

DOCTRINA

## From “water rights” to “right to water”: The legal framing of Modatima’s rights

*De “derechos de agua” a “derecho al agua”:  
El encuadre jurídico de los derechos de Modatima*

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**ABSTRACT** This study examines the legal framing of water conflicts in Chile, focusing on the social movement Modatima (Movement for the Defense of Water, Land, and Environmental Protection) and its interactions with the judicial system. Employing qualitative content analysis of 278 Modatima documents and 510 Court Rulings from 2011 to 2023, we analyze how the concepts of water and rights are framed by both Modatima and the judiciary. The research reveals three distinct legal framings of water: the *neoliberal* framing of the Court of Appeals, the *human rights* framing of the Supreme Court, and Modatima’s *democratic* framing. Our findings indicate that Modatima’s democratic legal framing emerges from the application of human rights principles to their specific context, resulting in a conceptualization of water as a public common good and proposing new rights related to water access, land-water connections, and health. This framing challenges existing legal interpretations and contributes to the democratization of water governance. The study demonstrates how social movements can reshape legal interpretations and democratic processes in resource management and environmental rights. It highlights the complex interplay between social movements, judicial decision-making, and the evolution of water rights discourse in Chile. These findings contribute to our understanding of the role of social movements in shaping adaptive water governance and offer insights into the potential for innovative approaches to water conflicts in the context of climate change challenges.

**KEYWORDS** Social movements, right to water, water conflicts, legal framing, Modatima.

**RESUMEN** Este estudio examina el encuadre jurídico de los conflictos hídricos en Chile, centrándose en el movimiento social Modatima (Movimiento por la Defensa del Agua, la Tierra y la Protección del Medio Ambiente) y sus interacciones con el sistema judicial. Empleando un análisis cualitativo de contenido de 278 documentos de Modatima y 510 sentencias judiciales entre 2011 y 2023, analizamos cómo los conceptos

de agua y derechos son enmarcados tanto por Modatima como por el poder judicial. La investigación revela tres encuadres jurídicos distintos del agua: el encuadre *neoliberal* de la Corte de Apelaciones, el encuadre de *derechos humanos* de la Corte Suprema y el encuadre *democrático* de Modatima. Nuestros hallazgos indican que el encuadre jurídico democrático de Modatima emerge de la aplicación de principios de derechos humanos a su contexto específico, resultando en una conceptualización del agua como bien común público y proponiendo nuevos derechos relacionados con el acceso al agua, las conexiones tierra-agua y la salud. Este encuadre desafía las interpretaciones jurídicas existentes y contribuye a la democratización de la gobernanza del agua. El estudio demuestra cómo los movimientos sociales pueden reformular las interpretaciones jurídicas y los procesos democráticos en la gestión de recursos y derechos ambientales. Destaca la compleja interacción entre los movimientos sociales, la toma de decisiones judiciales y la evolución del discurso sobre los derechos de agua en Chile. Estos hallazgos contribuyen a nuestra comprensión del papel de los movimientos sociales en la configuración de una gobernanza adaptativa del agua y ofrecen perspectivas sobre el potencial de enfoques innovadores para los conflictos hídricos en el contexto de los desafíos del cambio climático.

**PALABRAS CLAVE** Movimientos sociales, derecho al agua, conflictos por el agua, encuadre jurídico, Modatima.

## Introduction

How does the legal framing from social movements transit in the context of social conflict? Research on “water conflicts” states that there has been a growing prominence of courts and environmentalist social movements in providing solutions beyond the legislative sphere (Bauer, 2015; Budds, 2020; Larraín, 2006). This is because the institutional design has constrained political deliberation to change public policies (Costumero and others, 2017; Valdés-Pineda and others, 2014), and water law has created increasingly unequal access to water (Bauer, 2015).

This study examines how social movements construct their identity through legal framing, translating political demands via legal concept interpretation. We examine the case of Modatima, a Chilean social movement that serves as a bridge between the genesis of laws in the legislature and their interpretive application by courts. In particular, we focus on how social movements have gained protagonism in the context of water conflicts in Chile through the act of legal framing, wherein they collectively mobilized law which implied shaping their grievances, identity, and objectives.

The history of Modatima dates to its foundation in 2010 when a group of farmers and local communities came together to address the overexploitation of water resources through the irrigation of avocado orchards (Modatima, 2023; Mundaca, 2014: 4; Rojas Vilches, 2021). In its early years, Modatima established itself as a pro-

test movement, undertaking various actions to raise awareness of the issues and demands of the affected communities. However, they began to transform into a social movement, expanding its support base and solidifying its political discourse around five constitutive elements: i) rational and efficient use of water; ii) water as a national asset; iii) water as a human right; iv) the replacement of the 1981 Water Code; and v) the restitution of property rights over water (Bauer, 2015; Larrain, 2006; Modatima, 2023; Mundaca, 2014; Panez-Pinto and others, 2017)

To enhance our understanding of this issue, this study adopts a qualitative content analysis approach to study the legal framing of water conflicts involving Modatima and the judiciary. Special attention is paid to the role of mutual legal interpretation in shaping the constituencies involved in this water conflict. This study examines how the legal framing of water as a concept has led to modifications in the identity of the social movement Modatima.

Through a qualitative content analysis, we explore Modatima's evolving conceptualization of water as a public common good, and how this shift has altered their institutional objectives, linking them to issues of access, water-land relationships, and health. This process has given rise to a democratic legal framing for water, encapsulated in the principle of "water as life". Our analysis reveals the dynamic interplay between legal concepts, social movement identity, and institutional goals in the context of water conflicts in Chile.

This paper aims to complement this growing body of knowledge by introducing three main contributions: first, the conceptualization of water conflicts as a confrontation of legal framings wherein it's able to recognize how the interpretation of legal concepts can create a new offer of rights; secondly, focusing on the judiciary legal framing, we have been able to distinguish between the Court of Appeal and the Supreme Court, reflecting different conceptions of water and rights; and thirdly, the reconstruction of the legal framing of Modatima not exclusively in terms of human right to water against neoliberal policies, but rather identifying a democratic legal framing of water as a public common good and offering the rights to access water, water and land, and health.

The study's primary finding reveals that Modatima's legal framing strategy represents a novel synthesis. This strategy emerges from the application of human rights principles to a context of water scarcity—a condition precipitated by neoliberal water policies. The resultant framework, which we term "democratic legal framing", transcends both its human rights and neoliberal antecedents; it offers a distinct approach to conceptualizing water rights and governance within Chile's specific socio-legal landscape.

This framing emerges through jurisprudence, that is the creation through application to a singular case, resulting in the establishment of new legal rights to embody the concept of the public common good. The democratic nature of the public com-

mon good lies in its implication within the context of water governance, emphasizing the promotion of widespread participation and the diversification of knowledge.

Given the current situation, it is crucial to recognize that our objective is not to establish a cause-and-effect relationship between the three legal framings, but rather the opposite. The significance of applying the legal framing tradition to analyze this case lies in the correlation between these framings and their respective actors. To elucidate, Modatima’s legal framing did not serve as the cause for how the Supreme Court’s legal framing was altered. Instead, we identified two similar legal framings that diverged due to the application of human rights legal framing, resulting in the emergence of a democratic legal framing. Moreover, the Court of Appeals’ neoliberal legal framing was instrumental in exposing contradictions within Modatima’s legal framings and bolstering their understanding of legal water.

We hope this analysis will contribute to both the legal debates on water conflicts, where legal framing analysis can provide the conception of right and water for each actor (judiciary and social movements) which has not been specified, and to a deeper comprehension of the conditions of legal interpretation, rejecting the assumption of homogenizing the courts and an invariability in social movements advocating for human rights.

After this section, the paper goes on as follows: first, we introduce the conceptual and methodological framework for the study; second, we discuss the existing literature on water conflicts in Chile; third, we present the main results from the study; and finally, we close with a discussion, some conclusions and key insights.

## **Legal framing and social movements**

What do we understand about social movements concerning water conflicts? Certainly, we assert that social movements are characterized by their ability to challenge existing power structures (Tarrow, 2011: 154) and engage with social conflicts to introduce new cultural patterns. These patterns encompass various aspects, including knowledge, investments, and ethical values, all within a specific societal context (Touraine, 1985: 780). This process of contentious politics involves the mobilization of the law to introduce—through institutionalization—their cultural patterns.

The legal framing argues that legal ideas and concepts serve as sources of cultural structures and frames that define and pattern social life (Marshall, 2003: 663). It offers a framework for analyzing the repertoires of meaning that movement actors construct and mobilize in their quest for social and political change (Pedriana, 2006a: 1720). Hence, the legal framing tradition posits that law influences social movements’ political experiences. Social movements articulate their demands through legal categories, primarily “rights”. They also employ legal strategies which, in turn, shape the experiences of the movement’s supporters.

