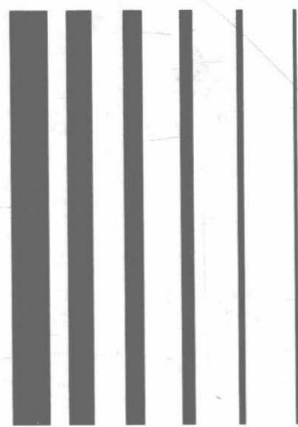


# CRIME AND JUSTICE IN TWO SOCIETIES

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## JAPAN and the UNITED STATES

Ted D. Westermann  
James W. Burfeind



**CRIME AND  
JUSTICE  
IN TWO SOCIETIES  
JAPAN AND  
THE UNITED STATES**

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For Florence  
—TDW

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—JWB

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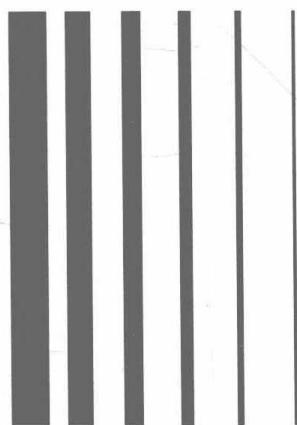
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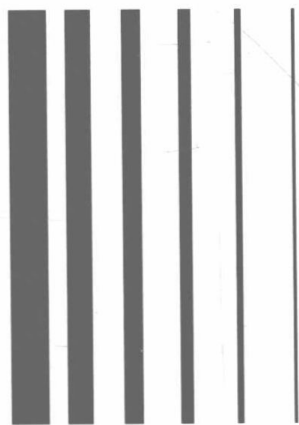
## ABOUT THE AUTHORS

**Ted D. Westermann** grew up in Seattle, Washington. He received his B.A. degree and a theological diploma from Concordia Seminary in St. Louis, Missouri; he earned his Ph.D. in sociology at Emory University in Atlanta, Georgia. He was an independent scholar at the University of Sydney, Australia, and did post-doctoral work at the University of Louisville. Currently professor of sociology at Valparaiso University, Dr. Westermann also taught at Concordia Senior College in Fort Wayne, Indiana.

*The Raiapu Enga of New Guinea* resulted from anthropological research in the Western Highland of Papua–New Guinea. Dr. Westermann's research and teaching interests continue to range from cultural anthropology to the sociology of law, but focus on cross-cultural issues in criminal justice.

**James W. Burfeind** was raised in Rochester, Minnesota, and received his B.A. in criminal justice and sociology from Moorhead State University. He earned his Ph.D. in criminology and urban sociology from Portland State University. An assistant professor of sociology at the University of Montana, Dr. Burfeind teaches courses in criminology and criminal justice studies. His research focuses on cross-cultural and comparative criminology, and on causal analysis of the family's role in delinquent behavior.

Dr. Burfeind has been a probation officer in Scott County, Minnesota, and an administrator for a nonprofit agency that provided services for delinquent youth in Hood River, Oregon.



## PREFACE

The idea that led to our writing this book emerged about a decade ago, when Ted Westermann saw a television documentary about policing in Japan. The narrator attributed Japan's exceptionally low crime rate to the effectiveness of the Japanese police, implying that if police in the United States would adopt the strategies and tactics of their Japanese counterparts the war on crime would quickly be won. No mention was made of the fact that the Japanese police were operating in a very different cultural system, nor of the likelihood that the intrusive police presence portrayed in the film would be in sharp conflict with basic American ideas about privacy and civil rights. No mention was made of the very different characters of the Japanese and American peoples. It was frustrating for someone trained in sociology and anthropology to be unable to respond to an obvious oversimplification.

Westermann later researched the influence of cultural values on policing in Japan and the United States; when James Burfeind joined him the scope of the work was expanded to include the entire justice systems of both societies. What we present here is the result of this collaboration.

We have taken what Terrill (1984, p. x) calls the "anthropological-historical approach," making a comparative analysis of crime and justice that crosses disciplinary lines. Shelley (1981, p. xxii), observes that "comparative criminologists, motivated by the desire to explore the multidimensional question of the relationship of crime to society, have been forced to pursue an interdisciplinary perspective." The text reflects our extensive review of the relevant scholarly literature, including historical materials on the development of institutions of justice and analyses of Japanese and U.S. criminological data. We integrate the work of historians, theologians, sociologists, legal scholars, anthropologists, statisticians, psychologists, and experts in criminal justice studies. These areas are all essential to understanding both how culture influences crime and how society responds.

