy sites; laws regarding residency and family reunification; archaeology; and the barrier Israel has constructed along and within the West Bank over the past decade.

“The barrier cuts right through Jerusalem, creating something of a de facto separation and border between populations. On our tours and in our conversations it came up a lot in terms of changing the dynamics — within Israel and Palestine as a whole and within Jerusalem itself,” said Pearce, who made it the focus of his initial research paper. It bears directly on housing in numerous ways, the students noted during their presentation: Municipal authorities do not deliver services outside the barrier; it has separated some families and spurred an increase in non-permitted — illegal — construction on both sides of the barrier; and it has led to the establishment of military-controlled checkpoints, which, critics say, disproportionately impede the movement of Palestinians within Jerusalem.

**Negotiating checkpoints — and flashpoints**

The International Court of Justice issued a 2004 advisory opinion stating that the barrier violates international human rights law and international humanitarian law for a variety of reasons. That prompted a response from the Israeli Supreme Court, which invoked Israeli domestic law.

“It’s yet another flashpoint in the debate.”

He observed that the barrier, which the students crossed many times during their trip, also demonstrates one — of many — semantic flashpoints: What Palestinians refer to as a “segregation wall,” “apartheid wall,” or simply “the wall” (as it was called in the ICJ advisory opinion), Israelis call a “security fence,” which they credit with substantially reducing suicide attacks in Jerusalem. Likewise, what the Israeli government calls “neighborhoods” of Jews within East Jerusalem, Palestinian residents and their supporters call “settlements.”

“This sort of gets to the educational value of the trip,” Pearce explained. “It’s yet another flashpoint in the debate.”
and come in with throaty, adversarial advocacy on that client’s behalf, then you’ve lost the other side.”

**A listening tour**

Each day’s itinerary, which Bradley developed with assistance from the Minerva Center for Human Rights at Hebrew University, included a tour of a different part of East Jerusalem, giving students a chance to engage with residents and experts on site. One Palestinian family discussed their eviction from their home in the Sheikh Jarrah neighborhood near the Old City; another told the students about having to vacate a portion of their home in order for an Israeli family to move in.

A frequent guide, in addition to Minerva Center colleagues, was a Palestinian lawyer who represents individuals in litigation in Israeli courts concerning evictions and demolitions and tries to contest these actions. “As an Arab-Israeli lawyer who is committed to the rule of law, he had an invaluable perspective on trying to use the judicial process to foster social change,” said Bradley.

In the Silwan neighborhood, the students toured the City of David excavation site as part of their examination of the varying claims to the land. Run by an organization named Elad, the dig seeks to unearth the city built by King David, a key anchor for Jews’ biblical claim of sovereignty over Jerusalem. While controversial both in its encroachment on Palestinian homes — dozens are likely to be demolished — and in Elad’s facilitation of Israeli settlement in traditionally Palestinian areas, a number of students found that their discussion with an Elad representative further revealed the complexity of the dispute.

“I realized that they are simply utilizing the legal system in place in order to achieve a goal,” said Jessica Stringer ’12. “That’s really why we are becoming lawyers — we want to further our clients’ interests and further their goals.”

“During our time in Jerusalem it became increasingly difficult to distinguish between the concepts of ‘housing’ and ‘home,’” Boyce noted. “Those are two very separate things. The notion of ‘home’ brings out a very visceral reaction in all of us. Both Israelis and Palestinians have a very intimate connection to the land and very clear senses of why they are justified in calling it their ‘home,’ and that’s what makes the situation so complex. It makes it very difficult to zero in on housing as if it’s a discrete thing, as opposed to something that’s inextricably linked with every aspect of our lives.”

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**Backroom candor, polarized rhetoric, and the limits of international law**

The students said they appreciated the candor offered by many of the individuals they met with on both sides of the dispute, such as a Jerusalem zoning official and a lawyer for the municipality, and an outgoing member of the Palestine Liberation Organization’s negotiating team, which was in the process of dissolution.

“These meetings tended to reflect the nuance and sophistication on both sides and the parties’ acknowledgment of the competing narratives. The people we met with seemed to say, ‘OK, let’s work within this framework and try to figure something out,’” said Pearce. “That was a refreshing change from some of the more tendentious and overstated approaches from some of the groups advocating on one side or the other.”

“You have these crucial issues of sovereignty, but when it comes to determining what that actually means and who would have control over things like allowing people into the city, it seemed that there was more willingness to agree on certain aspects,” added Stringer. Still, polarized rhetoric and domestic political issues on both sides are likely to keep the conflict simmering — if not exploding — the students agreed. It also was clear that in legal terms, the parties rely on different sources of law: Broadly speaking, Palestinians and their advocates assert rights and obligations under an international system, while Israelis invoke domestic law as authoritative.