*Framing* represents an active and process-oriented phenomenon that involves agency and contention in the construction of reality (Benford and Snow, 2000: 614–615). It legitimizes grievances and acts as a focal point for the development and flourishing of collective identities (Johnston and Noakes, 2005: 318; Pedriana, 2006a: 1729).

According to this viewpoint, the law functions as a “master frame”, a widely accessible conceptual framework that resonates with the population, providing normative claims for social movements (McAdam and others, 1996: 6). The concept of a master frame imposes certain conditions on social movements as they navigate their identity and seek to gain resonance with other actors.

This master frame, however, is not monolithic. Law, as a complex social institution, comprises multiple interpretative frames that coexist and sometimes compete within the legal system (Pedriana, 2006a). This multiplicity allows for diverse interpretations of legal concepts and principles, creating a dynamic legal landscape. Consequently, social movements and legal institutions, particularly courts, engage in a process of negotiation over the application and interpretation of these legal framings (Ewick and Silbey, 1998). Courts, as the primary appliers of legal interpretation, play a crucial role in this negotiation process, applying and sometimes redefining legal framings in response to social movement claims (Leachman, 2013; Pedriana, 2006b). This interaction between social movements and the judiciary underscores the resonant nature of legal meaning-making in contemporary socio-legal contexts (Malatras, 2005).

Hence, resonance plays a crucial role in this context, serving as the mechanism through which social movements utilize deeply resonant cultural symbols to articulate and legitimize their grievances and goals (Pedriana, 2006a: 1727). What distinguishes this interpretative understanding of law is that it acknowledges that social movements employ legal framings while extending their resonance beyond purely legal references. This framing facilitates resonance within the quotidian experiences and social realities of other groups and individuals and has the potential to reshape popular conceptions and expectations regarding the role of law within the political system (Albiston and Leachman, 2015; Kessler, 1990).

This process of legal framing and resonance has profound implications for the identity and objectives of social movements. As social movements engage with legal concepts and begin to articulate rights claims, the law becomes intrinsically woven into their organizational identity (McCann, 1994). This integration of legal discourse into movement identity not only shapes the movement’s goals and strategies but also enhances its resonance with broader societal audiences (Kostiner, 2003). The act of rights claiming, therefore, becomes a transformative process that both reflects and reinforces the movement’s evolving legal consciousness (Ewick and Silbey, 1998).

As Francesca Polletta<sup>1</sup> argues, claiming rights can help shape the legal framing of social movements and mobilize law to innovate the dominant legal framework. Social movements' legal framing is closely connected to rights-claiming as it reveals a critique of long-standing relationships of domination, providing individuals with the belief that change is attainable and acknowledging efforts whose short-term benefits may not be immediately apparent (McCann, 2006: 131).

Concurrently, this process of legal framing and rights claiming by social movements begins to influence the development of case law. As courts engage with the legal arguments and rights claims presented by social movements, judicial interpretations may begin to reflect and incorporate elements of the movement's legal framing (Pedriana, 2006b). This dialectical relationship between social movement legal framing and case law development underscores the dynamic nature of legal meaning-making in contemporary socio-legal contexts (Kostiner, 2003).

Given that law provides a profound source of symbolic resources, resonance becomes pivotal in expanding the legitimacy, grievances, and goals of social movements through the official recognition of legal rights. In essence, legal framing from social movements means the translation of a cultural frame into an officially recognized legal right representing the main objective for social movements. This bidirectional influence between social movements and the legal system highlights the transformative potential of legal framing in shaping both movement identity and legal discourse.

Furthermore, this approach allows us to understand how law is an element that profoundly affects the identity, objectives, and forms that increase the resonance of social movements. The legal framing perspective provides a lens through which we can examine the complex interplay between legal concepts and social movement dynamics.

As we transition to the specific context of water conflicts in Chile, we employ the legal framing scheme to understand how Chilean courts operate under diverse legal interpretations and how this approach illuminates water conflicts in the country. Our analysis focuses on the 1981 Water Code, which established a neoliberal framework prioritizing private water ownership, resulting in an inequitable resource distribution. By examining this conflict through the lens of legal framing, we can explore

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1. She has significantly contributed to the socio-legal understanding of social movements through her extensive work on cultural and legal narratives. Her research, particularly in *It Was Like a Fever: Storytelling in Protest and Politics* (2006) and *Freedom Is an Endless Meeting* (2002), examines how social movements strategically employ rights discourse and legal frameworks. Polletta's analysis demonstrates how movements transform legal concepts into mobilization tools while simultaneously challenging and reshaping institutional interpretations of rights. Her theoretical framework on legal framing and rights-claiming has been instrumental in understanding how grassroots organizations leverage legal discourse to achieve social change, combining institutional engagement with creative reinterpretation of legal principle.

how social movements like Modatima engage with and reshape legal meanings, while simultaneously being transformed by the law. This bidirectional influence highlights the pivotal role of social movements in evolving the water rights discourse and policy.

Our case study of Modatima will empirically demonstrate how legal framing of water involves redefining the resource by creating new rights, and providing insights into how movements not only respond to existing frameworks but actively participate in reformulating the legal landscape surrounding water rights. This approach allows us to examine the complex interplay between social movements, judicial interpretations, and the ongoing evolution of water rights in Chile's legal system.

### **Water conflicts, legal framing, and social movements**

#### **The Water Code: A legal framing that resonates into a water conflict**

The water conflict in Chile is fundamentally rooted in the neoliberal legal framework established by the 1981 Water Code, which prioritized private water ownership over its consideration as a public good. This legislation has resulted in an inequitable distribution of water resources, favoring economic interests over the needs of local communities. Despite reform attempts, the underlying issues persist, manifesting as a conflict between two opposing legal frameworks: the neoliberal and the human rights approaches.

Within this context, social movements and the judiciary have emerged as crucial actors in reinterpreting the legal concept of water, playing a pivotal role in the evolution of water governance in Chile. This complex scenario needs an examination of how these actors are shaping the understanding and application of water rights in the country, and how their actions may influence future policies and resolutions of water conflicts.

To fully grasp the dynamics of these water conflicts, it is essential to understand their origins in the legal framework established by the Chilean Constitution and Water Code, since this legal foundation has set the stage for the current tensions and debates surrounding water rights in the country.

The main premise of “water conflicts” (Bauer, 2015; Budds, 2004 and 2012; Guerrero-Valdebenito and others, 2018), relies on that political decision outlined in Article 19, number 24 of the Constitution, and in the Water Code, which established a neoliberal legal framework, thereby creating specific rights for private water ownership. This framework, subsequently, shaped water policies focused on commodification, detachment from land, and allocation not contingent on the availability of water.

The 1981 Water Code serves as the legal framework for governing water rights, possession, and use to equalize the legal concept of water to the right to private property (Dourojeanni and Jouravlev, 1999; Guerrero-Valdebenito and others, 2018).

However, the code presents an inherent contradiction as it ultimately prioritizes the use of water as an economic commodity. While it initially acknowledges water as “a national asset for public use”, subsequent articles reinforce the private ownership and control of water rights, which is constitutionally protected (Bauer, 2015; Bottaro and others, 2014). Moreover, the code separates water ownership from land ownership, enabling private individuals to access water independently of land ownership.

As a result, a concerning trend has emerged, where an increasing number of farmers who possess land lack access to water resources (Dourojeanni and Jouravlev, 1999; Larraín, 2006), because there is a distinction within water rights: *consumptive* and *non-consumptive* rights. These further shapes the legal framework for water allocation and usage (Molina Camacho and Park, 2022).<sup>2</sup>

The water code reforms in Chile aim to address the issue of unequal distribution of water among farmers and to prioritize the protection of water resources by introducing new regulations (Molina Camacho and Park, 2022). However, the effectiveness of these reforms depends heavily on the successful implementation and enforcement of the new regulations, which remains a significant challenge (Dourojeanni and Jouravlev, 1999; Larraín, 2006).

In 2022, a new reform was introduced that emphasized social equity and environmental quality, such as recognizing water as a human right and strengthening provisions around fees for non-use. However, in relation to our case-study on the enforcement of the law, particularly on how legal framings are applied in legal contexts, we are aware of Budds and O’Reilly’s analysis of this reform. For them, it’s indispensable that a reform becomes substantive when it focuses on redefining the status of water rather than the nature of water-society relations. Water in Chile is managed as a private good, and the provisions of the Water Code prevent it from being managed as a common pool resource, which is shared (Budds and O’Reilly, 2023). These ongoing challenges in water governance stem from the historical roots of water conflicts in Chile.

