





# An Interview with Dean Alex Aleinikoff

As reported in the spring 2004 *Georgetown Law*, on July 1, Alex Aleinikoff began work as the 14th dean in the 134-year history of Georgetown Law Center. Born in 1952, Aleinikoff graduated from Swarthmore College and, in 1977, earned a J.D. at Yale. After clerking for U.S. District Court Judge Edward Weinfeld and working in the Office of Legal Counsel at the U.S. Department of Justice, he joined the law faculty at the University of Michigan. There he taught for 15 years. In 1994, he came to Washington to work for the Immigration and Naturalization Service in the Justice Department, first as general counsel and then, from 1995 to 1997, as executive associate commissioner for programs. During that time, Aleinikoff also taught as an adjunct professor at the Law Center. On departing the INS in 1997, he worked at the Carnegie Endowment for International Peace for six months before joining the Georgetown Law faculty full time as a professor. Since then, he has taught courses in immigration and refugee law, citizenship, constitutional law, and the Constitution and the Civil War.

Aleinikoff has published a number of articles and books, including, with co-authors David Martin and Hiroshi Motomura, the book *Immigration and Citizenship: Process and Policy*, and he is credited with helping to establish the study of immigration law as a legal discipline in the United States. His most recent work, published by Harvard University Press in 2002, is *Semblances of Sovereignty: The Constitution, the State and American Citizenship*. The book has won the Alpha Sigma Nu Award from the Association of Jesuit Colleges and Universities.

An excerpt from that book and an interview with Aleinikoff about issues of sovereignty and citizenship in the wake of September 11 appeared in *Georgetown Law*'s spring 2002 issue (accessible from the magazine's homepage on the Law Center Web site, [www.law.georgetown.edu/news/index.cfm](http://www.law.georgetown.edu/news/index.cfm)). In an interview conducted before the start of the current school year, I began by asking Dean Aleinikoff how he had come to decide he would like to be the next dean of the Law Center.

—David Todd, Editor

**ALEINIKOFF:** Oh, I think that's about the timing in one's life and experience, the opportunities and challenges presented, multiple factors lining up. But also, for me, it was a matter of caring deeply for this school, wanting to be a part of moving it onward and upward.

**GEORGETOWN LAW:** You're recognized widely for your scholarship. Will this new position take time away from your work as a scholar?

**ALEINIKOFF:** I have a book manuscript under way but, interestingly, its subject fits with the strategic plan that the faculty has adopted for the direction of this school—to become recognized as the leading global law school in the country. The manuscript's entitled, "The Constitution and the Challenge of Transnational Law," and looks at one facet of internationalization: the role of international law in U.S. law and some related constitutional concerns. These issues are maturing in our legal world as well.

**GEORGETOWN LAW:** Let's talk, then, a bit more about those issues. What are some recent occurrences in American law that pertain to the "internationalization" you mention? Are there trends?

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**ALEINIKOFF:** Well, recently the U.S. Supreme Court has made a number of statements about the role that constitutional and human rights law from other jurisdictions can have in U.S. constitutional adjudication, as in the *Lawrence* case [regarding homosexual rights] and in the Michigan affirmative action cases. A case decided last term by the Court will allow some violations of international law to be pursued in federal courts under the Alien Tort Statute. The law of war, which is not fully codified in U.S. law and is an aspect of customary international law, is implicated in President Bush’s executive order that put Guantanamo detainees on trial before military commissions. Decisions from the World Trade Organization affect U.S. relations. A whole range of supranational regulations, of customary international law, and of treaties and human rights law all press for recognition in the American legal system.

**GEORGETOWN LAW:** Can you elaborate on some of these examples? How would actions of the WTO, say, affect the finances or decision-making of a domestic corporation served by an American lawyer?

**ALEINIKOFF:** I’ll give three illustrations. First, to answer your question about the WTO, decisions there bind governments, not corporations. But one claim could be that a federal grant of tax subsidies to exporters, for example, violates rules of fair trade. The United States a couple of years ago decided to impose steep tariffs on steel imports. The WTO ruled that some of those tariffs violate governing treaties. These decisions of the WTO are not directly enforceable in U.S. courts, but if the United States doesn’t comply, an aggrieved country is authorized to take retaliatory measures, which the Europeans have threatened, which in turn would also affect that domestic corporation.

Second, the Alien Tort Statute, passed in our country in the 18th century, allows noncitizens who are victims of torts that violate the law of nations to sue for damages. The statute lay dormant for about 150 years until recently: Lawsuits have been brought under it against U.S. corporations who, in doing business overseas, are accused of complicity in human rights abuses.

A final illustration is a case involving U.S. compliance with an international convention requiring that noncitizens arrested in the United States be notified of their right to call their consulate. In this case brought by Mexico, the International Court of Justice ruled the United States had violated the convention in not informing defendants in cases involving the death penalty.

