LEX DIGITALIS, LEX NULLIUS: POLICY FOUNDATIONS FOR DIGITAL GOVERNANCE IN THE GLOBAL SOUTH

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Abstract

In the digital landscape, there is a pluralistic data governance norms or digital anarchy which can be jurisprudentially viewed as lack of order or multiple conflicting laws operating in a particular state. We attempt to investigate the jurisprudential claims of Lex Nullius in the Global South and the impact of the current Lex Digitalis by foreign private digital platform which rules emanating from the Global North, and how can this condition be theorized for the benefits of the Global South. In the context of data governance, digital anarchy is not a lack of norms; but non-state actors and digital platforms that create norms that impact sovereigns and citizens. Relying on comparative case studies, political theory, postcolonial doctrines, and policy analysis focused on the Global South countries, this paper examines the existing principles of sovereignty and jurisprudence theory to rethink the discourse on digital sovereignty. In this paper, we find that pairing Lex Digitalis with Lex Nullius provides a diagnosis of when digital governance is not just about regulatory gaps but the recolonisation of sovereigns. The paper offers a new way to think about sovereignty that sets boundaries on the power of digital platforms in the Global South.

Keywords: *digital anarchy; lex digitalis; lex nullius; The Global South; legal pluralism; platform governance.*

LEX DIGITALIS, LEX NULLIUS: LANDASAN KEBIJAKAN UNTUK TATA KELOLA DIGITAL DI DUNIA SELATAN

Intisari

Dalam lanskap digital, terdapat pluralisme norma tata kelola data atau anarki digital yang secara yurisprudensial dapat dipandang sebagai ketiadaan keteraturan ataupun keberadaan berbagai hukum yang saling bertentangan dan beroperasi dalam suatu negara. Artikel ini berupaya menyelidiki klaim-klaim yurisprudensial mengenai Lex Nullius di Dunia Selatan serta dampak dari Lex Digitalis yang saat ini dibentuk oleh platform digital privat asing dengan aturan yang berasal dari Dunia Utara, sekaligus menelaah bagaimana kondisi tersebut dapat diteoretisasikan demi kepentingan negara-negara Dunia Selatan.

Dalam konteks tata kelola data, anarki digital bukanlah ketiadaan norma; sebaliknya, ia ditandai oleh aktor non-negara dan platform digital yang menciptakan norma-norma yang memengaruhi negara berdaulat maupun warga negaranya. Dengan bertumpu pada studi kasus komparatif, teori politik, doktrin pascakolonial, serta analisis kebijakan yang berfokus pada negara-negara Dunia Selatan, artikel ini mengkaji prinsip-prinsip kedaulatan dan teori yurisprudensi yang ada guna meninjau kembali diskursus mengenai kedaulatan digital.

Artikel ini menemukan bahwa penggabungan konsep Lex Digitalis dan Lex Nullius memberikan kerangka diagnosis untuk memahami situasi ketika tata kelola digital tidak lagi sekadar berkaitan dengan kekosongan regulasi, melainkan merupakan bentuk rekolonisasi terhadap kedaulatan negara. Pada akhirnya, artikel ini menawarkan cara baru untuk memahami kedaulatan yang menetapkan batas-batas terhadap kekuasaan platform digital di negara-negara Dunia Selatan.

Kata Kunci: *anarki digital; lex digitalis; lex nullius; Dunia Selatan; pluralisme hukum; tata kelola platform.*

A. Introduction

Digitalization has changed the notion of sovereignty, independence and the rule of law in the Global South. But the Global South has not yet become fully aware of idea of the transformation of legal theories in it due to digital narratives.[1] Regulatory measures are mainly created in the Global North, and many states in the Global South eventually copy Northern prototypes of regulation. This may be termed as digital colonialism, digital subjugation, digital extraction etc., which is the continuation of the subjugation, extraction and imbalance in the real world.[2] In this article, we investigate the question on: What is the jurisprudential condition of the Global South under the domination of a foreign digital platform which has corporate entities in the Global North, and how can this condition be theorized beyond existing frameworks?

The conceptualisation of the Global South and Global North is based on the distinction rooted in post-World War II discourse, developmental economics and classifications from the World Bank and the United Nations Development Program and the Brandt Commission report published between 1980 and 1983.[3] Though geographical terms, the Global South has been used to describe low or middle-income countries located in Africa, Asia, Oceania, Latin America and the Caribbean, while the Global North is used to denote economically advanced regions such as Europe, North America and Australia. In global discourse, experts consider the use of the word "south" as a better alternative to "Third world" and "poorer parts of the world", which have been used for a long time with negative connotations.[4] The 2003 UN document titled "Forging a Global South" was one of the initiatives that popularised the term. Broadly, the two sides have been differentiated based on politics, wealth, technology and demography.[5] Despite not being classified as poor,

1 Salwa Tabassum Hoque, "Neocolonial Digitality: Analyzing Digital Legal Databases Using Legal Pluralism," *Asian Journal of Law and Society* 10, no. 3 (2023): 516–49.

2 Toussaint Nothias, "An Intellectual History of Digital Colonialism," *Journal of Communication* 75, no. 5 (2025): 385–97; Özgür Yılmaz, "The Origins of Digital Colonialism," İmgelem, no. 16 (2025): 321–44; Renata Ávila Pinto, "Digital Sovereignty or Digital Colonialism?," *Sur* 15, no. 27 (2018): 15–27; Hoque, "Neocolonial Digitality: Analyzing Digital Legal Databases Using Legal Pluralism."

3 Lemuel Ekedegwa Odeh, "A Comparative Analysis of Global North and Global South Economies," *Journal of Sustainable Development in Africa* 12, no. 3 (2010): 338–48.

4 Smith Oduro-Marfo and Marlea Clarke, "Global South: What Does It Mean and Why Use the Term?," *University of Victoria* 8 (2018).

5 Arif Dirlik, "Global South: Predicament and Promise," *The Global South* 1, no. 1 (2007): 12–23.

powerful countries such as China, Brazil and South Africa have chosen to align with the Global South countries.[6] Depending on how we classify things, the link between technology and the North-South divide can either broaden digital governance debates or make the boundaries less clear.

Current legal frameworks ignore three Global South realities: ongoing colonial legal structures, a legally empty digital space despite heavy platform use, and digital anarchy—meaning no state-backed norms, not chaos.

To address these shortcomings, this paper relies on comparative case studies, political theory, postcolonial doctrines, and policy analysis focused on the Global South countries. Theoretically, the paper proposes interconnected concepts: Lex Digitalis (the 'new' legal order that is emerging from the code of the world of digital media); Lex Nullius - the colonial principle of 'no man's land', in this case as a principle of 'digital jurisdiction'; and the Digital Anarchy (a situation in which space is not controlled by a state due to the presence of non-state actors, lawlessness, or contestation of order, which weakens the state and creates conflict between states, citizens, and platforms).[7] These are the principles that make up a postcolonial jurisprudence of the digital.[8] The main idea of this article is that the Global South remains to be regarded in a Lex Nullius, in a legally empty digital space. As a result, the understanding of this policy foundations will set a direction for the Global South countries.

For the purposes of this article, the term "digital space" shall be preferred over the term "cyberspace". These terms are not necessarily mutually exclusive, but rather "cyberspace" may refer to a virtual space, while "digital space" refers to the physical space, data flow, algorithmic space, and socio-legal space that make up the digital environment.[9] To stress continuity with territorial sovereignty and physical jurisdiction, the term "digital space" is used, while "cyberspace" is only used when referring to early internet governance literature.

This article is divided into seven sections. Beginning with the introduction,

6 Dirlik. "Global South: Predicament and Promise."

7 Jake Okechukwu Effoduh, "Digital Colonialism and the Role of Local Intermediaries: Examining Big Tech's Impact on Data Sovereignty and Human Rights in Africa," *Business and Human Rights Journal* 10, no. 2–3 (2025): 301–17.