The emergence of water conflicts in Chile can be traced to the neoliberal legal framing’s prioritization of non-consumptive water use over access (Budds, 2020;

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2. In Chilean water law, water rights (*derechos de aprovechamiento de aguas*) are classified into consumptive and non-consumptive rights, as established in the 1981 Water Code. Consumptive rights allow for the complete consumption of water in any activity, typically agriculture, while non-consumptive rights require water return to its source, primarily used for hydroelectric projects. This legal distinction creates a hierarchical structure where non-consumptive rights holders, often large corporations, maintain priority in water allocation and can exercise their rights independently of land ownership. This system, coupled with Chile’s water market where rights can be freely traded, has led to a concentration of water rights in non-agricultural sectors. Consequently, many farmers retain land ownership but lack associated water rights, as these have been sold or allocated separately in the market, reflecting a fundamental disconnect between land and water rights in the Chilean legal framework (Bauer, 2015; Budds, 2020).



Dourojeanni and Jouravlev, 1999; Larraín, 2006; Mundaca, 2014; Panez-Pinto and others, 2017). This framing, codified in the 1981 Water Code and in Article 19, number 24 of the Constitution, established three key principles: water as a commodity, separation of water from land, and allocation of water rights independent of availability (Budds, 2020; Larraín, 2006). These principles, rooted in a constitutional recognition of water as private property, facilitated a market-based approach to water rights (Bauer, 2015: 148).

Consequently, water conflicts manifested as socio-environmental disputes, driven by local groups' political and legal demands for water management and access (Budds, 2004 and 2020). These conflicts represent complex socio-ecological processes, involving diverse actors with competing needs, expectations, and perspectives on water resource utilization within the prevailing institutional structure (Guerro-Valdebenito and others, 2018: 101).

This tension between the neoliberal framework and local water needs has become a central issue in Chile's water governance landscape (Bauer, 2015: 150). These new normative expectations have been framed through a human rights legal framing, which defines water as essential for maintaining life. Therefore, it constitutes a human right, implying a need to protect its quality and availability for human communities and the preservation of ecosystems (Larraín, 2012: 87).

For Carl Bauer, the primary cleavages in water conflicts rely on identifying how the human rights framing has innovated in the governance of water policies. It aims to mitigate the lack of institutional capacity for governance and integrated water resources management through international law (Bauer, 2015: 163), implying that water should be collectively owned and locally managed (Bauer, 2015: 162).

Therefore, the normative reality of the human right to water within an institutional design has the potential to alter the legal definition of water as property (Macpherson and others, 2023: 7-8). Generally, Bauer and Macpherson argue that the human right to water is characterized as an abstract normative expectation that lacks clear substance, having only been used to challenge water rights. In this sense, the lack of content of the human right to water is not solely addressed through legislative reforms, but also manifests in the judicial realm where courts interpret and apply this legal concept.

Therefore, in Chile the Court of Appeals and the Supreme Court emerge as the main actors to address the shortcomings of the water policies arising from the Water Code framework (Rivera and others, 2016: 40-41). They also appear as institutional actors capable of creating law through the application of the interpretation of domestic legal norms and fundamental rights, and by referencing international law, precisely to the figure of water as a human right (Larraín, 2006: 87-88). In other words, the judiciary emerges as institutional actors that interpret the resonance between the neoliberal legal framing and the human rights legal framing.

Through these considerations, we identify that the water conflict becomes a conflict because there are two legal framings struggling in governance to provide solutions for it. In other terms, water conflicts can be interpreted as framing conflicts that resonate around water as a legal concept involved in a particular legal framework. To put it differently, when discussing the phenomenon of water governance in Chile, we are essentially examining how conflicting legal framings intersect with the legal definition of water through institutional design.

As Budds and O'Reilly argue, water governance is the processes and practices of decision-making for human use and stewardship of water resources (Budds and O'Reilly, 2023), and the enforcement of legal framing is essential to fully understand the execution of these decision-making processes. Specifically, water governance is the central dynamic that this research focuses on. Rather than concentrating solely on environmental human rights, we concentrate on the legal enforcement relationship between two conflicting legal framings in the context of water.

Water governance allows us to incorporate both neoliberal and human rights legal framings into water use decision-making. Hence, these two legal framings often conflict with each other concerning the elements that constitute water governance (Macpherson and others, 2023). For instance, water allocation and use are primarily controlled by water rights owners, with limited input from the state or civil society. This results in private demand driving water use rather than public priorities such as ecological integrity and basic human needs. Occasionally, the public interest is upheld by courts (Bauer, 2015) or voiced by civil society (Budds, 2020). Furthermore, the Water Code lacks formal mechanisms for interaction between the state, water rights owners, and civil society.

Although government-organized regional roundtables (2014-2016) were held to document local experiences (Budds, 2020), there is still a gap in this regard. Active civil society organizations have filled this gap by contesting water rights accumulation and demanding broader stakeholder inclusion (Bauer, 2015; Budds, 2020). Lastly, the state does not provide mechanisms for water conflict resolution, as water rights are considered private property; therefore, disputes are managed by the courts under private law and not by the state. This often results in cost-prohibitive self-resolution by users, water user organizations, or court intervention, which can be hindered by judges' limited understanding of the Water Code (Rivera and others, 2016; Budds, 2004; Bauer, 2015).

The complex landscape of water governance in Chile has given rise to various actors seeking to influence and reshape the legal framework. Among these, social movements, and Non-Governmental Organizations have emerged as significant forces in challenging and reinterpreting water rights. A prime example of this phenomenon is Modatima, whose approach illustrates the broader trend of civil society's engagement with water law.

Recent scholarship has demonstrated social movements' significant role in proposing substantive legal reforms, particularly regarding Chile's Water Code. Despite limited political prospects for reform prior to 2019, these movements have advocated for fundamental changes in water governance. Their proposals encompass critical reforms aimed at restructuring water rights and improving governance mechanisms. These include redefining private water rights to incorporate social interest considerations (partially achieved in 2022), strengthening state regulatory oversight, enhancing legal professionals' expertise in water law, and expanding multi-stakeholder participation in water governance decisions (Macpherson and others, 2023: 5). These proposed reforms represent a systematic approach to addressing the Water Code's contested nature while promoting more equitable and participatory water management frameworks.

By examining Modatima's general and legal framing through qualitative content analysis, we can gain valuable insights into two interconnected processes. First, we observe how social movements actively engage in legal framing to redefine water rights and challenge the existing institutional legal framework. Second, we analyze how the judiciary responds to and frames its own legal interpretations in the context of enhancing the resonance of Modatima's framing.

This case study serves as a concrete example of the theoretical concepts of legal framing and rights claiming in action. It demonstrates the bidirectional influence between social movements and the legal system, illustrating how movements like Modatima can shape both legal interpretation and policy formation in the context of water governance. Simultaneously, it reveals how the judiciary's responses can legitimize or constrain these movements' efforts, contributing to the evolving landscape of water rights in Chile.

### The case: Modatima

Modatima is a social movement that originated in Petorca, a city located within the Valparaíso region. The formation of Modatima can be attributed to the direct correlation with the first signs of depletion of the Petorca river due to illegal drainage in this area (Bolados and others, 2018; Mundaca, 2014: 29; Panez-Pinto and others, 2017; Rojas Vilches, 2021). Consequently, this situation has posed significant challenges for small-scale farmers and the community, who have had to adapt to living with a daily water supply of only fifty liters over the years (Bauer, 2015: 159; Mondatima.cl, 2023).

The constant water supply through tanker trucks and the decline of small-scale agriculture are just some of the most explicit manifestations of a profound water crisis (Panez-Pinto and others, 2018: 158). This is compounded by the prolonged drought affecting the region and the unequal appropriation of available water, exacerbated by illegal water extraction from the basins (Budds, 2004: 328).

Modatima, as a social movement, signifies the formation of an organizational network where their non-institutional behaviors begin to articulate a specific legal framing aimed at transforming the legal framework (Panez-Pinto and others, 2017: 140). This pivotal development transpired in 2013 when they successfully orchestrated a citizen consultation in the commune of Petorca (Mundaca, 2014). The consultation unveiled the majority’s disapproval of the overexploitation of water resources by agricultural and mining activities. This event served as a crucial milestone in the ongoing struggle for access to water and environmental protection in the region (MODATIMA.cl, 2023; Mundaca, 2014: 6; Panez-Pinto and others, 2017: 142; Rojas Vilches, 2021).

## Methodology

The study employs qualitative content analysis to examine how the concepts of “water” and “rights” are framed and interpreted by both Modatima and the Chilean judiciary. This approach allows for a nuanced understanding of the discursive strategies and legal interpretations employed by each actor.

### *Data collection*

278 documents were collected from Modatima’s official website, covering January 2012 to September 2023. This timeframe marks Modatima’s inception as a social movement, allowing for a comprehensive analysis of its evolution and impact.

