

Learning how to advocate for community language rights: zhishibéniyêk (Citizen Potawatomi Nation)

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The goals of this talk are:

- First, I aim to show what language rights a Citizen Potawatomi has.
- Second, I outline a few steps I am taking to advocate for protecting the use and preservation of the Potawatomi language via a legislative amendment on the language.

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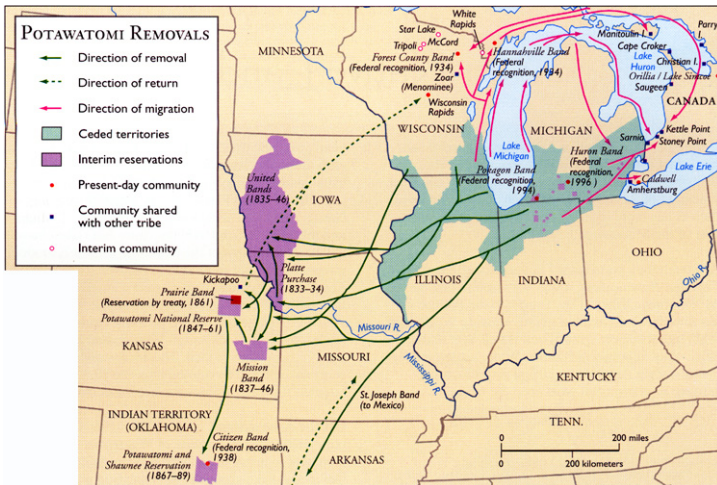
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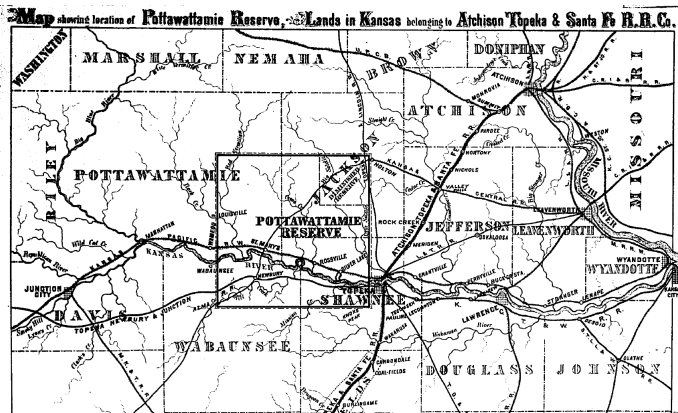
Who are the Citizen Potawatomi?

Removal



Source: www.geo.msu.edu/geogmich/potawatomi.html
<accessed 20-3-2018>

Kansas Phase



Map III. Potawotmi Reservation on the Kaw River. Map prepared to aid in sales promotion of railway company lands, after 1867 treaty. Disposition of reservation among four counties is clearly shown, also the Diminished Reservation of the Prairie Band, 1861 treaty. Courtesy of the Kansas State Historical Society.

Source: in (Murphy, 1961, p.350) from Kansas State Historical Society

- The following excerpts from Shwahgwee's speech to Commissioner Dole is informative:¹

"But then the laws will protect you," said Mr. Dole.

"Ah, the law protect me!" answered Shwahgwee; ["]the law protects him, that understands it; but to the poor and ignorant like the Indians it is not a shield of protection; on the contrary it is a cloak to cover the lawgiver's malice."

¹Gaillard (1877)

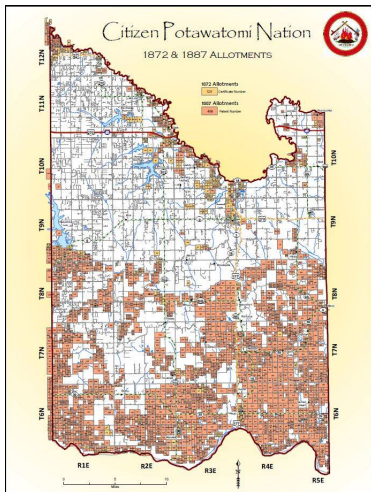
- 1861 united reservation and the Potawatomi are split into two:²
 - Citizen Band (who took US citizenship and were allotted land in KS)
 - Prairie Band
- 1867 KS and US courts ruled these allotted lands were fee-simple.³
 - So many European settlers and railroads bought up the allotments.
- 1867 the Citizen Band took advantage of a clause in the 1861 treaty.⁴
- 1872 and 1887 Citizen Potawatomi are allotted lands in Oklahoma.⁵

