

# PRECIS

A classic essay on the **utility of history** was written in 1874 by Friedrich Nietzsche entitled "On the Uses and Disadvantages of History for Life." Expounding on Nietzsche's essay, Judge Richard Posner<sup>[1]</sup> wrote:<sup>[2]</sup>

“Law is the most historically oriented, or if you like the most backward-looking, the most 'past-dependent,' of the professions. It venerates tradition, precedent, pedigree, ritual, custom, ancient practices, ancient texts, archaic terminology, maturity, wisdom, seniority, gerontocracy, and interpretation conceived of as a method of recovering history. It is suspicious of innovation, discontinuities, 'paradigm shifts,' and the energy and brashness of youth. These ingrained attitudes are obstacles to anyone who wants to re-orient law in a more pragmatic direction. But, by the same token, **pragmatic jurisprudence must come to terms with history.**”

When Congress enacted the **Indigenous Peoples Rights Act (IPRA)**, it introduced **radical** concepts into the Philippine legal system which appear to collide with settled constitutional and jural precepts on state ownership of land and other natural resources. The sense and subtleties of this law cannot be appreciated without considering its distinct sociology and the labyrinths of its history. This Opinion attempts to interpret IPRA by discovering its soul shrouded by the mist of our history. After all, the IPRA was enacted by Congress not only to fulfill the constitutional mandate of protecting the indigenous cultural communities' right to their ancestral land but more importantly, **to correct a grave historical injustice to our indigenous people.**

This Opinion discusses the following:

1. The Development of the Regalian Doctrine in the Philippine Legal System.

1. The Laws of the Indies
2. Valenton v. Murciano
3. The Public Land Acts and the Torrens System
4. The Philippine Constitutions

2. The Indigenous Peoples Rights Act (IPRA).

1. Indigenous Peoples
  1. Indigenous Peoples: Their History

## 2. Their Concept of Land

### 3. The IPRA is a Novel Piece of Legislation.

#### 1. Legislative History

### 4. The Provisions of the IPRA Do Not Contravene the Constitution.

#### 1. Ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain.

##### 1. The right to ancestral domains and ancestral lands: how acquired

##### 2. The concept of native title

(a) *Cariño v. Insular Government*

(b) Indian Title to land

(c) Why the *Cariño* doctrine is unique

##### 3. The option of securing a torrens title to the ancestral land

#### 2. The right of ownership and possession by the ICCs/IPs to their ancestral domains is a limited form of ownership and does not include the right to alienate the same.

##### 1. The indigenous concept of ownership and customary law

#### 3. Sections 7 (a), 7 (b) and 57 of the IPRA do not violate the Regalian Doctrine enshrined in Section 2, Article XII of the 1987 Constitution.

##### 1. The rights of ICCs/IPs over their ancestral domains and lands

##### 2. The right of ICCs/IPs to develop lands and natural resources within the ancestral domains does not deprive the State of ownership over the natural resources, control and supervision in their development and exploitation.

(a) Section 1, Part II, Rule III of the Implementing Rules goes beyond the parameters of Section 7(a) of the law on ownership of ancestral domains and is *ultra vires*.

(b) The small-scale utilization of natural resources in Section 7 (b) of the IPRA is allowed under Paragraph 3, Section 2, Article XII of the 1987 Constitution.

(c) The large-scale utilization of natural resources in Section 57 of the IPRA may be harmonized with Paragraphs 1 and 4, Section 2, Article XII of the 1987 Constitution.

### 5. The IPRA is a Recognition of Our Active Participation in the International Indigenous Movement.