### ORGANIZATION

The anthropological-historical approach is *functional* in character, focusing on the effects of structural elements (such as values) on human social behavior. In Chapter 1 we discuss the value and use of the comparative method and show why Japan and



the United States are prime candidates for cross-cultural comparison. In Chapter 2 we analyze the core cultural values in each society, showing how the very different combination of land, people, and historical sequence have produced quite dissimilar core values. In Chapter 3 we demonstrate how these differing values have influenced formal and informal social controls, and how each society's control mechanisms have influenced crime rates. In Chapter 4 we trace the history of legal development in the two countries, examining criminal law as a social control mechanism. In Chapter 5 we describe policing, especially law enforcement at the local or municipal level. In Chapter 6 we outline adjudicatory processes, showing how the core values have affected both the court structures and the legal climates in which they operate. In Chapter 7 we focus on correctional philosophy and practice in each society, again seeing how core values shape both the goals and the practices of corrections. In Chapter 8 we summarize what can be learned from a cross-cultural study of crime and justice.

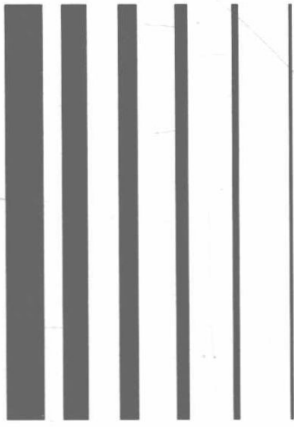
Over the past few years this project has taken on a life of its own. It has led us in directions we had not intended to travel. Many of the areas we entered were *terra incognita*. But the result has been a great learning experience that has led to new horizons and, at times, to surprising insights into American and Japanese societies. Much of the work is reflected in our teaching. We come to our courses with a new awareness of how important cross-cultural approaches are to understanding crime and justice in our own society as well as in the rest of the world.

## ACKNOWLEDGMENTS

No project of this sort is ever completed without the help of many people. We are especially grateful to colleagues and friends who read portions of the manuscript and whose comments and suggestions were of great value; they include Gary Sykes and Don Gibbons, and our colleagues at Valparaiso University, James Albers, Bruce Berner, Ted Ludwig, and Keith Schoppa. We appreciate the valuable help given by a number of our students who served as research assistants: Dawn Jeglum-Bartsch, Debra Hill, Beverly Rivera, Diane Prather, and Eric Beatty. We wish to thank the interlibrary loan staffs at both the Moellering Library at Valparaiso University and the Mansfield Library at the University of Montana for their invaluable services. Shari Linjala cheerfully and competently provided word processing assistance; she was a great help. We are indebted to Valparaiso University for a summer research grant in 1988. We acknowledge our reviewers: Steve Brodt, Ball State University; Dae H. Chang, Wichita State University; W. Byron Groves, University of Wisconsin-Green Bay; Rom Haghighi, University of Dayton; John Haley, University of Washington; Hillard Trubitt, Indiana University; and Charles Wellford, University of Wellington. Finally, we express our appreciation to the editorial staff at Brooks/Cole including Cindy Stormer, Cat Collins, Joan Atwood, and Penelope Sky. Their work has contributed greatly to the quality of this book.

We thank our families, especially our wives, Florence and Linda, for their support and understanding, which made this book possible. We promise that next year we *will* rake the leaves or maybe even plant some trees!

Ted D. Westermann  
James W. Burfeind



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# INTRODUCTION: A CULTURAL ANALYSIS OF JUSTICE SYSTEMS

The use of comparative and cross-cultural approaches has a long history in the social sciences. From the time of Auguste Comte and Herbert Spencer, scholars have used the comparative method extensively. This is reflected in the works of Max Weber, Emile Durkheim, Karl Marx, William Graham Sumner, Vilfredo Pareto, Charles H. Cooley, and others (Chang 1976).

Despite this legacy, the use of comparative and cross-cultural approaches in the study of crime and criminal justice has increased substantially only within the past few decades. As crime rates rose in all of the industrialized nations, scholars belatedly began to turn to these approaches in an attempt to understand both the causes of crime and societies' attempts to control it.