²Mosteller (2015)

³(Cash, 1976, 54)

⁴(Kappler, 1903, II, 827-8)

⁵CPN Public Information Office (2014)



Source: Citizen Potawatomi Nation (CPN Public Information Office, 2014)
<accessed 21-3-2018>

- Oklahoma mission and boarding schools⁶
 - 1877-1901 St. Benedict's Industrial School for boys
 - 1880-1945 St. Mary's Academy for girls
 - 1884-1915 Sacred Heart College
 - 1915-2017 St. Gregory's Abbey, Prep, and University
- English was used in these schools:⁷

All instruction must be in English, except in so far as the native language of the pupils shall be a necessary medium for conveying the knowledge of English, and the conversation of and communications between pupils and with the teacher must be, as far as practicable, in English.

Secretary Schurz, 1880

⁶Cash (1976); Levier & Sulcer (1984) and (Murphy, 1987, 48-9)

⁷Prucha (1973)

- U.S. boarding school officially start in 1878 with Captain Pratt's Hampton Institute cohort, and continued on Carlisle Institute starts in 1879.⁸
- Sulcer (1984) show that all interviewees did not speak the Potawatomi language. Some of their (grand)parents did speak.⁹

⁸Prucha (1973)

⁹This archival record should be checked for other interviewees

- The quote from Bill Battese (Prairie Band Potawatomi) is illustrative:¹⁰

*I can recall, I believe it was after World War II, I went up to a **Tribal Council meeting of the Prairie Band and our Council House was just to the west of Mayetta, Kansas. I think that our chairman at that time was a lady Potawatomi whose name was Mini Evans and when she got up to speak she spoke in Potawatomi. At that time, there was enough of the younger group that had grown up but did not understand Potawatomi that they booed her down and asked her to talk in English. I think this might have been one of the last times the Indian language was used at the Council because so many of the younger ones couldn't speak Potawatomi. [emphasis mine]***

¹⁰Sulcer (1984)

- The last fluent speaker who was Citizen Potawatomi was Walter Cooper. Walter lived in Kansas.¹¹

¹¹The Topeka Capital-Journal (2003)

Current Language Rights

What federal, state, and tribal language rights do Citizen Potawatomi have to the preservation, protection, and promotion of the Potawatomi language?

U.S. Constitution has offered a few rights to minority languages.

- Most minority language rights cases are founded on the fourteenth amendment's equal protection clause:
 - ex *Meyer v. Nebraska*
- Some are founded on the Civil Right Act of 1964.
 - ex *Lau v. Nichols*
- Few cases have been decided based on the U.S. Bill of Rights.¹²

¹²Piatt (1984)

Two important things to note:

- The U.S. Bill of Rights were extended to Native American's through the Indian Civil Rights Act. This year is the 50th anniversary.
- *Santa Clara Pueblo v. Martinez* has shown that the 14th amendment does not apply to native nations.

So many minority language rights would not extend to natives, but tribal law is horizontal to U.S. law¹³

¹³Riley (2017)

The Native American Languages Act of 1990, P.L. 101-447¹⁴

- States the history/present U.S. policy.
- Says a lot about education.
- Provides some funds: this is where the ANA language grants came from.

¹⁴<https://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg1152.pdf>
See Warhol (2012) for a history of this act.

Native American language act in 2001¹⁵

- Senate Concurrent Resolution No. 37
 - encourages teaching Native American languages.
 - encourages education administrators to do so.
 - tells Superintendent of Public Instruction to be vigilant at this.
- Oklahoma Administrative Code, Section 210:15-5-151, Overview
 - recognizes Native American languages (and other languages) as core curriculum and requires all districts to teach at least one language other than English.
 - language is communication and can be oral or written.

¹⁵McCoy (2003)

HJR 1042 §1, State Question 751, Ref. No. 351, adopted at election held November 2, 2010.

