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**UPDATED CORE DOCUMENT FORMING PART OF THE  
REPORTS OF THE UNITED STATES OF AMERICA**

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## I. LAND AND PEOPLE

### A. Population

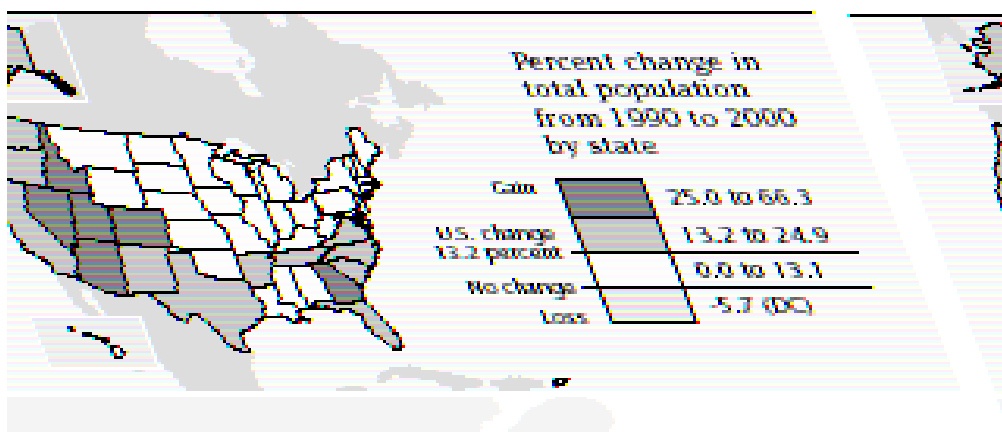
1. When the most recent national census was completed in 2000, the population of the United States of America had reached 281.4 million, a 13.2 percent increase from the 1990 census population of 248.7 million. The Census Bureau estimates the current population to be 293,655,404 (July 1, 2004), which represents a growth of 12,233,498 since the April 1, 2000 Census. This growth corresponds to a 4.3 percent increase in the size of the U.S. population. By the year 2010, the United States population is expected to be 308,935,581. Population growth varied significantly by region in the 1990's, with higher rates in the West and South and much lower rates in the Midwest and Northeast.

#### U.S. Population Change for Regions, States, and Puerto Rico: 1990 to 2000

(For information on confidentiality protection, nonsampling error, and definitions, see [www.census.gov/prod/cen2000/doc/p194-171.pdf](http://www.census.gov/prod/cen2000/doc/p194-171.pdf))

Area	Population		Change, 1990 to 2000	
	April 1, 1990	April 1, 2000	Number	Percent
<b>United States</b> .....	<b>248,709,873</b>	<b>281,421,906</b>	<b>32,712,033</b>	<b>13.2</b>
<b>Region</b>				
Northeast .....	50,809,229	53,594,378	2,785,149	5.5
Midwest .....	59,668,632	64,392,776	4,724,144	7.9
South .....	85,445,930	100,236,820	14,790,890	17.3
West .....	52,786,082	63,197,932	10,411,850	19.7
<b>State</b>				
Alabama .....	4,040,587	4,447,100	406,513	10.1
Alaska .....	550,043	626,932	76,889	14.0
Arizona .....	3,665,228	5,130,632	1,465,404	40.0
Arkansas .....	2,350,725	2,673,400	322,675	13.7
California .....	29,760,021	33,871,648	4,111,627	13.8
Colorado .....	3,294,394	4,301,261	1,006,867	30.6
Connecticut .....	3,287,116	3,405,565	118,449	3.6
Delaware .....	666,168	783,600	117,432	17.6
District of Columbia .....	606,900	572,059	-34,841	-5.7
Florida .....	12,937,926	15,982,378	3,044,452	23.5
Georgia .....	6,478,216	8,186,453	1,708,237	26.4
Hawaii .....	1,108,229	1,211,537	103,308	9.3
Idaho .....	1,006,749	1,293,953	287,204	28.5
Illinois .....	11,430,602	12,419,293	988,691	8.6
Indiana .....	5,544,159	6,080,485	536,326	9.7
Iowa .....	2,776,755	2,926,324	149,569	5.4
Kansas .....	2,477,574	2,689,418	210,844	8.5
Kentucky .....	3,685,296	4,041,769	356,473	9.7
Louisiana .....	4,219,973	4,468,976	249,003	5.9
Maine .....	1,227,929	1,274,923	46,995	3.8
Maryland .....	4,781,468	5,296,486	515,018	10.8
Massachusetts .....	6,016,425	6,349,097	332,672	5.5
Michigan .....	9,295,297	9,938,444	643,147	6.9
Minnesota .....	4,375,099	4,919,479	544,380	12.4
Mississippi .....	2,573,216	2,844,658	271,442	10.5
Missouri .....	5,117,073	5,595,211	478,138	9.3
Montana .....	799,065	902,195	103,130	12.9
Nebraska .....	1,578,385	1,711,263	132,878	8.4
Nevada .....	1,201,833	1,998,257	796,424	66.3
New Hampshire .....	1,109,252	1,235,786	126,534	11.4
New Jersey .....	7,730,188	8,414,350	684,162	8.9
New Mexico .....	1,515,089	1,819,046	303,957	20.1
New York .....	17,990,455	18,976,457	986,002	5.5
North Carolina .....	6,628,637	8,049,313	1,420,676	21.4
North Dakota .....	638,800	642,200	3,400	0.5
Ohio .....	10,847,115	11,353,140	506,025	4.7
Oklahoma .....	3,145,585	3,450,654	305,069	9.7
Oregon .....	2,842,321	3,421,399	579,078	20.4
Pennsylvania .....	11,881,643	12,281,054	399,411	3.4
Rhode Island .....	1,003,464	1,048,319	44,855	4.5
South Carolina .....	3,486,703	4,012,012	525,309	15.1
South Dakota .....	696,004	754,844	58,840	8.5
Tennessee .....	4,877,185	5,689,283	812,098	16.7
Texas .....	16,986,510	20,851,820	3,865,310	22.8
Utah .....	1,722,850	2,233,169	510,319	29.6
Vermont .....	562,758	608,827	46,069	8.2
Virginia .....	6,187,358	7,078,515	891,157	14.4
Washington .....	4,866,692	5,894,121	1,027,429	21.1
West Virginia .....	1,793,477	1,808,344	14,867	0.8
Wisconsin .....	4,891,769	5,363,675	471,906	9.6
Wyoming .....	453,588	493,782	40,194	8.9
<b>Puerto Rico</b> .....	<b>3,522,037</b>	<b>3,808,610</b>	<b>286,573</b>	<b>8.1</b>

Source: U.S. Census Bureau, Census 2000; 1990 Census, *Population and Housing Unit Counts, United States* (1990 CPH-2-1).



2. State population growth for the 1990s ranged from a high of 66 percent in Nevada to a low of 0.5 percent in North Dakota. This decade was the only one in the 20th century in which all states gained population.

3. Females outnumber males, comprising 50.9 percent of the population. The median age of all people increased from 32.9 in 1990 to 35.3 in 2000, reflecting a change in age distribution toward the older ages within the age range 18 to 64 with 25.7 percent under the age of 18, 61.9 percent age 18 to 64, and 12.4 percent age 65 and over.

**Population by selected age groups for the United States and regions:  
1990 and 2000**

(For information on confidentiality protection, nonsampling error, and definitions, see [www.census.gov/prod/cen2000/doc/sf1.pdf](http://www.census.gov/prod/cen2000/doc/sf1.pdf))

Area	1990						2000					
	Total	Under 18		65 and over		Median age	Total	Under 18		65 and over		Median age
		Number	Per-cent	Number	Per-cent			Number	Per-cent	Number	Per-cent	
United States . . . . .	248,709,873	63,604,432	25.6	31,241,831	12.6	32.9	281,421,906	72,293,812	25.7	34,991,753	12.4	35.3
Region												
Northeast . . . . .	50,809,229	11,913,007	23.4	6,995,156	13.8	34.2	53,594,378	13,047,783	24.3	7,372,282	13.8	36.8
Midwest . . . . .	59,668,632	15,614,783	26.2	7,749,130	13.0	32.9	64,392,776	16,647,666	25.9	8,259,075	12.8	35.6
South . . . . .	85,445,930	22,008,378	25.8	10,724,182	12.6	32.7	100,236,820	25,566,903	25.5	12,438,267	12.4	35.3
West . . . . .	52,786,082	14,068,264	26.7	5,773,363	10.9	31.8	63,197,932	17,081,460	26.9	6,922,129	11.0	33.8

Source: U.S. Census Bureau, Census 2000 Summary File 1; 1990 Census of Population, General Population Characteristics, United States (1990 CP-1-1).

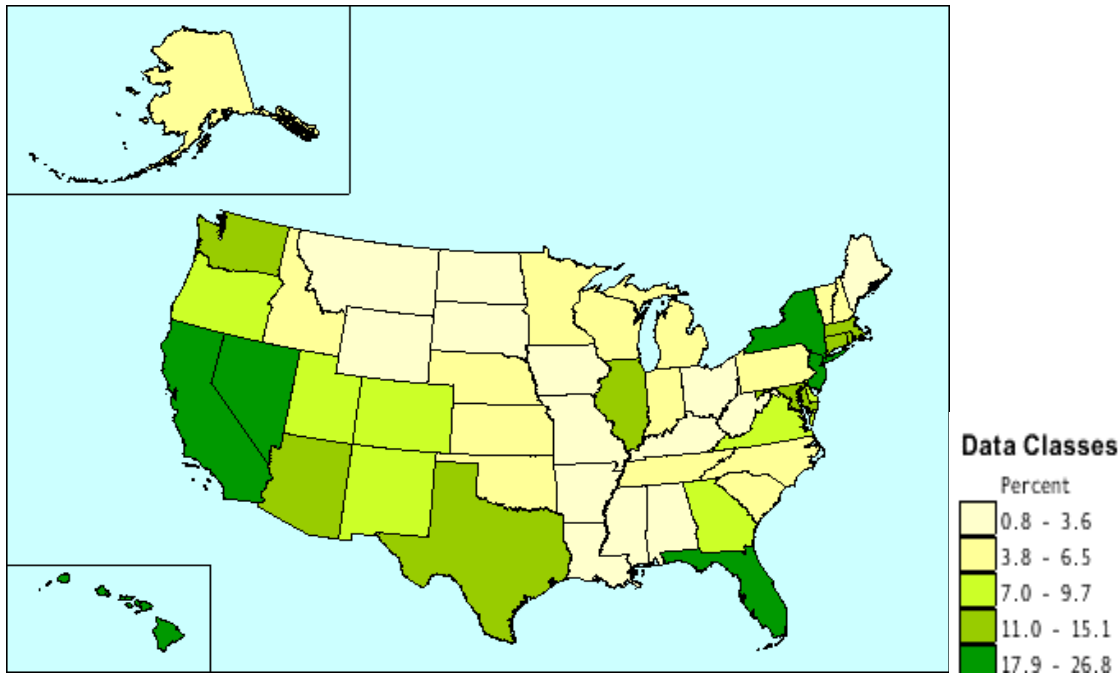
4. The United States is home to a wide variety of ethnic and racial groups; indeed, virtually every national, racial, ethnic, cultural and religious group in the world is represented in its population. According to Census 2000, 97.6 percent of all respondents (274,595,678) reported only one race. The largest group reported White alone, accounting for 75 percent of all people living in the United States. The Black or African American alone population represented 12 percent of the total. Just under 1 percent of all respondents indicated only American Indian and Alaska Native. Approximately 4 percent of all respondents indicated only Asian. The smallest race group was the Native Hawaiian and Other Pacific Islander alone population, representing 0.1 percent of the total population. The remainder of the “one race” respondents - 5.5 percent of all respondents - indicated only the “Some other race alone” category which consists predominately (97.0 percent) of people of Hispanic origin, and is not a standard Office of Management and Budget race category. 2.4 percent of all respondents reported two or more races.

**Population by Race and Hispanic Origin for the United States: 2000**

Race and Hispanic or Latino	Number	Percent of total population
<b>RACE</b>		
<b>Total population</b> .....	<b>281,421,906</b>	<b>100.0</b>
One race .....	274,595,678	97.6
White .....	211,460,626	75.1
Black or African American .....	34,658,190	12.3
American Indian and Alaska Native .....	2,475,956	0.9
Asian .....	10,242,998	3.6
Native Hawaiian and Other Pacific Islander .....	398,835	0.1
Some other race .....	15,359,073	5.5
Two or more races .....	6,826,228	2.4
<b>HISPANIC OR LATINO</b>		
<b>Total population</b> .....	<b>281,421,906</b>	<b>100.0</b>
Hispanic or Latino .....	35,305,818	12.5
Not Hispanic or Latino .....	246,116,088	87.5

Source: U.S. Census Bureau, Census 2000 Redistricting (Public Law 94-171) Summary File, Tables PL1 and PL2.

5. According to the American Community Survey (ACS), in 2004, the foreign-born population was estimated as 34.3 million (or 12.0 percent of the total U.S. household population). The foreign-born population is located throughout the United States. The following map shows the percent of the foreign-born population based on each state’s total population.

**Percent of the people who are foreign born: 2004**

*Source:* U.S. Census Bureau, 2004 American Community Survey.

6. Within the foreign-born population, 42 percent are naturalized U.S. citizens. About one-in-five entered the United States since 2000. The foreign-born population comes to the United States from all over the world: 54.8 percent were born in the Americas (9.2 percent in the Caribbean, 36.3 percent in Central America, 6.7 percent in South America, and 2.4 percent in Northern America), 30.0 percent were born in Asia, 14.3 percent were born in Europe, 3.3 percent were born in Africa, and 0.6 percent were born in Oceania.
7. The foreign-born population includes naturalized U.S. citizens, legal permanent migrants, temporary migrants (e.g., students), humanitarian migrants (e.g., refugees), and people illegally present in the United States (i.e., unauthorized migrants).
8. Direct estimates of the unauthorized population are not available. Generally, estimates of this population are derived using multiple data sources such as censuses, surveys, and administrative records. Recent efforts have yielded estimates of a residual population that include the unauthorized as well as “quasi-legal” migrants – people who are legally present in the United States, but who have not obtained legal permanent resident (LPR) status.
9. This residual foreign-born population was estimated to be about 3.8 million in 1990 and about 8.7 million in 2000. The residual foreign born were less likely to be male (48 percent) in 1990 than in 2000 (54 percent). Of the residual foreign born, about 27 percent were from Mexico in 1990 and about 47 percent were from Mexico in 2000.
10. Nearly four-fifths (79 percent) of all people in the United States live in urban areas, with “urban” defined as densely populated clusters of 2,500 or more residents.