Why has there been this hesitancy to use comparative methods? To begin with, Shelley (1981, xx) has pointed out that "[b]efore World War II world criminology was dominated by the European school, which employed medical-biological, psychological, and legalistic approaches to crime." Because this approach focused on crime as the product of individual characteristics, there was not much interest in examining what social and cultural factors might be related to crime. As a result, cross-cultural studies of crime and criminality were largely precluded.

Following World War II, the rapid growth of sociological criminology in the U.S. produced a switch in focus from an "emphasis upon the criminal to a new emphasis upon the contribution of the social and political order of society to criminality" (Shelley 1981, xx). However, Leavitt (1990) points out that criminological thought has been largely relativistic, arguing that criminal behavior can be understood only in the context of the social setting within which it occurs. This perception, together with the serious lack of adequate data sources, has limited comparative approaches until relatively recently.

Today there is a rapidly growing literature focused on comparative and cross-cultural crime and justice.\* The attention this cross-cultural approach has received

\*Although we cannot begin to list all the works that have been produced during the last few decades, the following appear to be important contributions to this growing literature. Early works by Mannheim (1965) and Cavan and Cavan (1968) were followed by the works of a host of scholars. The 1970s saw

(continued)

at meetings of professional groups such as the American Society of Criminology and the Academy of Criminal Justice Sciences also attests to the growing appreciation for and use of comparative methods.

This growth has occurred because a larger number of criminological scholars have come to recognize that if “crime is inherent in the structures of society and that changes in criminality can be ascribed largely to social, political, and economic conditions of society,” then the comparative study of different social systems provides us with better insights to the dynamics of this process (Shelley 1981, xxi). In this way, cross-cultural comparisons should help us better understand the nature of crime and to answer questions such as: Under what conditions does crime occur? Are these conditions the same in all societies? What are the social, political, and economic influences on criminal behavior? Are some of the answers we accept today universally applicable? Or do we find that some theories of criminality apply only in specific social and cultural settings?

Researchers have also begun to see that studies that examine the relationships between culture and behavior foster the development of theory that “transcends the one-dimensional explanation of criminality rooted in the unique characteristics of an individual society” (Shelley 1981, xxi; see also Leavitt 1990). Archer and Gartner (1981, 78) put it this way: “While . . . investigations of an individual society are of great descriptive value, they do not by themselves result in general explanation or theories.”

Certainly one of the great values of comparative, cross-cultural study is that it helps us overcome our ethnocentric perspectives. By examining cultures other than our own, we can move to more objective understandings of how our own culture shapes criminal behavior and our society’s response to it (Chang and Blazicek 1986).

Finally, some researchers now recognize that scholarly cross-cultural comparison can yield very pragmatic results. We can learn a great deal not only about crime but also about methods that societies can use to combat crime. As we will see in the final chapter of this book, one of the most recent and important innovative concepts in policing in the U.S. has been influenced strongly by comparative studies in law enforcement. By looking at both crime and social responses to it in a number of nations other than our own, we may develop new and innovative ways of dealing with one of our society’s most vexing problems.

works published by Clinard and Abbott (1973), Chang (1976), and Gurr, Grabowski, and Hula (1977). In the 1980s, substantive studies were produced by Shelley (1981), Cole, Frankowski, and Gertz (1981), Johnson (1983a), Adler (1983), and Chang and Blazicek (1986). While these more general works were being published, many works with more focused interests, such as Bayley (1976a), Ames (1981), and Parker (1984), were being produced.

Other scholars have been more concerned with questions of methodology. These include Wolfgang (1963), Meyers (1972), Skogan (1974), Gurr (1977), Krohn and Wellford (1977), Vigderhous (1978), Wilkins (1980), Archer and Gartner (1981, 1984), Kalish (1988), Huang and Wellford (1989), and Bennett and Lynch (1990).

Mention should also be made of the growing list of journals that focus on cross-cultural comparison. These include the *Journal of Comparative and Applied Criminal Justice*, *Criminal Justice International*, *International Journal of Criminology and Penology*, and the *International Annals of Criminology*.