8 Hoque, "Neocolonial Digitality: Analyzing Digital Legal Databases Using Legal Pluralism."

9 Geoffrey L Herrera, "Cyberspace and Sovereignty: Thoughts on Physical Space and Digital Space," in *Power and Security in the Information Age* (Routledge, 2016), 67–93.

the theoretical foundation of Lex Nullius and Lex Digitalis is discussed in Section II followed by digital anarchy of platform laws, social norms and technical protocol as a jurisprudential condition in Section III. The outcome of the digital framework for digital anarchy in the Global South is analysed in section IV. Section V applies the framework to case studies from the Global South and reflects on the varying attempts to claim digital sovereignty in the region. The nature of interventions for required in the Global South were analysed in Section VI. Section VII concludes with an attempt to provide a jurisprudence and policy-relevant questions for future juridical activity in the Global South.

B. Theoretical Foundations

This section builds on the two key theoretical elements of the article, namely, Lex Digitalis and Lex Nullius. It explores the origins of Lex Digitalis, its characteristics, layers and restrictions. Lex Nullius is provisionally explored in the context of digital governance in the Global South, with its colonial history as a foundation. While Lex Humanitas is not a core focus of this paper, it acts as a normative counterweight to human rights-based norms, which covers a rights-based approach to digital governance. The central theory of this paper is illustrated in Figure 1 below. The integration of Lex Digitalis, Lex Nullius and Lex Humanitas is the fundamental framework to the argument of this article. This diagnostic tool is needed to enable jurisprudential investigation.

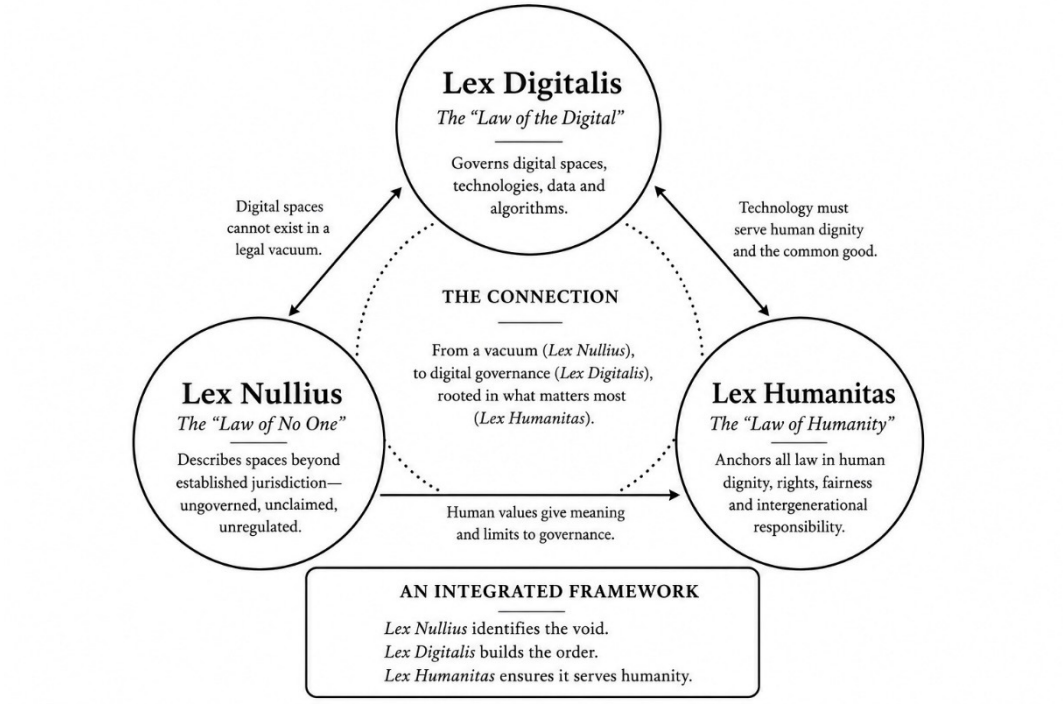

Figure 1: Theoretical Framework

Source: Authors

1. Lex Digitalis

To imagine the formulation of law and legal pluralism in digital space in the Global South, a more in-depth analysis of Lex Digitalis is needed. Lex Digitalis is derived from the Latin terms "lex" (law) and "digitalis" (digitized). It comes from the rules of doing digital things, which are based on code, terms of service, community needs and inputs into the platform. Usually, such rules are created by private organizations or by technology companies with a worldwide scope or no territorial restrictions.[10]

The core postulation of Lex Digitalis is that in the virtual world, there are no formal laws to govern and control the space; there is architecture instead. This can be used to interpret the legal and normative regime of the digital world. The Internet is not a nationally-bound area of law where there are well-established boundaries and rules (Lex Loci), but a new environment that needs its own rule of law.[11] Human attitudes, economic relationships, and

10 Federico Pierucci, "Sovereignty in the Digital Era: Rethinking Territoriality and Governance in Cyberspace," *Digital Society* 4, no. 1 (2025).

11 Dmitry I. Provalinsky, "Legal Support for Sovereignty in the Digital Space," *Pravosudie / Justice* 6, no. 2 (2024): 98–108; Pierucci, "Sovereignty in the Digital Era: Rethinking Territoriality and Governance in Cyberspace"; Kriangsak Kittichaisaree, "Future Prospects of Public International Law of Cyberspace," in *Law, Governance and Technology Series*, vol. 32, 2017, 335–56.

social interaction in the digital atmosphere are regulated by norms, protocols, standards, and practices that constitute the complex system of Lex Digitalis set by digital platforms.[12]

The most potent form of law is code, according to Lawrence Lessig, who sees algorithms, software and network protocols as the primary source of law in the digital world. This code, known as the "West Coast Code" (attributable to Silicon Valley), is more potent and enforceable than the "East Coast Code" (statutes made by traditional government).[13]

As a quasi-legal relationship, terms of service can be used to define privacy protocols, algorithmic content production and access mechanisms between users and technology platforms. This gives rise to a quasi-legal relationship of digital laws with binding rules, without apparent user approval.[14] This new Lex Digitalis manifests in various strata. Some of them include: the physical layer, which involves undersea cables, data centres governed by private and property law; the logical/protocol layer – i.e., Transmission Control Protocol/ Internet Protocol (TCP/IP), blockchain consensus rules; the application layer (consists of platform rules, API terms); and the social layer (mostly community standards, influencer-led norms).[15]

Amid these intersections and layers, conflicts are a necessity. For instance, a national court rules on the legality of content removal that contradicts a platform's free speech principles to its users. Similarly, the legalization of cryptocurrency as an acceptable digital ledger differs from country to country as it could conflict with monetary policy of states.[16]

Lex Humanitas provides an intersection with rules intended to stand in defence of human rights, dignity, and the collective safety of all. This may

12 Nathan Schneider, "Governable Stacks: Organizing against Digital Colonialism," in *Governable Spaces: Democratic Design for Online Life*, 2024, 84–105, https://doi.org/10.1525/luminos.181.e.

13 Joseph Savirimuthu, "Code, Hybrid Models of Consent and the Electronic Commerce (EC Directive) Regulations 2002," *Journal of Information Law and Technology*, 2004.

14 Rafael Grohmann and Alexandre Costa Barbosa, "Sovereignty-as-a-Service: How Big Tech Companies Co-Opt and Redefines Digital Sovereignty," *Media, Culture and Society*, 2025; Matthias Braun and Patrik Hummel, "Is Digital Sovereignty Normatively Desirable?," *Information Communication and Society* 28, no. 10 (2025): 1721–34, https://doi.org/10.1080/1369118X.2024.2332624.

