

## **Sundown Towns**

Sundown towns, despite becoming a frequent topic in some circles of the social media site TikTok, [1] remain an “obscure part of American history.” [2] Sundown towns are towns in which racial minority groups are or were excluded from living, either in totality or in near totality. [3] Essentially, the towns are or were “‘all-white’ on purpose.” [4] Despite their general obscurity, sundown towns had and continue to have far-reaching and long-standing impacts.

Beginning in the 1800s, sundown towns formed as a response to growing Chinese immigration in western America. [5] Because these immigrants created competition for white, American workers, state and local governments used “legal and extra-legal methods usually characterized by violence” to drive Chinese immigrants out of small towns and suburban communities into cities. [6] In many instances, armed whites shot these immigrants, forced them from their homes, or burned their belongings. [7]

Over time, African Americans were also targeted by sundown towns, often in the Midwest as opposed to the initial targeting of the Chinese in the Northwest. [8] This extension of the sundown town phenomenon has origins coinciding with the end of slavery and reconstruction, beginning at the end of the twentieth century and continuing “as late as” 1940. [9]

It is no accident that the rise of sundown towns peaked during these periods of racial dispersion. Indeed, sundown towns “are most likely to be places that started out with small minority populations,” given the coordination and monitoring required to expel minority residents. [10] Equally as intentional were the sophisticated methods used to keep sundown towns all-white. Using “their police power to regulate property, zoning, and land use,” many towns began explicitly forbidding racial minorities from “residing within their limits.” [11] If a racial minority could enter the town at all, local signage made it clear that they had to leave before sundown. [12] This prejudiced idiosyncrasy is where the phenomenon gets its name.

It is important to note that many sundown towns grew out of a culture of fear. Take, for example, a race riot in Corbin, Kentucky in 1919. After two black men stabbed and robbed a white man, an armed mob of white residents went door-to-door rounding up every Black resident in the town. [13]

Hundreds of Black residents were then marched onto railcars and shipped south to Knoxville, Tennessee. [14] Although, today, the town of Corbin is still labeled a probable sundown town by Tougaloo College's History and Social Justice project, [15] many Corbin residents either do not know of the town's racist past or have been told various stories of less severity.[16] Despite this white-washing, Corbin's reputation as a sundown town lives on. [17] In fact, at the 2020 census, African Americans composed only 0.56% of Corbin's population. [18]

Unfortunately, Corbin's history as a sundown town is one example of many that have been largely forgotten by the public. This pattern of fear, expulsion, and violence became a hallmark of many towns across America, and the effects of these events continue to bleed into the present. [19] For example, the legacy of sundown towns and the continued segregation within them lead the contemporary residents of such towns to believe that such racial division is "natural." [20] In turn, "negative perceptions of" Black people and an insistence on maintaining an all-white population may be supported in these towns. [21]

More broadly, evidence suggests historical sundown towns may continue to contribute to "large-scale segregation." [22] Although the exact cause is unclear, in counties neighboring those with "historical sundown town[s]," there is greater than average Black-white poverty inequality "driven by...higher [B]lack poverty and lower white poverty." [23]

Despite the disturbing history of sundown towns and their lingering effects, the legal and academic history of sundown towns is sparse, if not virtually nonexistent, a disturbing fact given the evidence suggesting the history of sundown towns continues to shape modern attitudes and socio-cultural phenomena. Indeed, in most every case which explicitly mentions sundown towns, courts have held that the alleged discrimination does not rise to the level necessary for legal recourse. [24]

But some notable exceptions exist. In Louisiana, a town's history as a sundown town was used to underscore the difficulty of tackling de jure segregation, [25] and in California, an area's history involving sundown towns weighed heavily in favor of plaintiffs challenging redistricting under Section 2 of the Voting Rights Act. [26] What's more, there are many instances of courts striking down the mechanisms employed by sundown towns without explicitly using the term "sundown town." [27]

Despite the piecemeal adjudication of sundown towns, it was not until the Fair Housing Act of 1968 ("FHA") was passed that "states and localities were forced to rein in the use of their police powers" related to exclusion from the housing market. [28] This is because the FHA prohibits, among other things, "public and private discrimination in the housing market on the basis of race, color, [and] national origin[.]" [29] "The damage," however, as the Black-white inequality data suggests, [30] "had been done." [31] Segregation remains "a persisting socio-cultural effect." [32] Worse still, current federal inaction and the omission of sundown town history from public perception, is perhaps "increasing the possibility that the sundown town concept" will expand to include "all Latino immigrants." [33]

Thus, if we wish to move forward, it seems we must reconcile with the past.