11. English is the predominant language of the United States. In 2004, of approximately 266 million people aged 5 and over, some 50 million (approximately 19 percent) spoke a language other than English at home. Thirty-one million people spoke Spanish; 7.6 million spoke an Asian or Pacific Island language. Based on data from 2003, French and German were among the next most common. Twenty-two million people in 2004 indicated they did not speak English “very well.” The highest percentages of non-English speakers were found in the States of California, New Mexico, and Texas.

### **B. Vital statistics**

12. According to 1999 figures, overall life expectancy in the United States was 76.7 years. Women tend to live longer than men, with a life expectancy of 79.4 years, compared with 73.9 years for men. Whites have a longer life expectancy than minorities. For example, the life expectancy for Whites is 77.3 years, but for African Americans it is only 71.4. From 1998 to 1999, life expectancy has increased for males, but decreased for females. For Black males, it has increased from 67.6 to 67.8 and for White males from 74.5 to 74.6. For Black females, life expectancy has decreased from 74.8 to 74.7 and for White females from 80.0 to 79.9. Overall, the largest gains in life expectancy between 1980 and 1999 were for Black males (4.0 years), White males (3.9 years), Black females (2.2 years), and White females (1.8 years).

13. The total fertility rate for the United States, according to 2000 figures, was 2,130 births per 1,000 women aged 10-49. In other words, women in the United States on average have 2.1 births over the course of their child-bearing years. This is statistically equivalent to the replacement level of 2.1. Over the decade of the 1990s, there has been a convergence between the fertility rate of White women and Black women. In 2000, the total fertility rate of White women was 2,114 births per 1,000 compared with 2,193 births per 1,000 for Black women. In 1990, Black women had a total fertility rate which averaged about 0.5 births per woman higher than that of White women. Overall, one-third (33 percent) of all births in the United States in 2000 were to unmarried women.

14. In 1999, a total of 2,391,399 deaths occurred in the United States, at an age-adjusted rate of 881.9 deaths per 100,000 population. The 1999 rate was the second lowest rate ever. Life expectancy at birth was 76.7 years, the same as the record high achieved in 1998. The infant mortality rate was 7.1 infant deaths per 1,000 live births. This rate continues to trend downward although single year changes have not been statistically different for several years. Gaps between men and women continue to narrow with the age-adjusted death rate for men 1.4 times greater than women and life expectancy for men lagging behind that for women by 5.5 years. Gaps between the Black and White populations persist with age-adjusted death rates 1.3 times greater, infant mortality rates 2.5 times greater, and maternal mortality 3.7 times greater for the Black population than that for the White population. Life expectancy for the White population exceeds that for the Black population by 5.9 years continuing the trend toward convergence in life expectancy and age-adjusted death rates.

15. Survey data for 2004 indicated that there were 112 million households in the United States, of which 68 percent contained families. However, married couples with children under 18 make up only 23 percent of all households. In recent decades, owing to increases in divorce and single-parenthood, more children are living with only one parent. Among all

children under age 18, 28 percent lived with a single parent in 2004, more than double the 12 percent of children who lived with only one parent in 1970. Most children who live with one parent live with their mother. For instance, in 2004 approximately 83 percent of children who lived with one parent lived with their mother. The proportion of children living with one parent varies according to race. Among children under 18, 22 percent of White children lived with one parent, whereas 56 percent of African-American children, 14 percent of Asian children, and 31 percent of Hispanic children lived with one parent. Children in every group were far more likely to live with their mother than their father. Among children living with their mother or father only, 80 percent of White children, 90 percent of African-American children, 86 percent of Asian children, and 83 percent of Hispanic children lived with their mother. In total, approximately 4 percent of children under 18 live with a relative other than their parents or with a non-relative.

*Source:* 2004 Annual Social and Economic Supplement to the Current Population Survey.

See tables at <<http://www.census.gov/population/www/socdemo/hh-fam/cps2004.html>>.

16. In 1998, it was estimated that there were 2,256,000 marriages in the United States, at a rate of 8.4 per 1,000 population. Also, there were 1,135,000 divorces, at a rate of 4.2 per 1,000 population. In both cases, the totals were slightly lower than in 1997.

### **Statistics on women in the workforce**

17. The Women's Bureau of the U.S. Department of Labor provides information on a variety of subjects relating to women in the labor force. These include statistics on the number of women in the labor force, their occupational and industrial characteristics, their labor force participation by race and educational attainment, their self-employment, and their earnings; quick facts on women in non-traditional jobs, women in nursing, and older women workers; and fact sheets on hot jobs for the 21st Century, women business owners, and women in high-tech jobs. The statistical data is compiled from Bureau of Labor Statistics reports and is 2004 data unless otherwise noted.

18. *Population.* There are 115,647,000 women compared to 107,710,000 men in the civilian non-institutional population, 16 years or older.

19. *Civilian Labor Force.* This labor force is comprised of 68,421,000 women (59.2% of the civilian population of women age 16 and over) compared with 78,980,000 men (73.3% of the civilian population of men). Women make up 46.4% of the civilian labor force.

20. *Employment, Unemployment.* 64,728,000 women are employed (56% of pop.), and 3,694,000 are unemployed. The unemployment rate for women was 5.4%, and for men, 5.6%.

21. *Full-Time/Part-Time Employment.* 48,073,000 women worked full time (74.3% of all employed women) and 16,654,000 women worked part time (25.7%). 66,444,000 men worked full time (89.2%) and 8,080,000 worked part time (10.8%).



22. *Occupations with the most women employed.* In 2004, the seven occupations in which the largest numbers of women were employed (with the median weekly earnings and estimated annual earnings [weekly earnings x 52 weeks] for women who were full-time wage and salary workers) were as follows:

- *Secretaries and administrative assistants* - 3,413,000 women employed; \$550 weekly, estimated \$28,600 annual earnings.
- *Elementary and middle school teachers* - 2,097,000 women employed; \$776 weekly, estimated \$40,352 annual earnings.
- *Registered Nurses* - 2,271,000 women; \$895 weekly, estimated \$46,540 annual earnings.
- *Nursing, psychiatric and home health aides* - 1,614,000 women; \$383 weekly, estimated \$19,916 annual earnings.
- *Cashiers* - 2,261,000 women; \$313 weekly, estimated \$16,276 annual earnings.
- *First-line supervisors/managers of office and administrative support* - 1,001,000 women; \$636 weekly, estimated \$33,072 annual earnings.
- *First-line supervisors/managers of retail sales workers* - 985,000 women; \$505 weekly, estimated \$26,260 annual earnings.
- *Retail salespersons* - 1,591,000 women; \$386 weekly, estimated \$20,072 annual earnings.
- *Bookkeeping, accounting, and auditing clerks* - 1,439,000 women; \$542 weekly, estimated \$28,184 annual earnings.

23. *Occupations with highest earnings for women.* In 2004, the seven occupations in which at least 50,000 women were employed and where women received their highest median weekly earnings were as follows:

- *Pharmacists* - \$1,432, with estimated annual earnings of \$74,464. There were 110,000 women pharmacists, 47.2 percent of a total 233,000 pharmacists.
- *Chief Executives* - \$1,310, with estimated annual earnings of \$68,120. There were 392,000 women chief executives, 23.3 percent of a total of 1,680,000 chief executives.
- *Lawyers* - \$1,255, with estimated annual earnings of \$65,260. There were 280,000 women lawyers, 29.4 percent of a total of 954,000 lawyers.

- *Computer and Information Systems Managers* - \$1,228, with estimated annual earnings of \$63,856. There were 104,000 women employed as computer and information systems managers, 30.9 percent of a total of 337,000 computer and information systems managers.
- *Computer Software Engineers* - \$1,149, with estimated annual earnings of \$59,748. There were 204,000 women employed as computer software engineers, 25.1 percent of 813,000 computer software engineers.
- *Computer Programmers* - \$1,006, with estimated annual earnings of \$52,312. There were 151,000 women employed as computer programmers, 26.8 percent of a total of 564,000 computer programmers.
- *Physicians and Surgeons* - \$978, with estimated annual earnings of \$50,856. There were 244,000 women physicians and surgeons, 29.4 percent of 830,000 physicians.

24. *Families maintained by women.* There were 76,741,000 primary families and unrelated subfamilies in the United States in March 2004, of which 14,196,000 were families maintained by women, 18.5 percent or slightly less than 1 out of 5 families. Between 2002 and 2004 the number of households headed by women increased by 679,000 (5.0 percent).

25. *Working Mothers.* In 2004, 62.2 percent of mothers with children under six were in the labor force, down from 64.1 percent in 2002. The labor force participation of mothers with children under six has declined since 2000. The total number of women with children under six in the labor force in 2004, 10,131,000, was less than the 10,193,000 mothers in 2002, consistent with the fact that the number of mothers with children under six has been declining since peak levels in 1994. In 2004, 57.3 percent of mothers with children under three were in the labor force (5,401,000 mothers), compared with 60.5 percent (5,600,000 mothers) in 2002.

### **C. Socio-economic indicators**

26. For 2004, the per capita money income in the United States was \$23,848 in current dollars. Median money earnings in 2004 for full-time, year-round workers was \$40,798 for males compared with \$31,223 for females. The gross domestic product (GDP) in billions of current dollars was \$11,734 for 2004. The Consumer Price Index, frequently used to measure inflation, increased by 2.3 percent in 2003 and 2.7 percent in 2004.

27. In 2004, 66 percent of the population 16 years and older was in the labor force (totalling 147,401,000), including approximately 25.7 million mothers in the labor force. The overall unemployment rate was 5.5 percent. For men, the figure was 5.6 percent, compared with 5.4 percent for women. Whites' rate of unemployment was 4.8 percent, African-Americans' rate was 10.4 percent, and Hispanics' rate was 7.0 percent. The minimum wage in 2004 was \$5.15 an hour.

28. In 2004, 12.7 percent of the population was below the poverty level, the federally established figure below which a person is considered to have insufficient income for his or her basic needs. For a family of four in 2004, this was equal to \$19,307. Of all families headed by

females, 28.4 percent were below the poverty level. The poverty rate for White, Black and Hispanic families headed by women was respectively, 24.8 percent, 37.6 percent and 38.9 percent. Among related children under 18, 17.3 percent lived in poverty. The rate for related children under six was 19.9 percent.

29. The poverty rate in 2004 varied among racial groups in the United States. While 10.8 percent of Whites (8.6 percent when Hispanics are not included) were below the poverty level, 24.7 percent of Blacks, 21.9 percent of Hispanics and 9.8 percent of Asians fell below the poverty level. Among the poor in 2003, 68.0 percent lived in a household where someone received means-tested assistance (cash or noncash), and 22.6 percent lived in a household where someone received means-tested cash assistance.

30. In 2004, 85.2 percent of the population aged 25 and over had a high school diploma, 53.1 percent had some college or more, and 27.7 percent had a bachelor's degree. Males and females achieved similar levels of education, the primary difference being that 29.4 percent of males versus 26.1 percent of females received a bachelor's degree. Education levels differed more widely, however, on the basis of race. Rates for completing high school and college were 90.0 percent and 30.6 percent for non-Hispanic Whites, versus 80.6 percent and 17.6 percent for the Black population, and 58.4 percent and 12.1 percent for Hispanics. In 2004, 66.7 percent of the most recent graduates of high school had enrolled in colleges and universities.

31. In 2000, approximately four fifths (84%) of all American women ages 25 and over have completed high school. Additionally, in 2000 women constitute 56 percent of the students in undergraduate, graduate, and professional degree programs. (Digest Table 174). More specifically, 56.1 percent of undergraduate students are women (Digest Table 189), and 57.9 percent of graduate students are women (Digest Table 190).

32. The United States Department of Education has developed a method for evaluating functional literacy by testing prose, document, and quantitative literacy resulting in five literacy levels. In 1992, the National Adult Literacy Survey (NALS) was conducted with a sample of 26,000 individuals. The NALS found that 21 to 23 percent of the participants scored in the lowest of five levels in each of the three literacy categories. Less than 18-21 percent scored in top 2 levels. The survey found that older adults, who have typically completed the fewest years of schooling, demonstrated lower literacy skills than other age groups. Among participants scoring in the lowest skill level, 62 percent had not completed high school, and 35 percent had eight or fewer years of formal schooling. Additionally, twenty-five percent were born in another country, and 26 percent had some physical or mental condition that prevented them from participating fully in work, school, housework, or other activities. Nearly half, 41 to 44 percent, of these participants lived in poverty. Adults in prison were disproportionately likely to perform in the lowest two levels of literacy skill.

33. Data are from the reports *Adult Literacy and Education in America* (NCES 2001-534) and from *Adult Literacy in America: a first look at the findings of the National Adult Literacy Survey* (NCES 1993-275).

**Table 1a****Percent of high school and college graduates of the population 15 years and over,  
by age, sex, race, and Hispanic origin: 2004**

(Numbers in thousands. Civilian noninstitutionalized population.)