15 Pierucci, "Sovereignty in the Digital Era: Rethinking Territoriality and Governance in Cyberspace."

16 Soorya Balendra, "Meta's AI Moderation and Free Speech: Ongoing Challenges in the Global South," *Cambridge Forum on AI: Law and Governance* 1 (2025).

be threatened by Lex Digitalis.[17] Also, the tendency of the adverse effects of privatization, automation of digital governance and data mismanagement are major concerns. A situation peculiar within the Global South is the erosion of users' privacy with no resulting liability.[18]

The underlying logic of the digital age is to serve humanity, and efforts must be made to ensure that its fundamental code, both technical and legal, aligns with the essence of transparency, equity, and fundamental rights of humans.[19] Essentially, if Lex Digitalis is not established in harmony with the existing traditional principles, it may result in chaos.[20]

> The core regulatory regime in the Global South is now Lex Digitalis, with platform terms of service governing acceptable speech, business rules, and virtual assembly. By implication, domestic law has been displaced in many situations, thereby calling into question the legitimacy and inclusivity of the digital regime.[21]

2. Lex Nullius

Born from colonialism, Lex Nullius erases local norms and laws, allowing colonial interests to control digital space against the interest of the sovereign in the Global South.[22] This is linked with terra nullius doctrine which literally means empty land or a concept used to describe the state of land which was legally empty if the people who lived on it did not have recognizably European forms of political organization or property rights.[23] Antony Anghie[24] has proved that this doctrine was not an innocent description of the void, but rather a law-making technique of dispossession, a doctrine that asserted that the laws of the indigenous peoples had no legal value and thus allowed for the colonization process to go "without the bother of conquest or

17 Effoduh, "Digital Colonialism and the Role of Local Intermediaries: Examining Big Tech's Impact on Data Sovereignty and Human Rights in Africa."
18 Yansen Alberth Reba et al., "Data Colonialism and Digital Sovereignty in the Global South," *Development in Practice*, 2026.
19 Braun and Hummel, "Is Digital Sovereignty Normatively Desirable?"
20 Braun and Hummel, "Is Digital Sovereignty Normatively Desirable?"
21 Reba et al., "Data Colonialism and Digital Sovereignty in the Global South"
22 Nothias, "An Intellectual History of Digital Colonialism."
23 Merete Borch, "Rethinking the Origins of Terra Nullius," *Australian Historical Studies* 32, no. 117 (2001): 222–39.
24 Antony Anghie, "Imperialism," in *Research Handbook on Third World Approaches to International Law (TWAIL)* (Edward Elgar Publishing, 2025), 34–45.

treaty".[25]

The Western Sahara Advisory Opinion by the International Court of Justice (1975) recognized that the doctrine did not apply when there was only a lack of European-style sovereignty. In the renowned case of Mabo v Queensland (No 2) (1992), the Australian High Court rejected the doctrine of terra nullius and determined that indigenous legal systems existed prior to and in the presence of British sovereignty.[26]

In the colonial period, land and resources were stolen through the doctrine of terra nullius; in the digital situation, data and users' interest in the data are stolen because of digital Lex Nullius. In the colonies, 'Lex Nullius' was the legal principle used to claim that the laws of the coloniser were not applied fully to the colonised.[27] The logic of terra nullius was analogised in this paper to introduce a conceptualization of the state of digital governance in the Global South – not as a claim of identity, but as a claim of structural analogy. In the same way that colonial terra nullius was a legal fiction that excluded native law, digital Lex Nullius is a legal fiction that excludes the ownership of territories' legal systems to govern platforms.

The analogy between terra nullius and Lex Nullius is apparent through the three ways: Juridical erasure imposed without local consultation; done by an external force ignoring local authority and enables resource extraction. Some differences are: Colonial Lex Nullius renders the law non-existent, while digital Lex Nullius renders it present in excess. The vacuum is not that the Global South does not have a law, but one that is not valid and has no ability to enforce in the eyes of the state in the Global South. Second, public international law's doctrine of terra nullius was used by sovereign states against non-sovereign peoples, while digital Lex Nullius is a practice of "private transnational governance" by Western corporations against nominal sovereign states.[28] Third, the remedy is different: decolonization involved recognition of pre-existing sovereignty whereas digital decolonization may involve new mechanisms which will create jurisdictional interoperability or

25 S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, USA, 2004).
26 Anghie, "Imperialism."
27 Anghie, "Imperialism."
28 Reba et al., "Data Colonialism and Digital Sovereignty in the Global South."

legal transplant, rather than a reassertion of territorial sovereignty.[29]

The territorial sovereignty of digital ecosystems is assumed to abide by the traditional norms of sovereignty. But while most countries, especially in the Global South, stake claims to their territory, they often do not have the technical means and economic power to do so against the technically formidable digital platforms.[30] On the other hand, private digital entities consider themselves to be governing in a constructed nullius, a perceived vacuum of governance. This vacuum does not arise out of a neutral place; it is filled and dominated by tech firms that influence users and sovereign states, albeit indirectly.[31]

The attempt to erode or erase the existence of law takes the form of erasure and imposition. This is done through the absolute rejection of traditional regulations, cultural practices, legislation, defamation rules, notions of dignity, trust and integrity and their replacement by the platforms' own data practices, algorithmic governance and guidelines.[32] This means that the supremacy of Parliament is disregarded, and local laws are not relevant to the platform. Maintaining separate social norms in the online sphere is viewed as a hindrance for businesses, as well as an inefficient and outdated approach in the Silicon Valley world ecosystem. [33] As a result, the supreme Lex based on platform exigencies becomes the terms of service: a Lex universally imposed without the express consent of its users.[34] Platform corporations are not elected or appointed by citizens to rule any land, but due to their technology services, they take a territory which they believe to be Nullius.

For countries in the Global South that are former colonies or underdeveloped, this brings a chilling reminder of historical subjugation and dispossession. The advent of colonialist emissaries, who dismissed the native

29 Thanapat Chatinakrob, "Interplay of International Law and Cyberspace: State Sovereignty Violation, Extraterritorial Effects, and the Paradigm of Cyber Sovereignty," in *Chinese Journal of International Law*, vol. 23, 2024, 25–72.

30 Michael Kwet, "Digital Colonialism: US Empire and the New Imperialism in the Global South," *Race and Class* 60, no. 4 (2019): 3–26.

31 Grohmann and Costa Barbosa, "Sovereignty-as-a-Service: How Big Tech Companies Co-Opt and Redefines Digital Sovereignty."

32 Effoduh, "Digital Colonialism and the Role of Local Intermediaries: Examining Big Tech's Impact on Data Sovereignty and Human Rights in Africa."

33 Reba et al., "Data Colonialism and Digital Sovereignty in the Global South."

34 Effoduh, "Digital Colonialism and the Role of Local Intermediaries: Examining Big Tech's Impact on Data Sovereignty and Human Rights in Africa."

system, was often based on Lex Nullius claims and followed by the displacement of native authorities as repugnant. Digital laws follow a similar pattern of dismissive behaviour towards local norms as primitive and crude. Thereafter, digital platforms impose their standards on users from independent territorial entities after successful dismissal of local norms as being incompatible with global connection or technological advancement.[35] Their legal dominance is further established and reinforced after the pre-existing normative landscape has been declared *nullius*. Afterwards, the interests of the conquering entity, whether legally or illegally, are served after their new digital legal order has been imposed.[36] Legitimacy is portrayed as a disguise when digital platforms' overlords seek data and user engagement, but it is the colonial powers that are exploiting territories and their resources through those platforms.[37]

Makau Mutua's Savages–Victims–Saviors metaphor remains relevant for the struggle over the control of digital space. Non-Western states, societies, and their cultures are portrayed as "savages", barbarians, authoritarian, and illiberal; not respecting human rights and freedoms of individuals who are "victims". These victims need rescuing from oppression and tyranny through "civilized" Western structures, including the "United Nations, Western governments, INGOs, Western charities," and even the human rights corpus.[38] Increasingly, tech giants of the Western world, including social media companies, have assumed the role of "saviours", purportedly championing freedom of expression, assembly, association and entrepreneurship. Yet, profit maximization remains the core motivation of these corporations. Nevertheless, when Global South states attempt to regulate their activities, such as requiring them to open local offices, comply with local obligations,

35 Hoque, "Neocolonial Digitality: Analyzing Digital Legal Databases Using Legal Pluralism"; Uditi Sen, "Developing Terra Nullius: Colonialism, Nationalism, and Indigeneity in the Andaman Islands," *Comparative Studies in Society and History*, 2017.

36 Sookyeon Huh, "Title to Territory in the Post-Colonial Era: Original Title and Terra Nullius in the ICJ Judgments on Cases Concerning Ligitan/Sipadan (2002) and Pedra Branca (2008)," *European Journal of International Law* 26, no. 3 (2015): 709–25; Gareth Knapman, "Uninhabited Islands in the Bay of Bengal, Penang, Singapore and Botany Bay: What Did Terra Nullius Mean in British Colonial Thinking?," *Australian Historical Studies* 55, no. 3 (2024): 444–63.

