

Arizona's 1864 Legislature Didn't Represent The People Then or Now

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Last week the Arizona State House once again ignored the will of the voters by refusing to repeal the “zombie” abortion law of 1864, part of Arizona’s first territorial legal code. On Tuesday, April 23, Arizona Attorney General asked the state Supreme Court to reconsider their April 8 ruling upholding the law. If they do not, the law will become effective June 8. It’s a law that does not represent Arizona, then or now.

Arizona in 1864 was a very different world. Reliable pregnancy and fetal tests, abortion pills, and for that matter anesthesia and surveillance-style government, did not yet exist. The law makes no exceptions for rape or incest, admittedly somewhat anachronistic ideas for 1864. The rape of Native and Hispanic women was normalized, marital rape did not yet exist as a legal concept, and the age of sexual consent for girls was ten years old. Until 1871, by law no non-whites could testify against whites in Arizona courtrooms, and, according to historian [Katrina Jagodinsky](#), “no Indigenous woman testified against a white defendant until 1913.” As a legislator, territorial militia Lt. Col. King Woolsey voted for the Howell Code. Among its laws was a system of Indian “apprenticeship” that amounted to slavery, and allowed Woolsey to legally keep as his consort a 10-year old Yaqui girl he had recently captured while killing 30 Apaches in what he himself called an [“extermination” plan](#). Lucía Martinez bore Woolsey three children by age 17. After Woolsey married a white woman, Martinez successfully went to court to reclaim the daughters Woolsey kept from her. Recently, journalists [Monica Hesse](#) and [Christine Fernando](#) have drawn attention to the pedophilic creep who ran the Arizona legislature in 1864 and the unsettled “Wild West” environment in which Arizona’s 1864 abortion law was created.

But the most outrageous aspect of reinstating this law is that it was created by a brand-new government that represented almost nobody. Arizona Territory, separated from New Mexico only months previous, was sparsely “settled” by Anglos (what inhabitants of the region called non-Hispanic whites). In 1864 maybe 600 Anglos (mostly men) and about 6000 Mexican-origin people lived in Arizona, although many of the latter were not counted by the census that year, conducted by a [“lawman and gunfighter”](#) they might have wanted to avoid. In 1864, the territory did not have a railroad, any public schools, or mail service. There were no female voters, since in 1864 women could not vote in Arizona, or anywhere else in the United States (the first place to give women the vote was Wyoming Territory in 1869). Prescott, Arizona, the first territorial capital, was located near a few fledgling gold-mining camps. The first legislature was a two-room log cabin that still smelled of pine pitch, with holes cut into the logs for windows and a dirt floor. The house assembly had 18 members; the senate only nine.

And what about women in the area? The 1864 territorial census found 40 women living in the Prescott area, 31 of whom were Mexican. More than half of them lived with men to whom they were not formally married; the census taker called them “mistresses,” but it’s unlikely that’s how they saw themselves. Of the handful of Anglo women in the region, Mary Sawyer was a cross-dresser, maybe what we would call transgender, dressing as a man, working mining claims, and drinking with men. Another, Mary DeCrow, had come to Arizona with her southern companion, “Negro Brown,” and soon left him for a Mexican American blacksmith, Cornelius Ramos. She later ran a small restaurant. The abortion views of these citizens are unrecorded and went unrepresented. But the census found only ten of the fifty women in central Arizona in 1864 were still there by 1870. This statistic almost certainly represents the facts of mining-camp transience, but I like to think some of these women voted with their feet because of the abortion law.

Arizona’s population was much larger if you *do* count American Indians, whose interests no one—Indian or White—intended for the new territorial government to represent. They numbered around 4,000, but were not counted in the official census of citizens. Historians such as [Pekka Hämäläinen](#), [Juliana Barr](#), [Karl Jacoby](#), [Steve Kantrowitz](#), [Susan L. Johnson](#), [Megan Kate Nelson](#), and [Maurice Crandall](#) have shown us it is a fiction to say places like Arizona Territory—where Indigenous people lived autonomously—were under the control of the United States government.

None of the various Apache tribal groups, who now play an important role in state politics, had yet laid down arms to federal troops. Most Navajo, or Diné, the largest Native nation in both Arizona and the United States, were not even living in Arizona when the abortion law was passed. The Diné were interned outside the Arizona Territory after Kit Carson’s men waged a hard war against them. The so-called [Long Walk](#) that followed was their forced removal to New Mexico. Women suffered in the sadly usual ways: One white man recalled, “These soldiers do not have any regard for the women folks. They took unto themselves for wives somebody else’s wife,” sometimes killing the husbands who resisted. By late 1864, 8570 Diné people were languishing at the [Bosque Redondo](#) reservation in eastern New Mexico, far from their homeland. One in four had died by 1868. In that year, however, Diné men *and women*, who perceive pregnancy as a [deeply private matter](#), negotiated with federal commissioners to return to their homeland, where they have been ever since. Women’s votes, we might say, mattered. Native peoples did not secure the right to US citizenship until 1924, and in Arizona, many fought for suffrage long after that, even using the Voting Rights Act of 1965. Yet they had [their own governance traditions](#).

All of this is to say that the 1864 territorial government comprised of 24 elected men and a governor appointed by the president did not even begin to represent Arizona’s diverse residents. Of the 24 legislators, three, all prominent ranchers, were of Mexican extraction, one in the House and two on the Senate “Council.” Only 250 paperback

copies of the Howell Code were printed; none were in Spanish. After passing the Howell Code, that first legislature spent much of the rest of their time debating how to create citizen militias to fight the Apaches.

In other words, these men were not really in charge, and don't represent actual Arizonans then or now. Their "governance" of Arizona was little more than a fiction, and it is ridiculous to enforce this law today. The 160-year-old law does not represent the views of the majority of Arizonans, and probably never did. Barry Goldwater's daughter had an abortion in 1956; his wife Peggy won Planned Parenthood's national Margaret Sanger Award in 1967 for her decades of reproductive-rights activism. Even Kari Lake opposes the law. A recent poll (Indivisible/Data for Progress) found 60 percent of Arizona voters identified as "pro-choice," as are the state's Democratic governor Katie Hobbs and attorney general Kris Mayes. Mayes happens to be from Prescott, the former capital, and is the first mother to serve as Arizona's attorney general. She is a former Republican, an Arizonan, and is pro-choice. She [has made it clear](#) that she will not enforce the law those benighted men passed in her hometown 160 years ago. Finally, someone is standing up for the actual views of the majority of the people of Arizonans.

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