All races and both sexes	Total	High school graduate			Bachelor's degree		
		Total	Not high school graduate	High school graduate or higher	Total	Less than bachelor's degree	Bachelor's degree or higher
		%	%	%	%	%	%
15 years and over	227 529	100.0	20.4	79.6	100.0	76.2	23.8
15 to 17 years	12 829	100.0	98.3	1.7	100.0	100.0	0.0
18 to 19 years	7 485	100.0	43.9	56.1	100.0	100.0	0.0
20 to 24 years	20 339	100.0	14.1	85.9	100.0	88.5	11.5
25 to 29 years	19 008	100.0	13.4	86.6	100.0	71.3	28.7
30 to 34 years	20 193	100.0	12.5	87.5	100.0	68.4	31.6
35 to 39 years	20 791	100.0	11.9	88.1	100.0	69.4	30.6
40 to 44 years	22 782	100.0	12.1	87.9	100.0	71.4	28.6
45 to 49 years	21 823	100.0	10.6	89.4	100.0	70.3	29.7
50 to 54 years	19 246	100.0	10.1	89.9	100.0	68.5	31.5
55 to 59 years	16 158	100.0	12.1	87.9	100.0	69.8	30.2
60 to 64 years	12 217	100.0	15.6	84.4	100.0	74.4	25.6
65 to 69 years	9 818	100.0	21.8	78.2	100.0	79.1	20.9
70 to 74 years	8 420	100.0	25.8	74.2	100.0	80.1	19.9
75 years and over	16 421	100.0	30.6	69.4	100.0	83.3	16.7
15 to 17 years	12 829	100.0	98.3	1.7	100.0	100.0	0.0
18 years and over	214 700	100.0	15.8	84.2	100.0	74.8	25.2
15 to 24 years	40 652	100.0	46.2	53.8	100.0	94.2	5.8
25 years and over	186 877	100.0	14.8	85.2	100.0	72.3	27.7
15 to 64 years	192 870	100.0	19.3	80.7	100.0	75.3	24.7
65 years and over	34 659	100.0	26.9	73.1	100.0	81.3	18.7

*Source:* U.S. Census Bureau, Current Population Survey. Internet Release  
Date: March 2005.

34. Freedom to worship and to follow a chosen religion is constitutionally protected in the United States. As a result, all major world religions are found in the United States and literally hundreds of denominations and sects exist. The population is overwhelmingly Christian, although obtaining accurate statistical data with regard to religion is extremely difficult, as this information is not included in the decennial census of otherwise collected by the government. The available figures are often rough, based on self-reporting studies which leave great room for error. According to the 2001 Yearbook of American and Canadian Churches, practicing church members make up 57% of the general population. Of those church members, the major groups include Protestants (chiefly Baptists, Methodists, Lutherans, Presbyterians, Episcopalians, Pentecostal, and Mormons) (56%), Roman Catholics (40%), and Jews (4%). The latest data available (1990) for Buddhist, Hindu, and Muslim/Islamic groups reported a total membership of 1,155,000 (or 1%). Numbers do not add to 100 percent due to rounding.

#### **D. Land**

35. In its totality, the United States of America covers almost 9.4 million square km, including the 48 coterminous states which span the North American continent, Alaska, Hawaii and the various insular areas in the Pacific Ocean and Caribbean Sea.

36. The geography of the continental United States is widely varied, with great mountain ranges, flat open prairies, and numerous rivers. On the Atlantic shore, much of the northern coast is rocky, but the middle and southern Atlantic coast rises gently from the sea. It starts as low, wet ground and sandy flats, but then becomes a rolling coastal lowland somewhat like that of northern and western Europe. The Appalachians, which run roughly parallel to the east coast, are old mountains with many open valleys between them. To the west is the Appalachian plateau underlain by extensive coal deposits, and beyond is the Central Lowland, which resembles the plains of eastern Europe or the Great Plains of Australia. The Central Lowland is drained chiefly by the vast Mississippi-Missouri river system, which extends some 5,970 km and which experienced disastrous flooding during 1993. In the south, the Gulf Coastal Lowlands, including Florida and westward to the Texas Coast, include many lagoons, swamps and sandbars in addition to rolling coastal plain.

37. North of the Central Lowland, extending for about 1,860 km, are the five Great Lakes, four of which the United States shares with Canada. The lakes are estimated to contain about half of the world's fresh water.

38. West of the Central Lowland are the Great Plains, likened to the flat top of a table which is slightly tilted upward to the west. They are stopped by the Rocky Mountains, the "backbone of the continent". The Rockies are considered young mountains, of the same age as the Alps in Europe or the Himalayas in Asia. They are high, rough and irregular in shape, with peaks exceeding 4,300 meters above sea level. Through the Rockies runs the Continental Divide which separates drainage into the Atlantic Ocean from drainage into the Pacific Ocean.

The land west of the Rockies is made up of distinct and separate regions. One region encompasses the high Colorado Plateau, in which the Grand Canyon of the Colorado River is cut, 1.6 km in depth. Other regions include the high Columbia tableland to the north, the Basin and Range Province to the south, the Sierra Nevada mountain range, and at the border of the Pacific Ocean, the Coast Ranges, relatively low mountains in a region with occasional earthquakes. Death Valley, located in eastern California and south-western Nevada, contains the lowest point in the Western Hemisphere, 86 meters below sea level.

39. The Cascade Mountains and the Sierra Nevada Mountains, close to the west coast of the continent, catch the largest share of the rain off the Pacific Ocean before it can go inland. As a result, there is too little rain for almost the whole western half of the United States, which lies in the "rain shadow" of the mountains. In a great part of that territory, farmers must depend on irrigation water from the snows or rains that are trapped by the mountains. Most of the western half of the country, with the exception of the Pacific North-West states, receives less than 50 cm of rainfall a year. Regions in the eastern half receive at least 50 cm, and often much more, through moist air masses from the Gulf of Mexico and Atlantic Ocean that travel inland.

40. Along the western or Pacific coast, the temperature changes little between winter and summer. In some places, the average difference between July and January is as little as 10°C. The climate along the northern part of this coast is similar to that of England. However, in the north central part of the country, summer and winter are vastly different. The average difference between July and January is 36°C, and more violent extremes are common. In the eastern part of the United States, the difference between summer and winter is also distinct, but not nearly so extreme. Near the south-western and south-eastern corners of the country, the climate is mild in winter, but in summer the temperature may reach equatorial levels.

41. Natural vegetation ranges from the mixed forests of the Appalachians to the grasslands of the Great Plains, from the conifers of the Rocky Mountains to the redwood forests of California, the cacti and mesquite of the south-western deserts and the subtropical pines, oaks, palms, and mangroves of the Gulf and southern Atlantic coasts.

42. The variations in temperature within the continental United States have had a marked effect on the country's economy and living standard. There is a long crop growing season along the south-east coast. This is also true in several small strips and pockets to the west where crops like grapes grow well during a large part of the year. In some of the cooler climates, animals and produce such as apples, wheat and corn thrive. Subtropical climates in parts of the United States allow for particularly long growing seasons. Citrus fruit is grown in Florida, California, Arizona and Texas. Sugar cane is grown in Louisiana and rice in Arkansas, California, Louisiana and Texas. Cotton is grown throughout the south-eastern United States as well as in Texas, Arizona and California. As a result, the United States produces a large range of agricultural products. Approximately one half of the land is occupied by farms, with dairies important in the north and north-east, livestock and feedgrains in the Midwest, wheat in the Great Plains, and livestock on the High Plains and in the South.

43. Located at the extreme north-western corner of the continent and separated from the 48 contiguous states by western Canada, Alaska is the largest state (approximately 1.59 million square km) and the only one extending longitudinally into the Eastern Hemisphere. Alaska includes two major mountain chains, the Brooks Range in the north and the Alaska Range in the south, as well as the highest point in the United States, Mt. McKinley (6,194 meters above sea level). The two ranges are separated by a Central Plateau through which the Yukon River flows. The northernmost part of the State contains the Arctic Slope. With thousands of offshore islands, Alaska has 54,552 km of shoreline. Alaska is one of the least populous states (in 2000, only Vermont and Wyoming had smaller populations), but indigenous people constitute over 15 percent of the total.

44. The Aleutian Islands extend 1,930 km into the northern Pacific Ocean from the Alaskan Peninsula and include some 150 islands of volcanic origin totaling 17,666 square km. The population of 8,162 is largely indigenous.

45. Hawaii, the fiftieth state, comprises a chain of some 130 islands representing the peaks of submerged volcanic mountains extending across 2,400 km in the North Pacific Ocean. The main islands (Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai and Niihau) are located at the south-eastern end, approximately 3,800 km from the mainland. There are several active volcanoes, including Mauna Loa (4,169 metres) and Kilauea (4,205 metres).

The climate is generally subtropical; Mt. Waialeale on Kauai is the wettest spot in the United States, with an average annual rainfall of 1,168 cm. As of the 2000 census, the population exceeds 1.2 million and is of diverse origins: 9.4 percent are Native Hawaiians and Other Pacific Islanders, 17 percent Japanese, 14 percent Filipino, and 24 percent White.

46. Guam, a self-governing territory of the United States, is located approximately 9,600 km from the mainland in the western Pacific Ocean. The largest and southernmost of the Mariana Islands, it is 48 km long and encompasses 541 km<sup>2</sup> of land. The highest point is Mt. Lamlam (405 metres above sea level). The population totals 154,805, of which 37 percent are Chamorro only and another 5.1 percent are Chamorro and another race or ethnic group. 47.8 percent of the population was born outside of Guam, 21.1 percent from the Philippines and 12.3 percent from the United States.

### Population and housing profile: 2000

#### Geography: Guam

(Note: For information on confidentiality protection, nonsampling error, and definitions, see the footnote below.)

Subject	Number	%
<b>SEX AND AGE</b>		
Total population	154 805	100.0
Male	79 181	51.1
Female	75 624	48.9
Under 5 years	16 785	10.8
5 to 9 years	16 090	10.4
10 to 14 years	14 281	9.2
15 to 19 years	12 379	8.0
20 to 24 years	11 989	7.7
25 to 34 years	25 850	16.7
35 to 44 years	23 141	14.9
45 to 54 years	16 548	10.7
55 to 59 years	4 993	3.2
60 to 64 years	4 534	2.9
65 to 74 years	5 860	3.8
75 to 84 years	2 000	1.3
85 years and over	355	0.2
Median age (years)	27.4	(X)
18 years and over	99 951	64.6
Male	50 932	32.9
Female	49 019	31.7
21 years and over	92 802	59.9
62 years and over	10 789	7.0
65 years and over	8 215	5.3
Male	3 953	2.6
Female	4 262	2.8

**Population and housing profile: 2000 (continued)****Geography: Guam**

Subject	Number	%
<b>ETHNIC ORIGIN AND RACE</b>		
Total population	154 805	100.0
One ethnicity or race	133 252	86.1
Native Hawaiian and Other Pacific Islander <sup>1</sup>	69 039	44.6
Carolinian	123	0.1
Chamorro	57 297	37.0
Chuukese	6 229	4.0
Kosraean	292	0.2
Marshallese	257	0.2
Palauan	2 141	1.4
Pohnpeian	1 366	0.9
Yapese	686	0.4
Other Pacific Islander	648	0.4
Asian	50 329	32.5
Chinese	2 707	1.7
Filipino	40 729	26.3
Japanese	2 086	1.3
Korean	3 816	2.5
Other Asian	991	0.6
White	10 509	6.8
Black or African American	1 568	1.0
Some other race or ethnic group	1 807	1.2
Two or more races or ethnic groups	21 553	13.9
Chamorro and other group(s)	7 946	5.1
Asian and other group(s)	10 853	7.0

*Note:* To maintain confidentiality, the Census Bureau applies statistical procedures that introduce some uncertainty into data for small geographic areas with small population groups. The census results in these tables contain nonsampling error, but do not contain sampling error. Data users who create their own estimates using data from these tables should cite the Census Bureau as the source of the original data only. See also the subject definitions.

- Represents zero or rounds to zero. (X) Not applicable.

<sup>1</sup> Classification of population by race and ethnicity reflects the Office of Management and Budget, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity", Federal Register, Vol. 62, No. 210, October 30, 1997, pp. 58782-58790.



47. The Commonwealth of the Northern Mariana Islands includes an archipelago of 16 islands stretching some 750 km in the Western Pacific, approximately 2,400 km east of the Philippines. The three main islands are Saipan, Tinian and Rota; the total land mass is 477 square km. The population is 69,221 and the largest ethnic group is Chamorro with 27.6 percent of the population claiming to be all or part Chamorro. The principal industry is tourism, although many residents engage in subsistence agriculture and copra export.

### Population and housing profile: 2000

#### Geography: The Commonwealth of the Northern Mariana Islands

(Note: For information on confidentiality protection, nonsampling error, and definitions, see the footnote below.)

Subject	Number	%
<b>SEX AND AGE</b>		
Total population	69 221	100.0
Male	31 984	46.2
Female	37 237	53.8
Under 5 years	5 792	8.4
5 to 9 years	5 420	7.8
10 to 14 years	4 377	6.3
15 to 19 years	3 943	5.7
20 to 24 years	7 566	10.9
25 to 34 years	20 181	29.2
35 to 44 years	12 651	18.3
45 to 54 years	6 208	9.0
55 to 59 years	1 199	1.7
60 to 64 years	837	1.2
65 to 74 years	748	1.1
75 to 84 years	233	0.3
85 years and over	66	0.1
Median age (years)	28.7	(X)
18 years and over	51 488	74.4
Male	22 825	33.0
Female	28 663	41.4
21 years and over	48 448	70.0
62 years and over	1 501	2.2
65 years and over	1 047	1.5
Male	506	0.7
Female	541	0.8

**Population and housing profile: 2000 (continued)****Geography: The Commonwealth of the Northern Mariana Islands**

Subject	Number	%
<b>ETHNIC ORIGIN AND RACE</b>		
Total population	69 221	100.0
One ethnicity or race	62 366	90.1
Native Hawaiian and Other Pacific Islander <sup>1</sup>	22 001	31.8
Carolinian	2 652	3.8
Chamorro	14 749	21.3
Chuukese	1 394	2.0
Kosraean	56	0.1
Marshallese	112	0.2
Palauan	1 685	2.4
Pohnpeian	640	0.9
Yapese	204	0.3
Other Pacific Islander	509	0.7
Asian	38 610	55.8
Bangladeshi	873	1.3
Chinese	15 311	22.1
Filipino	18 141	26.2
Japanese	952	1.4
Korean	2 021	2.9
Nepalese	300	0.4
Other Asian	1 012	1.5
White	1 240	1.8
Black or African American	41	0.1
Some other race or ethnic group	474	0.7
Two or more races or ethnic groups	6 855	9.9
Carolinian and other group(s)	2 124	3.1
Chamorro and other group(s)	4 383	6.3
Asian and other group(s)	3 016	4.4

*Note:* To maintain confidentiality, the Census Bureau applies statistical procedures that introduce some uncertainty into data for small geographic areas with small population groups. The census results in these tables contain nonsampling error, but do not contain sampling error. Data users who create their own estimates using data from these tables should cite the Census Bureau as the source of the original data only. See also the subject definitions.