37 Nothias, "An Intellectual History of Digital Colonialism"; Effoduh, "Digital Colonialism and the Role of Local Intermediaries: Examining Big Tech's Impact on Data Sovereignty and Human Rights in Africa."

38 Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harv. Int'l LJ* 42 (2001): 201.

and pay applicable taxes, such countries risk being portrayed as "savages" disregarding the human rights of individuals. The legitimacy of such states is then questioned, and they are made open to interventions at various levels.

At this point, double standards play a significant role: A fictional hierarchy of regulatory credibility is produced between Global North and Global South. For example, when the European Union regulates such platforms, through competition laws, personal data privacy frameworks or taxation, this is often characterised as "governance" or "rights-based approach", yet when similar measures are taken by Global South countries, they are often labelled as censorships, repression and human rights violations. The effect of such double standards is to condemn the Global South to a perpetual condition of Lex Nullius.

Extraction and exploitation reminiscent of colonial economies in the digital world are the new issues created by digital Lex Nullius.[39] Users' data is not given the right attention that it deserves, enabling a *terra nullius* ripe for harvesting, making those users lose control over their digital selves and respect to their personal dignity.[40] Opportunistic private corporate organizations exploit this legal void with adverse effects on the digital community. One of these consequences is the adjudication of disputes to suit their objectives. These private corporations define Users' rights (like "speech" or "property" in virtual goods) by melting out banishment, all through opaque systems with limited remedies and appeal for aggrieved users.[41]

If digital Lex Nullius is recognized, another dimension of the cyber-governance problem will arise. It will create a technical hurdle to state jurisdiction as well as a political and epistemological battle for legal recognition if given the opportunity.[42] At the other extreme, however, a single state's extension of its sovereignty into cyberspace is not the only viable

39 Reba et al., "Data Colonialism and Digital Sovereignty in the Global South"; Fischer, "The Digital Sovereignty Trick: Why the Sovereignty Discourse Fails to Address the Structural Dependencies of Digital Capitalism in the Global South."

40 Nothias, "An Intellectual History of Digital Colonialism"; Effoduh, "Digital Colonialism and the Role of Local Intermediaries: Examining Big Tech's Impact on Data Sovereignty and Human Rights in Africa."

41 Daniel P S Goh, "From Colonial Pluralism to Postcolonial Multiculturalism: Race, State Formation and the Question of Cultural Diversity in Malaysia and Singapore," *Sociology Compass* 2, no. 1 (2008): 232–52; Reba et al., "Data Colonialism and Digital Sovereignty in the Global South."

42 Braun and Hummel, "Is Digital Sovereignty Normatively Desirable?"

answer. It is likely to have little or no effect on developing the digital legal space as a haven for justice and human rights protection.

Lex Nullius is a complex problem in the era of increasing technological advancement. Thus, any solutions that are to be effective must consider all necessary factors to break the nullius logic itself. Communal rights to algorithmic self-determination should be recognised and respected. [43] Users in digital space are not passive data subjects on a blank landscape, but rather residents with rights in their own digital and cultural communities and must be treated as such. Digital laws and norms should be recognising, protecting and enforcing these rights.[44] These rights should not be erased or eroded without any legal justification whatsoever. Decolonization of the digital space should start with deconstructing the concept of nullius. Legal pluralism can be embraced to consider harmonisation of domestic norms and digital platform terms of service.

The Lex Nullius approach does not accept classical legal pluralism. Griffiths,[45] implies Legal pluralism as a situation where different norm systems are competing and can be described as existing in parallel. It proposes a previous juridical erasure that makes coexistence impossible. Lex Humanitas posited in the context of Lex Nullius is not just one norm system among others but a meta-normative rule: an impartial lowest common denominator that no state or transnational or private legal systems can violate without compromising its legal legitimacy. In this respect, Lex Humanitas works as *jus cogens* in public international law, peremptory norms which cannot be derogated by any actor.

In the perceived digital governance void in the Global South, there are three threats to Lex Humanitas. First, procedural erasure: users are unable to meaningfully agree to the terms of service of platforms and have no means to receive any remedy for breaches of their rights.[46] Second, the substantive displacement: the decision of whether to limit what is posted and stated online

43 Nothias, "An Intellectual History of Digital Colonialism."

44 Pierucci, "Sovereignty in the Digital Era: Rethinking Territoriality and Governance in Cyberspace."

45 John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55.

46 Judit Bayer, "Procedural Rights as Safeguard for Human Rights in Platform Regulation," *Policy & Internet* 14, no. 4 (2022): 755–71.

and let private information remain private is often made by the platforms, rather than by domestic human rights laws, and there is no legitimate hierarchy of norms.[47] Thirdly, normative invisibility: local legal orders are ignored, and thus local embedded human rights norms become invisible to platform governance structures, which assume that such norms do not exist.[48]

C. Digital Anarchy as a Jurisprudential Condition

Anarchy has always been the elephant in the room of political entities, as defined by the laws of statehood, order and legality. Conflict and lawlessness were the reasons that Thomas Hobbes termed the state of anarchy as "solitary, poor, nasty, brutish and short". The Hobbesian conception of "state of nature" (which embodies insecurity, lack of peace, lack of centralized coercive power, or solitary dictator) is one of the assumptions of anarchy.[49] With this knowledge, the existence of the law and the lack of anarchy are correlated with absolute sovereign power that can help prevent the failure of law and order in society.[50] This perspective is based on the utilitarian law and sees anarchy as the only way to prevent it, which is to surrender individual freedoms to a higher power called the Leviathan.[51]

The presence of competing norms or pluralistic legal landscape can create anarchy situation. John Griffiths[52] stated in his seminal essay, "What is Legal Pluralism?" (1986), legal norms and the rule of law are possible without having a single sovereign, structure or coercive hierarchical authority. Legal pluralists argue that the idea of a supreme sovereign is not essential to the development of law and order in a society, since there are societies that have overlapping normative orders that do conflict, but have not led to anarchy. [53]

47 Ekaterina P Rusakova, Evgenia E Frolova, and Anna I Gorbacheva, "Digital Rights as a New Object of Civil Rights: Issues of Substantive and Procedural Law," in *13th International Scientific and Practical Conference-Artificial Intelligence Anthropogenic Nature Vs. Social Origin* (Springer, 2020), 665–73.

48 Kebene Wodajo, "Mapping (in) Visibility and Structural Injustice in the Digital Space," *Journal of Responsible Technology* 9 (2022): 100024.

49 William Bain, "International Anarchy and Political Theology: Rethinking the Legacy of Thomas Hobbes," *Journal of International Relations and Development* 22, no. 2 (2019): 278–99.

50 Bain, "International Anarchy and Political Theology: Rethinking the Legacy of Thomas Hobbes."

51 Carmen E. Pavel, "The Rule of Law and the Limits of Anarchy," *Legal Theory* 27, no. 1 (2021): 70–95.

52 Griffiths, "What Is Legal Pluralism?"

53 Brian Z Tamanaha, "Understanding Legal Pluralism : Past to Present , Local to Global †," no. July (2007).

A combination of religious teachings, business principles, customary law and traditional rules are common. In the same vein, Lex Mercatoria was adopted by many societies, despite originating from merchants of the medieval period. All these operate concurrently with state regulations, but not from a supreme sovereign.[54] Likewise, they are not imposed, but self-imposed by those who follow or belong to communities by mutual consent and recognition. This process of legal formation, ongoing, renders inoperative the arguments of one supreme sovereign entity. But as Gunther Teubner has demonstrated in his research on the constitutional aspects of transnational private regulation, legal norms can be self-constituted, stabilized and given legitimacy in recursive processes of self-constitutionalization even if there is no single sovereign.[55]

The pluralist view of anarchy is not one of absence of order, but one in which there are multiple norms which are decentralized and sometimes competing.[56] With this, there are blended rules across hierarchies. Key questions in this situation are: Where is sovereignty? Is there engagement between legal orders? Competing norms cause clashes, but pluralism allows functional legitimization without anarchy.