## COMPARING JAPAN AND THE UNITED STATES

Japan appears to have become a focal point within this growing literature on comparative criminology. Perhaps the major reason for scholarly interest in Japan is that, in contrast to most industrialized nations, the rates for major crimes in Japan have been fairly stable or declined since 1950 (Ministry of Justice 1989; Nakayama 1981). Property crime dropped from a rate of 16 per 100,000 in 1948 to a rate of 9.98 in 1980. In this same period, despite a 46 percent increase in population, the actual number of bodily injury crimes declined by 37 percent (Suzuki 1985).

These trends become even more impressive when the rates of violent crime in Japan are compared with those in the United States. Data reported in a recent study of international crime rates (Kalish 1988) reveal that:

- There were over five times as many homicides per person in the United States in 1984 as there were in Japan—a rate of 1.5 per 100,000 in Japan compared to a rate of 7.9 in the United States.
- Rape was committed twenty-two times more frequently in the United States in 1984 than it was in Japan—35.7 per 100,000 in the United States, 1.6 per 100,000 in Japan.
- In 1984 the rate for armed robbery in the United States was 114 times the rate for that crime in Japan—205.4 per 100,000 in the United States, 1.8 per 100,000 in Japan.

These amazing statistics come from a nation that has become a major industrial society only within the past few decades. Scholars have long contended that crime is a consequence of the social disorganization that accompanies rapid industrialization and urbanization. After World War II, assisted by the United States, Japan quickly began to rebuild its war-shattered industry. This resulted in a massive influx of people into the cities. Today, Japan is one of the most urbanized societies in the world. Its population is about one-half that of the United States, yet it is crowded into a land mass no bigger than California. When forested and uninhabitable lands are excluded, "there are 2,326 people per square mile in Japan and 83 per square mile in the United States. . . . Almost one-fourth of all Japanese live within thirty-seven miles of downtown Tokyo—25 million people" (Bayley 1976a, 9–10). Yet, despite this rapid industrial and urban growth, which started just after Japan lost a major war and was under the control of a foreign power, Japan's crime rates have declined (Smith 1983).

This situation has attracted a number of scholars seeking to understand Japan's success in preventing crime. Several have included Japan in surveys of the criminal justice systems of a number of societies (Terrill 1984; Cole, Frankowski, and Gertz 1981). Other studies focus on a single justice institution in Japan. Ames (1981), for example, offers a detailed description of the Japanese police and the unique cultural setting within which they carry out their task. Bayley (1976a) and Parker (1984) add a cross-cultural component, comparing police organization and operations in Japan and the United States. Skolnick and Bayley (1988a) include Japan in a survey of policing in a number of societies.

We intend to present a cross-cultural study that will differ from previous

comparative studies in both scope and perspective. Rather than focusing on a single criminal justice institution, this study examines the complete criminal justice systems of Japan and the United States. Furthermore, instead of surveying criminal justice systems in a number of countries, we will focus our attention on only these two societies. We believe that by limiting the scope of the study to Japan and the United States, we can move beyond simple description to the analysis of how cultural values influence the formation, structures, and operational processes of criminal justice systems.

## CULTURAL VALUES AND SOCIAL CONTROL

Every society develops ways to guarantee conformity to social norms. Through the processes of socialization, individuals learn the norms and customs of their society which then serve as internal and informal means of controlling social behavior. However, as societies grow more heterogeneous and complex, informal means of control become inadequate and need to be augmented with formal institutions and processes of control. Criminal justice systems have become the standard structures of formal social control in modern society. In the terms of Talcott Parsons, the institutions of the criminal justice systems help to meet the functional prerequisite of "pattern maintenance" or "latency"—the need for society to maintain social continuity and order. As such, the component parts of the criminal justice system—the law, police, courts, corrections—are institutional structures that form around the central values of a society to protect and perpetuate these same values.

This study will focus on the organizations and processes of social control in Japan and the United States. While these nations share the commonalities of urban and industrial development, major differences in geography, population, and history have produced different clusters of cultural values. These core values, developing out of how land and people interact over time, have resulted in quite different patterns of social control, criminal behavior, and societal response to that behavior.

Using such a comparative analysis provides an understanding of how cultural values affect patterns and rates of crime and shape the unique institutional structures of social control which have developed in each society. Thus the cultural context of these justice systems is the analytic theme which informs this comparative analysis of the criminal justice systems in Japan and the United States.

