

WHAT'S IN STORE FOR THE NEXT FOUR YEARS?

A CONVERSATION WITH **ALLEN MENDENHALL**



A frequent collaborator with the Mises Institute, Allen Mendenhall is associate dean and executive director of the Blackstone & Burke Center for Law and Liberty at Faulkner University and is the author of *Literature and Liberty: Essays in Libertarian Literary Criticism* (2014) and *Oliver Wendell Holmes Jr., Pragmatism, and the Jurisprudence of Agon: Aesthetic Dissent and the Common Law* (2016). He recently spoke with us about his legal work, how the Mises Institute has influenced him, and his predictions for the new president.

THE AUSTRIAN: Tell us about your new position at Faulkner University and how you came to be associated with the Mises Institute.

Allen Mendenhall: I'm an associate dean in the law school at Faulkner and the executive director of a new center there called the Blackstone & Burke Center for Law & Liberty. The center promotes the common-law tradition and coordinates educational programs and research initiatives on liberty and private ordering.

I first started reading publications of the Mises Institute when I was a law student. I was freeing myself from the bad presuppositions and habits of thinking that had entangled me as an undergraduate English major.

For many years, I was a distant observer of the Institute. I was working through economic ideas for the first time, startled at the depth of my ignorance and exhilarated by the discoveries I was making through Austrian economics.

One day, on a whim, I wrote a book review and emailed it to the editors of Mises Daily. The next day, the piece was published. I was thrilled. After that, I wrote more pieces for the Institute, and when I attended Auburn University for my doctorate, Lew generously gave me office space to use during the school year.

ALLEN MENDENHALL, CONTINUED While I worked toward my doctorate, I participated in an Austrian Scholars Conference, attended Mises Circle events, and completed Mises Academy courses with Thomas DiLorenzo, David Gordon, Stephan Kinsella, and Robert Murphy. I was also working with Paul Cantor on developing libertarian approaches to literary criticism, an effort that resulted in the publication of my first book, *Literature and Liberty: Essays in Literary Criticism*.

MI: Now that you've had time to take a look at Trump's appointments following the election, what do you expect will be the overall tone of the administration?

AM: It's hard to say. Trump can seem evasive and unpredictable about details, even if his broad vision for certain policies — say, immigration or trade — is clear. I do find it promising that Trump has favored the private sector in his choices for cabinet positions: Andrew Puzder at Labor, Wilbur Ross at Commerce, Betsy DeVos at Education, and Linda McMahon at the Small Business Administration. And I'm fascinated by his decision to nominate Oklahoma attorney general Scott Pruitt, a longtime enemy of the EPA, to head up that agency, which exercised extraordinary powers under the Obama administration.

Whether these nominees will, if confirmed, reduce the power and spending of government or, instead, facilitate corporatism and cronyism remains to be seen. One harbors doubts when figures like John Bolton are in the mix for cabinet positions.

MI: What do you think are the best parts of the new Trump administration and what are the worst?

AM: The best, as I've suggested, include the selections of non-politicians and non-government figures. The worst, at least on the basis of track record, involve foreign policy. Given the choices at Homeland Security, Defense, and National Security Advisor, I'm fearful this won't be a return to an Old Right foreign policy.

As of this writing, Trump's nominee for Secretary of State is Rex Tillerson, the chairman and CEO of Exxon. I don't know much about Tillerson's perspective on

foreign policy, but at least he's not John Bolton, and I consider his business experience to be valuable.

MI: As an attorney, do you foresee any meaningful changes in the federal judiciary — including the Supreme Court — as a result of Trump's election?

AM: Yes. The history of the federal judiciary demonstrates that, no matter who the president is, courts always institute meaningful changes in society, for better or worse. On this score, I'd prefer a President Trump to a President Clinton.

The framers of the Constitution believed they could restrain the powers of government through a system of federalism, separation of powers, and checks and balances. Perhaps they were quixotic; the state of the federal government today would seem to suggest that they were. Even an ardent nationalist like Hamilton would be shocked at the growth and power of the federal government, let alone the federal judiciary. Many libertarians take an anti-Jeffersonian approach to the federal judiciary, advocating for robust judicial powers that can be enforced against local communities and private businesses. This bothers me.

Imagine if Hillary Clinton had won this election and appointed judges to federal vacancies in the district and circuit courts, and also to the US Supreme Court. Imagine if these judges and justices believed in a fundamental right to basic income or subsistence and attempted to incorporate these alleged rights against the states through the Fourteenth Amendment. Imagine new judges and justices who believed that forms of politically incorrect speech constitute "hate speech" that's not protected by the First Amendment. Imagine new judges and justices who believe the government is responsible for remedying past wrongs against certain groups and thus favored affirmative-action programs in schools and businesses. Imagine judges and justices hostile to the Second Amendment. We might have seen the federal judiciary populated by such jurists had Clinton been elected.

Because Trump won't nominate jurists like these, at least if his list of 21 potential nominees to the US Supreme Court is any indication, I believe his election will affect the role of judges in our society.

MI: In spite of Trump's victory, it's hard to ignore that the election was extremely close. Do you think there's any real ideological change in the US going on, or could we just be looking at a return to another typical center-left presidency in four years?

AM: Something has changed. Just four years ago, a Donald Trump presidency would have been inconceivable. I don't know whether a change in public opinion or culture or norms or attitude or demographics or whatever translates into a change in the size and structure of government at this point. We're experiencing political unrest, but it's not clear to me yet whether that will lead to more or less liberty and economic freedom in the long term. ■■■



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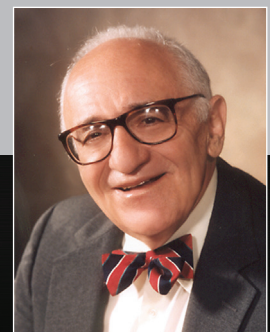
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35

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