In the digital world, the typical interaction with the internet and digital infrastructure is pluralistic with the possibility of anarchy. Business and political decision-making are frequently split up, which suggests regulatory authority is being carried out outside of the sovereign authority. This is an iconic case of 'digital anarchy' facilitated by tech and digital infrastructure companies, in one form or another. Unlike Bona Ventura Santos'[57] framework for "interlegality", there is no single authority in the digital ecosystem that decides on rules, their interpretation or order. The digital environment

54 David Nelken, "Eugen Ehrlich, Living Law, and Plural Legalities," *Theoretical Inquiries in Law*, 2008.

55 Gunther Teubner, "Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sectors?," in *Public Governance in the Age of Globalization* (Routledge, 2017), 71–87.

56 Martina Eckardt, "EU Digital Law and the Digital Platform Economy—an Inquiry into the Co-Evolution of Law and Technology," *Review of Evolutionary Political Economy* 6, no. 1 (2025): 183–213.they pose new challenges with regard to the abuse of a dominant market position, thus ultimately reducing competition and innovation. This paper outlines an evolutionary approach to the co-evolution of law and technology with collective cognitive constructs and wealth effects as essential drivers (Eckardt (2001, 2008

57 Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science, and Politics in the Paradigmatic Transition*, vol. 454 (Routledge New York, 1995).

is dynamic, divided, and compartmentalized, with interactions that do not have a hierarchy. Order is derived from platform policies, terms of service, community guidelines, protocol designs, and regional technical standards established in specific regions, like domain name registration by the Internet Corporation for Assigned Names and Numbers (ICANN). Teubner[58] explained that these norms, created by platforms, are a case of "global law without a state" in the sense that they are legally binding and effective, but lack the democratic legitimacy and accountability mechanisms found in state-based legal orders.

Therefore, the digital ecosystem is a global legal enclave of legal pluralism, in a setting where legal norms are outsourced, constructed and enforced beyond the sovereigns' traditional boundaries. Santos's notion of "interlegality"[59] is relevant here: the digital environment is characterised by permeable boundaries between state law and platform rules. Overreach of digital sovereignty may lead to the arrival of digital anarchy, as in a traditional sovereign, with other norms coming into conflict.

1. Defining Digital Anarchy

Perhaps the most heterogeneous pluralist governance environment in modern-day is the digital environment, hence it serves as a fertile ground for anarchy.[60] This context, known as "digital anarchy", originates as a governance space where regulatory structure for the digital ecosystem is implemented without a sovereign hierarchy but a diverse, inordinate, and non-hierarchical system. No singular entity can claim sole legitimacy over such space, including the state or digital platforms, which can be said to command absolute authority but exercise powers from diverse conflicting sources and differently applied to the same subjects.[61]

The dynamics of power and authority in the digital ecosystem can play concurrently from the following four areas:

58 Teubner, "Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sectors?"

59 Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (Cambridge University Press, 2002).

60 Pavel, "The Rule of Law and the Limits of Anarchy."

61 Pavel, "The Rule of Law and the Limits of Anarchy."

a. Jurisdictional Law

This includes laws and regulations on digital services, infrastructure, and entities passed by a country's parliament, or regional agreements entered by several states. The limitations on the enforcement of such laws often stem from technical provisions imposed by service providers or authorities outside their territories.[62] The conflict between traditional state norms and digital platforms has played out several models of pluralism in the digital space with different outcomes.[63]

b. Platform Law

Not a product of a sovereign but a contract between companies and users, platform laws come in different forms, such as terms of use, terms of service, community guidelines, or proprietary regulations. Although applied as soft law, it derives legitimacy through contract, and its adjudicative frameworks are enforced under the dispute resolution or complaint handling policy.[64] Global tech and social media platforms such as Meta, Google, TikTok and X have exerted their influence through deletions, suspensions and other penalties against users found to have breached their policies. The extent of fairness and objectivity of such guidelines has been challenged and is often in conflict with state laws.[65]

c. Technical Protocols

Software, hardware and other embedded systems operate based on fundamental "laws" that help to settle connectivity and interoperability among devices in the digital ecosystem.[66] Notable among laws, encryption standards, TCP/IP and other blockchain agreement mechanisms.[67] These set of digital

62 Pengfei Li and Miao Wang, "Navigating the Legal Labyrinth: The Future of Data-Driven Platform Labor in China," *Journal of the Knowledge Economy* 16, no. 2 (2025): 7016–38.

63 Sanne Taekema, "Fragments and Continuities of Law and ICT: A Pragmatist Approach to Understanding Legal Pluralism," in *Crossroads in New Media, Identity and Law: The Shape of Diversity to Come*, 2015, 80–91.

64 Jesús C. Aguerri, Fernando Miró-Llinares, and Ana B. Gómez-Bellvís, "Consensus on Community Guidelines: An Experimental Study on the Legitimacy of Content Removal in Social Media," *Humanities and Social Sciences Communications* 10, no. 1 (2023).

65 Li and Wang, "Navigating the Legal Labyrinth: The Future of Data-Driven Platform Labor in China"; Eckardt, "EU Digital Law and the Digital Platform Economy—an Inquiry into the Co-Evolution of Law and Technology."

66 Patrice Kadionik, "Introduction to Embedded Systems," *Communicating Embedded Systems*, 2013.

67 Ilia Murtazashvili, Ali Palida, and Michael J. Madison, "The Past, Present, and Future of Polycentric Legal Order: A Comparative Institutional Analysis of Lex Mercatoria and Blockchain," *Journal of Institutional Economics* 22 (2026).

norms prescribe legitimate and illegitimate paths or protocols for connectivity and other technical parameters within a system. To fill the vacuum left by traditional legislation, technocrats have laid the foundational basis for code governance to be enforced across all jurisdictions. In several aspects of normative formulations, traditional state laws appear to be playing a catch-up game after the technical protocols.[68] This brings the question of whether the digital space is a Lex Nullius.

d. Social Norms

A core source of law in the digital ecosystem is the evolving practices and customs embedded in users' behaviour in the online space.[69] These include etiquette, gaming rules and conduct which are enforced by the sentiment of members, sanctions, boycott, humiliation, and reputational damage, among others. This differs from the platform's community standards, but it reflects consensus among users against unusual behaviour in the online community. Most of the time, the social norms are unwritten but shaped by the collective intentions within a group.

Where digital anarchy occurs, enforcement mechanisms are often distinct from traditional state-sanctioned public sanctions. A primary enforcement tool adopted in the digital space is access control, which relies on the architectural design to regulate user behaviour. The power to limit or revoke access, market access, and algorithm management is a function of system design, which tilts the balance of power in content moderation in favour of the platform over the constitutional authority of the court.[70] The role a smart contract can play to supersede the traditional sovereign lies in its ability to enforce itself without judicial intervention.[71]

D. Digital Anarchy in the Global South

Incidents of digital anarchy can be normatively observed worldwide but weighs more on the Global South. This is often exacerbated by citizens'

68 Sabine K. Witting, "Transnational by Default: Online Child Sexual Abuse Respects No Borders," *International Journal of Children's Rights*, 2021.

69 Iina Savolainen et al., "The Role of Online Group Norms and Social Identity in Youth Problem Gambling," *Computers in Human Behavior* 122 (2021).

70 Li and Wang, "Navigating the Legal Labyrinth: The Future of Data-Driven Platform Labor in China."

71 Smart Contracts Alliance and Deloitte, "Smart Contracts : 12 Use Cases for Business & Beyond" (Washington, D.C., 2016).

mistrust, fragile governance and the entrenched role of foreign-controlled digital infrastructure and platforms.[72] The destabilising effect generated by the platforms leads to pluralistic conflicts. The reaction of state authorities to regain sovereignty over the digital space has been a partial shutdown of platforms and, in some cases, internet blackouts.[73]

Tech platforms do not view themselves as subordinate or accountable to state authority. This is worse when the platform operates from a base in the Global North by a foreign government with an unfavourable label against the local authority. The failure to respond to the administrative accountability process, local culture and social realities in the state is considered anarchical and a threat to state sovereignty.[74] From this perspective, the use of platform guidelines and community norms to justify suppression of local norms, influence political decisions, and ignite uprisings in the digital space actively erodes state authority in the physical space.

