



MY LEGAL HEROES: FROM MAHATMA GANDHI TO LAURA CODRUTA KÖVESI

President Chakrabarti on how lawyers can change the world

Suma Chakrabarti became President of the EBRD in 2012 and was re-elected to a second four-year term in 2016. Before joining the Bank, President Chakrabarti was the most senior civil servant at the British Ministry of Justice. Prior to this, he headed the UK's Department for International Development (DFID). He holds a degree in Politics, Philosophy and Economics from Oxford University and a Masters in Development Economics from the University of Sussex.

Under Suma Chakrabarti's presidency, the EBRD has significantly expanded its policy dialogue activities aimed at promoting reform in the Bank's countries of operations, including legal reform and other improvements to governance.

Michel Nussbaumer, Director of the Bank's Legal Transition Programme (LTP), interviewed President Chakrabarti about his experience of advocating legal reform and stronger rule of law in his capacity as head of the EBRD, as well as in his previous jobs.

Michel Nussbaumer: When you meet with heads of government and other key decision-makers from the EBRD region, as you do on a regular basis, how high on their agenda is legal reform?

Suma Chakrabarti: The honest truth in my mind is that it is not high enough on their agenda. It is like a “nice thing to have”, but they don’t think of it much unless they have a legal background themselves, which is quite rare in our countries of operations.

MN: Do you see a difference in that context between our old region¹ of operations and our new region?² The old region was forced to enact legal reforms as they were starting from a clean slate after the collapse of the Soviet bloc, whereas in the new SEMED region there is a long tradition of commercial law.

SC: Actually I don’t see this difference. The behaviours are quite similar in our traditional region and in the SEMED region, in particular in terms of the attitude towards corruption and prosecuting it. Talking to governments in Romania and Bulgaria has been quite similar to talking to governments in the SEMED region.

MN: But we should not forget the impact of EU accession in the old region.

SC: EU accession has always been a good motive for institutional reforms in all these countries. But at the same time the EU itself is still very critical of some of its members when it comes to the judiciary and organised crime, and how it is prosecuted or not prosecuted. Since the EU became very clear about the failings in Bulgaria and Romania, for example, there have been major advances. Look at Laura Codruta Kövesi³ pushing on the anti-corruption front in Romania. She has done a tremendous job I think, so that the judiciary in Romania is now very much more independent. Many female judges have supported her actions.

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MN: Then there is the question about what we can do to incentivise countries to reform their legislation. Would you have any advice on how to make our policy dialogue more efficient?

SC: In terms of getting governments to take this agenda more seriously, you have to explain to them why it is of value to them.

To give you a very concrete example, I just had an email from one of our country teams about, among other things, the appointment of the chief prosecutor and the head of the justice system in that country. These are issues where the leaders in our countries of operations are not necessarily thinking in the national interest. They are thinking of what is in their own interest. And it is our role as international public servants to tell them what is really in the long-term interest of their country. We should tell them “This is the right thing to do”, or “Please don’t do this”.

But you also have to find a way to explain to them that, if you have a good legal and judicial system, you will attract more foreign investment, because investors will be more confident that fair decisions will be made. I think this is really, really important to investors – that disputes are resolved fairly and quickly. If you want to be re-elected, as a politician, you will want to attract more investment, and that’s why you have to make the reasoning sufficiently short term and get them interested.

MN: Do you see a risk in offering free technical assistance to countries, as we do most of the time? Would fee-based services create more responsibility on the counterpart’s side?

SC: Yes, generally speaking if you pay for it you should care more about it. But you have to judge this case by case.

If you asked Tajikistan to pay for technical assistance, or any low income country, I don’t think they could afford it. But you could ask Poland to pay. You have to make a judgement about where the country is in its development process.



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MN: What about cooperation and competition among international financial institutions (IFIs)? In IFI headquarters in Washington or London you hear that everyone wants to cooperate, but on the ground in the Kyrgyz Republic or Armenia, there is much more competition for projects.