“I learned how little practical effect international law can have,” said Stringer. “Understanding aspects of international human rights and humanitarian law is important to see the overview, but in reality, they have little effective value. They are more bargaining chips
than rights that can be asserted. They can be given up in return for control of some areas.”

“There are certainly limits to either of these bodies of law vis-à-vis trying to negotiate and reach settlements on the broad issues in dispute,” said Pearce. “There’s a legal framework and a political framework, but there are all kinds of other ways we need to think creatively.” Alternative dispute resolution and analogous systems might be more helpful to the parties than a legal solution, he suggested. “You have contesting legal systems and contesting narratives about what’s going on. A ‘legal’ answer is inadequate.”

**Proposing small steps**

The students completed a polished draft of their paper by the end of the semester and are continuing to work on it with a view to publishing the piece. At their late March presentation to the Duke Law community, Boyce summarized the observations shared by the diverse group after their trip, and noted the dueling narratives on most points in the Israel-Palestine conflict.

“A key theme is the notion of distrust,” she said. “Through our visits and talks with community members, we all got the sense that distrust can make it very hard to find common ground, even where it exists. The people we talked to really did not have very different ideas about what peace would look like or about where boundaries should be drawn, but they had spent so much time treating each other without dignity and dehumanizing one another that the prospect of moving forward toward peace and reconciliation looked very bleak.

“More than anything we tried to formulate solutions that might attempt to rebuild that trust. To us it became less about where the lines are drawn and more about any actions that can start rebuilding relationships and restoring trust.”

How might that work? “Coming from the outside, you don’t want to dictate to people what they should do,” said Adam Schupack ‘11, who credited the March trip, his fourth to Israel, with giving him a greater appreciation of the complexities on the ground as well as a deeper personal desire to see both sides move toward a peaceful settlement of their differences. “Israel could consider increasing the amounts of municipal services into Palestinian neighborhoods and, on the flip side, Palestinians could try to cooperate more with the municipality in making sure those services can be delivered.”

The trip refreshed the students’ concept of law as a “living instrument,” according to Boyce. “I think that for all of us this trip was a great reminder of how the law can be a driving force in all of our lives and of the way the law molds our notion of ‘home’ and our understanding of whom we can trust.”

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**Student report: Rebuilding trust is key**

In the introduction of their draft report titled “Housing Issues in East Jerusalem,” the student authors acknowledge the difficulty of isolating the issue of housing from others that comprise the conflict over Jerusalem, such as the city’s legal status, borders, and refugees. Jerusalem, they note, represents the epicenter of a larger geopolitical dispute.

But the issue of housing, they suggest, may “offer an avenue for devising workable solutions that counter the atmosphere of distrust that pervades the Israeli-Palestinian relationship” — an atmosphere that presents, in their view, the biggest roadblock to a workable, lasting peace.

Because Palestinians and Israelis disagree on whether domestic Israeli law or international legal norms should govern the disputed area, and recognizing the difficulties inherent in enforcing international law, the students suggest the parties consider taking pragmatic and often non-legal steps toward solving problems of daily living. In the process, they see an opportunity for Israelis and Palestinians to establish the mutual trust needed to address larger problems.

Although more of their suggestions call for Israeli action, a reflection of Israel’s full control over Jerusalem, the students recommend a *quid pro quo* on the part of Palestinians, urging them to respond with constructive action and cooperation with the municipality — seeking building permits through lawful means, recognizing the importance of Jewish sites in Palestinian neighborhoods, and voting in municipal elections.

Among other suggestions, the students propose that Israeli authorities:

- streamline the permitting process for building or adding on to existing structures in East Jerusalem;
- reconsider the current zoning that designates large swaths of East Jerusalem as “green areas” where building is restricted or prohibited;
- permit more Palestinian high-rise construction to address a severe housing shortage;
- provide a process for legalizing illegal buildings;
- consider limiting or even repealing the Absentee Property Law, which allows Israel to confiscate the land of Palestinians who may have fled war or lived in a state with which Israel found itself at war;
- increase funding for municipal services in Palestinian neighborhoods and involve Palestinians in providing those services where possible;
- expand nascent outreach efforts to Palestinians on local planning and zoning matters and increase the use of neighborhood councils;
- alter the route of the separation barrier in order to minimize its impact on Palestinian daily life and ensure contiguity between East Jerusalem and the West Bank;
- consider abolishing the “center of life requirement” that requires Palestinian residents of East Jerusalem to maintain their center of life in the city or risk losing their residency status; and
- consider using government expropriation powers to ensure that certain housing remains in Palestinian hands.