

Alan Dershowitz offers twisted defense of his old op-ed arguing statutory rape is an 'outdated concept'

[Cody Fenwick](#)

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In 1997, Alan Dershowitz wrote an op-ed for the Los Angeles Times arguing that statutory rape is an “outdated concept” that should be re-examined, suggesting that the age of consent should be reduced to potentially as low as 14. Now, as he’s embroiled in the scandal over Jeffrey Epstein’s alleged sex trafficking ring, in which he is accused of having participated, [Dershowitz’s](#) sword came back to haunt him in a deeply troubling profile published Monday by the New Yorker.

But Dershowitz, who relishes rhetorical battles for their own sake, dug in his heels on the [op-ed’s argument](#) on Twitter, despite the allegations he’s facing. Former chief White House ethics lawyer [Richard Painter](#) picked up a screenshot of the op-ed posted by another user on Twitter, and Dershowitz apparently felt obliged to defend himself.

I stand by the constitutional (not moral) argument I offered in my controversial op-ed: if a 16 year old has the constitutional right to have an abortion without state or parental interference, how could she not have the constitutional right to engage in consensual sex? 1/ <https://twitter.com/RWPUSA/status/1155939457440219137> ...

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I challenge my readers to distinguish the cases, as a matter of constitutional law. I did not suggest that it is moral to have sex with a 16 year old, but rather that the issue presents a constitutional conundrum worthy of discussion. 2/

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Dershowitz's comments here are somewhat ambiguous. It's not clear if he's saying he stands by the constitutional argument he made but not the moral argument he made, or if he's trying to claim that he only made a constitutional argument. But to be clear, his op-ed clearly does try to make a moral case for abolishing many statutory rape laws:

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*This raises the fundamental question about the continuing legitimacy of statutory rape laws at a time when sex involving teenagers is so rampant and prosecution for statutory rap so selective. **It is obvious that there must be criminal sanctions against sex with very young children, but it is doubtful whether such sanctions should apply to teenagers above the age of puberty, since voluntary sex is so common in their age group. [emphasis mine]***

He later adds of the statutory age of consent:

It certainly should not be as high as 17 or 16.

In the most bizarre section, he wrote that because "puberty is apparently arriving earlier, particularly among some ethnic groups," that "the age of consent should be lowered" based on "the demographic criteria." It's not clear what he is saying here,

but it could be interpreted to suggest that there should be different ages of consent for different ethnicities, a truly mind-boggling proposal.

The quotes above should make clear that Dershowitz was making what he took to be a moral argument at the time. To be completely fair to him, he's not necessarily making the case that it's morally OK to have sex with young pubescent teenagers (though it certainly can be interpreted that way), but he is clearly suggesting that it is wrong to have laws against this kind of sex. If Dershowitz no longer believes that argument, he should state that clearly and explain why.

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It's particularly clear that he saw this as distinct from the constitutional argument because he begins the last paragraph of the op-ed with the sentence: "There may even be constitutional limitations on making the age of consent too high."

But oddly, the op-ed actually goes on to undermine the "constitutional" argument Dershowitz suggested in his tweet. He says the apparent disjunction between the right to have an abortion at 16 and the age of consent presents a "conundrum," but in 1997, he wrote clearly:

There are obvious differences between the right to choose whether to terminate an unwanted pregnancy and the right to have sex at all. The former requires a tragic choice between two difficult outcomes for a teenager, whereas the latter includes the preferred option—at least, for young teenagers—of abstinence.

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He concludes that Supreme Court precedent suggests that these two cases might seem "inconsistent," but his own op-ed provided a solid argument for thinking that, in fact, they are not. (Others have noted, too, that age of consent laws limit the legality of an adult having sex with the minor, not the minor's supposed right to have sex, so there are further reasons to doubt that a genuine constitutional "conundrum" exists.)

Of course, hanging over all of this are the allegations against Epstein and Dershowitz. Dershowitz forcefully denies any wrongdoing. But it hardly helps his case that he argued publicly that at least some of the laws that Epstein appears to have violated should not have been in place. And this is compounded by the fact that he is not being straightforward about the argument he offered in the op-ed, which remains bizarre and disturbing to this day.