The arguments applied in Andean water formalization policies and discourses stem from different theoretical approaches to how property rights are related to resource management, security, and conflict and come in different, complementary and sometimes contradictory ways. This chapter discusses the main theoretical currents of property rights thought reflected in Andean water formalization policies. The central argument of this chapter is that most theoretical approaches within the academic and policy debate regard property rights in water resource management as a unitary and static economic good whose formalization is seen as key to diminishing water conflict and protecting the water security of the poor. These theoretical assumptions, however, miss out on the issues of power, inequality and legal complexity of water rights.

New institutionalism and neo-classical political economy

In recent years, scholars of new institutionalism and neo-classical political economy have given increasing attention to the way rules, regulations, norms and values have an impact on natural resource management and how they shape individual and collective perceptions of incentives and gains to use resources. Their main theoretical argument is that institutions shape action and impact on natural resource management. In this context, institutions are chiefly defined as property rights and pricing systems for natural resources, which are seen as necessary in order to control and regulate human action in water resource use by offering constraints and opportunities (Ostrom 1990, Hall and Taylor 1996).

Rational-choice institutionalism has a particularly strong influence on the field of water and politics, as observed by Mollinga (2001: 739, 738): “In hydropolitics...rational choice approaches have found
widespread application...Its appeal for policy makers lies in its suitability for designing standardized policy prescriptions, and its exclusion, or rephrasing, of the issues of power and politics.” Within the literature on institutionalism and water resource management, new institutionalism also derives theoretical insights from neo-classical political economy scholars. Both schools of thought see private property as an essential element for economic development (Demsetz 1967; Furubotn and Pejovich 1972; Alchian and Demsetz 1973). Their arguments are often based on utilitarianism, influenced by authors of neo-classical political economy, such as Jeremy Bentham or John Stuart Mill and David Ricardo.

In the context of formalization policies, new institutionalism and neo-classical political economy primarily present water scarcity as a universal condition, which in their view makes it necessary to use the resource to its highest value by means of pricing it at full economic and environmental costs. As liberal economists, they argue in favor of enforceable and tradable water rights and water markets as the best property right regime in water resource management in order to improve efficiency, equity, and sustainability. Transferable water rights and water markets create incentives for present users to conserve water (increase sustainability) and to increase levels of productivity. This presumably generates a water surplus since water users take the cost as well as benefits from sale into account (Rosegrant andBinswanger 1994; Libecap 2009). In current literature, this approach is also known as “liberal environmentalism” (Bernstein 2001), “green neoliberalism” (Goldman 2005), or “market environmentalism” (Bakker 2004).

*Private and tradable water rights* are the central concept in these schools of thought. They propose accountability, financial autonomy, and cost-recovery, such as service-related user charges (North 1993; Perry et al. 1997; Repetto 1986) and further argue that *common property rights* regimes have a low productivity because they lack the motivation of financial incentives in order to increase private returns. They see tradable water rights as more flexible in response to market changes, such as shifts in crop prices, demand patterns and, thus, the value of water (Bauer 1997; Ostrom 2000). Well-established private water rights are advocated by attributing to them low transaction costs of trade because competing parties will stand by to offer or accept similar terms. Competition in the market place reduces the costs of finding and pursuing the most valuable option in which a resource may be contracted for production (Cheung 1970; Demsetz 1967; Holden and Thobani 1996).