Article 30 Section 1 - Official actions of State - English language

*As English is the common and unifying language of the State of Oklahoma, all official actions of the state shall be conducted in the English language, except as required by federal law. No person shall have a cause of action against an agency or political subdivision of this state for failure to provide any official government actions in any language other than English. **Nothing in this Article shall be construed to diminish or impair the use, study, development, or encouragement of any Native American language in any context or for any purpose.** The Legislature shall have the power to implement, enforce and determine the proper application of this Article by appropriate legislation. [Emphasis mine]*

The Citizen Potawatomi Nation first wrote its Constitution in 1938, then amended it in 1985 and 2007.¹⁶

- The 1938 Constitution and its amendments are in English.
- It says nothing about the Potawatomi language.

I am working to figure out if the Department of Interior said we had to use English for our constitution following The Indian Reorganization Act and Oklahoma Indian Welfare Act of 1936.

¹⁶<http://www.potawatomi.org/government/constitution/>

Citizen Potawatomi Nation Language Rights

From: **Justin Neely** JNeely@POTAWATOMI.ORG
Subject: Re: Language Question
Date: March 14, 2018 at 12:45 PM
To: **Robert Lewis** robertlewis@uchicago.edu



Bozho Robert

I spoke with someone who works in Administration. She didn't recall seeing any legislation stating that Potawatomi was the official language.

Migwetth
Justin

CPN members have a few opportunities to access Potawatomi language archival materials both in-house and at a number of museums.

- The tribe's cultural heritage center has a number of documents which can be viewed: including Joseph Bourassa's dictionary, Robert Simmerwell's dictionary, and Maurance Gailland's hymnal and prayer book.
- Christian Hoecken and Maurance Gailland's reference grammars can be found at the California Language Archive (CLA) in Berkeley, CA and at the Jesuit Archive in St. Louis. Linguist Charles Hockett's fieldnotes can also be found at the CLA.

Summary:

The results of my study show that

- there are some federal and state rights to the preservation, protection, and promotion of the Potawatomi language, but
- these rights are not afforded by my tribe.

Advocating for Community Language Rights

What can we as Citizen Potawatomi do to protect our community's rights to the Potawatomi language?

- The use of the Potawatomi language needed protection. It was not protected and therefore it ceased to be spoken among Citizen Potawatomi. If we do not protect a space for the Potawatomi language to be revitalized, it will remain silent.
- I will now:
 - Look at language rights in other Oklahoma tribes, and
 - Provide a draft of a constitutional amendment for the Citizen Potawatomi Nation on preserving, protecting, and promoting the Potawatomi language.

Oklahoma Languages

To make this search quick, I looked through the tribal constitutions for the keywords "language", "official" or the name of the tribe since tribal names are often synonymous with tribal languages.¹⁷

- Absentee-Shawnee Tribe of Indians
- Alabama-Quassarte Tribal Town
- Apache Tribe of Oklahoma
- Caddo Nation of Oklahoma
- **Cherokee Nation**
- Cheyenne and Arapaho Tribes
- Citizen Potawatomi Nation
- Comanche Nation
- Delaware Nation
- Delaware Tribe of Indians
- Eastern Shawnee Tribe of Oklahoma
- Fort Sill Apache Tribe of Oklahoma
- Iowa Tribe of Oklahoma
- Kaw Nation
- Kialegee Tribal Town
- Kickapoo Tribe of Oklahoma
- Kiowa Indian Tribe of Oklahoma
- Miami Tribe of Oklahoma
- Modoc Tribe of Oklahoma
- **Muscogee (Creek) Nation**
- **Osage Tribe**

¹⁷underline=I could not find the tribes constitution; bold=The tribes constitution says something about their language.

- Ottawa Tribe of Oklahoma
- Otoe-Missouria Tribe of Indians
- Pawnee Nation of Oklahoma
- Peoria Tribe of Indians of Oklahoma
- Ponca Tribe of Indians of Oklahoma
- Quapaw Tribe of Indians
- Sac and Fox Nation
- Seminole Nation of Oklahoma
- Seneca-Cayuga Tribe of Oklahoma
- Shawnee Tribe
- The Chickasaw Nation
- **The Choctaw Nation of Oklahoma**
- Thlopthlocco Tribal Town
- Tonkawa Tribe of Indians of Oklahoma
- United Keetoowah Band of Cherokee Indians in Oklahoma
- Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie)
- Wyandotte Nation

