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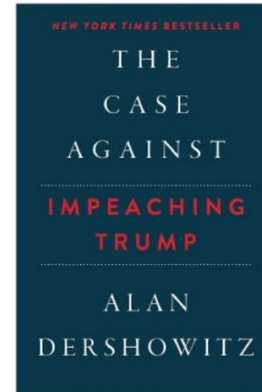
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## Dershowitz Opposes Criminalizing Political Differences

*The Case Against Impeaching Trump*, by Alan Dershowitz, New York: Hot Books, 2018, 146 pages, hardback.

“Please be truthful. You are not a liberal, but rather a Zionist Republican Authoritarian Bigot.”

This is an example of the multiple e-mails that Alan Dershowitz has received since he has been pleading with his fellow Democrats that the political differences they have with President Donald Trump should not cause them to ignore the Constitution of the United States and seek his impeachment. Dershowitz, formerly a law professor at Harvard and a longtime liberal Democrat, has been ubiquitous on the cable TV circuit, arguing that the present frenzy to get Trump impeached is not good for the country.



He doesn't let Republicans off the hook in his lectures about the Democrats being inconsistent in their present lack of respect for civil liberties and the rule of law. He suspects that had Hillary Clinton won the White House instead, there would be calls from GOP activists to impeach her.

But before Congress exercises its power to impeach and remove a president, there should be an impeachable offense, not simply political differences. Using the criminal justice system and the impeachment process to settle political differences sets a dangerous precedent. We should be using the ballot box, not the jury box, to resolve political fights.

Dershowitz begins by citing what the Constitution has to say about impeachment. It requires that a Senate vote to remove a president on an impeachment charge must be due to conviction of one or more specific charges: treason, bribery, high crimes, or misdemeanors. He disagrees with the proposition that impeachment is a purely political exercise, for otherwise the Constitution would not have limited to four the reasons that a president or other government official could be impeached and removed.

Interestingly, he asserts that the Constitution makes the chief justice of the Supreme Court the presiding officer of any Senate trial, not just because the vice president (the officer the Constitution installs as the president of the Senate) has a vested interest in the outcome of the case, but also to make sure that the Constitution is followed. Dershowitz argues that if the process were simply political the Senate president pro tempore should be given the presiding role.

Some Democrats, on the other hand, are ignoring the four constitutional grounds for impeachment, and interjecting reasons that are purely political. For example, Dershowitz cites Representative Maxine Waters (D-Calif.), who has said, “Impeachment is whatever Congress says it is. There is no law.” Allan Lichtman, a professor of history at American University, has even contended that Trump should be



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impeached based on his “war on women,” or even his climate-change policy, which Lichtman calls a “crime against humanity.”

But Dershowitz notes that there is a constitutional requirement (Article I, Section 3) applied to senators — to take a special oath — when they are sitting as a jury trying the president on an impeachment charge, a charge that must be brought by the House of Representatives. And considering that the Constitution explicitly lists only four grounds for presidential removal, Dershowitz makes the case that the special oath would require them to convict a president on only one of those four impeachment charges. According to Dershowitz, it would be the duty of the presiding officer — in this case, the chief justice — to disallow any testimony offered that did not advance the proposition that the president was guilty of one — and only one — of the four specific grounds for impeachment.

And challenging the liberal viewpoint on global warming, regardless of what one thinks about that issue, is not one of those four grounds for impeachment. Dershowitz warns that if a president, regardless of how controversial, is denied the constitutional protections he is entitled to, no other citizen’s constitutional protections are safe. In fact, Dershowitz quotes H.L. Mencken on this point: “The trouble about fighting for human freedom is that you have to spend so much of your life defending sons of b\*\*\*\*\*s; for oppressive laws are always aimed at them originally, and oppression must be stopped at the beginning if it is to be stopped at all.”

Having made this constitutional argument, Dershowitz further contends that Trump has not committed any impeachable offense — at least none for which he has seen any evidence.