The extraterritorial character of digital governance stretched the discourse of digital sovereignty and neo-colonialism in the Global South.[75] Many states possess legislation that is incapable of being enforced on platforms. On the other hand, platform guidelines are enforced on the state and its citizens from remote boardrooms.[76] It could be argued that a platform licensed to operate is a form of delegated legislation from the state to private entities. However, such delegation, if it exists, must be accountable, not undermine local culture, ensure justice, equity and prevent anarchy.

Beyond Hobbesian postulation of chaos, the conditions that lead to digital anarchy exceed a lack of sovereign control.[77] In this interaction to provide harmony of norms, the state is a participant among several stakeholders and often does not possess absolute power to set the rules. Most states have realized the need to curate a jurisprudence from the pluralism that exists to

72 Li and Wang, "Navigating the Legal Labyrinth: The Future of Data-Driven Platform Labor in China."

73 Manisha Madapathi, "Digital Barricades and Blackouts: A Case of Internet Shutdowns in India," *Media and Communication* 12 (2024).

74 Duncan Omanga, Admire Mare, and Pamela Mainye, *Digital Technologies, Elections and Campaigns in Africa*, *Digital Technologies, Elections and Campaigns in Africa*, 2023.

75 Kwet, "Digital Colonialism: US Empire and the New Imperialism in the Global South."

76 Tahu Kukutai, "Indigenous Data Sovereignty-A New Take on an Old Theme," *Science (New York, N.Y.)*, 2023.

77 Pavel, "The Rule of Law and the Limits of Anarchy"; Bain, "International Anarchy and Political Theology: Rethinking the Legacy of Thomas Hobbes."

avoid digital anarchy in the dynamic state of digital sovereignty.[78]

1. Authority Lacking Sovereignty in the Global South

From the foregoing, it has become apparent that the classical idea of sovereignty is under immense threat as states are challenged in the quest to exert full territorial and digital control.[79] Due to the increasing power of private platforms such as Meta, TikTok and Google, the traditional and legitimate authority enforcement authorities are becoming opaque in cyberspace.[80] The parallel structure for contracts comprising terms of service, dispute resolution, content moderation, appeals mechanism and enforcement measures such as account removal, demonetization or shadow banning amounts to a government structure on the internet domain.[81] Operating under the shadow of legitimacy, the private platforms significantly affect public opinion, economic decisions, election outcomes and social norms. The effect has far-reaching consequences on the local laws despite often being without legal backing or compliance with accountability and transparency frameworks prescribed by public sector regulators.[82] This situation best describes the unsettling situation of fragile sovereignty for states categorized as the Global South.[83]

States in the Global South attempt to assert their legal jurisdiction through legislation, including data localization rules, stringent cybercrime penalties, or social media regulating laws. However, these initiatives often result in what can be termed 'symbolic sovereignty', meaning legal structures that are theoretical and lack effective enforcement mechanisms against globally agile, technologically advanced enterprises.[84] The regulatory capabilities of these

78 Alex Prichard, "Collective Intentionality, Complex Pluralism and the Problem of Anarchy," *Journal of International Political Theory* 13, no. 3 (2017): 360–77; Tamanaha, "Understanding Legal Pluralism : Past to Present , Local to Global †"; Gad Barzilai, "Beyond Relativism: Where Is Political Power in Legal Pluralism?"

79 Pierucci, "Sovereignty in the Digital Era: Rethinking Territoriality and Governance in Cyberspace."

80 Martín Harracá, Itziar Castelló, and Annabelle Gawer, "How Digital Platforms Organize Immaturity: A Sociosymbolic Framework of Platform Power," *Business Ethics Quarterly* 31, no. 3 (2023), https://doi.org/10.1017/beq.2022.40.

81 Grohmann and Costa Barbosa, "Sovereignty-as-a-Service: How Big Tech Companies Co-Opt and Redefines Digital Sovereignty."

82 Aguerri, Miró-Llinares, and Gómez-Bellvís, "Consensus on Community Guidelines: An Experimental Study on the Legitimacy of Content Removal in Social Media."

83 Fischer, "The Digital Sovereignty Trick: Why the Sovereignty Discourse Fails to Address the Structural Dependencies of Digital Capitalism in the Global South."

84 Li and Wang, "Navigating the Legal Labyrinth: The Future of Data-Driven Platform Labor in China."

states frequently lag behind the rapidity and intricacy of digital platforms, and they may encounter considerable economic and political pressure during negotiations with these influential entities.[85] This disparity in power and technical capacity can lead to a situation akin to "data colonialism," where multinational firms from the Global North extract and monetize data from the Global South with minimal reciprocal benefit or accountability.[86] Thus, real authority moves from public to private actors, e.g., a remote content moderator can shape an election's info environment more than local courts or media.[87] This creates transnational corporate jurisdiction which overrides local frameworks, creating digital dependency that erodes self-determination and accountable governance in the Global South.[88] This redefinition of digital sovereignty by Big Tech companies, termed "sovereignty-as-a-service," frames sovereignty as a technical problem to be solved by their cloud infrastructure, further entrenching their control. The unfulfilled ideal of traditional sovereignty in the Westphalian sense has led to a push for achieving digital sovereignty in the Global South, but this often fails to address the structural dependencies inherent in digital capitalism.[89] The tension between the borderless nature of cyberspace and the territorial basis of traditional sovereignty demands a rethinking of governance models.

E. Case studies of Digital Anarchy in the Global South

Digital anarchy in the Global South is not an isolated incident, but a complex phenomenon that takes place because of a rapid, sometimes unchecked, penetration of digital technologies in a context of weaknesses of the existing institutions, socioeconomic inequalities, and contestations over political power. By looking at how these technologies have been used in social media governance, fintech/mobile money, and blockchain, a common theme appears: these technologies initially offer empowerment and can circumvent cumbersome systems, but once they proliferate, they often outpace the

85 Reba et al., "Data Colonialism and Digital Sovereignty in the Global South."
86 Malcolm Campbell-Verduyn and Francesco Giumelli, "Enrolling into Exclusion: African Blockchain and Decolonial Ambitions in an Evolving Finance/Security Infrastructure," *Journal of Cultural Economy* 15, no. 4 (2022): 524–43.
87 Balendra, "Meta's AI Moderation and Free Speech: Ongoing Challenges in the Global South."
88 Nothias, "An Intellectual History of Digital Colonialism."
89 Yılmaz, "The Origins of Digital Colonialism."

development of effective regulatory and legal frameworks, as well as social norms, leading to zones of contested control and unexpected effects.

1. Platform Power and Societal Fragmentation

The digital anarchy and governance vacuum is most pronounced in the space of social media, where policies for global platforms do not match the local context. Facebook's algorithm promoting the content to incite violence against the Rohingya minority in Myanmar in 2017 is a striking example.[90] Even though Facebook was aware that its recommendation systems could create extremist echo chambers causing serious real-life harm, it failed to act to prevent such scenarios from materialising.[91] Consequently, various atrocities including murder, torture, rape, ethnic cleansing were perpetrated against the Rohingya minority by individuals fuelled by the extremist content spread on Facebook, which pursued only a policy of profit maximisation.[92] Meta, the parent company of Facebook, has not so far been held accountable for its contribution to such atrocities.

Hate speech and disinformation spread across social media have also been shown to fuel ethnic conflicts in Ethiopia.[93] As Agnès Callamard, Amnesty International's Secretary General, puts "Meta has once again – through its content-shaping algorithms and data-hungry business model – contributed to serious human rights abuses" against Ethiopia's Tigrayan community between 2020 and 2022.[94]

These incidents demonstrate a crucial failure of global platforms which is typical of the Lex Nullius problem: the failure to properly moderate local language hate speech and, in effect, creating a space for organized violence to

90 "Human Rights Impact Assessment: Facebook in Myanmar"

91 "Amnesty International, "Myanmar: Facebook's Systems Promoted Violence against Rohingya; Meta Owes Reparations – New Report," Amnesty International, accessed May 28, 2026, https://www.amnesty.org/en/latest/news/2022/09/myanmar-facebooks-systems-promoted-violence-against-rohingya-meta-owes-reparations-new-report/.

92 "Amnesty International, "Myanmar: Facebook's Systems Promoted Violence against Rohingya; Meta Owes Reparations – New Report."