1839, 1976, 2003 Cherokee Constitution:¹⁸

Article XVIII. Adoption

*This Constitution shall become effective when ratified by the registered voters of the Cherokee Nation. It shall be engrossed on parchment and signed by the Principal Chief and the President of the United States, or his authorized representative. It shall be filed in the office of the Cherokee Nation and sacredly preserved as the fundamental law of the Cherokee Nation. **The Constitution shall be printed in both Cherokee and English, provided however, that the English version shall be controlling for all governmental and legal purposes. The Council shall enact laws in conformance with this Constitution within eighteen (18) months of its ratification, provided that the provisions for Article XI shall be enacted within six (6) months of its ratification.** [emphasis mine]*

¹⁸<http://www.cherokee.org/Portals>

Legislative Act 10-91:¹⁹

Section II. Establishment of the Official Language.

The Cherokee Nation does hereby officially establish both Cherokee and English as official languages for the tribe. The encouraged use of these languages is as follows:

A. Tribal Government. Any tribal member may speak in Cherokee or English in communicating with tribal government with regard to any programs or services provided. Any tribal member may use either Cherokee or English languages to communicate with the tribal council in any officially called meeting of the council on any occasion on which said person may be recognized to speak.

B. Translation Services. In any situation in which translation into English is deemed necessary or appropriate for persons using Cherokee language as defined in "A" above, translation services may be provided.

¹⁹<https://cherokee.legistar.com/>

Their 1892, 1979 Constitution²⁰ says nothing about language, but their Laws do:²¹

NATIONAL INTERPRETER.

SEC. 36. The National Interpreter shall be elected by the National Council at the regular session next succeeding the general national elections, and shall be installed in the same manner and by the same officer as other national officers, on the fifth of December next following ; and shall not be competent to perform the duties of his office until he is thus installed.

²⁰<http://www.creeksupremecourt.com/mcn-constitution/>


²¹<https://www.loc.gov/law/help/american-indian-consts/PDF/39020530.pdf>

The Constitution of the Osage Nation, 2006:²²

Article XVI, OSAGE CULTURE AND LANGUAGE

Section 1. *Preservation of Linguistic and Cultural Lifeways: The Osage People have the inherent right to preserve and foster their historic linguistic and cultural lifeways.*

The Osage Nation shall protect and promote the language, culture and traditional ways of the Osage People.

²²<https://www.osagenation-nsn.gov/sites/default/files/library> 

1888 Constitution of the Choctaw Nation.²³

Executive Department, Section III National Secretary, 4
It shall be the duty of the national secretary, as soon as
practicable after each session of the general council, to have
enough copies of all the acts, resolutions, treasurer and
auditor's report of each session thereof respectively printed
and published in substantial pamphlet form, on good
paper, in both Choctaw and English, to furnish and send one
copy of each language to every officer of the Choctaw
government, and reserve for the nation one dozen copies of each
besides, to be deposited in the archives of said nation to meet
future contingencies, and then if any surplus copies be left, ...
[emphasis mine]

²³<https://www.loc.gov/law/help/american-indian-consts/PDF/22025915.pdf>
and (Haag & Willis, 2001, xii)

Summary of Tribal Language Rights

Intermediate Summary:

- English still plays a prominent role.
- Translations or translators (Cherokee, Muskogee, Choctaw).
- Protection and promotion of their respective languages and cultures (Cherokee, Osage).

Is it possible to provide any of these rights to tribal members when no (or few) Citizen Potawatomi speak the Potawatomi language?

A draft of a legislative amendment

Yes!

Guidelines for drafting an amendment to the CPN Constitution:

- Be transparent.
 - We want to address the problem of Potawatomi not being a publicly usable language (i.e. This gives Potawatomi a reason to learn their hereditary language).
- What can we do to promote and protect the Potawatomi language?
 - state what our nation's policy will be for the Potawatomi language.
 - extend an official status to the Potawatomi language (the implications of this can be defined clearly and funds can be appropriated).
 - mandate department heads evaluate how their policies fit with this amendment.

A draft of a legislative amendment

Section 1. Title

This title should be cited as the “Potawatomi Language and Cultural Preservation Act”.

