



Written by [Steve Byas](#) on May 21, 2021

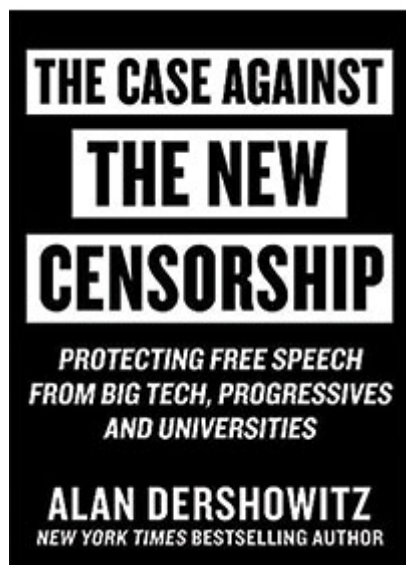
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## Dershowitz Takes on Leftist Enemies of Free Speech

***The Case Against the New Censorship: Protecting Free Speech From Big Tech, Progressives and Universities***, by Alan Dershowitz, New York: Hot Books, 2021, 169 pages, hardcover.



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***The Case Against the New Censorship: Protecting Free Speech from Big Tech, Progressives and Universities***

“Freedom of speech in America is facing the greatest threats since the Alien and Sedition Acts of 1798,” Alan Dershowitz writes in his latest book, making the case that the threat to free speech today is coming from the political Left, particularly from academia and Big Tech companies such as Google, Facebook, and Twitter.

Dershowitz has long been a noted civil libertarian, and was the youngest full professor in the history of Harvard Law School. Despite his history as a Democrat, his strong defense of free speech in the face of a rising tide of “progressive” opposition to the free-speech principle enshrined in the First Amendment has placed him in the crosshairs of contemporary Democrats, in and out of government.

What seems to have gotten Dershowitz in trouble with the Left is not his opposition to censorship *per se* — after all, he handled cases involving the Pentagon Papers and the Chicago Seven — but his consistency: He fervently champions freedom of speech for those on both sides of the political spectrum, not just for those on the Left.

In his new book, Dershowitz expresses special concern for the future of free speech in this country, as many of those who would censor free expression of certain political viewpoints are young — meaning our future leaders see nothing wrong with suppressing speech with which they do not agree.

Dershowitz is particularly worried about the growing trend of censorship in the private sector, saying that this form of censorship “is more damaging because for the most part it is not prohibited by the First Amendment,” which only directly restricts the government. For much of American history, it was



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assumed that people should be able to have differing opinions on social and political issues without fearing for their jobs. Dershowitz notes how the American Left, for example, defended communists in the motion-picture industry when writers, directors, actors, and others were “blacklisted,” i.e., denied employment because of their unpopular political views. Leftists now claim, however, that private-sector employers should have the right to fire or censor people who happen to hold conservative viewpoints or support Donald Trump.

Not only were there cheers on the Left when Trump was banned from social-media platforms such as Facebook and Twitter, but the Left has even tried to get cable television companies to drop Fox News from their basic cable TV packages.

Dershowitz also expresses concern about the suppression of free speech and opposing viewpoints at what are supposed to be the great protectors of freedom of thought: American universities. At the University of Chicago, for example, the English department insists that the only applicants that should be considered for instructor positions are those who have an interest in Black Studies, even arguing that the teaching of English has “encouraged colonization.”

While most Americans will claim they believe in freedom of speech “in the abstract,” Dershowitz notes, they often carve out exceptions when it conflicts with their other values. For example, Dershowitz calls out the hypocrisy of the American Civil Liberties Union. Instead of prioritizing free speech, this group now puts free speech second to the rest of the progressive agenda, including immigration, the environment, a woman’s right to choose abortion — and especially opposition to President Trump.

