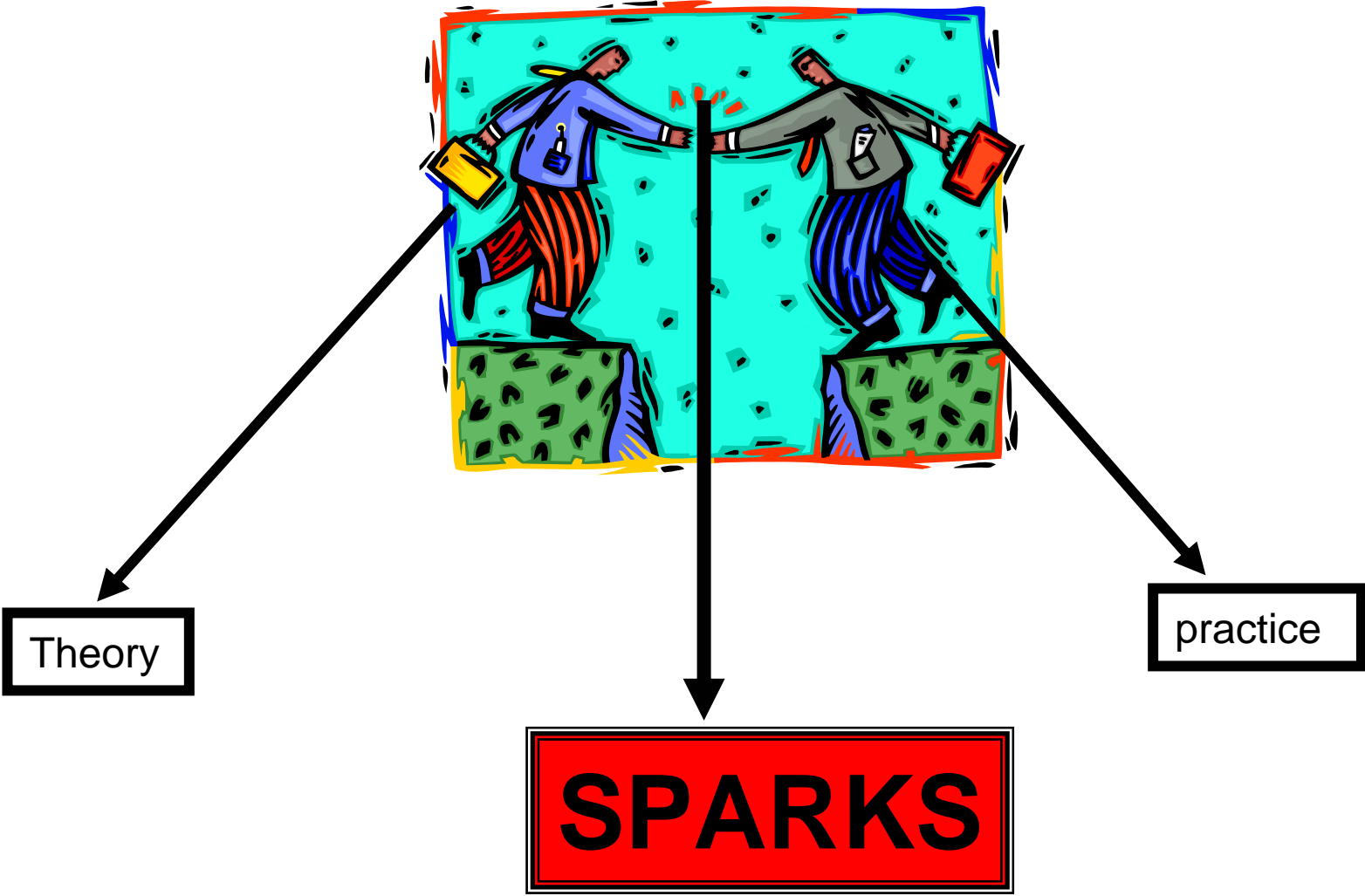


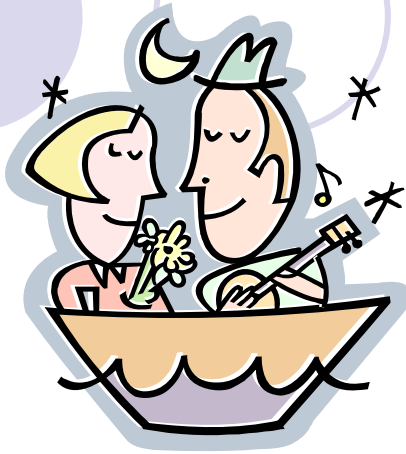
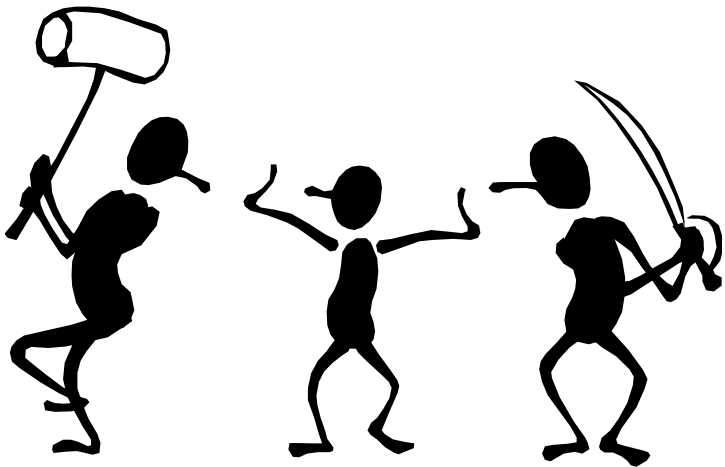
The Reform of Water Rights in South Africa

Paper prepared by Prof. G.J. Pienaar
and Dr. E. van der Schyff
Northwest-University
South Africa

REFLECTING




DESTINY??





Introduction

- Water is a contentious subject in South-Africa
- Not only is it a scarce commodity, needed for the daily livelihood of all the people of the country - but
- In the preceding political era access to water has been influenced by the political construct of apartheid.

- 
- Resulted = 1996: approx. 40% of the population did not have access to clean water for domestic use and
 - 21 million people did not have sufficient water for sanitation.
 - Need for change was apparent.

Change from what???

Historical overview:

Never an issue over OWNERSHIP of water
State = *dominis fluminis*

Public water



Water in public streams

Riparian owners' use rights were controlled and regulated by the state
Navigable streams -*Res publicae*