93 Muluken Asegidew Chekol, Mulatu Alemayehu Moges, and Biset Ayalew Nigatu, "Social Media Hate Speech in the Walk of Ethiopian Political Reform: Analysis of Hate Speech Prevalence, Severity, and Natures," *Information Communication and Society* 26, no. 1 (2023): 218–37.

94 "Amnesty International, "Ethiopia: Meta's Failures Contributed to Abuses against Tigrayan Community during Conflict in Northern Ethiopia," Amnesty International, accessed May 28, 2026, https://www.amnesty.org/en/latest/news/2023/10/meta-failure-contributed-to-abuses-against-tigray-ethiopia/.

be coordinated without consequences This, in turn, effectively creates a zone of impunity for such big tech companies. The main reasons for this failure of governance are that the state cannot enforce the law online (Lex Nullius); and that the platforms do not actively moderate content but rather wait for complaints (Lex Digitalis).

Digital anarchy in democratic processes from Brazil and India reflects through coordinated disinformation campaigns on a platform with end-to-end encryption, like WhatsApp, that presents a challenge to traditional disinformation monitoring in Brazil have contributed to electoral results.[95] The governance black box of the app itself is a prime example of how Lex Digitalis (code as law) can generate anarchy from a state-sovereignty perspective. In India, spreading false information about a disease or illness using life-changing platforms such as WhatsApp has caused real-life mob violence.[96] The cases illustrate an essential paradox: technologies that facilitate free speech and assembly can simultaneously be used by those aiming to erode social cohesion, and local authorities are often lacking the technical capability or legal mandate to intervene effectively.

On the other hand, content moderation itself can also be problematic when carried out according to criteria entirely shaped by Western approaches. Particularly in political contexts, content moderation can well be used as a tool to advance neocolonial aspirations or policies. This has been especially evident in the case of the Israel/Palestine conflict. Pro-Palestinian content on American social media companies such as Meta and X has been consistently restricted, aligning with the U.S. foreign policy of supporting Israel, particularly since 2023.[97] When TikTok, a China-registered video platform, emerged as a significant competitor in social media, it has become a freer avenue for the circulation of pro-Palestinian content. This significantly challenged the dominant pro-Israeli narrative among young people in the United States.

95 Joao V.S. Ozawa et al., "How Disinformation on WhatsApp Went From Campaign Weapon to Governmental Propaganda in Brazil," *Social Media and Society* 9, no. 1 (2023).journalists, and fact-checkers (N = 10

96 Aiswarya Dutta, "Human Rights Violation in India: Whatsapp and Mob Lynching," *IOSR Journal of Humanities And Social Science (IOSR-JHSS* 25, no. 9 (2020): 32–37.

97 Aboubakr Abbassa, "Algorithmic Imperialism and Digital Resistance:'A Case Study of TikTok and the Mechanisms of Control over the Palestinian Narrative Post-October 2023,'" *ZAOUL* 13, no. 3 (2023): 793–825.

Consequently, the United States, in order to control the narrative, first sought to ban TikTok and then pressured it to be purchased by an American-owned joint venture.[98] Considering the power of social media platforms through content moderation, which at times functions as an extension of the neocolonial agenda of Western states, it is clear that Global South countries should seek ways to take a more active role in the production of criteria for content moderation that reflect local contexts and cultures as well as universal values.

2. Fintech/Mobile Money: Financial Inclusion and Regulatory Gray Zones

Mobile money is a quintessential example of the fintech revolution thriving in the regulatory space in between. The M-Pesa in Kenya was a great success in giving financial services to the unbanked and thus also establishing a parallel financial system.[99] Its growth took place with relatively low levels of specific regulation which, however, led to concerns about consumer protection, data privacy and systemic risk, issues that were only tackled once the system was well established.[100] This "standard setting" by a private body is a *de facto* standard — a Lex Digitalis in a Lex Nullius vacuum.

The Unified Payments Interface (UPI) in India portrays a different model; it is a digital public infrastructure supported by the government that has seen a surge in fintech services.[101] Anarchy, however, can flourish on the fringes of a properly designed system: the number of digital lending apps that have come onto the market, many of them unregulated, has allowed for the existence of predatory practices and debtor harassment. Cryptocurrency usage has increased in Venezuela and Nigeria due to hyperinflation and the instability of their currencies.[102] Citizens creating digital assets to escape from broken national financial systems, a grassroots financial anarchy, but this is

98 "TikTok Closes Deal to Split US App from Global Business," BBC, n.d., https://www.bbc.com/news/articles/c3edd1l328lo.

99 Dutta, "Human Rights Violation in India: Whatsapp and Mob Lynching."

100 Isaac Abotebuno Akolgo, "On the Contradictions of Africa's Fintech Boom: Evidence from Ghana," *Review of International Political Economy* 30, no. 5 (2023): 1639–59.

101 Suyog A. Amrutrao, "FinTech Revolution in India: Redefining Banking Operations and Customer Experience," *International Journal of Innovative Research in Engineering and Management* 12, no. 6 (2025): 14–17.

102 Abidemi Omolayo Olukole et al., "Cryptocurrency Price Volatility and Stock Market Performance in Nigeria," *International Journal of Management Studies and Social Science Research* 07, no. 03 (2025): 126–40.

not a rejection of ideology; this is a need. This, of course, puts pressure on state monetary sovereignty, and provides an example of the 'Lex Nullius' condition – from below, not from above.

3. Blockchain and Cryptocurrency: Rebuilding Trust and New Oligarchies

By design, blockchain use in the Global South tends to be explicitly focused on overcoming institutional mistrust, and yet can generate new, technocratic power structures in the process. Countries such as Ghana or India are trying to tackle corruption and opaque land registry systems by researching the use of blockchain.[103] The idea is to have a ledger, which is open and transparent, and cannot be changed. But the cases show how Oracle problems — how to get data from the real world (a survey, for instance) onto the chain — prove difficult, and how the problems of people without digital literacy or access are not overcome. The special hurdles illustrate why Lex Digitalis cannot simply supplant Lex Nullius; it could well create new instances of erasure.

El Salvador's Bitcoin revolution is a case study in forced disruption in cryptocurrency. It was meant to draw investment and lower remittance costs, but created a lot of volatility and technological complexity for all the people, and not a lot of reported use.[104] Meanwhile, however, in Nigeria and Kenya, peer-to-peer crypto trading is thriving despite the occasional ban from central banks.[105] It is an ongoing, decentralised counter-system that exists outside the formal structure of financial governance, and neither Lex Digitalis (rules of the platform) nor state sovereignty have been able to solve it.

F. From Anarchy to Evidence-based Interventions

The governance void in the digital ecosystem, as seen in the case studies and literature, is the main problem in digital anarchy: the pace of technological penetration is running faster than the public institutions and

103 Daivi Rodima-Taylor, "Digitalizing Land Administration: The Geographies and Temporalities of Infrastructural Promise," *Geoforum*, 2021.

104 Ruchi Patel, "Economic Freedom or Crypto-Colonialism? Materialities of Bitcoin Adoption in El Salvador," *Geoforum* 151 (2024).

105 Eliot Pence, "African Venture and Startup Predictions for 2021," Center for Strategic and International Studies: Analysis, 2021, https://www.csis.org/analysis/african-venture-and-startup-predictions-2021.

sovereign authority. Addressing this, a state or society needs to improve its capacity to make change in its environment, rather than simply react to an invasion of digital technologies, by utilising local knowledge and the existing socio-cultural hierarchy.

Balendra[106] has suggested that a general policy for the digital grab in the Global South is bound to be unsuccessful. The study suggests an effective intervention-based approach with data. The following is a list of the essential steps: Collecting primary data regarding connectivity, usage, dominance of platforms, commercial usage patterns, and traditional models of online grievance. This information can be used to inform the design and reinforcement of Digital Public Infrastructure (DPI), which has the potential to increase interoperability, payment mechanisms and data exchange between the state's institutions and to decrease trading costs for the state.