SC: I don’t see quite as much as volume chasing and silly behaviours in areas such as the one covered by the Legal Transition Programme. I tend to find that lawyers in these various institutions have a more shared viewpoint.

MN: Are there any areas that we are not working on and should be?

SC: Of course I could come up with a long list of things to do, but we won’t have the money. But within what we do already, I have seen the good stuff your team has done on judicial training in particular, and I would like to scale this up.

MN: You are aware that judicial training is a special type of law reform work. It is expensive, it is difficult to make sustainable...

SC: I think we are good at it. This is an area of expertise that the EBRD has and we should build on it.

Another thing I want to say is we need to advertise our legal reform work more. Of course we can do press releases, but we should capitalise more on success stories. Take for example the Chernobyl project⁴ for the Nuclear Safety team. They get so much publicity because they are on the public’s mind. So we have to work harder together to find LTP projects that you can communicate about to show the difference that you make.

MN: Now, can we talk a little about your pre-EBRD days? You were Permanent Secretary at the UK Ministry of Justice from late 2007 until July 2012, when you joined the EBRD. Can you tell us more about the job there?

SC: I was chosen as a non-lawyer to lead the department. In previous times, the Ministry (or rather its predecessors) had always been led by a lawyer. The Ministry of Justice is a 95,000 person business, covering the prisons, the courts and the probation services.

MN: Were these criminal courts only?

SC: No, no, civil courts too, and the judiciary, or part of it. The essential question was: how do you create a new structure, a new ministry, with all these constituent parts together?

MN: It did not exist before?

SC: No. We had never had a Ministry of Justice before.⁵ So, it was really a leadership-management exercise. At the time, the 95,000 people working for the Ministry were quite siloed. The idea that the Prison Service would relate to those in Legal Aid or some other aspects of the justice system was actually quite problematic. We had a process called Transforming Justice which became quite famous. We were also by that time beginning to face up to the fact that austerity meant cutting budgets as well, so

we had to start cuts but at the same time make sure people could get access to justice.

Something that your readers outside the UK might find interesting: because we had taken the Prison Service and the National Probation Service out of the Home Office (the so-called interior ministry as people call it on the Continent), into the Justice Ministry, the Home Office became much more security-oriented, while the Justice Ministry became more focused on the rehabilitation of criminals. In other words, you get a quite right-wing, illiberal interior ministry and you have a justice ministry which is staffed by more liberal people.

Theresa May, when she was Home Secretary, made a famous joke about her and Ken Clarke (then Secretary of Justice): “I lock them up and he lets them out”. This encapsulates the divisions of the time.

MN: Was there any international cooperation at the Ministry of Justice?

SC: There was, mostly focusing on judicial training programmes. We developed the so-called Justice Assistance Network, which was a cross-departmental



initiative between DFID, the Ministry of Justice, the Home Office and lawyers from other departments. The programme involved training judges in other countries, but also helping to make the courts function better.

MN: So this may explain why you are so interested in the judicial training activities of the EBRD Legal Transition Programme?

SC: Yes! And I am also interested in lawyers for another reason: in 2009, I became an Honorary Bencher of the Middle Temple⁶ here in London.

MN: Does this mean that you are technically a barrister?

SC: Yes, but without the qualifications. They decided they liked me so much they would let me in [laughs]. Anyway, in my admission speech, I mentioned that I have always been interested in lawyers. It goes back to the Independence Movement in the British Empire. Many country movements were led by lawyers: for example Mahatma Gandhi, Jawaharlal Nehru, Muhammad Ali Jinnah.

“The first message is that law is an important part of the development process. And the second one has to do with the whole question of gender balance: we want to get a judiciary that better reflects society.”

MN: Gandhi was trained in the UK, right?

SC: Yes, and so were Nehru and Jinnah. If you then look at South Africa as well, many of the leading lights in the anti-apartheid movement were lawyers. All these lawyers played a vital part in the process.

MN: More on the political side, than the economic one.

SC: This is right. And many people do not know this. They don't know, unless they have studied the matter, that Nehru or Gandhi were lawyers. In fact, lawyers are often associated with being anti-change, being on the conservative side. And all the Myers-Briggs indicators by the way show this. They are conservative, they are introverted personality types, because they have to care about the rules.