Private water



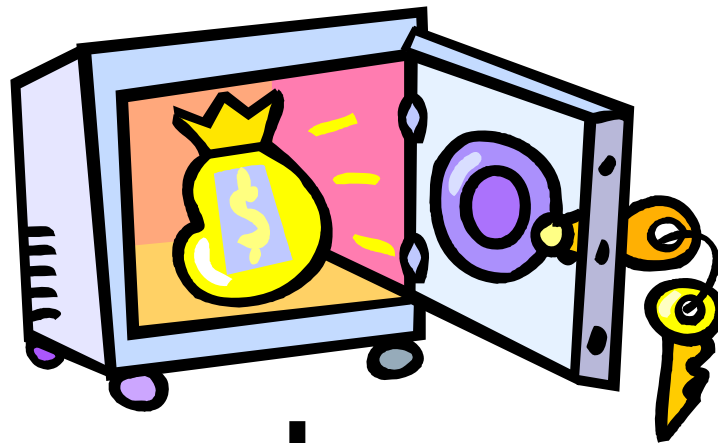
Spring water / rain water
if it flowed over land or
had its source on land

Landowners had exclusive use-rights
Water-use rights were directly linked to landownership

BUT ...

ALTHOUGH NO QUESTION ABOUT THE **OWNERSHIP** OF WATER

- Water-use rights were regarded as



Private property → Monetary value

ENTERS ...

NATIONAL WATER ACT 36 OF 1998

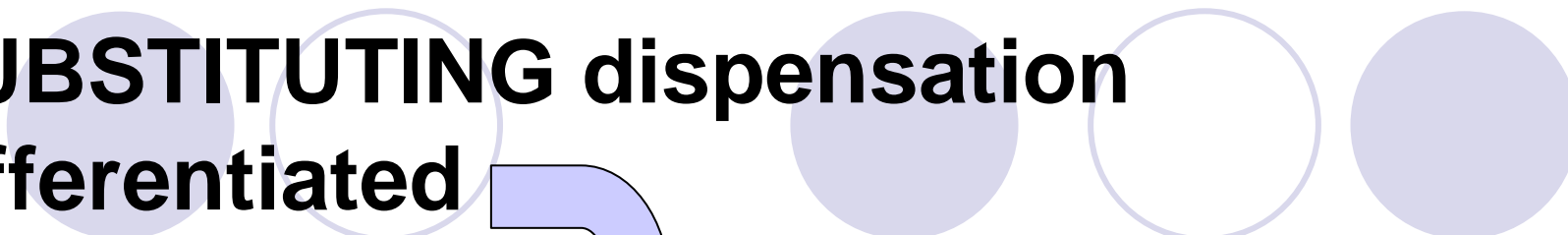
As part of the holistic action of **liberating** the country from the



apartheid

underlying nature of water rights were changed completely

**SUBSTITUTING dispensation
differentiated**

Four decorative circles are arranged horizontally at the top of the slide. From left to right: a solid light purple circle, a white circle with a light purple outline, a solid light purple circle, and a white circle with a light purple outline.A thick, light purple arrow that starts pointing right and then curves downwards and to the left, pointing towards the box below.