The approach that we use might at first seem to be circular: If central values for each society were deduced from the observation of social behavior, and it was then argued that behavior sprang from those values, this approach would indeed be tautological. However, we argue that the core values of a society are the product of history—that they develop as people interact in time and place. We will provide historical evidence which shows that the cultures of Japan and the United States are distinctly different because each has developed out of a different mixture of environment, population, and history.

The functional perspective with which we work is one which presupposes that there is a general consensus about values within a society. This is, indeed, the general picture that the so-called *Nihon-jiron* literature presents. It portrays the

Japanese as a placid conformist people, so dominated by the groups to which they belong that there is little room for individualism.

We would disagree most strongly with this portrayal. No one—not even the most convinced functionalist—would suggest that Japan is a society without conflict. Any complex society with more than a single socioeconomic group is bound to have a measure of conflict and competition. We would certainly agree with Masatsugu (1982), Krauss, Rohlen, and Steinhoff (1984), Mouer and Sugimoto (1986), and Upham (1987) who argue that the Japanese are a very competitive people whose history has been replete with conflict, often violent and destructive.

Yet at the same time, there is little evidence to suggest that the Japanese people are sharply divided over major social issues or enter into open conflict over central values. The instances of organized conflict that we found involve such things as strikes over salary and working conditions, litigation over environmental issues and damages suffered from industrial pollution, demonstrations about the U.S.–Japan security treaty (probably the closest instance of conflict over a central issue), disagreement over the construction of an airport that threatened farm land, or student conflict over issues related to their university or college. It is interesting that conflict in Japan does not appear to be closely related to issues involving social class, although there is the continued struggle by the *Burakumin* (the traditional outcast group, also known as the *Eta*) to confront the age-old discrimination they have faced (Upham, 1988). Increased litigation by women who seek equal employment opportunities appears to be a relatively new development. The absence of any large racial or ethnic minorities other than the Korean minority also influences the character of conflict in Japan, and there is little evidence of any relationship between racial conflict and criminal behavior. Instead, there is strong evidence to suggest that the Japanese are a racially and ethnically homogeneous people, united by a strong sense of tradition and common values.

Our argument asserts that a criminal justice system is shaped by the cultural environment of the society and that the study of the criminal justice system in any society must begin with an examination of the central values of that society. Comparisons between countries like Japan and the United States must begin with a comparison of the cultural values that have developed in each nation. The central argument that informs this work, then, is that U.S. and Japanese systems of justice differ because the primary values which shape the arenas of justice differ.





# CULTURAL VALUES IN JAPAN AND THE UNITED STATES

## **SIMILARITIES AND DIFFERENCES: CONTRASTS IN LAND, PEOPLE, AND HISTORY**

An American entering Japan for the first time would not immediately be aware of all of the differences that exist between the United States and Japan. The physical environment of Tokyo is not really all that different from Chicago or New York. Masses of people, traffic moving at a hectic pace, overcrowded streets, skyscrapers, professionals carrying attaché cases, department store windows displaying the latest fashions—except for the language and the oriental features of the people, Tokyo is like any other world-class city.

However, one would not have to be in Japan very long for the differences in behavior to become more and more apparent. For Japan, a society built on an ancient culture, has survived through its amazing capacity to absorb the new, to adapt itself to new situations and conditions, but at the same time to cling to values that have developed over nearly two thousand years of history (Smith 1983). The result is that although there are similarities between Japan and the United States, there are also major differences—differences that relate to the land, differences in the character of the people, and differences in the history of how land and people have produced the values that characterize each culture.

### **Geographic Differences**

The United States is the fourth-largest country in the world. Its land mass covers more than three-and-one-half million square miles of territory that is richly varied in climate and terrain (Shane 1980). Seacoast, mountain, prairie, desert, farm lands, semitropical areas, and lake-studded glacial terrain—all can be found within its borders. The United States is a land that is rich in resources of minerals, timber, and fertile land. It has always been a self-sustaining nation and today produces more foodstuffs than any country in the world.

Japan is an isolated nation that lies some distance off the Asian land mass. Its 142,305 square miles of territory stretch over a distance equal to the distance

between the Canadian border and the Gulf of Mexico. In total area it is the size of Montana or California. It is an intensely mountainous country with less than one-fifth of its territory suitable for agriculture or other commercial use. Only about 15 percent of Japanese land is used for food production. Its major resources are limited, but they include the seas that surround this nation of many islands and a climate that allows for an unusually productive system of agriculture. The climate is similar to that of the eastern United States with about the same variation from the temperate north to the semitropical south.