Also, 510 rulings (23 from the Supreme Court and 487 from the Court of Appeals) from 2011 to 2023 were sourced from the official Chilean Judiciary website (Poder Judicial).<sup>3</sup>

### *Document categorization*

Modatima documents were categorized into seven distinct types:<sup>4</sup>

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3. Replicability and limitations: while all analyzed documents are publicly available, the dynamic nature of web content may pose challenges for future replication. To mitigate this, a comprehensive list of document titles and publication dates is provided in the appendix. The volume and specificity of the dataset may present practical challenges for exact replication. These limitations highlight the importance of our detailed methodological description, which allows for conceptual replication.

4. All press documentation underwent systematic qualitative analysis through ATLAS.ti software. While ATLAS.ti’s reference bibliography was utilized for analytical purposes, each document reference in this paper’s bibliography includes corresponding hyperlinks. Each cited document is accompanied by its official link from MODATIMA’s institutional website, ensuring direct access to primary sources.

1. Quotations of the judicial rulings in which they have been involved (78 documents).
2. Public statements (55 documents).
3. References to national and international media aligning with their core political demands (45 documents).
4. Dissemination of their political activities and protests (35 documents).
5. Opinion columns and essays addressing political contingencies (30 documents).
6. Political discourses in assemblies (20 documents).
7. Scientific articles (15 documents).

Judicial rulings were selected using the following keywords:

- Aguas, derechos aprovechamiento, c. aguas.
- Aguas, amparo de.
- Acto administrativo, nulidad de.
- Perjuicios, indemnización de.
- Pesca y acuicultura, infracciones a la ley de.
- Servidumbre legal.
- Servidumbre minera.

### *Analytical process*

- Initial document review: we conducted a comprehensive reading of all 278 MODATIMA documents and 510 judicial rulings to familiarize ourselves with the content and identify recurring themes.
- Codebook development: based on this initial review, we created a preliminary codebook. This process was both deductive, drawing from our theoretical framework, and inductive, allowing new themes to emerge from the data. The initial codebook included detailed categories such as “human right”, “fundamental right”, “right to environment”; “access to water”, “water utilization”, and “non-consumptive water”.
- Code refinement: through an iterative process of abstraction and aggregation, we refined our codebook to focus specifically on two primary codes: “water” and “rights”. This reduction allowed for a more focused analysis of the relationships between these fundamental concepts. For example, codes such as “access

to water” and “water utilization” were grouped under “water”, while “human right” and “fundamental right” were categorized under “rights”.

- Network analysis: using the previous two primary codes, we examined the networks of meanings associated with each. This involved identifying how “water” and “rights” were conceptualized and interconnected within both Modatima’s discourse and judicial rulings. We mapped the co-occurrences of these codes and their related subcategories, visualizing how the concepts interrelate in different discourses.
- Qualitative assessment: we conducted a contextual analysis of how the concepts of “water” and “rights” were used at different times and by different actors. We paid particular attention to nuances in definitions and how these evolved over time. This assessment involved evaluating the quality and context of these conceptualizations, noting their evolution and the differences between Modatima’s framing and that of the judiciary.
- Systematic coding: we then systematically applied this refined coding scheme to all documents using ATLAS.ti software, ensuring consistency across the dataset. This process was iterative, with constant revisions of the coding as new insights emerged from the analysis.
- Comparative analysis: finally, we conducted a comparative analysis to identify similarities, differences, and potential influences between Modatima’s framing and judicial interpretations. We contrasted the definitions and uses of “water” and “rights” in Modatima documents with those in judicial rulings, identifying points of convergence and divergence, as well as possible mutual influences in the evolution of these concepts.

### *Analytical framework*

The study centers on “legal framing” and “legal interpretation”. Legal framing refers to MODATIMA’s interpretive scheme for identifying critical conditions of political non-participation, water policies exacerbating conflicts, and demands for water rights. Legal interpretation focuses on the dynamic nature of legal concepts and how meaning shifts can create new legal rights.

All documents analyzed are publicly available, mitigating potential ethical concerns related to privacy or confidentiality. This methodology allows for a rigorous examination of how legal framing and interpretation establish connections between “right” and “water” in Chile’s water conflicts, providing insights into the dynamic interplay between social movements and judicial decision-making.

**Table 1.** Summarized results.

Actor	Legal framing	Concept of water	Legal interpretation	Rights	Legal norms
Supreme Court	Human rights	National asset for public use	Incorporates international law into domestic interpretation; distinguishes between “water rights” and “right to water”.	Right to access clean and safe drinking water; right to live in a pollution-free environment.	Water Code (Articles 14, 6, and 8); International Human Rights Treaties; Chilean Constitution (Articles 1, 4, 5, 19, and 20).
Modatima	Democratic	Common public good	Refers to the meaning of water in a conflict that is constituted by scarcity and no access to drinkable water.	Right to access to water; right to land-water; right to health.	Chilean Constitution (Article 19, number 24); Water Code (Article 2); Supreme Court Rulings.
Court of Appeals	Neoliberal	Private property	Strict interpretation of Water Code and Constitution; focuses on water utilization and property rights.	Constitutional right to water usage as private property; procedural rights related to water rights registration.	Water Code (Articles 2 and 20); Constitution (Article 19, number 24).

Source: Author's elaboration.

## Results

The extensive analysis of legal documents and court decisions related to water rights in Chile has revealed three key findings that shed light on the complex interplay between social movements, legal interpretation, and water governance. These findings, summarized in table 1, highlight the multifaceted nature of water conflicts and their legal framing in the Chilean context.

### The transition of the concept of water

#### *Water as private property (2011-2016)*

The legal concept of water in Chile has been predominantly shaped by a neoliberal framing, particularly evident in the rulings of the Court of Appeals. This approach has been consistent from 2011 to 2023, with the court maintaining a clear interpretation based on the Water Code.

Central to this neoliberal framing is the conceptualization of water as private property, subject to utilization rights. The Court of Appeals has consistently defined water utilization rights in terms of surface waters, as outlined in Article 2 of the Water

Code. These rights are characterized as non-consumptive, allowing water use without consumption and requiring its return as specified in the right's constitution.<sup>5</sup>

The legal basis for this interpretation is firmly rooted in the Water Code (particularly Articles 2 and 20) and the Constitution (Article 19, number 24). The Court of Appeals has consistently referred to these legal norms to safeguard water use as a constitutionally protected fundamental right. This interpretation creates a legal fiction where water is subject to appropriation and can be used in terms of real property rights.<sup>6</sup>

This Court of Appeals conception of water linked to water utilization implied it only in terms of constitutional right, which created a *neoliberal legal framing*. The constitutional right to water serves as the nodal concept that allows for the aggregation and direction of legal power to recognize who has the right to access water. Specifically, Article 19, number 24, establishes a rights holder to invoke legal protection for the ownership of their rights. At the same time, this subject of constitutional right is available for limitations on their rights based on international legal norms or environmental considerations.

Between 2011 and 2015, there is a clear reference to how the fundamental right must be safeguarded in the terms of Article 19, number 24 of the Constitution of the Republic of Chile. The rulings by the Court of Appeals confirm that the right to water use is constitutionally protected as a fundamental right through legal protection actions.<sup>7</sup> In other words, the fundamental right to water use involves instituting legal protection actions to safeguard private property rights over water. Precisely, the Constitution understands that since private property holds a constitutional status, and furthermore, ownership of the right to utilize water it is established as a right. When it is limited or encumbered, there are judicial remedies available to challenge the legality of the expropriation and seek compensation for any resulting property damage.

Notably, this neoliberal framing has limited consideration for human rights or environmental aspects in water-related legal decisions. The focus has remained on

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5. Cases: *Escobar Castro Inés vs. Grupo Habitacional Villa El Boldo (Talca)*; *Arostica Cordero vs. Aguas Chañar SA*; *Cacciuttolo Pinochet Berenice Lucía Rosa vs. Tisné Torreblanca Jorge Fernando (Valparaíso)*; *Durocas S A vs. Dirección Regional De Aguas Santiago*; *Agrícola San Vicente Limitada vs. Dirección General De Aguas (San Miguel)*; *Chambe Salas, Elvira Ester vs. Aguas Del Altiplano S.A. (Arica)*; *Navarro vs. Patagonia Supre Natural Mineral Waters (Talca)*; *Sociedad Agrícola Tres Reginas Ltda vs. Rojas (Rancagua)*.

6. Cases: *Arostica Cordero vs. Aguas Chañar Sa (Copiapó)*; *Cacciuttolo Pinochet Berenice Lucía Rosa vs. Tisné Torreblanca Jorge Fernando (Valparaíso)*; *Carbone Henry Y Otros Alfonso vs. Aguas Del Altiplano (Arica)*; *Ñiquén (Chillán)*; *Agrícola San Vicente Limitada vs. Dirección General De Aguas (San Miguel)*.

