

## CHAPTER OVERVIEW

### 11: The Court System

#### Learning Objectives

- explore the major aspects of state and local courts.
- discuss how these court systems operate.
- outline selection processes for the judiciary.
- introduce the topic of judicial federalism; including the challenges courts will face in the future.
- discuss the impacts courts have had and will have in the future with respect to the promotion of sustainability.

When thinking about courts, many of us think about the statute of “Blind Justice” – also known as Lady Justice – that adorns the front of many courthouses around the country. Often portrayed blindfolded and holding balance scales and a sword, the figure represented is Themis, the Greek Goddess of Justice and law. The blindfold she wears represents the impartiality with which justice is served, the scales represent the weighing of evidence on either side of a dispute brought to the court, and the sword signifies the power that is held by those making the ultimate decision arrived at after an impartial and fair hearing of evidence. In fact, in ancient Greece judges were considered servants of Themis, and they were referred to as “themistopolois.”

Whether or not state and local court systems in these modern times are providing blind justice as represented by the statute of Themis could be debated. While residents in communities around the country ideally hope their own court system is impartial and immune to outside influences, few who work in or participate in American state court systems believe this is fully true; in fact, there is evidence that suggests that protection from outside influences upon the courts is becoming less and less assured. Judges today are increasingly called upon to make tough public policy decisions, with the outcomes – some of which entail promoting sustainability – often being popular with the parties engaged in a particular policy issue. Very often such decisions affect tradeoffs of economic, social and environmental goals, leaving some parties pleased and others anxious to “redress the balance” either in new statutory language or through further litigation in the courts. This continuation of the dispute through legal action often involves seeking out “more friendly courts” with more sympathetic judges in which to file their actions.

At the beginning of the American republic, the Founding Fathers clearly believed that the judicial branch would be weak — far weaker than either the Executive or the Legislative branches. In this regard, according to Alexander Hamilton (1788) writing in the Federalist Papers (number 78):

The Executive not only dispenses the honors but also holds the sword of the community. The legislature not only commands the purse but also prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. <sup>1</sup>

Simply speaking, Hamilton thought the judicial branch, with its lack of command of either physical or financial resources, could never overpower the two other branches of government.

Contemporary state, county, and municipal courts face many challenges, with some of these challenges placing an impact upon the provision of “Blind Justice” which society expects of its courts. Despite the critical role of courts in state and local government, many citizens are unaware of the importance of their state and local court systems. In a July 2005 survey about civic education carried out by the American Bar Association, only 55 percent of the participants were able to name the three branches of government. In point of fact, state and local courts have 100 plus times the number of trials and handle five times as many appeals as the federal courts. <sup>3</sup>

[11.1: State Courts](#)

[11.2: Federal Courts](#)