- Represents zero or rounds to zero. (X) Not applicable.

<sup>1</sup> Classification of population by race and ethnicity reflects the Office of Management and Budget, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity", Federal Register, Vol. 62, No. 210, October 30, 1997, pp. 58782-58790.

48. The southernmost United States jurisdiction is American Samoa, an unincorporated territory of seven small islands at the eastern end of the Samoan Island chain in the South Pacific Ocean, midway between Honolulu and Sydney, Australia. They include Tutuila Aunu'u, the Manu'a group, Rose Island and Swains Island, covering 199 square km. Volcanic and mountainous, and surrounded by coral reefs, the islands retain much of their original Polynesian culture. The population of 57,291 is composed of United States nationals approximately 92 percent of whom are Samoan or part Samoan with the remainder being primarily Tongan or other Pacific Island origin.

### Population and housing profile: 2000

#### Geography: American Samoa

(Note: For information on confidentiality protection, nonsampling error, and definitions, see the footnote below.)

Subject	Number	%
<b>SEX AND AGE</b>		
Total population	57 291	100.0
Male	29 264	51.1
Female	28 027	48.9
Under 5 years	7 820	13.6
5 to 9 years	7 788	13.6
10 to 14 years	6 604	11.5
15 to 19 years	5 223	9.1
20 to 24 years	4 476	7.8
25 to 34 years	8 707	15.2
35 to 44 years	7 361	12.8
45 to 54 years	4 733	8.3
55 to 59 years	1 474	2.6
60 to 64 years	1 204	2.1
65 to 74 years	1 345	2.3
75 to 84 years	465	0.8
85 years and over	91	0.2
Median age (years)	21.3	(X)
18 years and over	31 753	55.4
Male	16 018	28.0
Female	15 735	27.5
21 years and over	28 950	50.5
62 years and over	2 581	4.5
65 years and over	1 901	3.3
Male	860	1.5
Female	1 041	1.8

**Population and housing profile: 2000 (continued)****Geography: American Samoa**

Subject	Number	%
<b>ETHNIC ORIGIN AND RACE</b>		
Total population	57 291	100.0
One ethnicity or race	54 882	95.8
Native Hawaiian and Other Pacific Islander <sup>1</sup>	52 486	91.6
Samoan	50 545	88.2
Niuean	18	-
Tokelauan	45	0.1
Tongan	1 598	2.8
Fijian	80	0.1
Other Pacific Islander	200	0.3
Asian	1 631	2.8
Chinese	310	0.5
Filipino	792	1.4
Japanese	16	-
Korean	294	0.5
Asian Indian	7	-
Other Asian	212	0.4
White	565	1.0
Black or African American	19	-
Some other race or ethnic group	181	0.3
Two or more races or ethnic groups	2 409	4.2
Samoan and other group(s)	1 991	3.5
Asian and other group(s)	803	1.4
White and other group(s)	458	0.8

*Note:* To maintain confidentiality, the Census Bureau applies statistical procedures that introduce some uncertainty into data for small geographic areas with small population groups. The census results in these tables contain nonsampling error, but do not contain sampling error. Data users who create their own estimates using data from these tables should cite the Census Bureau as the source of the original data only. See also the subject definitions.

- Represents zero or rounds to zero. (X) Not applicable.

<sup>1</sup> Classification of population by race and ethnicity reflects the Office of Management and Budget, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity", Federal Register, Vol. 62, No. 210, October 30, 1997, pp. 58782-58790.

49. Other United States dependencies in the Pacific Ocean include Wake Island (and its sister islands Wilkes and Peale) an atoll in the central Pacific with a population of 124 (mostly United States government personnel and contractors with no indigenous population); Midway Islands (including Sand and Eastern Islands) in the northern Pacific with no indigenous population but about 150 people from the Fish and Wildlife Service; Johnston Atoll, with a total area of 2.8 square km and no indigenous population; Howland, Jarvis and Baker Islands, which are uninhabited and administered by the Department of the Interior; Kingman Reef, which is uninhabited and administered by the United States Navy; and Palmyra Atoll, privately owned and administered by the Department of the Interior.

50. In the Caribbean, Puerto Rico is a self-governing commonwealth located at the eastern end of the Greater Antilles. The main island is largely mountainous with a surrounding coastal plain; Cerro del Punta in the Cordillera Central is the highest elevation, at 1,325 meters above sea level. The main island extends 153 km east-to-west and 58 km north-to-south, and encompasses approximately 9,100 square km. Puerto Rico enjoys a mild tropical climate but is subject to hurricanes. The population of 3.8 million is largely Hispanic, descended from Spanish conquerors and slaves. Some 3.4 million Puerto Ricans reside on the mainland. The primary economic activities include tourism, light manufacturing and agriculture.

51. Some 60 miles to the east of the main island of Puerto Rico lie the United States Virgin Islands, the westernmost group of the Lesser Antilles in the West Indies. Although more than 50 separate islands and cays constitute this westernmost group, only three have a size and population of any significance: St. Thomas, St. John and St. Croix. Altogether, the territory covers some 352 square km of land. The highest point is Crown Mountain on St. Thomas, with an elevation of 474 meters. The climate is subtropical, and the principal activities involve tourism, light manufacturing and agriculture. Census 2000 showed that the U.S. Virgin Islands population was 108,612 on April 1, 2000 of which 78 percent are Black or African American. Off the western tip of Haiti is Navassa Island, uninhabited and administered by the United States Coast Guard.

## **II. GENERAL POLITICAL STRUCTURE**

### **A. Republican form of government**

52. The United States of America is a federal republic of 50 states, together with a number of commonwealths, territories and possessions. The United States Constitution is the central instrument of government and the supreme law of the land. Adopted in 1789, the Constitution is the world's oldest written constitution still in force, and owes its staying power to its simplicity and flexibility. Originally designed to provide a framework for governing 4 million people in 13 very different former British colonies along the Atlantic coast, its basic provisions were so soundly conceived that, with only 27 amendments, it now serves the needs of some 250 million people in 50 even more diverse states and other constituent units which stretch from the Atlantic to the Pacific Ocean.

53. Although the Constitution has changed in a number of respects since it was first adopted, most of its basic principles remain the same as they were in 1789:

- The will of the people forms the basis of governmental legitimacy, and the people have the right to change their form of national government by legal means defined in the Constitution itself.
- The three main branches of the federal government (the executive, legislative, and judicial) are separate and distinct from one another. The powers given to each are delicately balanced by the powers of the other two. Each branch serves as a check on potential excesses of the others.
- The Constitution stands above all other laws, executive acts and regulations, including treaties.
- All persons are equal before the law and are equally entitled to its protection. All states are equal, and none can receive special treatment from the federal government. Within the limits of the Constitution, each state must give “full faith and credit to the public acts, records, and judicial proceedings of every other state.” [It is well settled that the constitutional “full faith and credit” requirement allows states, for public policy reasons, to decline to “recognize and respect” the laws of other states in certain circumstances. *See e.g., Nevada v. Hall* 440 U.S. 410, 422 (1979).] State governments, like the federal government, must be republican in form, with final authority resting with the people.
- Powers not granted to the federal government are reserved to the states or the people.

54. The Constitution and the federal government stand at the peak of a governmental pyramid which includes the 50 states and many hundreds of local jurisdictions. In the United States system, each level of government has a large degree of autonomy. Disputes between different jurisdictions are typically resolved by the courts. However, there are questions involving the national interest which require the cooperation of all levels of government simultaneously, and the Constitution makes provision for this as well. By way of example, the public (government-funded) schools are largely administered by local jurisdictions, adhering to statewide standards even at the university level. Private schools are also generally required to meet the same standards. Nevertheless, the federal government also aids the schools, as literacy and educational attainment are matters of vital national interest. In other areas, such as housing, health and welfare, there is a similar partnership between the various levels of government.

55. Within the states there are generally two or more layers of government. Most states are divided into counties, and areas of population concentration are incorporated in municipalities or other forms of local government (cities, towns, townships, boroughs, parishes or villages). In addition, school districts and special service districts provide systems of public education and various other services (for example, water and sewer services, fire and emergency services, higher education, hospital services, public transportation). The leaders of the federal, state,

county, municipal and other local governments are for the most part democratically elected, although some are appointed by other officials who are themselves democratically elected. The leaders of special service districts are likewise either elected or appointed, with election more common in the case of school districts.

56. The federal Constitution establishes a democratic system of governance at the federal level and guarantees a republican system at the state and local levels. Elected at the federal level are the President, the Vice President, and members of the United States Senate and House of Representatives. There is considerable variation in the governmental structures of the states and of lesser governmental units. From state to state there are large differences in the number of officials who are elected per unit of government and in the number of officials elected per capita. Elected at the state level typically are the governor, a lieutenant governor, an attorney-general, other leaders of state governmental departments, and members of a bicameral legislature (Nebraska has a unicameral legislature). In many states, justices of the state supreme court and judges in various lower courts are also elected. Elected at the county level typically are members of a county governing body, a chief executive, a sheriff, a clerk, an auditor, a coroner, and the like, and minor judicial officials, such as justices of the peace and constables. Officials elected at the municipal level usually include a mayor and members of a governing council, board or commission. All elections, even those for federal office, are conducted by the states or their political subdivisions.

57. Officials at all levels are elected at regularly scheduled elections to terms of fixed duration, usually varying in length between one and six years. Vacancies are filled either through special elections or by appointment or by a combination of the two methods. Elections are conducted by secret ballot.

58. While the Constitution does not establish or regulate political parties, most federal and state elections are in fact dominated by two long-established parties: the Democratic party, the origins of which may be traced to Thomas Jefferson, who was President from 1801 to 1809, and the Republican party, founded in 1854. Each party is a loose alliance of private organizations formed at the state and local levels which unite every four years for the presidential election. While the Democratic party is generally considered more liberal and the Republican party more conservative in terms of ideology, there are no tests for party registration and beliefs vary widely across the country. Some Democrats are more conservative than most Republicans, and some Republicans are more liberal than most Democrats. Where one party dominates the local politics, the only truly competitive electoral race may in fact be an initial, intra-party election of the party's candidate for office. Particularly during a presidential election, each party tends to compete for voters with a "moderate" or centrist ideology, considered to comprise the majority of voters nationwide. Nonetheless, each party has both a liberal and a conservative "wing" or group of members.

59. While the United States may generally be said to have a "two party" system, many Americans consider themselves "independents" or unaffiliated with either the Democratic or Republican party. Currently, two independents hold seats in the United States Congress, one in the House of Representatives and one in the Senate. An independent candidate for President won 18.9 percent of the popular vote in the 1992 election. In the 2004 Election, an independent candidate won 1 percent of the popular vote.

60. Most elections involve a two-step process. The first (or “primary”) step involves the selection or designation of a candidate to represent a political party; second, the respective parties’ candidates run against each other and any independent candidates in a general election. Local and state party organizations vary widely in the degree to which a voter must demonstrate party allegiance before participating in the party’s nominating methods. Commonly, “primary” elections are held among a party’s candidates to determine who will be the nominee of that party for office. Other methods include party caucuses and conventions. Primary elections usually require a voter to demonstrate at least a minimal commitment to a particular party. Although a state may not require by law that political parties conduct “closed primaries” limited to registered members of their party, *see e.g., Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986), states may nevertheless choose to permit “closed primaries”. On the other hand, party caucuses and conventions typically require a greater degree of party affiliation by the voter and may be open only to certain party officials. Once the parties have designated their candidates for office, state-run general elections are held. In almost all elections, voters are permitted to “split” their ballots by, for example, voting for a Democrat for President and a Republican for Senator. The result is that at both the federal and state levels, the individual holding the highest executive office (e.g., President or Governor) may be of a different political party from the majority of elected representatives in the legislative branch.

## **B. Federal government**

61. The federal government consists of three branches: the executive, the legislative and the judicial.

### **1. The executive branch**

62. The executive branch of government is headed by the President, who under the Constitution must be a natural-born United States citizen, at least 35 years old, and a resident of the country for at least 14 years. Candidates for the presidency are chosen by political parties several months before the presidential election, which is held every four years (in years divisible evenly by four) on the first Tuesday after the first Monday in November.

63. The method of electing the President is peculiar to the United States system. Although the names of the candidates appear on the ballots, technically the people of each state do not vote directly for the President and Vice President. Instead, they select a slate of “presidential electors” equal to the number of Senators and Representatives each state has in Congress. The law of each state determines how its “presidential electors” are chosen. All but two of the states have adopted a “winner-take-all” system, in which the entire slate of “presidential electors” is awarded to the candidate with the highest number of state-wide votes. The other two states have adopted a system in which the citizens of each congressional district choose one presidential elector, and the remaining two electors are chosen in accordance with the highest number of state-wide votes.

64. According to the Constitution the President must “take care that the laws be faithfully executed”. To carry out this responsibility, the President presides over the executive branch of government, with broad powers to manage national affairs and the workings of the federal



government. The President can issue instructions called executive orders, which are binding upon federal agencies. As commander-in-chief of the armed forces of the United States, the President may also call into federal service the state units of the National Guard. The Congress may by law grant the President or federal agencies broad powers to make rules and regulations under standards set in those laws. In time of war or national emergency, these grants may be broader than in peacetime.

