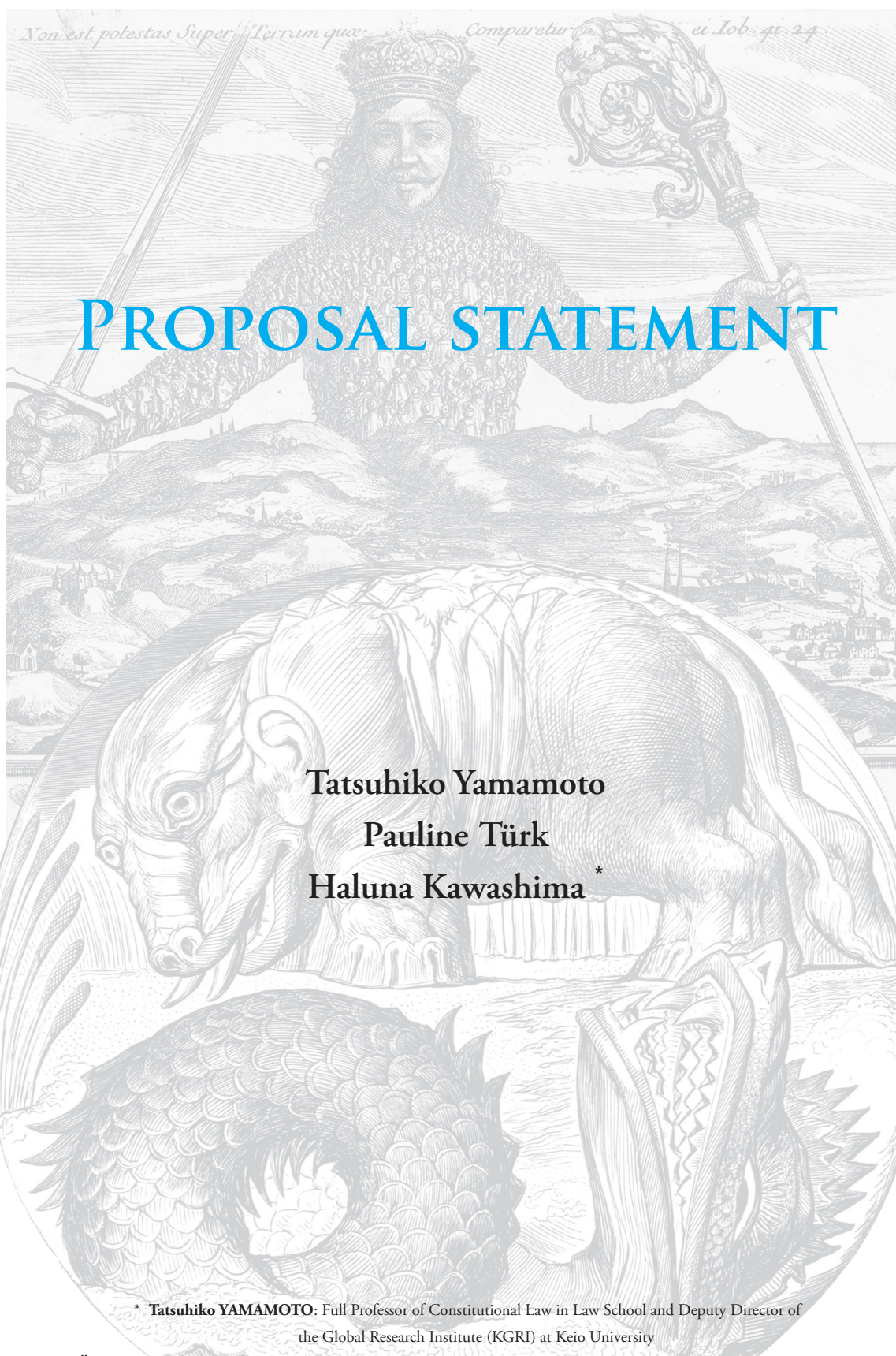


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PROPOSAL STATEMENT

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I Preamble: State and Digital platforms - Clash of two “monsters”

During the COVID-19 outbreak and the Russian invasion of Ukraine, digital platforms (DPFs) proved to be more powerful than expected. For example, in pandemic preparedness, Google and Apple, the two companies with the largest share of the smartphone OS market, were the first to develop APIs for contact verification applications and announce their availability to other countries. In addition, during the conflict of Ukraine, the Meta put a fact check on the information transmitted by Russian state-controlled media and blocked the transmission of propaganda.

It can be said that the DPF has demonstrated its power in national and international “crises” to a great extent. One might generously characterize this situation as the DPFs lending a hand to a state that wishes to resolve national and international sovereignty issues in a more expeditious and efficient manner. However, another view could be taken. The state had no choice but to comply with the seemingly well-intentioned “suggestion” made by the DPFs, and in the end, found itself operating only within the digital infrastructure and the rules (algorithm) set by the DPFs: the state was effectively “wrapped around” by the DPFs. It could be said that DPFs were flaunting its “power” in the digital space against a sovereign nation, Leviathan.