7. Cases: *Arostica Cordero vs. Aguas Chañar Sa (Copiapó)*; *Cacciuttolo Pinochet Berenice Lucía Rosa vs. Tisné Torreblanca Jorge Fernando (Valparaíso)*; *Carbone Henry Y Otros Alfonso vs. Aguas Del Altiplano (Arica)*; *Ñiquén (Chillán)*; *Agrícola San Vicente Limitada vs. Dirección General De Aguas (San Miguel)*.



protecting water use rights as a form of private property, with legal protections firmly anchored in constitutional guarantees. This “neoliberal legal framing” constitutes the constitutional right to water, wherein it serves as the central concept for determining access to water resources, primarily based on property rights rather than human or environmental needs.

### *Opening the water towards new meanings (2017-2019)*

The period from 2017 to 2019 marked a significant shift in the legal conceptualization of water rights in Chile, characterized by growing tensions between the established neoliberal framing and emerging human rights considerations. This transition phase saw the Supreme Court beginning to align water rights with the right to live in a pollution-free environment, while Modatima gained increasing influence in legal discourse by promoting water as a common good.

The Supreme Court’s evolving perspective introduced the concept of “life” in relation to water rights, as evidenced in the 2017 ruling (*Tito Aburto Mora y Otros vs. Hera Ecobio S.A. (A)*). This ruling marked a departure from the purely property-based understanding of water, considering water rights in the context of preventing environmental harm due to its essential role in sustaining human life. The Court began to frame water as a national asset of public use, a concept rooted in the idea of water as a vital resource for all citizens.

In contrast, Modatima conceptualized water as life, reflecting a more radical departure from the neoliberal framing. Modatima’s framing, developed since 2012, established a mutually defining relationship between life and water, asserting that without water, life is not possible. This perspective critiqued the unequal distribution of water resulting from its privatization through water rights, arguing that the market-based distribution of water rights effectively forces individuals to pay for the basic right to exist. Consequently, since water is treated as an economic commodity traded in the market, there is no institutional concern that translates into legal rights to ensure the quality of life.

The regulatory framework of the Water Code does not differentiate between regulating water for human consumption and agricultural use. This notion of water as life has the legal consequence to define together “water and land”. The interpretation of the legal concept of water by Modatima involves differentiating its meaning in a way that does not separate land ownership from water utilization rights, as explicitly stated in one of their early public declarations in 2012 (Modatima, 2019 and 2020).<sup>8</sup> Thus, the legal concept of water cannot be distinguished from land ownership, implying a profound critique of the water utilization model. For Modatima, water must legally

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8. Modatima, «Privatización de las aguas», 17 de febrero de 2012, disponible <https://tipg.link/RpX1>.

encompass land ownership because the separation of these two elements has led to an extractivist policy, leaving lands without water in Petorca, for example.

The Supreme Court’s interpretation evolved progressively while maintaining elements of the existing legal framework. It attempted to balance the concept of water as a national public asset with the constitutional protection of water rights as property. In contrast, Modatima called for a complete overhaul of water rights. They advocated for abolishing private water ownership and creating new legal rights that link water ownership to land property. These contrasting views highlight the complex tensions in Chile’s evolving water rights framing.

Both the Supreme Court and Modatima moved towards recognizing water as a public good essential for life, yet their conceptualizations and proposed legal frameworks varied significantly. The Supreme Court’s national public asset framing sought to operate within the current legal structure, while Modatima’s common public good framing called for a radical overhaul of water rights, emphasizing equal access, the inseparability of water and land rights, and the recognition of water access as a fundamental human right.

### *Legal water: Three definitions of water (2020-2023)*

The period from 2020 to 2023 marked a significant transformation in the legal conceptualization of water rights in Chile. The Supreme Court made an explicit distinction between “water rights” and the “right to water”, incorporating international human rights law into domestic water rights interpretation. However, legal rulings did not consider the human right to water from 2011 to 2020.

But, in 2020, Modatima’s involvement in a legal case against the Subsecretaría del Interior del Ministerio del Interior y Seguridad Pública<sup>9</sup> marked a significant shift. This led to the recognition of the human right to access clean and safe drinking water, under the principles of equality and non-discrimination (*Huentelaf/Collinao*). This right finds its basis in international human rights conventions, which emphasize equality and non-discrimination, and aligns with the core tenets of the legal notion of water as a *common good* including elements such as accessibility and the provision of potable water.

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9. It was not until 2020, in judgment *Almendra Dusta y Otros vs. Gobernación Provincial De Petorca y Gobernadora Provincialde Petorca*, that members of Modatima sued the State of Chile to secure the right to water through the provision of potable water. Precisely, the Supreme Court mandates that the declaration of the Subsecretaría del Interior del Ministerio del Interior y Seguridad Pública must be modified without delay, along with other relevant administrative acts, ensuring the delivery and supply of at least 100 liters per person per day to the people of Petorca.

This 2020 case marks a critical tipping point in the evolution of water rights framing in Chile. The Supreme Court made a crucial distinction between “water rights” and the “right to water”, stating:

From the aforementioned provisions, a clear and undeniable conclusion emerges: every individual, by virtue of their inherent dignity, possesses the human right to access clean drinking water, under conditions of equality and nondiscrimination. This right entails, as its corollary, the duty of the State to guarantee access under the mentioned conditions (*Almendra Dusta y Otros vs. Gobernación Provincial De Petorca y Gobernadora Provincialde Petorca*) [author’s translation].

While this distinction created a conceptual opening, it was Modatima’s strategic engagement that led to the emergence of a new democratic legal framing. Modatima developed this concept further, asserting: “Water as life, in legal terms, means that water must be conceptualized as a common good that cannot be privately owned and is above productive functions, with a legal duty to protect the lives of communities and the preservation of the environment” (Modatima, 2021) [author’s translation].

This indirect influence demonstrates how social movements can leverage judicial interpretations to create innovative legal framings. Modatima’s democratic legal framing, while inspired by the Supreme Court’s human rights approach, uniquely emphasizes the inseparability of water rights from land rights and introduces new concepts such as the right to health in relation to water access. As Modatima further elaborates: “The regulatory framework of the Water Code does not differentiate between regulating water for human consumption and agricultural use. This notion of water as a life has the legal consequence to define together ‘water and land’” (Modatima, 2020).

This development illustrates the complex, non-linear nature of legal framing evolution in water conflicts, where judicial decisions can provide the conceptual groundwork for social movements to construct more comprehensive and radical legal interpretations.

Modatima’s democratic legal framing gained substantial traction during this period, proposing new rights related to water access, land-water connections, and health, in addition to the lawsuit against the State of Chile, wherein the Supreme Court ruled in favor of Modatima. Their prominence within its legal framing is attributed to complex factors, wherein the formation of this democratic legal framing began in 2016 when they started to define water as life. This concept has now become more concrete and legally defined, as it aims to translate “life” into a *public common good* wherein all live inhabitants have access to water.

In other words, we can say that Modatima’s advocacy for the legal frame in which water is recognized as a human right implies a legal definition of the concept of water as a “common good for public use”. This generates a new offer of rights related

**Table 2.** Modatima’s legal rights proposal

Right to access water	Right to land and water	Right to health
Modatima proposes water as a common good, ensuring equitable access without discrimination.	Modatima critiques the separation of water rights from land ownership, arguing it leads to water marketization and leaves agricultural land without water.	Modatima links the right to health with the human right to water, arguing that lack of water access violates the right to health.
This conflicts with private ownership rights under Article 19, number 24 of the Constitution. Modatima advocates for constitutional reform to eliminate private water ownership, redefining water as a common good for public use and establishing a new constitutional right to water access.	They propose amending Article 19, number 24 of the Constitution and Article 2 of the Water Code to create new legal rights linking water ownership to land property.	This concept emerged in 2016 during the Cigri project in Til-Til, highlighting the connection between water access and environmental rights.

Source: Author’s elaboration.

to access, sanitation, and potable water, particularly in the context of water conflicts (Bauer, 2015; Modatima, 2019 and 2023).<sup>10</sup> As a result, Modatima’s legal vocabulary clearly distinguishes the right to water, emphasizing it as a right as it represents a normative expectation that increases the power of those subject to the Rule of Law by granting them access to water as a common good for public use (Modatima, 2019).<sup>11</sup>

These rights serve as constitutive elements that ensure the legal framework of the public common good (**table 2**).