65. The President chooses the heads of all executive departments and agencies, together with hundreds of other high-ranking federal officials. The large majority of federal workers, however, are selected through the Civil Service system, in which appointment and promotion are based on ability and experience rather than political affiliation.

66. Under the Constitution, the President is the federal official primarily responsible for the relations of the United States with foreign nations. In this sense the President is both “head of government” and “head of State”. Presidents appoint ambassadors, ministers, and consuls, subject to confirmation by the Senate, and receives foreign ambassadors and other public officials. With the Secretary of State, the President manages all official communication with foreign governments. On occasion, the President may personally participate in summit conferences where heads of government meet for direct consultation.

67. Through the Department of State, the President is responsible for the protection of United States citizens abroad. Presidents decide whether to recognize new nations and new governments, and negotiate treaties with other nations, which are binding on the United States when approved by two thirds of the Senators present and voting. The President may also negotiate executive agreements with foreign powers that are not subject to Senate advice and consent, based on statutory authority as well as inherent constitutional powers.

68. Although the Constitution provides that “all legislative powers” shall be vested in the Congress, the President, as the chief formulator of public policy, also has a major role in the legislative process. The President can veto any bill passed by Congress, and, unless two thirds in each house vote to override the veto, the bill does not become law. Much of the legislation dealt with by Congress is drafted at the initiative of the executive branch. In his annual report (the “State of the Union” address) and in other special messages to Congress, the President may propose legislation he believes is necessary. The President has the power to call the Congress into special session. Furthermore, the President, as head of a political party and as chief executive officer of the United States government, is in a position to influence public opinion and thereby to influence the course of legislation in Congress.

69. The President also appoints federal judges, including Justices of the Supreme Court of the United States, subject to the advice and consent of the Senate. The President has the power to grant a full or conditional pardon to anyone convicted of breaking a federal law, except in a case of impeachment. The pardoning power has come to embrace the authority to shorten prison terms and reduce fines.

70. The day-to-day enforcement and administration of federal laws is in the hands of the various executive departments created by Congress to deal with specific areas of national and international affairs. The heads of the departments, chosen by the President and approved by the

Senate, form a council of advisers generally known as the President's Cabinet. The Cabinet is an informal consultative and advisory body, not provided for by the Constitution. Currently, the members of the Cabinet include the secretaries of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, State, Transportation, Treasury, and Veterans Affairs, as well as the Attorney-General, who heads the Justice Department. Some executive departments include major subordinate agencies, such as the Federal Aviation Administration (the Department of Transportation), the Federal Bureau of Investigation (the Department of Justice), and the Bureau of Indian Affairs and the National Park Service (the Department of the Interior).

71. On November 25, 2002, President George W. Bush signed into law the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, establishing the Department of Homeland Security (DHS), a new cabinet-level agency. The primary mission of DHS, as described in the Homeland Security Act, is to prevent terrorist attacks within the United States; to reduce the vulnerability of the United States to terrorism; to minimize the damage and assist in the recovery from terrorist attacks that do occur within the United States; to carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning; to ensure that the function of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and to monitor the connection between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

72. The Homeland Security Act consolidated into the new department 22 government agencies and 180,000 employees to accomplish that mission. Overseeing the various DHS components is the Office of the Secretary, which includes several sub-offices such as the Office of the Chief Privacy Officer, the Office of Civil Rights and Civil Liberties, the Office of Counter Narcotics, the Office of the General Counsel, the Office of the Inspector General, the Office of Legislative Affairs, the Office of the Private Sector, the Office of Public Affairs, and the Office of State and Local Government Coordination and Preparedness. The many agencies incorporated into DHS are generally located in one of four major directorates: Border and Transportation Security, Emergency Preparedness and Response, Science and Technology, and Information Analysis and Infrastructure Protection.

73. The Border and Transportation Security Directorate encompasses the government's major border security and transportation operations, including (1) the former U.S. Customs Service (formerly within U.S. Department of the Treasury), now U.S. Customs and Border Protection (CBP); (2) the enforcement components of the former Immigration and Naturalization Service (formerly within U.S. Department of Justice), now U.S. Immigration and Customs Enforcement (ICE); (3) the Federal Protective Service (formerly within U.S. General Services Administration); and (4) the Transportation Security Administration (formerly within the U.S. Department of Transportation).

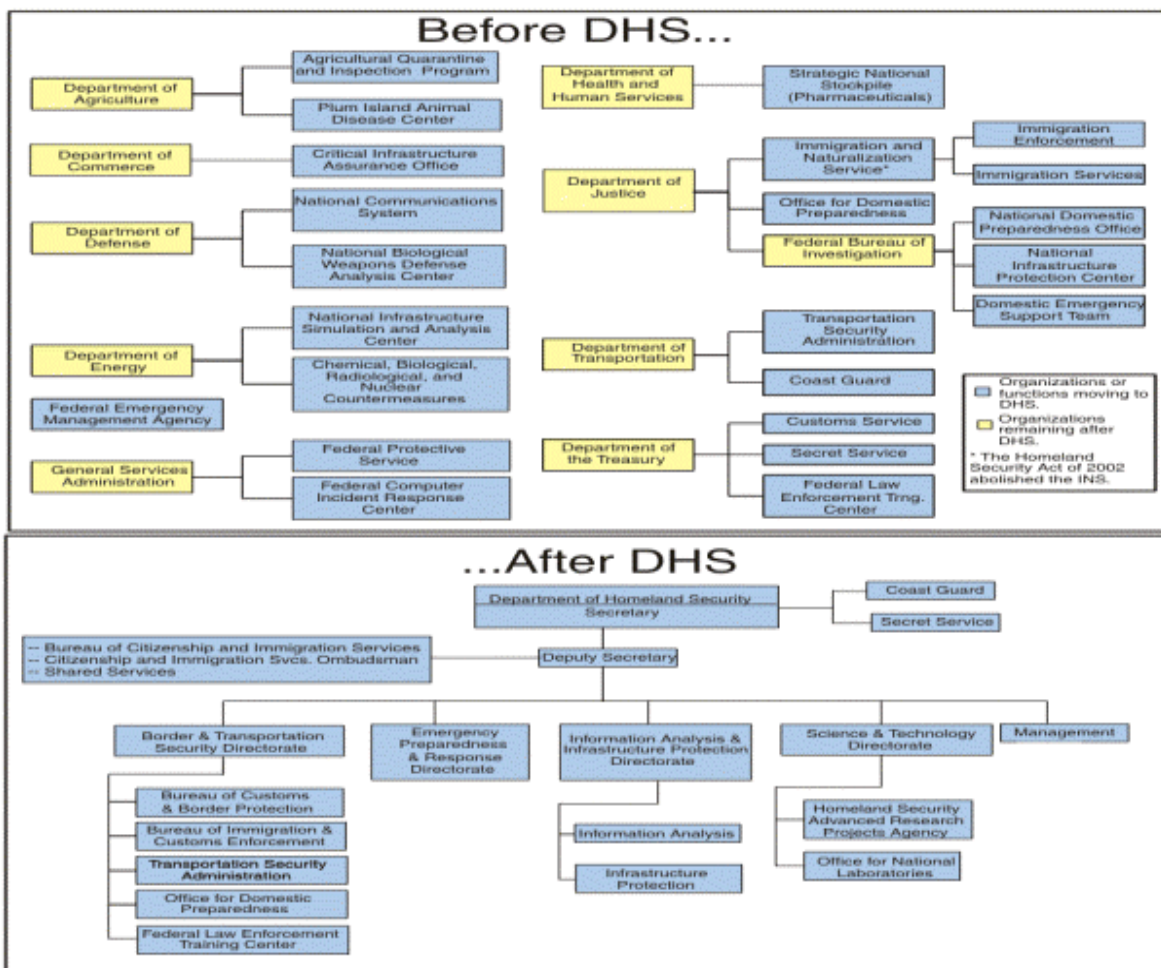
74. The Emergency Preparedness and Response Directorate oversees domestic disaster preparedness training and coordinates government disaster response. It encompasses (1) the Federal Emergency Management Agency (FEMA) (formerly an independent agency);

(2) the Strategic National Stockpile and the National Disaster Medical System (formerly within the U.S. Department of Health and Human Services); (3) the Nuclear Incident Response Team (formerly within the U.S. Department of Energy); and (4) the National Domestic Preparedness Office (formerly within the U.S. Department of Justice (FBI)).

75. The Science and Technology Directorate seeks to utilize all scientific and technological advantages when securing the homeland and includes (1) the Environmental Measurements Laboratory (formerly within U.S. Department of Energy); (2) the National Bio-Weapons Defense Analysis Center (formerly within U.S. Department of Defense); and (3) the Plum Island Animal Disease Center (formerly within U.S. Department of Agriculture).

76. The Information Analysis and Infrastructure Protection Directorate analyzes intelligence and information from other agencies (including the CIA and FBI) involving threats to homeland security and evaluates vulnerabilities in the nation's infrastructure.

77. The Department of Homeland Security also includes the U.S. Secret Service (formerly within U.S. Department of the Treasury), the U.S. Coast Guard (formerly within U.S. Department of Transportation), and U.S. Citizenship and Immigration Services (USCIS) (executing immigration benefits and services functions of former Immigration and Naturalization Service (formerly within U.S. Department of Justice)).



78. In addition to the secretaries of the 14 executive departments, the chiefs of a number of other governmental organizations are also considered part of the Cabinet. Currently, these include the chiefs of the White House staff, the National Security Council, the Office of Management and Budget, the Council of Economic Advisers, the Office of the United States Trade Representative, the Environmental Protection Agency, Drug Control Policy, Domestic Policy Council, the National Economic Council, and the United States Ambassador to the United Nations. The Office of the President includes certain other organizations such as the Office of Science and Technology and the Office of Environmental Policy.

79. In addition to the executive departments, more than 50 other agencies within the executive branch have important responsibilities for keeping the government and the economy working. These are often called independent agencies, as they are technically not part of the executive departments. Some are regulatory groups, with powers to supervise certain sectors of the economy, such as the Securities and Exchange Commission, the Nuclear Regulatory Commission and the Interstate Commerce Commission. Others provide special services, either to the government or to people, such as the United States Postal Service, the Central Intelligence Agency, and the Federal Election Commission. In most cases, the agencies have been created by Congress to deal with matters that have become too complex for the scope of ordinary legislation. Among the best known independent agencies are the Peace Corps and the National Aeronautics and Space Administration (NASA). All together, the executive branch currently employs approximately 2.8 million civilian personnel.

80. The Department of Defense is responsible for providing the military forces required to deter war and protect the security of the United States. The major elements of these forces include the Army, Navy, Marine Corps and Air Force, consisting in June 2005 of approximately 1.1 million active duty personnel. As of September 2004, there are approximately 212,000 women in active duty personnel. Under the authority of the President, the Secretary of Defense exercises civilian authority, direction and control over the Department of Defense, which includes the separately organized departments of Army, Navy and Air Force, the Joint Chiefs of Staff, the unified and specified combatant commands, and various subordinate agencies established for specific purposes.

## **2. The legislative branch**

81. The legislative branch of the federal government is the Congress, which has two houses: the Senate and the House of Representatives. Powers granted Congress under the Constitution include the powers to levy taxes, borrow money, regulate interstate commerce, and declare war. In addition, each house may discipline its own membership and determine its rules of procedure. Including related entities such as the Library of Congress, the General Accounting Office, the Government Printing Office and the Congressional Budget Office, the legislative branch employs some 38,000 people.

### **The Senate**

82. Each state elects two senators. Senators must be at least 30 years old, residents of the state from which they are elected, and citizens of the United States for at least nine years. Each term of service is for six years, and terms are arranged so that one third of the members are elected every two years.

83. The Senate has certain powers especially reserved to that body, including the authority to confirm presidential appointments of high officials and ambassadors of the federal government, as well as authority to give its advice and consent to the ratification of treaties by a two thirds vote.

84. The Constitution provides that the Vice President of the United States shall be president of the Senate. The Vice President has no vote, except in the case of a tie. The Senate chooses a president *pro tempore* from the majority party to preside when the Vice President is absent.

### **The House of Representatives**

85. The 435 members of the House of Representatives are chosen by direct vote of the electorate in each state, with the number of representatives allotted to each state on the basis of population. Each representative represents a single congressional district. Members must be at least 25 years old, residents of the states from which they are elected, and previously citizens of the United States for at least seven years. They serve for a two-year period.

86. The House of Representatives chooses its own presiding officer, the Speaker of the House. The Speaker is always a member of the political party with the majority in the House.

87. The leaders of the two political parties in each house of Congress are respectively the majority floor leader and the minority floor leader; they are helped by party whips who maintain communication between the leadership and the members of the House. Legislative proposals (termed “bills” prior to enactment as “statutes”) introduced by members in the House of Representatives are received by the standing committees which can amend, expedite, delay, or kill the bills. The committee chairmen attain their positions on the basis of seniority. Among the most important House committees are those on Appropriations, the Judiciary, Foreign Affairs, Ways and Means, and Rules.

88. Each house of Congress has the power to introduce legislation on any subject, except that revenue bills must originate in the House of Representatives. Each house can vote against legislation passed by the other house. Often, a conference committee made up of members from both houses must work out a compromise acceptable to both houses before a bill becomes law.

### **The role of committees**

89. One of the major characteristics of the Congress is the dominant role committees play in its proceedings. Committees have assumed their present-day importance by evolution, not design, as the Constitution makes no provision for their establishment. At present, the Senate has 16 standing committees; the House of Representatives has 22. The Houses share a number of joint committees, such as the Joint Committee on Taxation, and each also has a number of special and select committees. Each specializes in specific areas of legislation and governmental activity, such as foreign affairs, defense, banking, agriculture, commerce, appropriations and other fields. Every bill introduced in either house is referred to a committee for study and recommendation. The committee may approve, revise, reject or ignore any measure referred to it. It is nearly impossible for a bill to reach the House or Senate floor without first winning

committee approval. In the House, a petition to discharge a bill from committee requires the signatures of 218 members; in the Senate, a majority of all members is required. In practice, such discharge motions rarely receive the required support.

