
Editorial

Editorial: On My Way Out – Advice to Young Scholars V: Writing References; In this Issue

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I have most certainly reached the final phase of my academic and professional career and as I look back I want to offer, for what it is worth, some dos and don'ts on different topics to younger scholars in the early phases of theirs. This is the fifth instalment and regards that staple of academic life: writing references.

If you are at the beginning of your career as a teacher it is likely that until now you have mostly been the recipient of references rather than the writer of such. Let us separate the writing of references for entry-level candidates seeking an initial teaching appointment or for colleagues in the process of tenure or promotion from references for students seeking admission to graduate programmes, which is likely to be the bulk of your reference writing. I do write references from time to time – though, as you will see, I am quite circumspect in accepting to do so. But since I have, throughout my career in the United States, been involved, almost without interruption, in the direction of graduate programmes at three major universities (Michigan, Harvard and NYU) I must have read – no exaggeration here – thousands of reference letters for potential masters', doctoral and postdoctoral candidates. And though you are likely to think that the following is hyperbole, I will state here too, with no exaggeration, that a very large number of these references were worthless or close to worthless.

The following is a generalization, meaning that there are plenty of exceptions, but academic (and public life) culture are hugely impactful in determining the quality of a reference. In many Continental European countries and in many Asian countries – some more, some less, there are also North–South variations – it appears that *who* writes the reference seems to be more important than its content. Applicants will go to great lengths to receive a reference not from the Assistant, or Privatdozent or Maître de Conference etc. with whom there may have actually been a much closer intellectual and academic relationship but from a 'famous' professor or judge on the Supreme or Constitutional Court and not infrequently even ministers and the like. It must be a spill-over from a more general culture of the labour market. Since the *who* is more important than the *what*, the content of these references is predictably short and vacuously laudatory. The 'big name' might have scant knowledge of the candidate and in a more or less subtle manner the burden of the reference is 'You should admit X because I (the big

name) think you should.’ Often you can tell that the candidate himself or herself had a hand in drafting the reference. One tell-tale sign is similar phraseology in the reference and the personal statement of the candidate. This scandalizes me less than you might imagine, since it is so often the case that the structure of legal education in many of these countries, with large classes and frontal teaching, means that the professor has, at best, a superficial knowledge of the applicant. What *can* he or she write? This is typically true of Central and South America too.

The UK, Ireland and the so-called Old Commonwealth (Australia, New Zealand, South Africa, etc) are, as a rule, a shining exception. There is a well-established tradition of detailed and honest references that are typically based on meaningful knowledge of the applicant (again, a result of the structure of legal education) which are very helpful and to which I will return below in suggesting how you might think of the task of writing a reference.

The United States (and Canada, sigh) follow the English in oftentimes writing detailed references but the most common sin is that just as often these read as advocacy – as if the exclusive purpose of the reference is to get the refereed person admitted. Take a few dozen of these and in no time one could compose a dedicated Referee Thesaurus composed of 30 different ways of stating that Moses or Sarah are wonderful without repeating any superlative. At the same time, North Americans are accustomed to discussing an applicant on the phone and these conversations are usually more frank and helpful.

Probably the most common, transcultural misconception about references is that, indeed, their exclusive purpose is to get ‘your candidate’ admitted. This is simply not so. *A balance needs to be struck between helping the candidate in his or her application purpose and an academic fiduciary duty owed to the admitting institutions in their selection procedures.* If all your references end up looking the same (as is so often the case, see *supra*) you are failing to strike the right balance. Obviously it would be wrong to accept the task of writing a reference knowing that what you are willing and planning to write would positively harm the applicant. But there is a midway which is both fair and helpful.

The key is to go light on the ‘one of the best students I have ever had’ phraseology, which also runs the risk of provoking mirth in the admission office when a professor uses the same phraseology again and again and which is a datum that in most cases will emerge from the objective, empirical data in the application (grades, ranking, etc.). Instead, it is far more beneficial to provide information and insight that would not be transparent from the formal file. It requires time. You should certainly read the application carefully – there might be things about your education system that are worth explaining in the reference. There may be a paper you supervised that will reveal strengths (and weaknesses) worth discussing. The reference very often plays a role in decision-making when the objective data in the application makes it difficult to choose among what appear to be equally qualified applicants. The result should not be determined by the referee whose superlative thesaurus is richer, but by providing the selector with information that individualizes the applicant and enables the selector to know the person better. In this way, the selector does not simply decide ‘who is better’ but can select the candidate who is more suitable for the programme in question.