Leviathan, a sea beast that appears in the Old Testament book of Job, is described as the strongest creature, “(h)e beholdeth all high things; he is king over all the proud beasts”. Thomas Hobbes coined this name to describe the supreme sovereign state, which individuals collectively established through a social contract to escape their fear of death. Subsequently, we seem to have basically accepted the modern sovereign state system, which safeguards freedom by using the Constitution to prevent Leviathan from its power abuse, while relying on this monster to keep us in security.

Assuming the previous observations are accurate, the Leviathan, once considered the most powerful, appears to be losing its absolute authority when faced with the emergence of a new monster, the DPF. Drawing a parallel with Behemoth, another monster described in the Old Testament, which is called “the foremost of God’s works” and one that “only his Maker can draw the sword against him” (Job 40:19), we could say that Leviathan and Behemoth are currently locked in an intense conflict across multiple domains. This clash or opposition naturally raises the following normative questions: Which monster should “govern” the digital space, and what should their relationship be? The confrontation between the state and the DPFs compels us to reconsider fundamentally the nature of order in digital space.

The following recommendations propose an ideal relationship between the state and the DPFs in areas where the state has traditionally held power, thus presenting an opportunity to conceptualize a new paradigm in the digital sphere.

The recommendations are derived from the collaborative efforts of three editors, taking into account each article of this book. It should be noted that not all authors concur with these recommendations. Each recommendation is linked to the corresponding section of this book; therefore, readers are advised to refer to it while maintaining an objective viewpoint on the recommendation.

II Basic Direction of proposal

In the context of medieval European power dynamics between state and church, three analogous configurations may illuminate today's evolving pattern of relationship between state power and DPF power.

1 Concordat Model

Historically, the “state” and the church would established a “concordat,” a formal agreement establishing a strategic relationship to jointly govern society. The “Concordat model” of the state-DPF relations represent a horizontal and collaborative arrangement. The state and the DPF form a strategic alliance, respecting each other's autonomy while maintaining a dynamic tension.

2 Unity of State and Church Model

In the Eastern Roman Empire, also known as Byzantium, the emperor held authority over both state and church affairs, and the patriarch, the head of the church, was under the control of the emperor. The system, called “Caesaropapism ” (Unity of Church and State or State Religion Model) represents a governance model of political unity where political and information infrastructure are merged. In certain authoritarian regimes, the state incorporates the DPFs and directly oversees them (Leviathan “hacks” and controls Behemoth). Such scenario facilitates data sharing between the public authority and private sectors (Leviathan can absorb and digest data hold by the behemoth), potentially enabling efficient governance. However, there arise a risk of highly monitored and controlled society.

3 Separation of Church and State Model (Digital *Laïcité*)

traditionally, the state and the church stood in opposition to each other, and the separation of church and state (*laïcité*) was advocated to remove spiritual influence from politics to ensure the secularity of the state. The separation model serves as an analogy for the relationship between state and DPFs. In this framework, the state views the DPF as the “others” (not as a partner) and excludes them from the political sphere in order to maintain the purity of its sovereignty. This model adheres to modern constitutionalism, such as the division between the public and private sector and democracy. However, there exists a risk of inefficient governance and reduced state functionality if it fails to leverage the data processing capabilities and technological advantages of DPFs. For example, if the state completely excludes DPF such as AWS from providing cloud services, can it still to maintain its functions?

The following proposals are based on the first model. However, the democratic legitimacy of the DPF is questionable because it is not necessarily run democratically. Consequently, we should seek a strategic relationship based on a state (Leviathan) that has already institutionalized the procurement of democratic legitimacy. There may be programmatic limits in the search for a state-superior relationship when an individual sovereign state negotiates and concludes an agreement with the DPFs. This is because the Behemoth may be too powerful for each Leviathan to confront on its own. Therefore, in order to make this model effective, it

may be necessary for a number of states to collaborate and form a coalition of states, or “Leviathans,” as in the EU, and “collectively negotiate” with the DPFs. matters such as what kind of “coalition of nations” would be appropriate, and with what qualifications the DPFs would come to the international negotiating table, will be discussed in the different parts of this book.

The following proposals illuminate the areas where the Behemoths began to wield significant influence over the sovereign power traditionally seized by the Leviathan, and suggest how the various relevant actors should respond to this emerging reality.

(For details, see Chapters 1, articles I, II, and III)

III Proposal

1 Legislative power – The necessity of democratic control over “agreements”

Proposal 1: States should seek “strategic cooperation” with the DPF reagrding the design of digital spaces when deemed necessary.