90. The majority party in each house controls the committee process. Committee chairs are selected by a caucus of members of the majority party in that house or by specially designated groups of members. Minority parties are proportionately represented in the committees according to their strength in each house.

91. Bills are developed by a variety of methods. Some are drawn up by standing committees, some by special committees created to deal with specific legislative issues, and some are suggested by the President or other executive branch officers. Citizens and organizations outside the Congress may suggest legislation to members, and individual members themselves may initiate bills. Each bill must be sponsored by at least one member of the house in which it is introduced. After introduction, bills are sent to designated committees which may schedule a series of public hearings to permit presentation of views by persons who support or oppose the legislation. The hearing process, which can last several weeks or months, opens the legislative process to public participation.

92. When a committee has acted favorably on a bill, the proposed legislation may then be brought to the floor for open debate. In the Senate, the rules permit virtually unlimited debate. In the House, because of the large number of members, the Rules Committee usually sets limits. When debate is ended, members vote to approve the bill, defeat it, table it (set it aside), or return it to committee. A bill passed by one house is sent to the other for action. If the bill is amended by the second house, the bill may return to the first house for another vote, or a conference committee composed of members of both houses may attempt to reconcile the differences.

93. Once passed by both houses, the bill is sent to the President for his action. The President generally has the option of signing the bill, in which case it becomes law, or vetoing it. A bill vetoed by the President must be re-approved by a two thirds vote of each house in order to become law. If the President refuses either to sign or veto a bill, it becomes law without his signature 10 days after it reaches him (not including Sundays). The single exception to this rule is when Congress adjourns after sending a bill to the President and before the 10-day period has expired; the President's refusal to take any action then negates the bill - a process known as the "pocket veto".

### **Congressional powers of oversight and investigation**

94. Among the most important functions of the Congress are oversight and investigation. Oversight functions include reviewing the effectiveness of laws already passed and assessing their implementation by the executive branch, as well as inquiring into the qualifications and performance of members and officials of the other branches. In addition, investigations are conducted to gather information on the need for future legislation. Frequently, committees call on outside (non-governmental) experts to assist in conducting investigative hearings and to make detailed studies of issues.

95. There are important corollaries to the powers of oversight and investigation. One is the power to publicize the proceedings and their results. Most committee hearings are open to the public and are widely reported in the mass media. Congressional hearings thus represent one important tool available to lawmakers to inform the citizenry and arouse public interest in national issues. A second power is to compel testimony from unwilling witnesses and to cite for contempt of Congress witnesses who refuse to testify, and for perjury those who give false testimony.

### **3. The judicial branch**

96. The third branch of the federal government, the judiciary, consists of a system of courts headed by the Supreme Court of the United States and including subordinate courts throughout the country. The federal judicial power extends to cases arising under the Constitution, laws, and treaties of the United States; to cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States is a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. In practice the vast majority of litigation in federal courts is based on federal law or involves disputes between citizens of different states under the courts' "diversity" jurisdiction.

97. The power of the federal courts extends both to civil actions for money damages and other forms of redress, and to criminal cases arising under federal law. Article III of the Constitution establishes the Supreme Court of the United States and gives Congress the power to establish other federal courts as needed. Under Article I, Congress also has the power to establish courts; Article I courts include territorial courts, certain District of Columbia courts, courts martial, legislative courts, and administrative agency adjudicative procedures.

98. The Constitution safeguards judicial independence of Article III judges by providing that federal judges shall hold office "during good behavior" - in practice, until they die, retire, or resign, although a judge who commits an offence while in office may be impeached in the same way as the President or other officials of the federal government. Federal judges are appointed by the President and confirmed by the Senate. Altogether, there are approximately 1,000 federal judges, and the federal judiciary employs some 28,000 people.

#### **The Supreme Court**

99. The Supreme Court is the highest court of the United States and the only one specifically created by the Constitution. A decision of the Supreme Court cannot be appealed to any other court. Congress has the power to fix the number of judges sitting on the Court (currently a Chief Justice and eight Associate Justices) and, within limits, to decide what kind of cases it may hear, but it cannot change the powers given to the Supreme Court by the Constitution itself.

100. The Supreme Court may exercise original jurisdiction (i.e. the authority to hear cases directly rather than on appeal) in only two kinds of cases: those affecting ambassadors, other public ministers and consuls; and those in which a state is a party. All other cases reach the Supreme Court on appeal from lower federal courts or from the various state courts. The right of

appeal is not automatic in all cases, however, and the Supreme Court exercises considerable discretion in selecting the cases it will consider. A significant amount of the work of the Supreme Court consists of determining whether legislation or executive acts conform to the Constitution. This power of judicial review is not expressly provided for by the Constitution. Rather, it is a doctrine inferred by the Court from its reading of the Constitution, and stated in the landmark case of *Marbury v. Madison*, 5 U.S. 137 (1803). In *Marbury*, the Court held that “a legislative act contrary to the Constitution is not law”, and observed that “it is emphatically the province and duty of the judicial department to say what the law is”. The doctrine of judicial review also covers the activities of state and local governments for conformity with federal law.

101. Decisions of the Court need not be unanimous; a simple majority prevails, provided at least six Justices participate in the decision. In split decisions, the Court usually issues both a majority and a minority or dissenting opinion, both of which may form the basis for future decisions by the Court. Often Justices will write separate concurring opinions when they agree with a decision, but for reasons other than those given by the majority.

### **Courts of appeals and district courts**

102. The second highest level of the federal judiciary is made up of the courts of appeals. The United States is currently divided into 12 appellate circuits, each served by a court of appeals. The courts of appeals have appellate jurisdiction over decisions of the district courts (trial courts with federal jurisdiction) within their respective geographic areas. They are also empowered to review orders of the independent regulatory agencies, such as the Federal Trade Commission, in cases where the internal review mechanisms of the agencies have been exhausted and there still exists substantial disagreement over legal issues. There is also a thirteenth court of appeals, which hears appeals from certain courts with specialized jurisdiction. Approximately 180 judges sit on the various courts of appeals.

103. Below the courts of appeals are the federal district courts. The 50 states are divided into 89 districts so that litigants may have a trial within easy reach. Additionally, there are district courts in the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories of Guam and the Virgin Islands. Congress fixes the boundaries of the districts according to population, size, and volume of work. Some states (such as Alaska, Hawaii, Idaho and Vermont) constitute a district by themselves, while the larger states (such as New York, California and Texas) have four districts each. In total, there are approximately 650 federal district judges.

### **Courts with specialized jurisdiction**

104. In addition to the federal courts of general jurisdiction, it has been necessary from time to time to set up courts for special purposes. Perhaps the most important of these special courts is the United States Court of Federal Claims, established in 1855 to render judgment on monetary claims against the United States. Other special courts include United States Tax Court, the Court of Veterans Appeals, and the Court of International Trade, which has exclusive jurisdiction over civil actions involving taxes or quotas on imported goods.



## **Military courts**

105. A separate system exists for military justice. Members of the military are subject to the Uniform Code of Military Justice for disciplinary matters. Cases of alleged criminal conduct are investigated and, when substantiated, are resolved in appropriate forums ranging from nonjudicial punishment to one of three types of courts-martial. In a trial by court-martial, an accused is accorded the full range of constitutional rights, including representation by a qualified defense counsel at no charge to the individual. Any court-martial that results in a sentence of confinement for a year or more, discharge from the service or capital punishment is automatically reviewed by the relevant court of criminal appeals for the Military Department concerned. Those courts, which are composed of senior military (and sometimes civilian) attorneys serving as appellate judges, examine the records of trial for both factual and legal error. Decisions can be appealed to the United States Court of Appeals for the Armed Forces, comprised of five civilian judges. Adverse decisions can be further reviewed by the United States Supreme Court on a discretionary basis.

## **Relationship between federal and state courts**

106. Over the course of the nation's history, a complex set of relationships between state and federal courts has arisen. Ordinarily, federal courts do not hear cases arising under the laws of individual states. However, some cases over which federal courts have jurisdiction may also be heard and decided by state courts. Both court systems thus have exclusive jurisdiction in some areas and concurrent jurisdiction in others. Taking into account that there are 50 separate state court systems, which often include subordinate judicial bodies (e.g., county and city courts), as well as the judicial systems of the insular areas, the District of Columbia and other nonstate entities, there are over 2,000 courts with general jurisdiction and approximately 18,000 judicial districts of either general or limited jurisdiction in the United States. Many states have large numbers of courts with very limited jurisdiction, such as New York (which has 2300 town and village justice courts) and Texas (which has approximately 850 municipal courts and 920 justice of the peace courts).

## **C. The state governments**

107. The governments of the 50 states have structures closely paralleling those of the federal government, each with a constitution and executive, legislative, and judicial branches. The state Governor acts as the head of the executive, but not all states bestow the same amount of power upon their governors; some are quite powerful, others less so. All state legislatures have two houses, except Nebraska's, which is unicameral. The size of state legislatures varies widely; the largest include those in New Hampshire (424 representatives), Pennsylvania (253), and Georgia (236), while the smallest are found in Nebraska (49) and Alaska (60). Most state judicial systems mirror the federal system, with lower trial courts, appellate courts, and a court of last resort. States and insular areas divide relatively evenly among those that elect their judges (22), those that appoint judges (16 including the District of Columbia and four of the insular areas), and those where judges are initially appointed and subsequently run on a retention ballot (18 including Guam).

108. The power of state governments is vast. Essentially, each state is a sovereign entity, free to promulgate and enforce policy and law that pertain exclusively to that state, limited under the Constitution only to the extent that the relevant authority has been delegated to the federal government. The power of a state and its cities and localities to regulate its own general welfare has traditionally been termed the “police power.” Besides enforcement of criminal laws, the police power encompasses agriculture and conservation, highway and motor vehicle supervision, public safety and correction, professional licensing, regulation of intrastate business and industry, and broad aspects of education, public health, and welfare. The interpretation of a state’s constitution falls exclusively within the domain of that state’s own court system. Only where there is direct conflict with federal law or the federal Constitution, or where the federal government has “pre-empted” the field, can state law be overridden or invalidated. The retention of most aspects of governmental authority at the state and local levels generally serves to keep that authority in the hands of the people.

109. Distribution of authority between the states and the federal government has historically been among the most basic dynamics of the federal system. Although the powers of Congress are limited to those expressly enumerated in the Constitution, and those powers not expressly delegated to the federal government are reserved to the states or to the people, the twentieth century has seen increasingly broad judicial interpretation of the national legislative power. Today there is an abundance of federal legislation, touching on many areas which 100 years ago would have been exclusively considered a state concern. One result of this expansion of federal authority, especially in the latter half of this century, has been a substantial increase in legislation and government regulations protecting civil and political rights.

#### **D. Other governmental levels**

110. A significant number of United States citizens and/or nationals live in areas outside the 50 states and yet within the political framework and jurisdiction of the United States. They include people living in the District of Columbia, American Samoa, Puerto Rico, the United States Virgin Islands, Guam, the Northern Marianas, and the remaining islands of the Trust Territory of the Pacific. The governmental framework in each is largely determined by the area’s historical relationship to the United States and the will of its residents.

111. The *District of Columbia* was established at the founding of the Republic to serve as the home of the nation’s capital outside of any state. In 1783 the Continental Congress voted to establish a federal city; the specific site was chosen by President George Washington in 1790. Congress moved to the District from Philadelphia in 1800, and the District remains the seat of the federal government today. Originally, Maryland and Virginia donated land for the District. The land donated by Virginia was given back in 1845 and the District now covers 179.2 km<sup>2</sup> located on the west central edge of Maryland, along the eastern bank of the Potomac River. Residents of the District, numbering about 550,000, are United States citizens and have been entitled to vote in presidential elections since 1964. Residents elect a non-voting delegate to the United States Congress as well as a mayor and a city council with authority to levy its own taxes. The United States Congress retains final authority in a number of important areas, including the District’s laws and budget. Whether the District should be admitted to statehood or whether its residents should be afforded full voting rights in Congress remains an issue of active public debate.

112. *American Samoa* is an unincorporated territory of the United States, acquired in 1900 and 1904 through Deeds of Cession executed by its Chiefs, and ratified by Congress in 1929. Residents are United States nationals who do not vote in federal elections; they are, however, represented by an elected non-voting delegate in the House of Representatives. Fundamental rights are guaranteed by both the United States Constitution and the territorial constitution. American Samoa is under the general administrative supervision of the Department of the Interior; nonetheless, American Samoa has been self-governing since 1978, with an elected Governor and lieutenant Governor and bicameral legislature (Senate and House of Representatives). American Samoa also has its own high court and five district courts.

113. *Puerto Rico* has been a United States territory since 1899 and is currently a self-governing commonwealth freely associated with the United States. Puerto Ricans have been citizens of the United States since 1917; however, they cannot vote in presidential elections. Residents elect the Commonwealth's "resident commissioner" to the United States House of Representatives. Puerto Rico has a popularly elected chief executive (Governor), a bicameral legislature, and a judicial branch consisting of a Supreme Court and lesser courts. There is also a federal district court. The federal government conducts foreign relations for Puerto Rico and has responsibility for defense, the post office, customs, and certain agricultural activities. The future relationship of Puerto Rico and the United States continues to be a matter of vigorous public debate. The people of Puerto Rico expressed their views in a public referendum in November 1993, in which continuation of the commonwealth arrangement received the greatest support, although nearly as many votes were cast in favor of statehood. By contrast, a small minority of some 5 percent chose independence. The people of Puerto Rico more recently expressed their views in a public referendum held on December 13, 1998. The plebiscite allowed for five options: (1) a "territorial" commonwealth (0.1%); (2) free association (0.3%); (3) statehood (46.5%); (4) independence (2.5%); and (5) "none of the above" (50.3%). The majority, thus, chose "none of the above." To address the schism in Puerto Rico between those in favor of maintaining the commonwealth status and those in favor of statehood, in 2000, the U.S. Congress held hearings on the right of Puerto Rico to self-determination and passed legislation assigning \$2.5 million to educate Puerto Rico residents about their self-determination choices regarding the Island's future status.