Private + public water

Three thick black arrows pointing downwards from the box above to the final text box.

**Water as a natural resource
belongs to all the people of the
country**

Expropriation



Common property



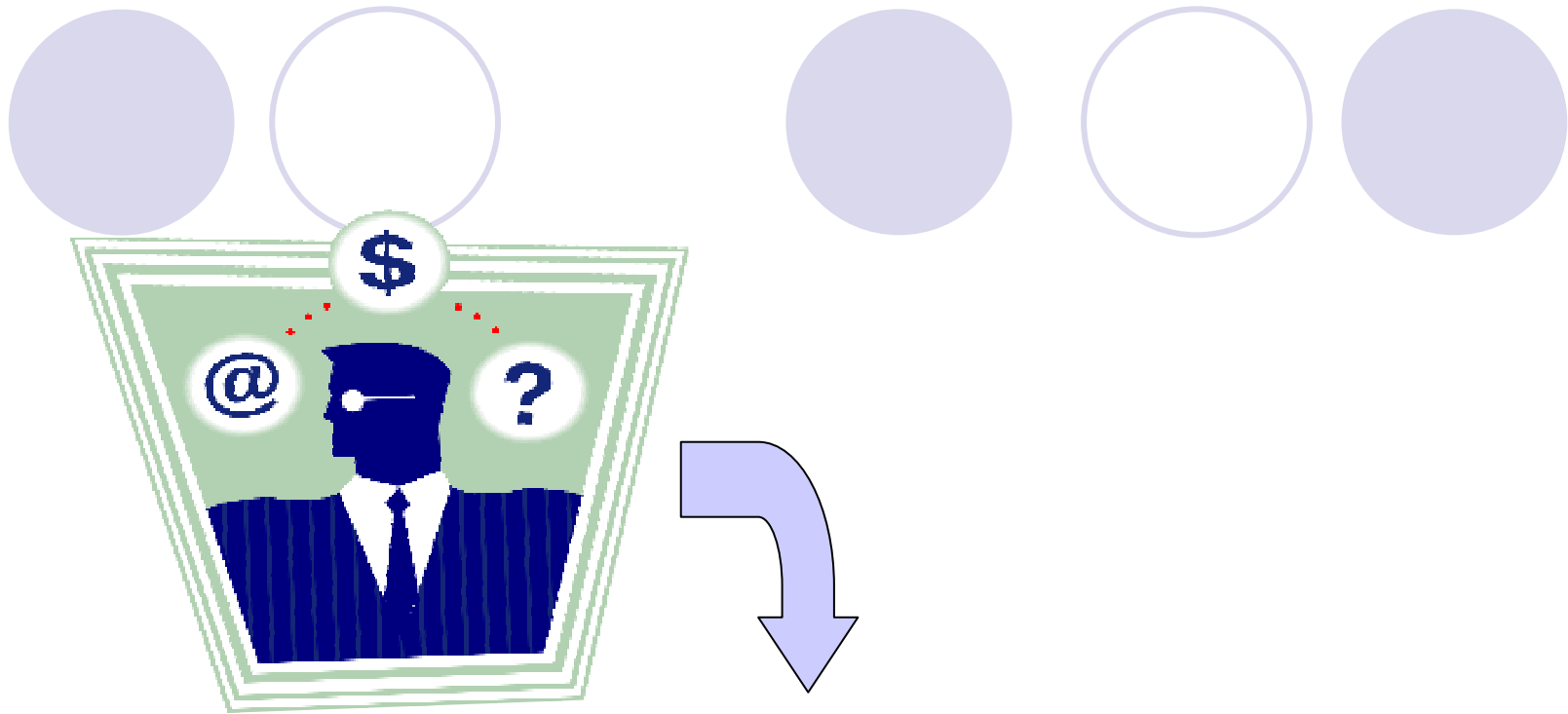
Compensation



I have rights

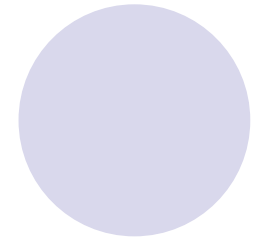
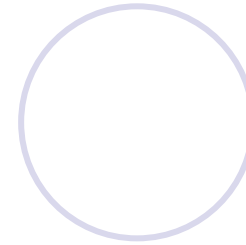
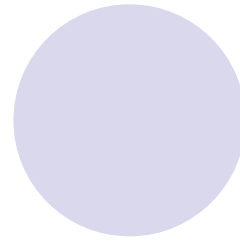
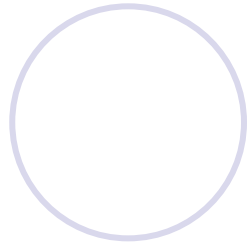
Constitutional protection of property

I had rights



How can any commodity
BELONG to all the people of
the country?