In various disparate areas such as these, international law intrudes in new ways into domestic law.

**GEORGETOWN LAW:** And so, to bring the explanation full circle, how do you see the Law Center engaging with those challenges?

**ALEINIKOFF:** An increasing number of students come to law school expressing an interest in international work. And, as I’ve begun talking with alums, I

find an increasing number are dealing with matters that cross boundaries—involving international law or the laws of foreign countries.

That's why I think the right phrase for our focus is "transnational law," meaning law that crosses borders. This covers situations involving not only international law, but comparative law and the law of different legal systems.

As we train our students to think like lawyers and expose them to different areas of law, we can find numerous ways to help them think beyond borders. We can introduce international and comparative elements into traditional domestic courses. When teaching immigration law, I've frequently mentioned citizenship laws from other countries—such as Germany, France, and Japan—to give perspective on a problem. Increasingly, Georgetown faculty do that kind of comparative work.

Also, we can introduce more transnational law into first-year elective courses. Now Georgetown already has a huge international curriculum—the largest number of international law classes offered by any law school. We will be reviewing our curriculum to make sure it's as coherent as possible, perhaps staging courses along certain lines of inquiry.



DAVID TODD

**GEORGETOWN LAW:** And these international agreements continue to multiply regardless of the ideology of who's in the White House?

**ALEINIKOFF:** Yes. If you only look at particular current decisions, it may suggest we're isolationist: the United States didn't sign the land mines treaty; it hasn't ratified the convention on the rights of the child or the convention for eliminating discrimination against women; it "unsigned" the Rome statute which created the International Criminal Court; it hasn't gone along with the Kyoto protocol on climate changes. In these perhaps more popularly known ways we may look like we've been withdrawing from international institutions. But the reality is that our international ties are thickening every day. The movement from the GATT to the WTO is just one obvious example of that. The United States complies with literally thousands of international conventions.

**GEORGETOWN LAW:** Is there any risk to identifying the Law Center more prominently for its international expertise?

**ALEINIKOFF:** It's not a risk. This is sweeping the law schools, and Georgetown is uniquely qualified as a leader already. We have a nationally ranked international law faculty, and now, an international law building and library. We are in the capital city of the United States with all sorts of ties to government, foreign consulates, and nongovernmental organizations. We have the Global Law

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Scholars program, have just launched the Georgetown International Law Review, and will soon establish a Human Rights Center. Our faculty are increasingly interested in transnational legal issues. With all these ingredients, it’s not surprising that we have the strong reputation we do now and that we will be able to lead in new conceptualizations within the field.

**GEORGETOWN LAW:** What are some other priorities you see for the Law Center?

**ALEINIKOFF:** A top priority will be to continue to recruit the most talented faculty in the country. This is a remarkable community of scholars, where people care about the institution and about each other, so it’s a great place to work. And our location in Washington makes it enormously attractive for our professors to combine theory and practice in productive ways.

Student recruitment will also be a priority. We are increasingly drawing applicants away from our top competitors, and the average GPAs and LSAT scores of our incoming class continue to rise.

Another priority is to continue our dedication to public interest law and service. Through our clinical work, the Office of Public Interest and Community Service, and many other activities here, our students engage with the community and pursue justice for people who otherwise lack means. Expanding those opportunities will be an important focus.

In the longer term, I think we are ready to take a full look at legal education. The way we teach is often more a product of tradition than of current justification. Again, we are uniquely qualified to do that thinking, with our diverse faculty, our talent for innovation (such as the alternative first-year track, Curriculum B), and our incredible clinical programs. Last year, two of our faculty—Mark Tushnet and Carrie Menkel-Meadow—were named joint editors of the *Journal of Legal Education*.

**GEORGETOWN LAW:** A final question. What can you tell us about your family? How have they responded to your taking this new job?

**ALEINIKOFF:** My wife is a clinical psychologist, and we have three children. The eldest is a freshman at Cornell, the middle child is in 10th grade, and the youngest is in sixth. When I was considering applying for the deanship, my family was initially ambivalent; they understood it would be a great honor but worried about the extent to which it would take me away from family life. They came to the conclusion that it would be good for me to do. When I told my 11-year-old that I had been chosen, his answer was, “Does this mean we get really good tickets to the Georgetown basketball games?”



# Address of Dean Alex Aleinikoff to First-Year Students


On August 25, 2004, Dean Aleinikoff delivered a welcoming address to students entering the Law Center this fall. Following are excerpts from that address.

**W**elcome to Georgetown University Law Center. You are about to begin the most interesting and intellectually challenging three years of your life.

Let me first tell you a bit about you. You are an incredibly talented and diverse class. More than 12,000 people applied for the 575 places in the class. Do the math; your presence here is a result of years of hard work and great accomplishment. You come from 43 states and 17 countries, and 197 undergraduate institutions. You include 14 teachers, two actors, a two time All-American bowler, 14 members of the military including a Bronze Star winner, and a concert pianist who played Carnegie Hall at the age of five.