114. The *United States Virgin Islands* are an unincorporated territory of the United States. They were acquired from Denmark in 1917; residents are United States citizens who do not vote in federal elections. Since 1973, they have been represented by an elected delegate in the House of Representatives. Residents elect their chief executives, the Governor and lieutenant Governor, as well as the 15 members of their unicameral legislature. There is a federal judicial district for the United States Virgin Islands, whose judge is appointed by the United States President.

115. *Guam* is an unincorporated territory of the United States, acquired by the United States in 1899 after the Spanish-American War and administered by the Navy until 1950. Residents of Guam are United States citizens who do not vote in federal elections; since 1972, they have been represented by a non-voting delegate in the House of Representatives. The territory is under the general administrative supervision of the Department of the Interior. The residents elect their own Governor, lieutenant Governor, and unicameral legislature. The district court of Guam operates within jurisdiction very similar to a United States district court.

116. The *Northern Marianas* are a self-governing commonwealth in political union with the United States. Formerly part of the Trust Territory of the Pacific Islands assigned to the United States by the United Nations in 1947, the Northern Marianas became self-governing in 1976. Residents are United States citizens. They do not participate in federal elections but do vote for their popularly elected Governor, lieutenant Governor, and bicameral legislature. Residents maintain control over domestic affairs; the United States government provides for defense and foreign affairs. The Northern Marianas adopted this governmental form in a United Nations referendum in 1975.

117. Two other areas formerly encompassed within the Trust Territory of the Pacific Islands include the Federated States of Micronesia, a federation including Pohnpei, Kosrae, Chuuk and Yap, and the Republic of the Marshall Islands. Both are now independent, sovereign nations in free association with the United States. The sole remaining entity of the Trust Territory is the *Republic of Palau*, consisting of 200 islands in the Caroline Island chain. The majority of the population of 15,000 lives on the main island of Koror. In 1986, the government of Palau and the government of the United States signed a Compact of Free Association, which was enacted into law by the U.S. Congress in the same year. However, the Compact was not ratified by the people of Palau until a November 1993 plebiscite. Approval of that plebiscite led, on October 1, 1994, to the termination of the Trusteeship, independence for Palau and the commencement of Palau's relationship of free association with the United States. Palau became a member of the United Nations on December 15, 1994.

### **III. GENERAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS**

#### **A. Legal framework**

118. The essential guarantees of human rights and fundamental freedoms within the United States are set forth in the Constitution and statutes of the United States, as well as the constitutions and statutes of the several states and other constituent units. In practice, the enforcement of these guarantees ultimately depends on the existence of an independent judiciary with the power to invalidate acts by the other branches of government which conflict with those guarantees. Maintenance of a republican form of government with vigorous democratic traditions, popularly elected executives and legislatures, and the deep-rooted legal protection of freedoms of opinion, expression and the press, all contribute to the protection of fundamental rights against governmental limitation and encroachment.

#### **United States Constitution**

119. The Constitution has been amended 27 times since it was ratified in 1789. Amending the Constitution requires approval by two thirds of each house of the Congress, or by a national convention, followed by ratification by three quarters of the states. The first 10 amendments, known collectively as the Bill of Rights, were added in 1791. These amendments provide for the basic protection of those individual rights which are fundamental to the democratic system of government. They remain at the heart of the United States legal system today, just as they were written two centuries ago, although the specific rights they guarantee have been extensively elaborated by the judiciary over the course of time. Individuals may assert these rights against the government in judicial proceedings.

120. The First Amendment guarantees freedom of worship, speech and press, the right of peaceful assembly, and the right to petition the government to correct wrongs. The Second Amendment prohibits the federal government from infringing on the right of citizens to keep and bear arms, bearing in mind the necessity for a “well regulated militia”. The Third Amendment provides that troops may not be quartered in a private home without the owner’s consent. The Fourth Amendment guards against unreasonable searches, arrests and seizures of persons and property.

121. The next four amendments deal with the system of justice. The Fifth Amendment forbids trial for a major crime except after indictment by a grand jury; it prohibits repeated trials for the same offence, forbids punishment without due process of law, and provides that an accused person may not be compelled to testify against him or herself. The Sixth Amendment guarantees a speedy public trial for criminal offences; it requires trial by an unbiased jury, guarantees the right to legal counsel for the accused in criminal proceedings, and provides that witnesses shall be compelled to attend the trial and testify in the presence of the accused. The Seventh Amendment assures trial by jury in civil cases involving anything valued at more than 20 United States dollars. The Eighth Amendment forbids excessive bail or fines and cruel and unusual punishments.

122. The Ninth Amendment declares that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The Tenth Amendment sets forth the federal and democratic nature of the United States system of government, providing that powers not delegated by the Constitution to the federal government, nor prohibited by it to the states, are reserved to the states or the people. The Tenth Amendment recognizes that the federal government is a government of limited jurisdiction, empowered to do only what the Constitution authorizes it to do, and that all other powers remain vested in the people, and in their duly constituted state governments.

123. Amendments to the Constitution subsequent to the original Bill of Rights cover a wide range of subjects. One of the most far-reaching is the Fourteenth Amendment, by which a clear and simple definition of citizenship was established and broadened guarantees of due process, equal treatment, and equal protection of the law were confirmed. In essence, this amendment, adopted in 1868, has been interpreted to apply the protections of the Bill of Rights to the states. By other amendments, the judicial power of the national government was limited; the method of electing the president was changed; slavery was forbidden; the right to vote was protected against denial because of race, color, sex or previous condition of servitude; the congressional power to levy taxes was extended to incomes; and the election of United States Senators by popular vote was instituted.

124. The Constitution provides explicitly that it is the “supreme Law of the Land”. This clause is taken to mean that when state constitutions or laws passed by state legislatures or laws adopted by the federal government are found to conflict with the Constitution, they have no force or effect. Decisions handed down by the Supreme Court of the United States and subordinate federal courts over the course of two centuries have confirmed and strengthened this doctrine of constitutional supremacy.

## State constitutions

125. As indicated above, the protections provided by the federal Constitution and statutes are applicable nationwide, generally providing a minimum standard of guarantees for all persons in the United States. While the laws of individual states cannot detract from the protections afforded to their citizens by federal law, states are, except where prohibited by federal law or it infringes on a protected federal right, free to offer their citizens greater protections of civil and political rights.

126. Historically, states individually or collectively have led the federal government in the advancement and protection of civil and political rights. For example, starting with Vermont in 1777, and through 1862, most Northern states curtailed or abolished slavery. Likewise, women first gained the right to vote in Wyoming Territory in 1869, while federal law did not extend that right until 1920.

127. More recently, in the latter half of the twentieth century, federal law and the federal courts played a more active role in civil rights protections. State courts, however, continue to play an important role in this arena. In many cases, in keeping with the federal system of government, individual state's laws afford their citizens greater protections than the federal Constitution requires. See *Prune Yard Shopping Center v. Robins*, 447 U.S. 74 (1980) (holding that broader state protections for free speech, protecting expression in a public shopping center, did not effect a taking violating the federal Constitution; upholding the California Supreme Court in *Robins v. Prune Yard Shopping Center*, 592 P.2d 341 (Cal. 1979)).

128. State law has provided broader protections than federal law in a number of areas, including free speech, religious liberty, property rights, victims' rights, and the provision of government services. State constitutions vary widely in length, detail, and similarity to the United States Constitution. As a result, a state court decision, while it may expand upon a right protected by the United States Constitution, may rest on grounds very different from those upon which a similar federal case would be decided.

129. One area in which federal law provides broader protection than some state laws is protection of freedom of religion. The federal Constitution permits students who choose freely to do so to attend parochial schools with the use of public funds. See *Zelman v. Harris*, 536 U.S. 639 (2002). Some states, on the other hand, prohibit much more rigidly the use of public funds for religious endeavors. For instance, based on the state constitution's broad prohibition of governmental assistance to an institution not owned by the state, the Supreme Court of Nebraska found unconstitutional a statute under which public school books were loaned to parochial schools; on similar grounds, the Supreme Court of Idaho struck down a statute authorizing publicly provided transportation of students to nonpublic schools. See *Gaffney v. State Department of Education*, 220 N.W.2d 550 (Neb. 1974); *Epeldi v. Engelking*, 488 P.2d 860 (Id. 1971). While the United States Supreme Court has upheld the display of a nativity scene on public property, the California Supreme Court has nonetheless held that the state constitution's ban on preference for religious sects prohibited the display of a lighted cross on public grounds in celebration of Christmas and Easter. See *Lynch v. Donnelly*, 465 U.S. 668 (1984); *Fox v. City of Los Angeles*, 587 P.2d 663 (Cal. 1978).

130. State courts have also interpreted a state right to equal access to government benefits more broadly than the Supreme Court has interpreted a similar federal right. While the Supreme Court has held that governments may not place an “undue burden” on a woman’s ability to obtain an abortion before viability, *see Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Court has also held that the federal government need not provide financial support and federal health benefits for obtaining an abortion, *see Harris v. McRae*, 448 U.S. 297 (1980). The Massachusetts Supreme Judicial Court, in contrast, has held that under the Massachusetts Declaration of Rights, once the state has allocated public funds for child-bearing and health in general, the state must show “genuine indifference” in that allocation and consequently fund abortions as well. *See Moe v. Secretary of Administration*, 417 N.E.2d 387 (Mass. 1981).

131. Despite these examples, state courts are not uniform in their willingness to find greater protections within the state constitutions than those guaranteed by the federal government. As is appropriate in a federal system, each state’s protections are tailored by that state’s democratic process. States are prohibited simply from subverting established federal protections.

### **Statutes**

132. There is no single statute or mechanism by which basic human rights and fundamental freedoms are guaranteed or enforced in the United States legal system. Rather, domestic law provides extensive protection through enforcement of the constitutional provisions cited above and a variety of statutes, which typically provide for judicial and/or administrative remedies.

133. At the federal level, for example, the constitutional protection afforded by the Equal Protection Clause of the Fourteenth Amendment against discrimination by the state governments on the basis of race, color or national origin has been applied to the federal government through the Fifth Amendment. It has also been supplemented by a number of specific federal statutes, including the 1866 and 1871 Civil Rights Acts (protecting property rights, freedom to contract, and providing federal remedies for private individuals subjected to unlawful discrimination by persons acting “under color of law”), the 1964 Civil Rights Act (ensuring equal treatment in places of public accommodation, non-discrimination in federally funded programs, and non-discrimination in employment), the 1965 Voting Rights Act (invalidating discriminatory voter qualifications), and the 1968 Fair Housing Act (providing the right to be free from discrimination in housing). Similarly, in the area of gender discrimination, individuals benefit from the protections of the Equal Protection Clause, the 1963 Equal Pay Act (equal pay for equal work), the Civil Rights Act of 1964 (non-discrimination in hiring and employment practices and policies), the Education Amendments of 1972 (assuring gender equality in education), the Equal Credit Opportunity Act (equal access and non-discrimination in credit and lending), the Fair Housing Act (non-discrimination in housing, real estate and brokerage), the Pregnancy Discrimination Act of 1978, and the Religious Land Use and Institutionalized Persons Act. Protection against age discrimination is provided by the Age Discrimination in Employment Act of 1967 (prohibiting discrimination in employment against workers or applicants 40 years of age or older). The Civil Rights of Institutionalized Persons Act of 1980 provides protection to mentally disabled persons in state facilities. Although disabled persons have long been protected against discrimination in the federal service, an important and much broader set of protections was recently added with the enactment of the Americans with Disabilities Act of 1990, which

prohibits discrimination against disabled individuals in employment, public accommodations, state and local government services, and public transportation. The Indian Civil Rights Act of 1968 imposes upon tribes such basic requirements as free speech protection, free exercise of religion, due process and equal protection.

134. Most states and large cities have adopted their own statutory and administrative schemes for protecting and promoting basic rights and freedoms. For the most part, state statutory protections mirror those provided by the United States Constitution and federal law. Typically, state constitutions and statutes protect individuals from discrimination in housing, employment, accommodations, credit and education. For example, Minnesota's statute prohibits discrimination in sales, rentals or lease of housing. Minn. Stat. § 363.03 (1992). Massachusetts makes it unlawful to refuse to hire or to discharge someone from employment on discriminatory grounds, or to discriminate in education. Mass. Ann. Laws ch. 151B, § 4; ch. 151C, § 1 (1993). California requires that all persons be "free and equal" in accommodations, advantages, facilities, privileges and services of business establishments. Cal. Civ. Code § 51 (1993). Texas prohibits discrimination in credit or loans. Texas Revised Civil Statutes Annotated art. 5069-207 (1993).

### **Derogation/states of emergency**

135. Neither the Constitution nor the laws of the United States provide for the declaration of a general state of emergency entailing suspension of the normal operations of the government or permitting derogations from fundamental rights. On the contrary, the basic requirement for a republican form of government, the general functions of the three branches of the federal government, and most of the fundamental civil and political rights enjoyed by individuals, are all enshrined in the Constitution and thus remain in effect at all times, even during crisis situations.

136. The one exception to this rule concerns the privilege of the writ of habeas corpus. Article I, § 9, cl. 2 of the Constitution states that the privilege shall not be suspended, "unless when in cases of rebellion or invasion the public safety may require it". Congress is considered to hold the authority to suspend the privilege. *See Ex Parte Bollman*, 8 U.S. 74, 101 (1807). President Lincoln suspended the privilege during the Civil War but sought congressional authorization for his actions. *See Ex Parte Merryman*, 17 Fed. Cas. 144 (No. 9487) (C.C.D. Md. 1861) (Chief Justice Taney sitting as a Circuit Judge for the 4th Circuit found Lincoln's action invalid). The privilege has been suspended only three other times, each pursuant to an act of Congress.