I oftentimes open my reference by explaining that I would not be giving a reference if I did not think that the applicant would be suitable for the programme to which he or she is applying, but then I state explicitly that the rest of the reference will speak in substantive terms rather than evaluative ones. I also add that, given that so many references traffic in superlatives, my self-imposed diet should not be construed as killing with faint praise. As I mentioned above, I have learnt this from the best in UK practice. Here are some Dos and Don'ts.

- If you agree to write a reference never forget and always respect the deadline – to do otherwise is a capital offence.
- Speak to the applicant. If you do not think you can write a substantive reference, or a favourable one, be transparent about it. Explain that for a reference to be meaningful real knowledge is more important than status. If you think that you would only be able to write a perfunctory reference you should say so. Countless times I have told former students seeking a reference: What can I say? That you took my class and got an A-? Students tend to come to you if they got a good grade. I have a practice of many years that you may find helpful. Towards the end of the class I tell students that if they are thinking of doing graduate work at some point and think they might wish to have a reference from me, they should let me have a cv and photo on the last day of class so that I can make notes about them (on the cv itself) when their presence and contribution in class are still fresh in my mind. These get filed away for future reference, excuse the pun.
- If you belong to a system where there is little opportunity to get to know your students, I would mention that on the reference. If in your system you have Assistants who get to know the students better than you do, write a joint reference with them explaining this. It will be appreciated and others might learn from you.
- No, you should not ask or allow the applicant to write his or her reference. But I think it is acceptable, and I frequently do this, to ask them to alert you to anything on their vita which they believe is of significance in the context of the specific programme. You will often do a better job in contextualizing such for the benefit of the selectors.
- If the application is for a research degree it is not so important that you praise the research project – the selectors will form their own view of that. It is much more helpful if you can provide information on the aptitude of the applicant to engage in such research.

There is a kind of 'bottom line' to all of this. To be effective (in helping the applicant) and useful (to the admitting institutions) references are a serious business that require some time, dedication and commitment – not unlike grading exams. Like all things one gets better at it, but it should never just become rote, sloppy or careless. In the panoply of academic citizenship duties this is one which is least welcome and most sacred.

Writing references for persons seeking entry-level appointment, tenure or promotion is a somewhat different kettle of fish. The stakes are much higher both for the candidate and for the appointing or promoting faculty. Thankfully, these requests are not quite as frequent; but this is balanced out by the need for a greater effort at reading and writing.

In many systems there is still the practice that the candidate nominates two to three referees to whom the Selection Committee then turns for a reference. There is nothing wrong with this unless they are the *only* referees to whom the Committee will turn. Even more so than with student applicants it is unlikely that a referee nominated by the candidate will not be on the whole laudatory. So the American custom of turning to a bunch of referees not nominated by the candidate is salutary. Such referees are asked, or should be asked, if they have any conflict of interest of the friend-foe type. I have only rarely seen this emerge as a problem and usually, in the evaluative dimension of the report, such references are more frank and illuminating.

The advantage of having a nominated referee is usually a consequence of the holy trinity of appointment criteria: scholarship, teaching and academic citizenship. Someone who knows the candidate may better be able to comment on teaching and citizenship. Also, a referee, even if nominated, deeply in the field may, if not lazy, be able to explain the importance of the work, relate it to that which is done by other scholars and the like – with the caveat mentioned above. Being nominated by the candidate has a chilling effect on total candour.

The amount of work involved is typically quite large – especially in tenure reviews. One needs to read a significant sample of the writing (and even more difficult, reread it if one knows it already) and then write a meaningful report, assuming that not everyone on the Selection Committee or the faculty that will eventually make the decision is familiar with the field.

When approached and under time pressure I will tell the Selection Committee that I am only able to write a ‘conclusory report’ – almost like grading an exam or a person. I think these ‘testimonials’ are for the most part worthless to any self-respecting selection committee but they are not uncommon. Here, too, the culture of *who* writes is more important than *what* is written sadly often applies.