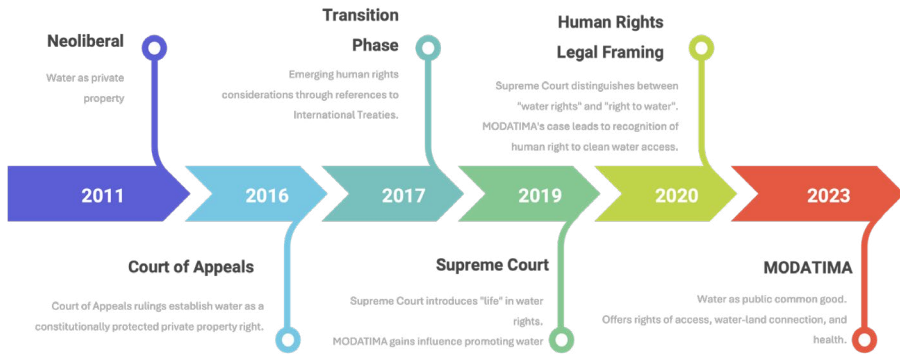
Modatima’s legal framing challenges the traditional concept of natural resources as private property, advocating for alignment with environmental law expectations. Their approach has influenced the Supreme Court’s understanding of the “right to water”, expanding it to include access to land, water, and health. This legal framing emerges from interpreting existing legislation and Water Code rights, creating a mutual constitution with the Supreme Court’s framing. However, this relationship also includes tensions, particularly with the Court of Appeals’ neoliberal framing, which is crucial in shaping the distinct identity of each legal approach to water rights in Chile.

The correlation, rather than a coincidence, suggests that as the Supreme Court begins to distinguish between water rights and the right to water, Modatima’s democratic legal framing contributes to the conceptualization of the “right to water” as a of public common use. Within this framework, the right to water encompasses access, water-land relationships, and health considerations.

The Court of Appeals maintained its neoliberal framing, focusing on water as private property subject to utilization rights. This persistent tension between the Court

10. También véase: Modatima, «La recuperación de las aguas en el mundo», 23 de junio de 2015, disponible en <https://tipg.link/Rpd8>.

11. También véase: Modatima, «Recuperación del agua y defensa de la vida», 19 de octubre de 2014, disponible en <https://tipg.link/RpaZ>.



**Figure 1.** Timeline of the water legal framing for the water conflict in Chile in the case of Modatima. Source: Author's elaboration.

of Appeals' approach and the evolving perspectives of the Supreme Court and Modatima, highlighted the complex nature of water conflicts in Chile.

The water conflicts during this period revealed the emergence of three distinct legal framings of water: the human rights approach of the Supreme Court, the neoliberal framing of the Court of Appeals, and Modatima's democratic framing. This tripartite conceptualization challenged the previously established binary understanding of water governance in Chile (figure 1).

## Discussion

The research presented here has allowed us to distinguish the processes and conditions that shape the legal framing of water in Chile, revealing a complex interplay between judicial interpretations and social movement framing. Based on the results presented above and summarized in table 1, it can be concluded that the Chilean legal system simultaneously accommodates three distinct legal framings of water: neoliberal and human rights as insiders within institutional reality in the law, and the democratic perspective from Modatima that offers an opportunity to diversify and democratize water governance and water rights.

Our analysis, conducted across three periods (2011-2016, 2017-2019, and 2020-2023) and focusing on key actors, reveals a significant finding: two contradictory legal framings—human rights and neoliberal—coexist within the judiciary itself, manifesting in conflicting interpretations in the context of water conflicts. Notably, this coexistence should not be understood as a teleological progression, but rather as a coalescent production of water conceptualizations.

The primary conclusion to be emphasized is that Modatima has developed a democratic legal framing that emerges from the application of the human rights legal framing to their specific reality in Petorca, within the ongoing struggle with the neoliberal framing. This framing has created a new legal concept of water, encompassing rights of access, water-land connections, and health. This democratic framing represents a novel contribution to water governance, distinct from the judiciary’s dual interpretations.

This tripartite conceptualization challenges the previously established binary understanding of water governance in Chile. It demonstrates that the legal concept of water is not monolithic but rather a contested terrain where different actors—including different levels of the judiciary and social movements—contribute to shaping its meaning and implications. The emergence of these three distinct framings underscores the complex nature of water conflicts in Chile and highlights the need for a more nuanced approach to water rights and governance.

In this context, Modatima’s legal framing is characterized as democratic due to its source, procedural aspects, and content. These elements collectively constitute a productive framing that engages with the institutional nature of law in water governance. This approach seeks to universalize water access through a reconceptualization of water as a public common good. By redefining water in this manner, Modatima challenges existing legal and institutional framings, advocating for a more participatory and rights-based approach to water governance within legal and policy frameworks.

The democratic legal framing of Modatima emerges through the application of the “human rights legal framing” to the specific case of water scarcity in Petorca, Chile. This framing goes beyond a mere “human rights framing” due to its immanent democratic nature, which is intrinsically linked to the transformation of the legal concept of water. The constitution of this democratic legal framing unfolds through the redefinition of water’s legal meaning, operationalizing it as a “condition of life” (Larraín, 2012) and a prerequisite for a “dignified life for rational human beings” (Larraín, 2006; Panez Pinto and others, 2017). This redefinition occurs within the context of water scarcity resulting from neoliberal policies that treat water as an economic asset.

The application of this framing entails defining water through a distinctive theoretical and practical process. Instead of merely opposing neoliberal frameworks through protest (internal negation), Modatima constructs a new conceptualization (external difference) by applying human rights principles to specific water conflicts. This process transforms abstract universal rights into concrete solutions for water scarcity, generating a novel understanding of water as a “public common good”. The distinction between internal negation and external difference is crucial: while the former only contests existing frameworks, the latter actively creates new legal meanings through practical application. Modatima’s democratic framing thus emerges from translating universal human rights principles into specific guarantees of water

accessibility, prioritizing universal access over market-based consumption. This theoretical-practical process demonstrates how social movements can generate new legal concepts through the application of rights in specific contexts, rather than merely opposing existing frameworks.

In alternative terms, Modatima's legal interpretation reveals a process wherein the repetition of human rights legal framing into their own context creates a different framing. This constitutes a repetition because it refers to the human right content of *access and dignified life*; however, it differs in that it connects to their immanent reality of water access as a condition for a dignified life. Simultaneously, it establishes new legal rights that do not correspond to the existing catalog of water human rights. This process reflects the dynamic and immanent character of Modatima's stance in water conflicts, which cannot be adequately explained by traditional human rights legal framing.

The framing's democratic procedure is evidenced by its resonance with the notion of "constitutive power", where democracy's essence lies in the power to constitute legal rights (Kalyvas, 2005 and 2020). This concept of democratization entails the establishment of new legal rights reflecting the ability to shape the rule of law and empower the people (Kalyvas, 2005). In Modatima's framing, "people" refers specifically to those lacking water access and facing land unusability and health challenges due to water scarcity, denoting political participation within this context.

By invoking "the people", Modatima not only depersonalizes its rights claim to appeal to a broader audience but also invokes democratic and republican legal discourses deeply embedded in the political democracy. This approach allows Modatima to bridge the gap between internal constituents and external audiences, adapting its discourse to the current political climate while expanding the scope of water rights from an individual issue to a collective one.

Thus, Modatima's reference to "the people" serves as a sophisticated procedural way to increase resonance and legitimacy. This framing needs the establishment of new legal rights to articulate the new material meaning of water as a public common good. The people, in this context, constitute a formal procedure to enhance the resonance of their claims, mobilizing water rights into a new legal definition that aligns with democratic principles and collective well-being.

The content of Modatima's democratic legal framing centers on redefining water from an *economic asset* to a *public common good*. This redefinition stands in stark contrast to both the neoliberal framing of water as an economic asset and the Supreme Court's interpretation of water as a "national asset for public use". Modatima's framing goes beyond these existing conceptualizations by prioritizing access over consumption and proposing specific rights related to water access, land-water connections, and health (Modatima, 2019 and 2023).

According to Lawrence Susskind, democratizing water governance involves transitioning water management toward collective use through stakeholder involvement, aligning with common-pool resource management challenges and emphasizing equitable usage (Susskind, 2013: 669). The concept of a public good entails collaboration among users to develop innovative technologies that can enhance water availability. Stakeholder engagement is deemed crucial for addressing complex water governance challenges, acknowledging the interdependence of diverse actors in achieving sustainable solutions (Susskind, 2013: 670).

In this context, the democratic nature of public water management diverges from the “neoliberal framing”, which seeks to establish a competitive water market, to advocating for the recognition of power and the deliberation of a broader range of participants in addressing water-related issues. This focus emphasizes the importance of: i) a formal process to identify and involve representatives from relevant stakeholder groups in designing problem-solving processes; ii) the participation of a professional “neutral” or mediator with the necessary skills and experience to facilitate the engagement of diverse groups and individuals with varying capabilities; and iii) a commitment to engage in joint fact-finding, aided by scientific and technical experts, as part of the consensus-building process (Susskind, 2013: 670).

