



Thinking Historically through Writing: Justice and the Law

One-day Professional Development Workshop

funded by the Historical Society of the New York Courts

Workshop Leaders: Rachel Cavell and Seth Halvorson

About the Bard College Institute for Writing & Thinking (IWT): IWT's mission is to enliven and enrich learning in classrooms through writing. To this end, IWT designs workshops and professional development programs for secondary and college teachers. Practical, hands-on instruction in a collaborative learning environment demonstrates for teachers how they can lead their students to discover rather than just setting out to find answers.

The philosophy and the practice of IWT are one: Writing is both a record of completed thought and an exploratory process that supports teaching and learning across disciplines. At all levels writing allows the writer to discover what she or he wants to say.

Notes on the Workshop Process:

- **“Learning by Doing”:** In IWT workshops we do the work that we would do with our students. The experience is the lesson. We work together instead of just talking and mostly that work is writing-based and writing intensive. We believe that we can use writing to learn strategies in order to access interesting and challenging texts, and to make our own writing more interesting, specific, and engaged. The goal of this workshop is to make classes not just rich in reading and writing instruction but also, more fundamentally, rich in critical thinking practice. To paraphrase John Bean, we use writing to teach content; better writing skills are a happy by-product. (See Bean's *Engaging Ideas*, Jossey-Bass, 2011)
- **Suspension of Disbelief:** Over the course of our work together, we are going to do a lot of writing and a lot of sharing of that writing. Much of that writing will be drafty and provisional—that's a good thing, but it can feel vexing at times! You will always have the option to “bracket and share” your writing. You will be asked to read anything that you do not feel comfortable sharing.
- **Question Log:** There is time planned towards the end of the workshop for processing and teacher talk. Please set aside a place in your notebook for questions that you have throughout the day. These questions will be useful to us as we begin to plan for our classrooms and think about our students.
- **Sequencing:** The three workshop plans that follow are intended to be done in that order, ideally in a one-day professional development context. Each workshop builds on the work done in the session before. Each discrete session is approximately 90-120 minutes long. However, the time it takes to “bracket and share” depends on the size of the workshop group. The times included estimate a group of 15 teacher participants.

WORKSHOP I: Writing to Read *The Federalist Papers*

Note for facilitators: This workshop begins with the assumption that students will already have worked with the Preamble and Articles 1, 2, and 3 of the *United States Constitution*. They will be familiar with definitions and functions of the legislative branch, the executive branch, and the judicial branch. The texts referred to in this plan are included in the accompanying anthology of texts.

1. **Private Free Write.** [5 Minutes]
 - “When I introduce private writing for the first time, I might explain that it is nonstop writing, synchronized writing and thinking, or stream-of-consciousness writing. IWT defines private freewriting as 5-10 minutes of writing to explore what’s on our minds in order to become centered, present for the learning that is about to begin, to ground out the static we bring to class. To breathe, hear [ourselves] think.” (Sharon Marshall, “A Case for Private Freewriting in the Classroom”) Private writing is never shared—it is private.
2. **Introduce the Practice of Focused Free Writing (FFW):** Focused freewriting begins with an idea or some language, words, a prompt or question. FFWs are also timed and you will almost always be asked to share at least a bracketed section of what you’ve written. In other words, this is public writing and the topic is loosely defined by the teacher or workshop leader.
3. **FFW 1:** Tell a brief story (in writing) about a time you learned something about the law that surprised or interested you. [5 Minutes]
4. **FFW 2:** Make a quick list of your first thoughts when you hear the word “justice.” [2 Minutes]
5. **FFW 3:** Make a second list of your first thoughts regarding difficulties you may have experienced or can imagine could arise when teaching about justice. [3 Minutes]
6. **Bracket and Share.** Invite participants to read excerpts from any of the pieces of writing they’ve done so far as a way to introduce ourselves. Ask the group to avoid the temptation to extemporize, or to give an impromptu spoken presentation, or to preface the selection with apologies or introductory remarks of any kind. Simply read what is on the page exactly as it is written. [10 Minutes]
7. **Turn to *The Federalist Papers*: No. 78 (1788)—**Pages 6-11 in the anthology, we’ll only focus on the passage that is in bold on pages 6-7. (“Whoever attentively considers...of the public justice and the public security.”) Read this excerpt to yourselves. [5 Minutes]