In relation to interventions, the idea of 'Sovereignty-as-a-Service' by Grohmann and Barbosa[107] presents a sharp critique on the reimagining of sovereignty as a technical problem that can be solved with the help of cloud infrastructure by Big Tech. Through this lens, platforms appear to provide states with sovereign control (local data hosting, national content moderation dashboards) yet retain ultimate governance over them via code, terms of service and infrastructural lock. This article extends the critique with the Lex Nullius element: sovereignty-as-a-service is not just outsourcing governance, it is also delegating and retroactively validating the erasure of local legal orders as technologically incapable and/or economically inefficient. The capability of this DPI provides all that is needed for service delivery, security, inclusivity and transparency under the sovereign's eye.[108]

The interventions to manage digital anarchy in the Global South can be grouped into four categories based on the impact this intervention can have: (1) adaptation of regulatory frameworks; (2) enhancement of human and institutional capacity; (3) support for homegrown digital platforms or startups; and (4) regional and international cooperation. These four categories should

106 Balendra, "Meta's AI Moderation and Free Speech: Ongoing Challenges in the Global South."
107 Grohmann and Costa Barbosa, "Sovereignty-as-a-Service: How Big Tech Companies Co-Opt and Redefines Digital Sovereignty."
108 Ashish Desai and Aroon P. Manoharan, "Digital Transformation and Public Administration: The Impacts of India's Digital Public Infrastructure," *International Journal of Public Administration*, 2024.

not be interpreted as a descriptive list of categories, but as a representation of the analytical development of the taxonomy.

1. Regulatory framework

An initial response to digital anarchy or dominance of foreign platforms is the passing of rigid laws, which have been proven to be ineffective. A milder approach is the adoption of regulatory sandboxes, which provide flexible testing models for digital platforms and government agencies to explore risk levels and solutions within a regulatory environment.[109] This approach has been popularized in fintech regulation to simulate fraud risk, data exploitation and consumer protection. The outcome is measured based on the safety level of processes and forms the basis of appropriate regulation.

2. Investment in Human Capital

Recognizing the fact that regulations alone are insufficient, the Global South countries are making efforts to enhance the knowledge and expertise of their citizens to take charge of the digital ecosystem and reclaim governance vacuum. The efforts include public awareness campaigns, digital rights advocacy, upskilling for public sector officers, judges, and legislators on the digital economy, etc.[110] The impact of human capital development is a more resilient bureaucracy which exhibits clarity in tackling the complexity of the digital ecosystem.

3. Localisation of digital ecosystem

One of the measures to tackle dependence on foreign platforms and reduce digital colonialism is the incubation and support for local digital platforms, digital entrepreneurs, and content creators. Local content regulations are applied to enhance procurement and patronage of local digital platforms in public expenditures, focus on local solutions to solve local problems, and incorporate local languages in digital platforms.[111] This has proven effective in jurisdictions such as China's WeChat and Kenya's Fintech startup (M-Pesa), which maintain market share of localized platforms and inflow of venture

109 Jayoung James Goo and Joo Yeun Heo, "The Impact of the Regulatory Sandbox on the Fintech Industry, with a Discussion on the Relation between Regulatory Sandboxes and Open Innovation," *Journal of Open Innovation: Technology, Market, and Complexity* 6, no. 2 (2020).

110 Campbell-Verduyn and Giumelli, "Enrolling into Exclusion: African Blockchain and Decolonial Ambitions in an Evolving Finance/Security Infrastructure."Iran, Russia, Venezuela

111 Akolgo, "On the Contradictions of Africa's Fintech Boom: Evidence from Ghana."

capital funding.[112]

4. Regional and International Cooperation

Realizing that the full sovereignty over digital space by the Global South countries appears elusive, many countries have leveraged on regional and international blocs such as the Association of Southeast Asian Nations (ASEAN) and the African Union (AU).[113] These alliances have the objective of harmonizing digital policies, maintaining data sovereignty, taxation, and platform accountability within their region. The extent of success achieved in ASEAN and AU is yet to be measured, as the ASEAN Digital Market Framework and African Continental Free Trade Agreement (AfCTA) are not fully operationalized.[114]

This taxonomy, when applied across jurisdictions, will give varying results vis-à-vis: that without human capacity there is likely to be no regulatory adaptation or that homegrown platforms are prone to adopting Lex Digitalis but not replacing it, or that the Northern-defined rules are not sufficient for the regional cooperation, hence the need to have shared DPI standards.

G. Conclusion: Towards a Jurisprudence of Digital Anarchy

The aim of this article was to analyse the issue of digital governance from the Global South as a jurisprudential problem, and not just a technical or regulatory one. It has been claimed that this combination of Lex Digitalis (private, code-based ordering) and Lex Nullius (juridical erasure of local law) creates a state of digital anarchy – nothing more, nothing less than a structured lack of valid, enforceable, and accountable rules and laws available to Global South states and their citizens. It was not the purpose of this article to create a "jurisprudence" of digital anarchy. This would need a systematic theory of norm validity, authority and legitimacy in hybrid transnational-digital settings, which is beyond the scope of this article. Instead, it provided a diagnostic framework: a set of conceptual tools for detecting when digital governance in the Global South is happening under Lex Nullius conditions,

112 Akolgo, "On the Contradictions of Africa's Fintech Boom: Evidence from Ghana."

113 "ASEAN Digital Economy Framework Agreement (DEFA): Implications for Digital Trade and Regional Economic Integration," *Journal of Strategic and Global Studies*, 2025.

114 Agripah Marangwanda and Abubaker Qutieshat, "Advancing Regulatory Alignment and Market Integration of the African Insurance Sector with the Context of AfCFTA: A Critical Review of Literature," *International Journal For Multidisciplinary Research*, 2024.

for distinguishing them from other legal pluralisms, and for enquiring the proper jurisprudential questions.

The law of "absolute state sovereignty" seems to be inadequate to rule over the multi-hierarchical nature of the digital ecosystem. A responsive, pluralistic legal framework needs to be embraced to have a functional digital space. This framework should recognise the presence of private entities and other concurrent norms, in addition to state regulation. Pluralism is, therefore, an amalgamation of the traditional laws of the state, community guidelines, technical procedures, professional codes and terms of service. Any denial of pluralism would limit the ecosystem.

But an important question remains: What happens if the Global South end up in a state of Lex Nullius, that is, their own legal rules are effectively superseded by those of the foreign platform, then how can a pluralistic system resolve or mitigate it? The answer is to separate out two types of pluralism: descriptive pluralism, which is the actual coexistence of several norms, and prescriptive pluralism, which is the normative recognition and reconciliation of plural and conflicting norms. Lex Nullius is not defeated when it is recognized that there is pluralism; it is defeated when it is rejected as a premise of erasure. A pluralist approach in Global South contexts cannot start by denying the role of legal orders in Global South spaces – i.e., by assuming that they are irrelevant. Platforms can share these orders without stating that they are legally non-existent. This turns things around – platforms, rather than states, are required to explain why local law should not be applied. Traditional statesmen who want to be in absolute control of digital space have faced challenges throughout this process. Some have been able to synchronize with the private sector, while others want to compete and slowly introduce the national values and norms in the foreign digital models.

A major hurdle for the Global South to move towards pluralism in digital governance seems to be the absence of an adaptive policy instrument to facilitate regulated oversight in digital governance, particularly through the lens of policy sandboxes. Other measures to improve the diagnostic framework are mandatory local involvement in the content moderation, governance, and appeal processes. This will ensure that decisions made on behalf of citizens are made within a local context, culture and legal framework. Digital Public

Infrastructure and interoperability would be impossible without recognition of pluralist frontiers in digital space. The Indian Unified Payment Interface (UPI) is a good example of the potential of open digital protocols for achieving a national advantage.

Alliances and coordinated state action have proven to be effective in taming private digital platforms. Regional groups and agreements for multi-state data sovereignty would allow ASEAN, and African countries, to negotiate and stand up to global tech giants acting in an anarchistic manner. It is worth emphasizing that participatory norm creation – not only a sovereign norm creation – is the goal of pluralism in the digital governance field. Likewise, under a digital anarchy paradigm, private digital platforms from the Silicon Valley boardrooms, as well as foreign influence, should not be the standard that drives unilateral decisions.

A dynamic jurisprudence, one that does not rely on a central sovereign approach but instead considers the political landscape in the local context, would be an ideal approach for the Global South that aims to change the digital anarchy rather than accept it. The aim is not to "synergize" with anarchy, but to develop institutional capacity to make anarchy unnecessary.

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