“The argument that the First Amendment simply does not apply to impeachment cases flies in the face of the text,” Dershowitz writes, “which prohibits ‘Congress’ from making any law abridging the freedom of speech.” Particularly obnoxious to Dershowitz were the efforts to keep anyone who participated in the Trump administration from having their philosophies published, or given an “imprimatur of respectability.” During the second impeachment of Trump, Trump’s lawyers were threatened with disbarment. This was unprecedented, as Americans have historically believed everyone is entitled to legal counsel — this concept is even enshrined in the Bill of Rights. Even the British Redcoats involved in the Boston Massacre were afforded due process of law and were defended by patriot lawyer John Adams.

Dershowitz also condemned the effort to invoke the 25th Amendment to remove President Trump from office, noting that its purpose was to remove a president who was physically or mentally incapacitated, not as a weapon by the party that controls the House of Representatives to punish a president of the other party. He also opposed the second impeachment effort (as he did the first), arguing that nothing President Trump did “comes within the criteria for impeachment and removal.”

Additionally, Dershowitz said the trial that the Senate conducted — after Trump left office — was blatantly unconstitutional. “Congress has no authority over any president once he leaves office,” he writes, calling it essentially a “bill of attainder,” forbidden by the Constitution. (A bill of attainder is an act of a legislative body, such as Congress, deciding a person’s guilt and assigning a punishment, essentially bypassing the judiciary).

Particularly refreshing is the fact that Dershowitz took the House managers to task for their tactic during the second impeachment trial of referring to the president of the United States as America’s “commander in chief.” Certainly, the president of the United States *is* the commander in chief of the



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armed forces of the United States, but he has no authority to issue orders to private citizens. But the House managers used the term “commander in chief” to argue that those who broke into the U.S. Capitol on January 6 were merely following what they thought were orders from their “commander in chief.” Sadly, far too many Americans who consider themselves conservatives, even professional commentators, will refer to the president as our commander in chief, outside of his domain of authority over the armed forces. It is even quite common to hear someone refer to the president as “running the country,” as if he were some sort of dictator.

In summary, Dershowitz defends the right of free speech, even if he disagrees with its content. “A false claim that the earth is flat is as constitutionally protected as conclusive evidence that the earth is round,” he says. Whether Trump’s claims that the election was stolen are true or false is irrelevant to Dershowitz, insofar as the remarks are protected by the Constitution.

Dershowitz also defends the Second Amendment-protected right to keep and bear arms and takes particular issue with “red-flag laws,” which permit governmental authorities to confiscate an individual’s firearms with little to no due process. He explains that red-flag laws set a “dangerous precedent” not only for the right to keep and bear arms, but also for other rights specifically protected by the Constitution.

Dershowitz makes many important points, all well-argued as usual. However, conservatives need to remember that Dershowitz is a liberal Democrat, and the book does contain content that many conservatives would not agree with. Perhaps the biggest problem with his book is that he makes several negative references to Senator Joe McCarthy. Although Dershowitz does not say it directly, a reader could infer from the book that McCarthy had something to do with the Hollywood Blacklist. The truth of the matter is that McCarthy’s principal concern was communist agents employed by the U.S. government. In 1950, when McCarthy first raised the issue of communists inside the U.S. government, the American Communist Party was a wholly owned subsidiary of the Soviet Union, ruled at the time by one of history’s greatest monsters, Joseph Stalin. American Communist Party members were loyal to a hostile foreign power, and their employment inside the U.S. government in sensitive positions enabled them to subvert the very government for which they were supposedly working. Unlike leftists involved in today’s censorship, McCarthy was on no crusade to get people fired from corporate positions in private industry or from academic posts in universities.

Despite these issues, Professor Dershowitz’ book is certainly worth reading, and heeding. Dershowitz cites Justice Learned Hand, who wrote *The Spirit of Liberty* in 1944. In that book, Justice Hand observed that the “spirit” of liberty “lies in the hearts of men and women,” and that when “it dies there, no constitution, no law, no court” can do much to save it. This spirit of liberty, Dershowitz argues, is no longer part of the philosophy of many young people on the Left.



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