Hence, Modatima’s framing is more comprehensive, proposing concrete legal changes, such as: i) the modification of Article 2 of the Water Code, eliminating the non-consumptive use figure; ii) the legal inseparability of water and land rights; and iii) a constitutional reform to guarantee the social right to water, ensuring universal access and potability (Modatima, 2020 and 2021).

Besides, the public common good serves to democratize the legal definition of water through intricate institutional designs, which entails the creation of norms and institutions to address scientific and technical issues associated with water (Hoogesteger, 2017; Susskind, 2013).

Jaime Hoogesteger argues—based on the grassroots struggles in the Ecuadorian Highlands—that social movements possess the ability to democratize water governance through distinct political contestation methods (della Porta, 2009; Hoogesteger, 2017: 75; Tarrow, 2011). His thesis centers on the idea that democracy in the making advances through the contestation of prevailing power structures and established decision-making processes both within and beyond formal stakeholder participation (Hoogesteger, 2017: 78). Therefore, the redefinition of water as a public common good—in addition to complexifying participant dynamics and epistemic knowledge about water—democratizes water governance. This redefinition aims to empower water users to organize at various scales and form strategic alliances to collectively advocate for their voices and concerns (Hoogesteger, 2017: 85).

Similarly, as observed by Hoogesteger in the case of grassroots struggles in Ecuador, Modatima’s democratic legal framing implies that conceiving water as a public



common good extends the concept of democracy to the realms of legal interpretation. This extension implicitly demands recognition that Modatima is an integral part of the dynamic, innovative, and contested processes involved in shaping democracy in the making (Asenbaum, 2022; Elstub and Escobar, 2019; Hoogesteger, 2017; Tarrow, 2011).

Modatima's framing, thus, represents a comprehensive reimagining of water governance, integrating legal, social, and environmental considerations. This exemplifies how social movements can contribute to reshaping legal interpretations and democratic processes, particularly in the context of resource management and environmental rights (Asenbaum, 2022; Elstub and Escobar, 2019; Tarrow, 2011). By proposing a "public common good" framing that diverges from both the neoliberal "economic asset" model and the Supreme Court's "national asset for public use" interpretation, Modatima is pushing for a fundamental transformation in how water is conceptualized and managed within Chile's legal and governance frameworks.

Our research on Modatima's legal framing has revealed key aspects that actively influence water governance systems in Chile. For example, Modatima emerged as a crucial element in Petorca, introducing a democratic legal framing that conceptualizes water as a "common public good". This framing stands in contrast to both the neoliberal approach of the Court of Appeals and the human rights framing of the Supreme Court. Modatima's approach is characterized by a unique legal interpretation that refers to the meaning of water in the context of scarcity and lack of access to potable water, proposing specific rights including access to water, land-water connections, and health. This democratic legal framing challenges existing legal interpretations and proposes new rights, aiming to democratize water governance through a reconceptualization of water.

The emergence of this framing underscores the importance of social movements in shaping adaptive environmental governance, especially in the context of water conflicts and climate change challenges. However, the potential of this approach faces obstacles in the form of conflicting legal interpretations within the judiciary and the entrenched neoliberal water governance model. The growing literature on socio-ecological systems and adaptive environmental governance emphasizes the importance of such innovative approaches in promoting both adaptability and transformability, in the face of growing uncertainties and potential regime shifts caused by climate change (Bauer, 2015; Budds, 2012; Budds and O'Reilly, 2023; Larraín, 2012)

## Conclusions

Our analysis reveals the coexistence of three distinct legal framings within the Chilean legal system regarding water: the neoliberal framing of the Court of Appeals, the human rights framing of the Supreme Court, and Modatima's democratic framing.

This tripartite conceptualization challenges the previously established binary understanding of water governance in Chile.

The Supreme Court’s key distinction between “water rights” and the “right to water” created a conceptual opening that Modatima strategically leveraged to develop its democratic legal framing, which emerges from applying the human rights approach to the specific reality of Petorca, redefining water as a “public common good” and proposing new rights related to water access, water-land connections, and health.

This study demonstrates that social movements like Modatima offer alternative approaches independent of the judicial frameworks typically focused on literature. The application of legal framing theory to social conflicts reveals that contradictions can be productive, generating new legal framings such as the democratic framing exemplified by Modatima.

Our results highlight the importance of understanding this democratic legal framing not solely in political terms of deliberation, but as a process of legal interpretation where redefining water presupposes the creation of new rights. This approach complexifies our understanding of actors in water conflicts, revealing that the judiciary does not hold a monolithic comprehension of water; instead, the application of law has created resonance and new ways of applying rights, resulting in two distinct judicial framings: the neoliberal framing of the Court of Appeals and the human rights framing of the Supreme Court.

Legal framing analysis thus offers a more nuanced approach to water governance, demonstrating that legal concept(s) of water are not reducible to positive law but are shaped by application and interpretation. This framework may be used to study other areas with similar characteristics, compare different forms of water governance, and push forward a more reflexive and collaborative approach to water resource planning and management.

Future research should pay more attention to the role that social movements like Modatima play in shaping legal framings of water governance. Researchers should explore how this approach can be applied to other contexts, potentially offering new insights into the democratization of water governance globally.

## References

- ALBISTON, Catherine and Gwendolyn Leachman (2015). «Law as an Instrument of Social Change». *International Encyclopedia of the Social & Behavioral Sciences*, Second Edition: 542-549. DOI: [10.1016/B978-0-08-097086-8.86133-4](https://doi.org/10.1016/B978-0-08-097086-8.86133-4).
- ASENBAUM, Hans (2022). «Rethinking Democratic Innovations: A Look through the Kaleidoscope of Democratic Theory». *Political Studies Review*, 20 (4): 680-690. DOI: [10.1177/14789299211052890](https://doi.org/10.1177/14789299211052890).

- BAUER, C. (2015). «Water Conflicts and Entrenched Governance Problems in Chile's Market Model». *Water Alternatives*, 8 (2): 147-212. Available at <https://tipg.link/RPLN>.
- BENFORD, Robert and David Snow (2000). «Framing Processes and Social Movements: An overview and assessment». *Annual Review of Sociology*, 26: 611-639. DOI: [10.1146/annurev.soc.26.1.611](https://doi.org/10.1146/annurev.soc.26.1.611).
- BOLADOS, Paola, Fabiola Henríquez, Cristian Ceruti, and Alejandra Sánchez (2018). «La eco-geo-política del agua: Una propuesta desde los territorios en las luchas por la recuperación del agua en la provincia de Petorca (Zona central de Chile)». *Rupturas*, 8 (1): 167-199.
- BOTTARO, Lorena, Alex Latta, and Marian Sola (2014). «La politización del agua en los conflictos por la megaminería: Discursos y resistencias en Chile y Argentina». *Revista Europea de Estudios Latinoamericanos y del Caribe*, (97): 97-115. DOI: [10.18352/erlacs.9798](https://doi.org/10.18352/erlacs.9798).
- BUDDS, Jessica (2004). «Power, Nature and Neoliberalism: The Political Ecology of Water in Chile». *Singapore Journal of Tropical Geography*, 25 (3): 322-342.
- . (2012). «LA DEMANDA, evaluación y asignación del agua en el contexto de escasez: un análisis del ciclo hidrosocial del valle del río La Ligua, Chile». *Revista de Geografía Norte Grande*, 52: 167-184.
- . (2020). «Gobernanza del agua y desarrollo bajo el mercado: las relaciones sociales de control del agua en el marco del Código de Aguas de Chile». *Investigaciones Geográficas: Una mirada desde el sur*, (59): 16-27. DOI: [10.5354/0719-5370.2020.57717](https://doi.org/10.5354/0719-5370.2020.57717).
- BUDDS, Jessica and Kathleen O'Reilly (2023). «Reforma a la gobernanza de agua en Chile: una mirada desde las relaciones hidrosociales». *Journal of Latin American Geography*, 22 (3): 151-159. DOI: [10.1353/lag.2023.a915672](https://doi.org/10.1353/lag.2023.a915672).
- COSTUMERO, Roberto, Jesús Sánchez, Ángel García-Pedrero, Diego Rivera, Mario Lillo, Consuelo Gonzalo-Martín, and Ernestina Menasalvas (2017). «Geography of legal water disputes in Chile». *Journal of Maps*, 13 (1): 7-13. DOI: [10.1080/17445647.2016.1252803](https://doi.org/10.1080/17445647.2016.1252803).
- DELLA PORTA, Donatella (2009). *Democracy in Social Movements*. Hampshire: Palgrave Macmillan.
- DOUROJEANNI, Axel and Andrei Jouravlev (1999). *El Código de Aguas de Chile: Entre la ideología y la realidad*. Santiago: CEPAL
- ELSTUB, Stephen and Oliver Escobar (2019). *Handbook of Democratic Innovation and Governance*. Cheltenham and Northampton: Edward Elgar Publishing.
- EWICK, Patricia and Susan Silbey (1998). *The Common Place of Law: Stories from everyday life*. Chicago: The University Chicago Press.
- GUERRERO-VALDEBENITO, Rosa María, Francisca Fonseca Prieto, Jaime Garrido, and Mauricio García-Ojeda (2018). «El código de aguas del modelo neoliberal y con-