A draft of a legislative amendment

Section 2. Purpose and Policy

The Citizen Potawatomi Nation Legislature finds that

- A) the Potawatomi culture and language is unique to the Citizen Potawatomi Nation and the Citizen Potawatomi Nation has the responsibility to act together with tribal members to ensure the survival of this culture and language; and
- B) language is the means of communication for the full range of human experiences and is critical to the survival of the cultural and political integrity of the Citizen Potawatomi Nation; and
- C) it is the policy of the Citizen Potawatomi Nation to preserve, protect, and promote the rights and freedom of tribal member to use, practice, and develop the Potawatomi language.

A draft of a legislative amendment

Section 3. Establishment of official languages

The Citizen Potawatomi Nation does hereby establish Potawatomi and English as the official languages of the nation.

- A) Any tribal member may speak in either Potawatomi or English languages in communicating with tribal government with regard to any programs or services provided. Any tribal member may use either Potawatomi or English languages to communicate with the tribal council in any officially called meeting of the council on any occasion on which said person may be recognized to speak.
- B) In any situation in which translation into English is deemed necessary or appropriate for persons using Potawatomi language as defined in "A" above, translation services may be provided.

A draft of a legislative amendment

Section 4. Report

The chairman shall direct the heads of various departments, agencies, and instrumentalities to –

- A) evaluate their policies and procedures in order to determine and implement changes needed to bring the policies and procedures into compliance with provisions of this title.

The chairman shall also provide a report to the legislature on the findings of these departments, agencies, and instrumentalities no later than (6) months after the passage of this title.

CPN Constitution, Article 19 Amendments

Amendments of this Constitution may be proposed by a unanimous vote of the Legislature or by a petition signed by thirty percent (30%) of the members of the Tribal Council, shall be submitted to a referendum vote of the members of the Tribe, and shall be effective if ratified by a 2/3 majority vote of those registering and voting in an election called for that purpose under the supervision of the Election Committee.

- igwiyen -

References I

- Cash, Joseph H. 1976. *The Potawatomi People (Citizen Band)*. Phoenix: Indian Tribal Series.
- CPN Public Information Office. 2014. What is "Indian Land?". Online.
- Gaillard, Maurice. 1877. Pottowattomy indians: The mission of our fathers among them from 1846 to the present time. *Woodstock Letters* VI(I).
- Haag, Marcia & Henry Willis. 2001. *Choctaw language and culture: Chahta anumpa*. University of Oklahoma Press.
- Kappler, Charles J. 1903. *Indian affairs, laws and treaties*, vol. 2 vols. Washington.
- Levier, Dr. Francis & Patricia Sulcer (eds.). 1984. "*grandfather, tell me a story*": *An oral history project*. The Citizen Band Potawatomi Tribe of Oklahoma.

References II

- McCoy, Melody L. 2003. The Native American Rights Fund Indian Education Legal Support Project "Tribalizing Indian Education": A Compilation of Federal and State Education Laws regarding Native Language in Curriculum and Certification of Teachers of Native Languages. Native American Rights Fund.
- Mosteller, Kelli. 2015. Potawatomi Allotment in Kansas. In Zoë Laidlaw & Alan Lester (eds.), *Indigenous communities and settler colonialism: Land holding, loss and survival in an interconnected world*, Palgrave macmillan.
- Murphy, Joseph Francis. 1961. *Potawatomi Indians of the West: Origins of the Citizen Band*: University of Oklahoma dissertation.
- Murphy, Rev. Joseph. 1987. *The Benedictine Foundations of Sacred Heart Mission and St. Gregory's Abbey and College*. Citizen Band Potawatomi Tribe.
- Piatt, Bill. 1984. Linguistic diversity on the airwaves: Spanish language broadcasting and the f.c.c. *La Raza Law Journal* 2. 101.

- Prucha, Francis Paul (ed.). 1973. *Americanizing the American Indians: Writings by the "Friends of the Indian" 1880-1900*. Harvard University Press.
- Riley, Angela R. 2017. Native Nations and the Constitution: An Inquiry into "Extra-Constitutionality". *Harvard Law Review Forum* 130(6). 173–199.
- Sulcer, Patricia. 1984. *Grandfather, tell me a story*. The Citizen Band Potawatomi Tribe.
- The Topeka Capital-Journal. 2003. Walter E. "Pahso" Cooper Obituary. Online.
- Warhol, Larisa. 2012. Creating official language policy from local practice: the example of the Native American Languages Act 1990/1992. *Language Policy* 11(3). 235–252.