He spends some time on the allegation that Trump committed “obstruction of justice” by firing FBI Director James Comey. But the president has the authority under the Constitution to fire members of the executive branch, including the director of the FBI. Trump’s detractors, of course, argue that the president fired Comey to stop any bureau investigation into alleged “collusion” with the Russian government, and therefore committed obstruction of justice. But Dershowitz dismisses that line of thinking, writing that Trump’s “state of mind” is irrelevant, as only his actions matter. Under the executive powers granted him by the Constitution, the president may tell the FBI director whom to investigate, and whom not to investigate. He cites several examples of presidents doing just that, and then adds that it does not matter what we think the law should be, but what the law is.

Dershowitz makes it clear that he not only does not believe there was any collusion between anyone in the Trump campaign with the Russian government, but even if there had been, it would not be an impeachable offense, as that would not be covered by one of the four impeachable grounds listed in the Constitution. If such collusion did take place, then there is a remedy, Dershowitz contends — the voters can vote Trump out at the next election.

This is not to say that Dershowitz views the possibility of collusion with a foreign power unimportant. Rather than launching a criminal investigation, complete with a special counsel in the person of Robert Mueller, the country would have been better served, he believes, had a special commission been appointed to investigate if there was such collusion, and then make recommendations on what, if any, actions Congress needs to take to avoid such problems in the future.

Regrettably, in Dershowitz’s view, that is not what happened in this case. In fact, he is troubled by the whole system of selecting these “special counsels,” often referred to as “independent counsels,” or even “special prosecutors.” Dershowitz contends, “The framers of our Constitution did not seek to make it



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easy to convict Americans of crimes. They bestowed upon criminal defendants a bundle of rights to provide safeguards against overzealous prosecutors.”

Yet, with a “special counsel,” Dershowitz laments, instead of investigation of an alleged crime, Mueller and other such “special prosecutors” are deemed failures if they don’t obtain convictions. He notes that Lavrentiy Beria, the head of the notorious NKVD (later the KGB) for communist dictator Joseph Stalin, said, “Show me the man, and I’ll find you the crime.” We are rightly repelled at such sentiments in a totalitarian dictatorship, but that is exactly what often occurs in situations with “special counsels” such as Mueller.

In this regard, Dershowitz recently told Fox News’ Tucker Carlson, “There are no civil libertarians left on the Left, certainly not the American Civil Liberties Union.” On the contrary, the ACLU actually supported Mueller’s raid on the home of Trump’s lawyer, Michael Cohen. “Targeting Trump’s lawyer should worry us all. The silence of civil libertarians following the raid on Michael Cohen shows that we are losing that valuable neutrality.”

While many anti-Trumpers are cheering these tactics by the special prosecutor today, Dershowitz warns his readers that “prosecutorial tactics used today against President Trump may tomorrow be used against Democrats — and even against you.”

One aspect of the Mueller investigation that particularly concerns Dershowitz is what Mueller is doing with the grand jury process. First of all, Dershowitz argues that grand juries are not generally protective of defendant’s rights — on the contrary, he agrees with the famous concern that just about any prosecutor could get compliant grand juries to indict a ham sandwich. But mostly, Dershowitz expresses concern that Mueller has impaneled a *second* grand jury in the District of Columbia, in addition to the one he is presently working with in Virginia.

Dershowitz’s concern is that a person is tried in the jurisdiction where he is indicted. He sees this move by the special counsel as a way to get a trial for defendants in a jurisdiction — D.C. — which is highly unfavorable to Republicans generally, and Trump particularly. Not surprisingly, Maxine Waters called Dershowitz a racist for even making this point.

Many Trump opponents are even using Trump’s insistence that Attorney General Jeff Sessions be personally loyal to the president against him. Dershowitz expresses amazement that there should be anything controversial about such an expectation, considering President John Kennedy even picked his own brother as attorney general. Other presidents, both Democrat and Republican, have routinely picked loyalists as their attorney general.

With even vice-presidential candidate Tim Kaine arguing that Trump’s actions are potentially treasonous, among the multiple over-the-top comments made in our present toxic political environment, Professor Dershowitz’s book is a healthy counterbalance, especially since it comes from a well-known partisan Democrat. Sadly, many of the charges of hypocrisy he levels against his fellow Democrats could also be leveled at many Republicans.



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