*(You might need to give an introduction about what *The Federalist Papers* were. Briefly, they were a series of papers written by Madison, Hamilton and John Jay to try to convince the people of the State of New York to ratify the United States Constitution. It was one long justification for the Constitution—for residing so much power in the Federal Government rather than in the States. This can be done as a quick historical context.)*

8. **Quaker Style Reading:** Read the passage out loud as a group. One person begins and reads a sentence or two, then another person jumps in. This is a way of reading out loud, collaboratively.
9. **FFW 1:** What is your very first impression of this document? What is Hamilton up against here? What is he trying to accomplish? [3 Minutes]
10. **FFW 2:** What is the big idea that jumps out at you? See if you can describe it in one sentence. [3 Minutes]
11. **Bracket and Share** from both free writes. Begin with FFW 2, once everyone has shared move on to FFW 1. [10 Minutes]
12. **Turn to *The Federalist Papers: No. 51*** (bolded passage on page 4). Let's read this passage out loud twice. ("Justice is the end of government...where the weaker individual is not secured against the violence of the stronger.") [5 Minutes]
13. **FFW 1:** What is the big idea that jumps out at you? Underline it. Is that big idea still relevant today? How? How not? Write to explore and explain. [5 Minutes]
14. **FFW 2:** Imagine that you are shipwrecked on the island of Manhattoes, 1787, and you just happened to find these passages (from *The Federalist Papers: No. 78* and *51*) floating in the wind around Wall Street. What would you surmise about this new community from what you have read. Without knowing anything else. Consider here form and content. [5 Minutes]
15. **Bracket and Share** from both free writes. This time, begin with FFW 1 and then move on to FFW 2.
16. **Collaborative Learning** [30 Minutes]:
 - Let's look again at the excerpts we've read, from Hamilton and Madison.
 - As you read, underline a passage from paragraph 2 of the Hamilton that you love, that speaks to you for any reason.
 - Now underline a passage from the Madison paragraph that confuses you, for any reason.
 - Let's go around the room and read the passages from the Hamilton that we love. Just to get them into the room.
 - **Divide the class into groups of 3-4.**
 - Appoint one group member to serve as a timekeeper, and one person to take notes.
 - Take turns reading out loud the passage from the Madison (*The Federalist Papers: No. 51*) that confuses you and see if you can work towards clarity here.
 - As a group, write three extremely clear sentences that would explain these paragraphs to your 12 year old nephew or niece.
 - Return as a large group and share sentences.

17. **Process Write:** Write to reflect and explore what you noticed about your own process of reading and understanding this text. What did you notice about your role in the group work?
[5 Minutes]

- from “**Process Writing: Reflection and the Arts of Writing and Teaching**” (Alfred E. Guy, Jr.): “Process writing is a practice of using writing to step back from an activity and assess how that activity is going. Process writing is sometimes used to identify and overcome obstacles, but it’s also an invaluable tool for deeper understanding. We might say that the uses of process writing range from the problem solving to the philosophical...stepping back to evaluate progress is a crucial component of many activities...”

18. **Bracket and Share** process writes.

19. **Discussion/Process Talk:**

(Guiding Questions):

- How do these excerpts from the Federalist papers suggest the role of the court in American society?
- What is your impression here of how the court should function?