Despite its productive agriculture, the shortage of arable land causes Japan to suffer about a 30 percent deficit in food production. This plus the lack of other natural resources has had a strong impact on the Japanese economy (Reischauer 1988).

### Demographic Differences

Major differences also exist between the populations of these two societies. The population of the United States numbers about 246 million, while the population of Japan is about half that number, approximately 123 million. But size of population is relevant only in relation to the size of geographic territory. Japan is one of the most densely populated nations in the world, about thirty times more densely populated than the United States.

Even more important is the difference in the makeup of the people. The U.S. people are a polyglot mixture, born of almost continual migration from every corner of the world. There is probably no other nation as diverse in its mixture of race and ethnic characteristics. The city of Chicago boasts of having more people of Polish descent than live in Gdansk or Kraków, Poland. More Jewish people live in New York City than live in Haifa and Tel Aviv, Israel, combined. Flourishing communities of Chinese are found in most of America's major cities. The people of the United States are a mixture of very different racial, geographic, and linguistic backgrounds.

The Japanese, on the other hand, are a singularly homogeneous people. According to Reischauer (1988), the modern Japanese are a mixture of Asian peoples who flowed into Japan from northeastern Asia, through Korea, especially during the first seven centuries of the Christian era. However, since the eighth century, there has been no infusion of new people. For over a thousand years, immigration into Japan has been infinitesimal. During those years, the original inhabitants, ancestors to the ethnic group known as the Ainu—which today number less than 20,000—were slowly pushed to the north.

As a result, the Japanese today are a people who perceive themselves as a racially and ethnically pure and homogeneous people. With the exception of the Ainu, a Korean community of about 600,000, and small numbers of other non-Japanese residents, there are no ethnic divisions in Japanese society. Reischauer (1988) estimates that the total number of non-Japanese comprise less than 1 percent of the total population.

One factor that has contributed to this homogeneity is Japan's isolation. Until World War II, Japan had never been successfully invaded by a foreign power. Its

location was an effective barrier to contact from without. Further, from the twelfth to the nineteenth centuries, Japanese rulers effectively maintained their isolation by preventing any major influx of other peoples. With the exception of some European contact in the sixteenth century, Japan remained an isolated country whose homogeneous people developed a culture that was uniquely Japanese (Reischauer 1988).

## History

The history of these two societies is also a study in contrasts. Four elements of history are important for the purposes of this comparative study: time span, political development, economic development, and the evolution of religious belief.

**Time span** The United States is a relatively young nation, if its history is reckoned on the basis of its inhabitation by Europeans. Although European settlers came to this country in the sixteenth century, its establishment as a political entity did not take place until near the end of the eighteenth century. This late date, plus the fact that its population continued to develop through an immigration-aggregation process, means that the United States has not developed a strong historical tradition. The average person in the United States is not very conscious of history. For most, concern focuses upon the present and future rather than the past. For many Americans, family history is tied to other countries. The result is that few people attempt to understand the present through the analysis of what has happened in the nation's history.

Japanese written history extends back more than 1400 years. Japanese are conscious of that history. They see themselves in historical perspective and celebrate that perspective through ritual and drama. They are intensely proud of a distinctive cultural heritage that has become a living tradition (Hall and Beardsley 1965).

One of the implications of that shared historical tradition is that the Japanese see themselves as a united people. When people in the U.S. are asked about their heritage, many respond in terms of the nation from which their forefathers migrated. In Japan, this could not happen. Because they share one historical tradition and one common language, they feel bound to one another as an entity distinct from any other people (Ishida 1974).

**Political development** The second important historical element is the nations' political developments. American political history begins with the struggles of a colonial people who started a revolution in order to develop a democratic system of government. Despite the institution of slavery and the racial inequality it spawned, the ideals of democracy and individual freedom play a significant role in the nation's unfolding history. The perception that the United States was the "land of the free" helped draw to this nation the millions of immigrants who provided the labor for its development. The goals of freedom and economic independence fueled the westward expansion. The ideals of freedom and democracy were contributing factors in the nation's only civil war.