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[1] Noel Cymone Walker, Black TikTok Warns Travelers About Current-Day Sundown Towns, Yahoo News (July 6, 2022), [https://www.yahoo.com/news/black-tiktok-warns-travelers-current-194712806.html?fr=sycsrp\\_catchall](https://www.yahoo.com/news/black-tiktok-warns-travelers-current-194712806.html?fr=sycsrp_catchall).

[2] Maria Marulanda, Note, Preemption, Patchwork Immigration Laws, and the Potential for Brown Sundown Towns, 79 Fordham L. Rev. 321, 325 (2010); see also Heather A. O'Connell, Historical Shadows: The Links Between Sundown Towns and Contemporary Black-White Inequality, 5(3) Socio. Race and Ethnicity 311, 314 (2019) ("One of the most pernicious consequences of sundown towns stems from the invisibility of [their] history[.]").

[3] Marulanda, *supra* note 2, at 325.

[4] *Id.* (quoting James W. Loewen, Sundown Towns: A Hidden Dimension of American Racism, 310-311 (2006)) (emphasis added).

[5] *Id.* at 326.

[6] *Id.*

[7] *Id.*

[8] O'Connell, *supra* note 2, at 313.

[9] *Id.*

[10] *Id.* at 313-14.

[11] Marulanda, *supra* note 2, at 326-28.

[12] *Id.*

[13] Kristy Owens Griggs, The Removal of Blacks from Corbin in 1919: Memory, Perspective, and the Legacy of Racism, 100(3) Reg. Ky. Hist. Soc'y 293, 293 (2002).

[14] *Id.*

[15] Corbin, Kentucky, History and Social Justice, <https://justice.tougaloo.edu/sundowntown/corbin-ky/> (last visited Sep. 22, 2024).

[16] Center for Investigative Reporting, Kentucky Town Re-Examines its Racial History, NPR (Mar. 10, 2007, 11:16 AM), <https://www.npr.org/2007/03/10/7772527/kentucky-town-re-examines-its-racial-history>.

[17] *Id.* ("Williard McBurney recalled...a conference...speaker, a black man from Chicago, [saying] publicly that he would not travel to Corbin for business.").

[18] United States Census Bureau, <https://data.census.gov/table/DECENNIALPL2020.P1?q=corbin,%20ky&t=Black%20or%20African%20American> (last visited Sep. 22, 2024).

[19] See Marulanda, *supra* note 2, at 328; see also O'Connell, *supra* note 2, at 314.

[20] O'Connell, *supra* note 2, at 314.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 322-23.

[24] See *Brown v. City of Crescent City*, 2021 U.S. Dist. LEXIS 216778, 22 (N.D. Cal., Nov. 9, 2021) (a plaintiff describing law enforcement practices in a mostly white community as “sundown town” practices was denied legal recourse because she failed to “provide[] sufficient evidence of a longstanding practice or custom of racial profiling”); see *Polk v. Tex. Off. of Consumer Credit Comm’r*, 2024 Tex. App. LEXIS 6819, 76 (Tex. App., Sep. 17, 2024) (calling a management practice of sending Black employees to sundown towns “petty harassment”); see *Cunningham v. Panola Ctny.*, 2011 U.S. Dist. LEXIS 57850, 28-29 (E.D. Tex., May 8, 2011) (holding that knowledge of sundown towns in an area where alleged racial profiling by police occurred is irrelevant to an Equal Protection claim).

[25] *Thomas v. Sch. Bd. St. Martin Par.*, 2023 U.S. Dist. LEXIS 133641, 27 (W.D. La., July 31, 2023).

[26] *Luna v. Cnty. of Kern*, 291 F.Supp.3d 1088, 1135 (E.D. Cal., Feb. 23, 2018).

[27] See, e.g., *Buchanan v. Warley*, 245 U.S. 60 (1917) (striking down a city ordinance preventing the alienation of property to a person of color); *Parine v. Levine*, 274 F.Supp. 268 (E.D. Mich., Oct. 16, 1967) (denying a motion to dismiss plaintiff’s civil rights claim that their property rights had been negatively impacted when defendants refused to approve the transfer of liquor licenses due to the plaintiff’s skin color); *Simkins v. Greensboro*, 149 F.Supp. 562 (M.D. N.C., Mar. 20, 1957) (holding that a city and education board cannot exclude individuals from a golf course on the basis of race); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (holding unconstitutional separate educational facilities on the basis of race).

[28] *Marulanda*, supra note 2, at 327-28.

[29] *Id.*

[30] *O’Connell*, supra note 2, at 322.

[31] *Marulanda*, supra note 2, at 328.

[32] *Id.*

[33] *Id.*