137. At the national level, there is a general statutory prohibition against the use of the armed forces for domestic law enforcement purposes. However, the President is authorized in limited circumstances to order the use of federal troops to assist state and local authorities in controlling violence and to suppress insurrections and enforce federal law. The President may also declare an emergency with respect to catastrophic domestic situations (for example, in the event of an earthquake, a hurricane, flooding or a drought), thus permitting the federal government to provide disaster relief and emergency assistance to state and local governments and to the individual victims of the crisis. These laws do not, however, permit the executive branch to interfere with the responsibilities of the legislative or judicial branches of the federal government or to arrogate the authority of the states.



138. Other statutes permit the President to declare national emergencies with respect to foreign affairs and international economic transactions (thus providing a basis, for example, for implementation of international sanctions imposed by the United Nations Security Council or other competent international authority). While these laws permit the imposition of civil and criminal penalties for prohibited activities, they remain subject to constitutional limitations and do not circumscribe basic human rights or permit interference in the normal functioning of the government.

139. Under state and local law, the responsible authorities (state Governors, city mayors, county executives) are typically permitted to take a wide range of emergency actions pursuant to the general “police power” in order to respond to emergencies (for example, by imposing curfews in cases of civil unrest, establishing quarantines in response to public health concerns, and restricting water usage in the event of drought). While the “police power” is reserved to the states under the Constitution, actions taken pursuant to it may not limit or infringe upon federally protected rights. Individuals thus retain their constitutional protections and human rights at all times and may challenge the exercise of emergency authority in the courts. As a general rule, the exercise of emergency authority by the government - at any level - is given particularly careful judicial scrutiny when it infringes upon individual rights and liberties. *See, e.g., The Amy Warwick* 67 U.S. 635 (1863); *Toyosaburo Korematsu v. United States*, 323 U.S. 214 (1944). It is rare, however, for the United States Supreme Court to invalidate presidential actions taken in emergency situations. *See Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952).

## **B. Responsible authorities**

140. Within the federal government, all three branches share responsibility for the protection and promotion of fundamental rights under the Constitution and the statutes of the United States. The President is responsible for enforcing the law. Within the Department of Justice, the Civil Rights Division bears principal responsibility for the effective enforcement of federal civil rights laws. These include the various civil rights acts mentioned above as well as specific criminal statutes prohibiting wilful deprivation of constitutional rights by officials acting with actual or apparent legal authority or through conspiracy, involuntary servitude, and violent interference with federally protected activities. In addition, most other agencies have civil rights sections charged with enforcing civil rights issues within their scope of authority.

141. The United States Commission on Civil Rights, a statutorily established independent agency within the executive branch, collects and studies information on discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, national origin or in the administration of justice in such areas as voting rights, enforcement of civil rights laws, and equality of opportunity in education, employment and housing. It also evaluates federal laws and the effectiveness of governmental equal opportunity programs and serves as a clearing house for civil rights information. The Commission makes findings of fact and recommendations for the President and the Congress but has no independent enforcement authority.

142. The United States Equal Employment Opportunity Commission, also an independent agency within the executive branch, works to eliminate discrimination based on race, color, religion, sex, national origin, disability or age in all aspects of the employment relationship.

The Commission conducts investigations of alleged discrimination, makes determinations based on gathered evidence, attempts conciliation when discrimination has occurred, files lawsuits, and conducts voluntary assistance programs for employers, unions and community organizations. The Commission has oversight responsibility for all compliance and enforcement activities relating to equal employment opportunity among federal employees and applicants, including discrimination against individuals with disabilities.

143. At the state and local levels, a variety of schemes and mechanisms exist to protect and promote basic rights. At the state level, enforcement responsibility is typically found in the Attorney-General's Office or in separate civil or human rights offices within the state government or at the county level. Examples include the Massachusetts Commission Against Discrimination, the Illinois Department of Human Rights, the Cook County (Illinois) Human Rights Commission, the California Fair Employment and Housing Department, and the Texas Commission on Human Rights. Many large city governments have also established offices or commissions to address civil rights and discrimination issues. These organizations vary. Some emphasize enforcement of housing and employment anti-discrimination laws. Others facilitate community development and strategies to address human rights issues. Examples include the Boston (Massachusetts) Human Rights Commission, the Chicago (Illinois) Commission on Human Relations, the Los Angeles (California) Human Relations Commission, and the Austin (Texas) Human Rights Commission.

144. Non-governmental organizations also play an important role in ensuring the protection and promotion of human rights within the United States. Professional groups provide legal expertise as well as forums for the development of considered positions on legal developments and matters of human rights concern. Numerous private organizations representing diverse interests and constituencies with particular human rights and civil rights concerns, (including race, religion, sex, private property, children, the disabled, and the indigenous people), are actively involved in the consideration and application of human and civil rights laws relating to their constituencies.

### **C. Remedies**

145. United States law provides extensive remedies and avenues for seeking redress for alleged violations of basic rights and fundamental freedoms. The principal method, if administrative remedies are insufficient to produce the desired result, is through recourse to court. A person claiming to have been denied a constitutionally protected right may assert that right directly in a judicial proceeding in state or federal court. In addition, in instances involving "state action" or actions "under color of state law", the injured party may seek civil damages and injunctive relief against the individual responsible for the denial of rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983. Federal officials may be sued for damages directly under provisions of the Constitution, subject to various doctrines of immunity from liability.

146. Many federal statutes specifically provide for enforcement through administrative procedures or by civil actions filed in court. All states have judicial procedures by which official action may be challenged, though the procedure may go by various names (such as "petition for review").

147. Where Congress has so provided, the federal government may bring civil actions to enjoin acts or patterns of conduct that violate some constitutional rights. This is the case, for example, under the principal civil rights acts discussed above. Thus, the Attorney-General can sue under the Civil Rights of Institutionalized Persons Act to vindicate the rights of persons involuntarily committed to prisons, jails, hospitals, and institutions for the mentally retarded. Similarly, the Voting Rights Act of 1965 authorizes the Attorney-General to bring suit to vindicate the right to vote without discrimination based on race. The federal government may also prosecute criminally the violations of some civil rights, for example, the denial of due process through the abuse of police power and conspiracies to deny civil rights. The government may also bring criminal prosecutions against defendants for use of force or threat of force to violate a person's rights, or for the trafficking of humans.

148. Any person prosecuted under a statute or in conjunction with a governmental scheme (such as jury selection) which he or she believes to be unconstitutional may challenge that statute as part of the defense. This may be done in the context of federal or state prosecutions. Even in civil actions, the defendant may pose a constitutional challenge to the statute that forms the basis of the suit. Any court, from the lowest to the United States Supreme Court, may consider such a claim of unconstitutionality, though normally it must be raised at the earliest opportunity to be considered at all. Detention pursuant to a statute believed to be unconstitutional or as a result of a procedure that allegedly violated a constitutional right may also be challenged by a writ of habeas corpus in state and federal courts. To a limited degree, post-conviction relief is also available by state and federal writs of habeas corpus or, in the case of federal convictions, by a motion for relief from a sentence. All states have similar remedies as part of their criminal procedure.

#### **D. Human rights instruments**

##### **Multilateral treaties**

149. The United States is at present Party to the following multilateral human rights instruments:

- Slavery Convention and its amending Protocol;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;
- Protocol Relating to the Status of Refugees;
- Inter-American Convention on the Granting of Political Rights to Women;
- Convention on the Political Rights of Women;
- Convention on the Prevention and Punishment of the Crime of Genocide;
- ILO Convention No. 105 concerning the Abolition of Forced Labor;
- International Covenant on Civil and Political Rights;

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor;
- The Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict;
- The Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution, and Child Pornography.

150. Moreover, the United States has signed but not yet ratified the following multilateral human rights treaties:

- International Covenant on Economic, Social and Cultural Rights;
- American Convention on Human Rights;
- Convention on the Elimination of All Forms of Discrimination against Women.

151. In addition, the United States has entered into many bilateral treaties (including consular treaties and treaties of friendship, commerce and navigation) which contain provisions guaranteeing various rights and protections to nationals of foreign countries on a reciprocal basis. In some cases, these may be invoked directly in United States courts for that purpose.

### **Treaties as law**

152. Duly ratified treaties are binding on the United States as a matter of international law. Whether a given treaty has the force of domestic law, and if so, to what extent, will depend on the specific provisions of the treaty, including any reservations, understandings, or declarations made by the United States. For example, not all treaty provisions create judicially enforceable individual rights in the courts of the United States. In some cases where a treaty provision does not by its own force grant a judicially enforceable individual right, the federal government may enact implementing legislation that grants such a right as a means of implementing the treaty provision.

153. Historically, the prospect that the constitutional treaty power could be used to override or invalidate state and local law generated considerable domestic political controversy. Although it has been recognized that the treaty power is not limited by the scope of congressional authority over domestic matters (*see Missouri v. Holland*, 252 U.S. 416 (1920)), reliance upon that power to pre-empt State and local law has been considered by some to be an interference with the rights of the constituent States reserved to them under the Constitution. Consequently, the expectation has been that any changes to United States law required by treaty ratification will be accomplished in the ordinary legislative process.

154. Also, treaties as well as statutes must conform to the requirements of the Constitution. *Reid v. Covert*, 354 U.S. 1 (1957). Thus, the United States is unable to accept a treaty obligation which limits constitutionally protected rights, as in the case of Article 20 of the International Covenant on Civil and Political Rights, which infringes upon freedom of speech and association guaranteed under the First Amendment to the Constitution.

155. Consequently, in giving advice and consent to ratification of a treaty concerning the rights of individuals, Congress must give careful consideration to the specific provisions of the treaty and to the question of consistency with existing state and federal law, both constitutional and statutory. When elements or clauses of a treaty conflict with the Constitution, it is necessary for the United States to take reservations to those elements or clauses, simply because neither the President nor Congress has the power to override the Constitution. In some cases, it has been considered necessary for the United States to state its understanding of a particular provision or undertaking in a treaty, or to make a declaration of how it intends to apply that provision or undertaking.

### **Implementation**

156. When necessary to carry out its treaty obligations, the United States generally enacts implementing legislation rather than relying on a treaty to be “self-executing”. Thus, for example, to implement the Genocide Convention, the United States Congress adopted the Genocide Convention Implementation Act of 1987, codified at 18 U.S.C. § 1091-93. When such legislation is required, the United States’ practice with respect to certain treaties has been to enact the necessary legislation before depositing its instrument of ratification. It is for this reason, for example, that the United States did not deposit its instrument of ratification for the Convention Against Torture until 1994, even though the Senate gave its advice and consent to ratification of that treaty in 1990, as Congress did not approve the necessary implementing legislation until May 1994.

157. However, the United States does not believe it necessary to adopt implementing legislation when domestic law already makes adequate provision for the requirements of the treaty. Again, the Convention Against Torture provides a case in point. While final ratification awaited enactment of legislation giving United States courts criminal jurisdiction over extraterritorial acts amounting to torture which had not previously been covered by United States law, no new implementing legislation was proposed with respect to torture within the United States because United States law at all levels already prohibited acts of torture within the meaning of the Convention. Similarly, because the basic rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States took a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant’s provisions in domestic law. That important human rights treaty was accordingly ratified in 1992 shortly after the Senate gave its advice and consent.

## **IV. INFORMATION AND PUBLICITY**

158. Information concerning human rights treaties is readily available to any interested person in the United States. All treaties, including human rights treaties, to which the United States is a Party are published by the federal government, first in the Treaties and International Agreements

Series (TIAS) and thereafter in the multi-volume United States Treaties (UST) series. Annually, the Department of State publishes a comprehensive listing of all treaties to which the United States is a Party, known as Treaties in Force (TIF). The constitutional requirement that the Senate give advice and consent to ratification of all treaties ensures that there is a public record of its consideration, typically including a formal transmission of the treaty from the President to the Senate, a record of the Senate Foreign Relations Committee's public hearing and the Committee's report to the full Senate, together with the action of the Senate itself.

159. The texts of all human rights treaties (whether or not the United States has ratified) can also be readily obtained from the government or virtually any public or private library, as they have been published in numerous non-governmental compilations and are also available in major computerized databases. The United Nations Compilation of International Instruments on Human Rights (ST/HR/1) is also widely available.

160. Although there is no national educational curriculum in the United States, instruction in fundamental constitutional, civil and political rights occurs throughout the educational system, from grammar and secondary school through the college and university levels. Most institutions of higher education, public and private, include courses on constitutional law in their departments of political science or government. Constitutional law is a required subject in law school curricula, and most law schools now offer advanced or specialized instruction in the area of civil and political rights, non-discrimination law and related fields. Nearly every law school curriculum includes instruction in international law including basic human rights law. Several textbooks have been published in the field, including documentary supplements which contain the texts of the more significant human rights instruments. The numerous non-governmental human rights advocacy groups in the United States, which operate freely, also contribute to public awareness and understanding of domestic and international rights and norms.

161. With particular respect to the International Covenant on Civil and Political Rights, the original transmittal of the treaty to the Senate was published in 1978 (Message from the President of the United States Transmitting Four Treaties Pertaining to Human Rights, 95th Cong., 2d Sess., Exec. E, 23 Feb. 1978). The record of Senate consideration has also been published (see Hearing before the Senate Committee on Foreign Relations, 102d Cong., 1st Sess., 21 Nov. 1991, S. Hrg. 102-478; Report of the Senate Foreign Relations Committee, Exec. Rept. 102-23, 24 March 1992; 102 Cong. Rec. S4781-4784 (daily ed. 2 April 1992)). The full text of the treaty has also been published in the official journal of the federal government (see 58 Federal Register 45934-45942, No. 167, 31 Aug. 1993). Copies of the Covenant have also been sent to the attorneys-general of each state and constituent unit in the United States, with a request that they be further distributed to relevant officials. The fact of United States ratification and the text of the treaty have also been brought to the attention of state bar associations. Governmental officials have participated in a number of presentations at academic and professional meetings to highlight the significance of United States ratification.

162. Finally, the advice and input of various non-governmental organizations and other human rights professionals was sought and considered during the preparation of this report, and the report will be given wide distribution to the public and through interested groups such as the bar associations and human rights organizations.