



DON'T BE FOOLED BY... CONSTITUTIONS

The Constitution—the official Constitution of the United States of America—may not be the only constitution in your life. The state you live in surely has its own constitution, and if you belong to any social, professional, or charitable organizations, chances are good that they are founded on principles set out in a constitution or a set of bylaws.

These constitutions serve the same purpose as our national document—they establish who can make decisions, how business will proceed, and how power is transferred. They may or may not also set out what rights the members of the organization possess. Because, as we have seen in this book, constitutions are the product of what is usually an intensely political process, we cannot always rely on them to state clearly what they mean and to mean what they say.

WHAT TO WATCH OUT FOR

- **What is the body being constituted?** Who is bound by the document? In the case of the Articles of Confederation, the states were bound into a confederation of state governments, while the Constitution of 1787 bound individuals into a nation. The consequences of each were very different; as we have seen, it was much easier to enforce the provisions of a constitution against individuals than against states. Who is bound by the constitutions in your personal life? If you are in a sorority, fraternity, or residence hall, are only residents bound by the bylaws, or do visitors or nonresident members also come under the group's jurisdiction? If you belong to a sport's club, do the rules

apply only to paying members, or to guests and visitors as well?

- **Are parts of the constitution ambiguous?** If so, is the vagueness intentional, as in Article III of the Constitution on the judiciary, perhaps signaling the authors' inability to agree on the provisions? Does it indicate that the authors were ashamed or embarrassed, as the U.S. founders were over the constitutional references to slavery? Or is the ambiguity a result of the fact that when the group's operating laws were put together the authors simply weren't concerned about the issue, or thought it would never come up? It can be argued that the U.S. founders' failure to provide an amendment in the Bill of Rights protecting privacy was a result of the fact that they never intended the government to get so powerful that it could make serious inroads on citizens' private lives.
- **Does the constitution provide lists of powers, or rights, or responsibilities?** If so, is the list comprehensive—does it include every power or right or responsibility that can be possessed or is it merely suggestive? Does the list limit power, or expand it? The list of congressional powers in Article I, Section 8, would be far more limiting on Congress if it were not for the elastic clause, which provides Congress with any powers not listed if they are necessary and proper to performing its job.
- **Can the constitution be changed?** If so, how and by whom? Is change easy or difficult? How does that affect how the constitution can be used as a political document?
- **Who is in charge of deciding what the constitution means?** When the U.S. Constitution failed to address that, it left the door open for the Supreme Court to grab the power of judicial review in *Marbury v. Madison*. Whoever decides what the rules mean has an enormous amount of power. Watch that person or group carefully.