This did not fit in with the
established Roman-Dutch
property concept



employed to overcome the



property concept

PUBLIC TRUST DOCTRINE

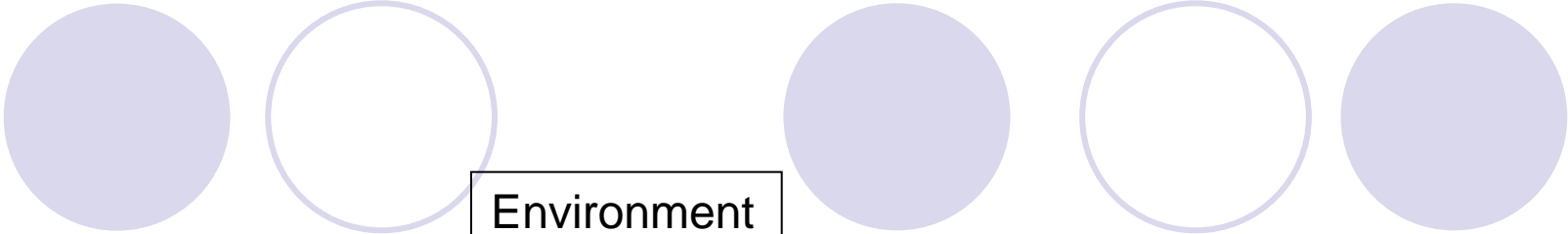


PUBLIC TRUST DOCTRINE:

- Title of public trust property vests in the State -
- as TRUSTEE
- with the nation as BENEFICIARY
- Thus the STATE holds the property solely as REPRESENTATIVE of the nation
- for the
- BENEFIT of the nation

PUBLIC TRUST DOCTRINE

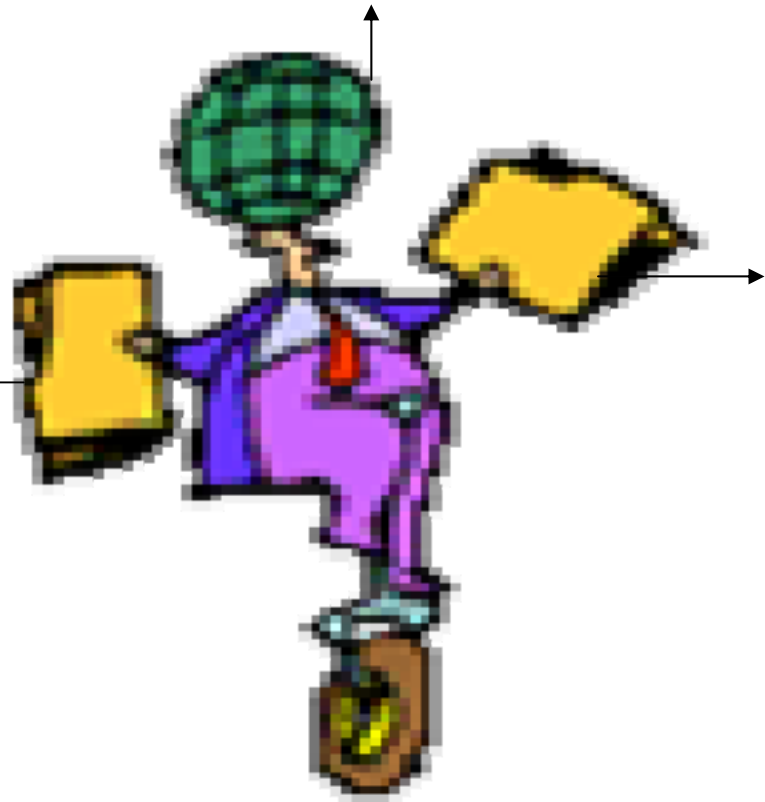
- IDEAL mechanism for balancing opposing interests in water and water use rights
- because
- flexible tool –
 - Licences / authorisations granted subject to the provisions/objects of the act
 - Public Trust title = pre-existing
- adapt to the pressing needs of society



Environment

Agriculture / industry

Socio-economic rights



Future of water resource
development and water
distribution in S.A. is good
PROVIDED: administration is
uncorrupted and efficient