- flictos sociales por agua en Chile: Relaciones, cambios y desafíos». *Agua y Territorio*, 11: 97-108. DOI: [10.17561/at.11.3956](https://doi.org/10.17561/at.11.3956).
- HOOGESTEGER, Jaime (2017). «The politics of water democracy: insights from grassroot struggles in the Ecuadorian Highlands». *Asia Pacific Viewpoint*, 58 (1): 74-85. DOI: [10.1111/apv.12141](https://doi.org/10.1111/apv.12141).
- JOHNSTON, Hank and John Noakes (2005). *Frames of protest: Social movements and the Framing perspective*. Maryland: Rowman & Littlefield.
- KALYVAS, Andreas (2005). «Popular Sovereignty, Democracy, and the Constituent Power». *Constellations*, 12 (2): 223-244. DOI: [10.1111/J.1351-0487.2005.00413.X](https://doi.org/10.1111/J.1351-0487.2005.00413.X).
- . (2020). «Constituent Power». In Jay M. Bernstein, Adi Ophir, and Ann Laura Stoler (editors), *Political Concepts: A Critical Lexicon* (pp. 87-117). Fordham: Fordham University Press.
- KESSLER, Mark (1990). «Legal Mobilization for Social Reform: Power and the Politics of Agenda Setting». *Law & Society Review*, 24 (1): 121-144.
- KOSTINER, Idit (2003). «Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change». *Law & Society Review*, 37 (2): 323-368. DOI: [10.1111/1540-5893.3702006](https://doi.org/10.1111/1540-5893.3702006).
- LARRAÍN, Sara (2006). «El agua en Chile: Entre los derechos humanos y las reglas del mercado». *Polis Revista Latinoamericana*, 14 (online). Available at <https://tipg.link/R1z3>.
- . (2012). «Human rights and market rules in Chile's water conflicts: A call for structural changes in water policy». *Environmental Justice*, 5 (2): 82-88. DOI: [10.1089/env.2011.0020](https://doi.org/10.1089/env.2011.0020).
- LEACHMAN, Gwendolyn (2013). «Legal Framing». *Studies in Law, Politics, and Society*, 61: 25-59. DOI: [10.1108/S1059-4337\(2013\)0000061005](https://doi.org/10.1108/S1059-4337(2013)0000061005).
- MACPHERSON, Elizabeth, Cristy Clark, Pía Weber Salazar, Natalie Baird, Afshin Akhtar-Khavari, and Edward Challies (2023). «Evolving rights to (and of) water in Chile: A case for relationship-based water law and governance». *International Journal of Human Rights*, 1-26. DOI: [10.1080/13642987.2023.2266719](https://doi.org/10.1080/13642987.2023.2266719).
- MALATRAS, Jim (2005). *Legal Consciousness of Social Movements: Framing the Strategies for Mobilizing the Law*. New York: Rockefeller College of Public Affairs.
- MARSHALL, Ana-María (2003). «Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment». *Law & Social Inquiry*, 28 (3): 659-689.
- MCADAM, Doug, John D. McCarthy, and Mayer N. Zald (1996). *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framing*. Cambridge: Cambridge University Press.
- MCCANN, Michael (1994). *Rights at work: Pay equity reform and the politics of legal mobilization*. Chicago: University of Chicago Press. Available at <https://tipg.link/R2Hk>.
- . (2006). *Law and Social movements*. New York: Routledge.


- MODATIMA (2019). «Modatima presente en la lucha por la defensa del agua de Chada». Disponible en <https://tipg.link/RphJ>.
- . (2020). «El agua es y debe ser un derecho humano». Disponible en <https://tipg.link/RpiT>.
- . (2021). «Constituyentes por el agua presentan iniciativa para garantizar el Derecho Humano al agua y Saneamiento en la nueva Constitución». Disponible en <https://tipg.link/RpjZ>.
- . (2023). «Modatima presentó su norma por la desprivatización del agua en el Consejo Constitucional». Disponible en <https://tipg.link/RpkS>.
- MOLINA CAMACHO, Francisco and Susan Park (2022). «Water scarcity, intergenerational dynamics and music: the case of the Indigenous community of Chiu-Chiu». *Canadian Journal of Latin American and Caribbean Studies*, 47 (1): 1-23. DOI: [10.1080/08263663.2022.1996185](https://doi.org/10.1080/08263663.2022.1996185).
- MUNDACA, Rodrigo (2014). *La Privatización de las Aguas*. Valparaíso: América en Movimiento.
- PANEZ-PINTO, Alexander, Rodrigo Faúndez-Vergara, and Camilo Mansilla-Quiñones (2017). Politización de la crisis hídrica en Chile: Análisis del conflicto por el agua en la provincia de Petorca. *Agua y Territorio*, 10, 131. DOI: [10.17561/at.10.3614](https://doi.org/10.17561/at.10.3614).
- PANEZ-PINTO, Alexander, Pablo Mansilla-Quiñones, and Andrés Moreira-Muñoz (2018). «Agua, tierra y fractura sociometabólica del agronecio». *Bitacora Urbano Territorial*, 3: 153-160.
- PEDRIANA, Nicholas (2006a). «From protective to equal treatment: Legal framing processes and transformation of the women's movement in the 1960s». *American Journal of Sociology*, 111 (6): 1718-1761. DOI: [10.1086/499911](https://doi.org/10.1086/499911).
- RIVERA, Diego, Alex Godoy-Faúndez, Mario Lillo, Amaya Alvez, Verónica Delgado, Consuelo Gonzalo-Martín, Ernestina Menasalvas, Roberto Costumero, and Ángel García-Pedrero (2016). «Legal disputes as a proxy for regional conflicts over water rights in Chile». *Journal of Hydrology*, 535: 36-45. DOI: [10.1016/j.jhydrol.2016.01.057](https://doi.org/10.1016/j.jhydrol.2016.01.057).
- ROJAS VILCHES, Natalie (2021). «No es sequía es saqueo: Movimientos sociales por la recuperación del agua en Chile. De la protesta social a la Constituyente, autoetnografía del caso de Modatima». *Clivatge Estudis i Testimonis Sobre El Conflicte i El Canvi Socials*, 9: 1-43. DOI: [10.1344/clivatge.2021.9.14](https://doi.org/10.1344/clivatge.2021.9.14).
- SCHLAGER, Edella and Tanya Heikkila (2009). «Resolving Water Conflicts: A Comparative Analysis of Interstate River Compacts». *Policy Studies Journal*, 37 (3): 367-392. DOI: [10.1111/J.1541-0072.2009.00319.X](https://doi.org/10.1111/J.1541-0072.2009.00319.X).
- SUSSKIND, Lawrence (2013). «Water and democracy: New roles for civil society in water governance». *International Journal of Water Resources Development*, 29 (4): 666-677. DOI: [10.1080/07900627.2013.781914](https://doi.org/10.1080/07900627.2013.781914).

- TARROW, Sidney (2011). *Power in movement: Social Movements and Contentious politics*. Cambridge: Cambridge University Press.
- TOURAINÉ, Alain (1985). «An Introduction to the Study of Social Movements». *Social Research*, 52 (4): 749-787. Available at <https://tipg.link/R2eu>.
- URQUIZA, Anahí, Catalina Amigo, Marco Billi, Julián Cortés, and Julio Labraña (2019). «Gobernanza policéntrica y problemas ambientales en el siglo XXI: Desafíos de coordinación social para la distribución de recursos hídricos en Chile». *Persona y Sociedad*, XXXIII (1): 133-160.
- VALDÉS-PINEDA, Rodrigo, Roberto Pizarro, Pablo García-Chevesich, Juan B. Valdés, Claudio Olivares, Mauricio Vera, Francisco Balocchi, Felipe Pérez, Carlos Vallejos, Roberto Fuentes, Alejandro Abarza, and Bridget Helwig (2014). «Water governance in Chile: Availability, management and climate change». *Journal of Hydrology*, 519 (C): 2538-2567. DOI: [10.1016/j.jhydrol.2014.04.016](https://doi.org/10.1016/j.jhydrol.2014.04.016).

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