WORKSHOP II: Writing to Understand ‘Bills of Rights’ and Case Law

1. **Private Write.** [5 Minutes]
2. **Turn** to the excerpts from the *New York State Constitution* (Page 12) and the *US Constitution, Bill of Rights* (Pages 13-14) in the anthology.
 - a. **Read out loud Article 1, Section 3** of the *New York State Constitution, Bill of Rights*.
 - b. Now, let’s read out loud **Amendment 1 of the Federal Bill of Rights**.
3. **FFW:** How do you understand the concept of the “Bill of Rights”? List everything you already know or think you know about what a Bill of Rights is. [3 Minutes]
4. **Bracket and Share.** Create a list on the board (or big paper) of language that describes and/or defines “Bill of Rights.” [5 Minutes]
5. **FFW:** Which document (New York or Federal) do you think better protects an individuals’ rights to practice their religion? How do you know? Underline the sentence or sentences in each that convinces you of this. [5 Minutes]
6. **Bracket and Share.** [10 Minutes]
7. **Turn to *Rivera v. Smith*** (Pages 15-25 in the anthology). This Decision was written by the New York Court of Appeals, the highest appellate court in New York State. **To begin, let’s focus only on the case summary that appears on page 15.**
 - a. Ask for a volunteer to read the summary out loud.
 - b. Read the summary out loud a second time asking for a different volunteer to read.
 - c. Pause to take note of any immediate responses or first thoughts.
8. **Turn to the *Rivera v. Smith* case** (pages 16-25). [15 Minutes]
 - a. **Explain:** Given time constraints, we will only take a small passage from this case to work with. The entirety of the case is included in your anthology. For our purposes, when practicing IWT’s pedagogy of close reading, we might always just take a small passage to work with. You can work with the entire case at another time, or not at all. For now, we will focus on these excerpts very closely.
 - b. **Read out loud, Quaker style:** Pages 16-17 (“Appeal from an order...from the inmate’s institutional records.”) and pages 21-22 (“Our analysis starts with the proposition...security-related policies.”)
 - c. **Reread this passage to yourself.** Focus only on these passages. As you read, try the following experiment: Get rid of any “extraneous” language by underlining just those words and phrases that you think are essential to the meaning of the case.
 - d. **Share.** Let’s hear some of the language we’ve underlined.
9. **In pairs** [10 Minutes]
 - a. Begin by introducing yourself to your partner.

- b. Then, focusing on just this passage of the *Rivera v. Smith* case, discuss it until you feel like you understand what the court is saying. See if you can distill it into three clear sentences. We will share these.

10. **Share.**

11. **Process Write:** Based on the different sentences you just heard, and your experience working with your partner, where is your thinking about *Rivera v. Smith*? What similarities and differences did you notice in the different sentences generated? [5 Minutes]

12. **Dialectical Notebook** [20 Minutes]:

- a. **Explain:** This practice combines focused free writing and process writing with working in small groups, conversing through writing in order to come to a deeper understanding of a difficult text.
- b. **Divide a page in your notebook into 3 columns.** If you need more space, do the same thing with another page.
- c. **In Column 1:** Respond in writing (only in that very first column) to the following:
 - i. **FFW:** How did the New York Bill of Rights, Section 3 (freedom of religion) aid the court in its Decision? What might have happened in this case if the Court only had the Federal Constitution (Section 1) to rely upon?

| Column 1 / Writer | Column 2 / Response | Column 3 / Reply & Process |
|-------------------|---------------------|----------------------------|
| | | |

- d. **Pass your notebook to a partner** who will read what you have written, and respond back (in Column 2), either agreeing and saying why or disagreeing and saying why.
- e. **Return notebooks to their owners.** Read over both Column 1 and Column 2. In Column 3, write to respond to what your partner wrote in Column 2, as well as to your own initial writing. How has your thinking changed?

13. **Bracket and Share** portions from the dialectical notebooks.

14. **Process Write:** So far, we've done a range of different kinds of free writing (private, focused, process); group collaboration; work in pairs; and dialectical notebooks. Jot down some notes on how these writing-based practices might be helpful to you in your own teaching of primary documents. What worked for you? What did not work? What would you like to try? [5 Minutes]

15. **Bracket & Share.**

16. **Text Rendering/Jazz Reading:** Let's turn back to the *New York State Constitution* that we looked at before, Article 1, Section 3, Bill of Rights. Let's read it out loud in unison. Read it out loud again, as jazz (hearing bits of the language almost at random). Read it backwards and forwards.
17. **Process Write:** How did reading the *New York State Constitution* backwards and forwards, as jazz, etc., help you see something that you might not have otherwise seen? Do you think it might be helpful as a teaching strategy? When? Why? [5 Minutes]
18. **Bracket and Share.**
19. **FFW:** Return to the passage we worked with in *The Federalist Papers: No. 51*. What are your thoughts now on how that passage might be relevant in terms of the Court's decision in the *Rivera v. Smith* case? [3 Minutes]
20. **Quick share/read-around.**