MN: Did you ever consider becoming a lawyer?

SC: No, I did not. But I became interested in lawyers because of the fight against colonialism.

And later, when I started my first job, working as an economist in a ministry in Botswana, the importance of law for making sure the institution ran well became very clear. We know now in development how much institutions and policies matter.

MN: In the 1990s, the importance of legal frameworks was not so obvious in the IFI world. This became more obvious with the Doing Business project at the World Bank in the noughties.

SC: That's right. Maybe the importance of lawyers was not recognised 'til then. I think we have known about the importance of institutions since the late 1980s – if you look at the Know How Fund promoted by the UK government, for example. You are right that the recognition of the importance of the law as part of the institutional framework is more recent.

¹ Countries of the Caucasus, Central Asia, central and eastern Europe and Russia.

² The southern and eastern Mediterranean area (also known as SEMED), which includes Egypt, Jordan, Lebanon, Morocco, Tunisia, West Bank and Gaza. The EBRD began operating in SEMED in 2012.

³ The chief prosecutor at Romania's National Anticorruption Directorate.

⁴ The EBRD manages international funds that finance work to secure Chernobyl, including the construction of the shelter known as the New Safe Confinement. For more information, visit www.ebrd.com/what-we-do/sectors/nuclear-safety/chernobyl-overview.html (last accessed 15 December 2017).



MN: Can you please tell us about your time at DFID. Did you have a chance to promote the rule of law as part of your role there?

SC: Very much so. That happened in the context of country strategies. DFID is extremely strong on political economy, when compared with other donors, so when you want to design a country strategy for a developing country, you have to think about institutions and legal frameworks.

Another aspect of my work at DFID was that sometimes I would have to go and challenge a government because they were behaving badly, in terms of lawyer independence. I had these very difficult face-to-face discussions with presidents or attorney generals in Sub-Saharan Africa about their treatment of lawyers.

MN: Did your programme at DFID include law reform assistance for these countries?

SC: Yes, but it was only starting. I think DFID began to rely more on the Ministry of Justice, when it was created, to do that.

MN: What sort of legal models were you promoting in DFID projects? The English law model, which is often seen as a gold standard? Or were you relying on international standards?

SC: We did not actually have to promote the UK model, because most of the countries that DFID is helping are Commonwealth countries, so they have English law-inspired systems already. Rather, the focus was on getting systems that worked and ensuring they had good governance and good legal processes.

MN: Do you have any family connections with lawyers or the rule of law?

SC: I don't think we have a single lawyer in the family. We have doctors, academics, accountants, journalists,

but I can't recall a single lawyer. Note however that my wife, who is Japanese, is interested in the law. She has recently focused her research on legal services, in particular on outsourcing them. So she has a big interest in how lawyers function, how they behave and what makes them tick. And of course at the Ministry of Justice I became very interested in lawyers. I retain strong personal links with senior members of the judiciary in the UK and I continue to see them.

MN: To conclude, I would like to go back to our technical cooperation activities. You know we are working to establish a platform for women judges in the SEMED region. The idea is to allow them to share experiences and develop their leadership potential in these societies. What would be your message to these women judges?

SC: The first message is that law is an important part of the development process. And the second one has to do with the whole question of gender balance: we want to get a judiciary that better reflects society. So, this means more women, but also more openly gay judges. It is fantastic that now, in Britain, so many senior judges are suddenly openly gay, whereas before they were denying it. Now it is OK. Having more minority judges is good for everyone!

⁵ The Ministry of Justice was formed in 2007, combining the criminal justice functions of the Home Office and its agencies with the responsibilities of the Department for Constitutional Affairs.

⁶ The Middle Temple is one of the four Inns of Court which have the exclusive right to call their members to the English Bar as barristers. Benchers, or Masters of the Bench, are responsible for governance at the Middle Temple, which elects Honorary Benchers from other walks of life who have excelled in their profession.