**B**y the time you have left these classrooms and seminar rooms, you will have developed a most valuable attribute: the ability to think like a lawyer; the legal mind. You will have learned to analyze, to parse, to reason with a precision and incisiveness that will surprise and please you—even if it sometimes annoys your nonlawyer friends, spouses and relatives. But more than making “lawyers’ arguments,” a mind educated in the law at Georgetown will be able to see the bigger picture—to understand the place and function of law in our society, and to see the special role that Georgetown lawyers can play in pursuing justice in their communities, their nation, and the world.

The importance of law in today’s world has never been greater. The movement of people, of goods, of armies across borders has likewise led law across borders—as human beings strive for the order, the control on arbitrariness, the protection of expectations, that law can bring.



**U.S.** lawyers and law students will need to begin to look beyond the U.S. legal system—not just for the “good ideas” that comparative study can bring, but because the transactions and events that they—you—will be involved in on a daily basis will inevitably implicate non-U.S. legal principles and policies.

**Y**ou will examine law and justice from a wide array of perspectives over the next three years. If you have come to law school expecting “answers,” you will be pretty much disappointed. We will not hand you codes and rule books in which you, like a clerk examining a price list, can “look up” the law. Nor will you find a “party line” among professors as to the ends that a just system of laws ought to pursue. Rather, you are, in your classes, likely to face questions and more questions—and then even more questions (perhaps until you want to scream).

Why do we do this? Because law is a process of reasoning more than a declaration of fact; more a verb than a noun. Quintessentially law is an act of interpretation; it requires not wooden literal-mindedness, but rather argument and judgment. Our pedagogy of questions is a way to sharpen argumentation and to test judgment. It is a demand for what lies at the heart of the idea of a rule of law: reasoning and justification.

Formal logic plays an important role in legal reasoning, but it alone is not sufficient. As a social institution, law reflects and helps determine human values and human projects. Oliver Wendell Holmes said—in an epigram that you will hear more than once at Georgetown—that the life of the law has not been logic, but experience. Holmes meant that law is adapted to human affairs, tested and molded in its application not simply in its derivation.

You will rather quickly learn that good lawyers can make plausible arguments on both sides of most interesting legal questions. This is not because lawyers are playing word games, but rather because our legal system embraces and pursues a range of purposes and values that frequently suggest different answers to a question.

**N**ote that it is not enough to simply invoke the concept of “justice” to resolve these difficulties—because justice as well is a contested term. Notions of right, fairness, equality can be invoked to support both sides of the issue of limiting the franchise to citizens.

You may find this uncertainty unsettling. How can a complex society like ours not have definite rules of law and conceptions of justice? Is not the law, in fact, fairly certain in most respects? Just as highways have posted

speed limits, surely the law must in most respects be clear enough so that we all can go about our daily affairs fairly confident of what rules apply and when they will be applied. To a large extent this is true—but we will not be spending much time on speed limits at law school. You will be traversing the difficult terrain, where values and principles are in tension—in short, where the best and best-trained lawyers are needed.

More importantly, the inherent uncertainty of law, the playful openness of legal argument, deep disputes about the meaning of justice, are actually empowering. It means that We the People, sometimes aided by lawyers, remain very much the authors of our legal system—making arguments, stressing values we most care about, pursuing purposes and principles important to us in our day.

All this means that the world—not rules of logic—is where the lawyer must seek answers. And this is what makes the study of law exciting. Legal reasoning is inherently interdisciplinary, comparative, sociological, and ultimately based on a political theory about how power is justified and exercised. This is why in the courses you take here, your task will not be to memorize rules of law; rather, you will explore the context in which legal problems arise and examine legal issues from the perspective of the social sciences, philosophy, morality, and politics.

In pursuing your legal studies, you will find the Georgetown University Law Center a world of opportunities. Take advantage of those opportunities. We have classes and seminars on almost every imaginable legal subject—and if you are able to discover an area of law not covered by our more than 300 courses, let us know and we'll see what we can do about it. Enroll in one of our 12 legal clinics, to learn in a reflective way the practice of law while helping disadvantaged members of our community. Participate on one of the 10 journals to sharpen your research and writing skills. Join several of the more than 70 student organizations. Attend the myriad presentations and panel discussions held at Georgetown each year at which high-ranking government officials, practitioners, and scholars discuss cutting-edge issues in the law. Participate in a moot court competition to develop oral advocacy skills. Sign up for pro bono activities at the Law Center's Office of Public Interest and Community Service that further the Jesuit commitment to the pursuit of social justice.

If you take good advantage of the world of opportunities here, when you leave you will have opportunities to change the world. You will be joining the community of more than 25,000 law school alumni with distinguished careers in private practice and public interest law, who have served as members of Congress, executive branch officials and as federal and state judges, and have entered the ranks of the professoriat.