WORKSHOP III: Believing & Doubting, Applying the Practices through Lesson Planning

1. **Private Write.** [5 Minutes]
2. **Turn to “Why Obama Voted Against Roberts”** (pages 26-28 in the anthology). Let’s read the entire article (it is short) out loud.
3. **Let’s return to paragraph 6** (page 27, “In those 5% of hard cases...”) and read that out loud again.
4. **Believing and Doubting:** Then president Obama says that in 5% of cases that come before the Court, the “critical ingredient is supplied by what is in the judge’s heart.”
 - a. **FFW 1:** Do you agree with this? Why or why not? [3 Minutes]
 - b. **FFW 2:** Do you think Hamilton would agree? Why or why not? (Refer to *The Federalist Papers: No. 78*) [5 Minutes]
 - c. **FFW 3:** Now, disagree with yourself. What would the other side look like? [3 Minutes]
5. **Bracket & Share.** Begin by alternating between FFW 1 and FFW 3. Then hear FFW 2.
6. **Text Explosion:** Let’s turn to the Preamble to the *US Constitution* (page 13 in the anthology). [20-25 Minutes]
 - a. Ask for a volunteer to read the entire Preamble out loud.
 - b. Read the Preamble a second time, one sentence each.
 - c. Look over the Preamble on your own. Underline moments of language that you find exciting or interesting. Circle moments where you find yourself puzzled.
 - d. Choose 1 of the moments you underlined. This should be no longer than a single sentence, ideally shorter—a phrase, fragment, word. Copy it into your notebook.
 - e. **FFW 1:** Focus your attention on the phrase you selected and write to respond to it. Remember, the underlined excerpt should begin the writing. You can write in any mode—generative, word play, analytical, narrative, etc. [5 Minutes]
 - f. **FFW 2:** Pick one of the phrases you circled, copy it into your notebook, and again respond to it in writing. Try to take a risk this second time and write in a mode that differs from the writing you just did (for example if you responded via narrative for the first excerpt, try analysis or word play this time). [5 Minutes]
 - g. **Performing the Preamble:**
 - i. **Appoint a strong reader** to read the entire Preamble out loud.
 - ii. This reader should be instructed to read slowly, with determination, yet also be open to constant interruption.
 - iii. As the reader reads the text, when someone hears the phrase that they wrote from read out loud, they should interrupt the reader by repeating the phrase and then reading their passage (the reader should do this to his or herself when he or she reads the appropriate passage).

- iv. When more than one person has written to a particular unit of language, they should determine the order they will read in via silent signals.
 - v. This is a group performance that incorporates all the writing everyone has done.
 - vi. Urge participants to avoid explaining what they have written or prefacing their reading by saying “Oh, I wrote to that!”
- h. **Process Write:** Where is your thinking now about the Preamble? What surprised you about what you heard? You might also use this process write as an opportunity to reflect on what we just did. [3 Minutes]
- i. **Bracket and Share.**
7. **Lesson Planning / Applying the Day’s Work** [30 Minutes]:
- a. Divide into groups of 3. Each group should appoint a scribe and a timekeeper.
 - b. Begin by discussing your own classrooms—where you teach, subject, grade level, etc.
 - c. Together you will then draft a lesson plan (for 30-45 minutes). This lesson plan should involve:
 - i. the Preamble to the *US Constitution*;
 - ii. the writing-based teaching practices we’ve done today (private write, focused free write, process write, text rendering, collaborative learning/group work, text explosion, dialectical notebook, and believing & doubting);
 - iii. 1 or more of the texts we’ve worked with from the anthology.
 - d. **Make sure to consider the following in your planning:** How might you make this relevant to our current political climate and any current political crisis or situation facing the country today?
8. **Each group presents their lesson plan.** Pause between groups to “sayback” what you imagine will be successful in the classroom and why.
9. **Process Write:** What new ideas did you hear that you’d like to try out in your own classroom? What questions are still on your mind regarding writing-based teaching and primary documents? [5 Minutes]
10. **Share process writes.** Time for final group discussion. Last questions.