To a much greater degree than writing references for students applying to graduate programmes the reputation and credibility of the referee are at stake here. If you take average work and praise it as ‘paradigm shifting’ (one of the most odious clichés of the genre) the discrepancy will be noted, the candidate will not be helped, and your own reputation and credibility will take a hit. This incentive for ‘self-preservation’ apart from the substantiality of the file explains why for the most part references for appointment, tenure and promotion have more heft and are more helpful. More time is given, an honorarium is sometimes offered (which makes doing a superficial thing a little bit more difficult) and a more substantial analysis is expected.

All in all, when focusing on scholarship, selection committees are mostly interested in explaining the work, the quality of mind behind it, its contribution and where it fits in the field rather than reading a series of superlatives.

It is very, very hard to refuse your name when asked by a colleague or former doctoral or post-doctoral student applying for a job or tenure or promotion. It has been a while since I have made this kind of request, but I think it is good practice when doing so to put in a sentence such as ‘I know how busy you must be and will understand if you are unable, etc...’ It may also be the case that more than one candidate for the same appointment may approach you – it is totally understandable if you indicate that you are already committed.

I cannot end this reflection without a *cri de coeur* as regards peer review for articles. My view, which I have often expressed, is that in an era of extensive self-publication the role of peer-reviewed journals is no less and maybe even more important. I expect selfless service, especially from those who have published in *EJIL* and/or *I.CON* and have thus, themselves profited from peer review.

In this Issue

This issue opens with a set of articles that address a range of centrally important theoretical and doctrinal issues. The first, by Niels Petersen, addresses an evergreen topic in general international law, which has been the subject of several studies in this Journal over the past few years: the identification of customary international law by international courts and tribunals. Petersen seeks to explain why the International Court of Justice rarely conducts a detailed analysis of state practice in identifying customary norms, by reference to the specific institutional constraints that the Court faces. In our second article, Bernard Hoekman and Petros Mavroidis analyse the ambiguities in scheduling additional commitments for policies affecting trade in goods in the GATT compared to the process under the GATS. Next, Janis Grzybowski offers a novel perspective on the old debate about the identification of states, deconstructing the accepted criteria and provoking deeper reflection on the role of 'silent ontological commitments' in legal assessments of statehood. Noëlle Quénivet questions whether international law should prohibit the prosecution of children for war crimes, taking this problem as an opportunity to test some of the basic assumptions underpinning the current law and examining the relationship between restorative, retributive, and juvenile rehabilitative justice mechanisms. The final article in this section, by Yota Negishi, proposes that the *pro homine* principle should serve as a point of focus – and thereby, also, of harmonization – for both conventionality and constitutionality control exercises undertaken by domestic courts.

The second set of articles forms the *Focus* of this issue: international legal histories – looking back to the twentieth century. In the first article, Giovanni Mantilla revisits the signing of the 1949 Geneva Conventions by the United States and the United Kingdom. He uses the reasoning of these states for signing as the basis for a reflection on contemporary discussions of treaty commitments and the pressure of social conformity. Next, Narrelle Morris and Aden Knaap present a carefully researched examination of the United Nations War Crimes Commission and its problematic relationship with member nations. Finally, Felix Lange offers a rich account of the discipline of international law in Germany between the 1920s and the end of the Cold War.

In our *Roaming Charges* contribution, by Viorica Vita, a solitary figure seeks to carve out a living selling love locks on a bridge in Rome.

This issue features an *EJIL: Debate!* centring on an article by Vladyslav Lanovoy, which addresses the use of force by non-state actors and the ability of the International Law Commission's Articles on State Responsibility to ensure that states facilitating such conduct face legal consequences. Lanovoy submits that complicity should be used as a test of attribution of conduct when a state contributes to the conduct of a non-state actor that leads to the commission of a wrongful act attributed to the state.

In his Reply, Ilias Plakokefalos takes up a series of concerns with the approach taken by Lanovoy, who in turn offers a Rejoinder.

The issue closes with a *Critical Review of International Governance* article by Moria Paz, examining the ‘law of walls’. Drawing on the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee, Paz argues that human rights courts and quasi-judicial bodies have become deeply implicated in the proliferation of border walls as a strategy of immigration control.

We welcome Gregory Shaffer back to *The Last Page* with a poem entitled ‘Khundi’, which evokes life, with its simplicity and complexities, in a corner of the Himalayas.

JHHW