Proposal 1-1: The state, if deemed necessary, should engage in formal negotiations with the DPF core executives regarding organizational and strategic matters in the process of shaping legislation related to the design of digital spaces

The DPF, which possesses extensive data resources and demonstrates technological superiority in AI and other domains, has effectively limited the legislative authority of states in shaping the digital spaces. For instance, when Australia and Canada attempted to introduce law to regulate the DPF, the DPFs responded with potential countermeasures, including the suspension of service in these countries. Faced with the risk of disruption to national communication infrastructures, both governments were compelled to retreat. For the effective enforcement of laws and regulations on the design of digital space, it is crucial for states to engage in systematic and strategic negotiations and reach an agreement with the core executives of the DPF in advance. The state should not face the DPF as a single regulatory ministry alone, but should include the core executives of the state, who should be capable of negotiating with the DPF in a systematic and strategic manner. The striking example is the U.S. Biden administration’s invitation of major DPF executives to the White House to promise safe AI development in a format resembling treaty negotiations with other countries. As states seek to create rules for the design of digital spaces, they should consider to establish quasi-diplomatic relations with the DPF and negotiate with them.

Proposal 1-2: States should enhance the transparency of the negotiation process with the DPF, thereby facilitating public scrutiny and democratic discourse.

Article 72 of the Constitution of Japan stipulates that “the Prime Minister shall report to the Diet on

foreign relations”. Furthermore, Article 73 Paragraph 3 confers upon the Cabinet the competence to conclude treaties with other countries, while simultaneously empowering the Diet to approve such agreements. These constitutional provisions serve a to ensure that the Cabinet’s conduct in foreign affairs is subject to check by the Diet, representative body of the people. They mandate also that any treaty negotiated by the Cabinet must undergo through deliberation and approval from the Diet. The Constitution envisages democratic control over foreign relations, which can significantly influence our social and economic life. The DPF is sometimes more powerful than sovereign states, and the relationship between the state and the DPF can have a more substantial impact on our socioeconomic life than diplomatic relations with other states. Therefore, the state should see its relations with the DPF as similar to its diplomatic relations with other countries, and should make the negotiation process and the “agreements” as transparent as possible, subjecting them to democratic control by the Diet. Transparency of the Leviathan-Behemoth relationship is crucial to allow public critique and to realize a state-dominated model of agreements.

(For details, see Chapter 3 article I)

Proposal 2: DPF, as a rule-maker in the digital space, should ensure transparency regarding platform design policies, algorithms and their “enactment process”.

Proposal 2-1: DPF should disclose as much as possible about the purpose and process of creating the basic policies for its service provision

The basic policy of the DPF functions as the “constitution” of its platform services and serves as the “fundamental law” governing the digital space. Therefore, when formulating its “fundamental law”, the DPF should carefully deliberate on the social interests related to its service provision, its contribution to societal objectives, and its considerations of minorities’ rights and interests, while taking into account the opinions of both internal and external stakeholders. In addition, while not necessarily replicating state legislative processes, DPF should adopt procedures analogous to the enactment of state fundamental law. Both the content of the basic policy, as well as the process and reasons for its enactment, should be transparent. This transparency enables users to make independent and rational decisions regarding the selection of DPF.

Proposal 2-2: DPF must also disclose the underlying logic of the algorithms and AI systems that determine the specific design of each service to a reasonable extent, without enclosing them in a black-box.

Algorithms and AI systems designed by the DPF in accordance with its basic policy are, by analogy with the state legislation, comparable to laws and decrees that embody and implement the Constitution. Therefore, the DPF should follow the process similar of that of enacting laws and decrees in the state (though not necessarily identical), and disclose the construction and decision-making process of algorithms and AI systems to the public within reasonable limits. It should also expose them to external critiques through

“public comments,” “town hall meetings” or public hearings to incorporate external perspectives via multi-stakeholder engagement. Through those procedures, the DPF should continuously reevaluate the adequacy of their algorithms and AI systems to their basic policy.

Proposal 2-3: Users and the media must play an active role in monitoring the DPF’s basic policies and algorithms, and seek their appropriateness.

Users should critically examine the basic policies and algorithms of the DPF, and in instances where concerns arise regarding respect for human rights and governance, they should actively articulate these concerns to the DPF and media outlets. To facilitate this, users should cultivate digital literacy, maintain awareness of the activities of civil society organizations, researchers, and watchdog groups monitoring DPF, and engage in collaboration with them when necessary. Media organizations tasked with monitoring power structures should extend their oversight to the DPF in a manner analogous to their surveillance of state power recognizing that the DPF also constitutes a significant locus of power.

(For details, see Chapter 3 article I)

2 Taxing authority – Optimizing the Attention Economy and Digital Innovation

Proposal 3: States should collaborate with one another to establish taxation standards tailored to the business model of the DPF.

Proposal 3-1: The state should establish a taxation framework that is adapted to the attention economy, considering the economic advantages of the DPFs and the harmful effects of their data use.

In Japan, a “platform taxation system” is scheduled to be implemented in 2025, mandating tax payment for transactions conducted by overseas operators on large-scale DPFs (revision of the Consumption Tax Act by Law No. 8 of 2024, to come into effect on April 1, 2025). The taxation system should be evaluated not only from the perspective of fairness in competitive markets but also from the perspective of fostering an appropriate digital environment. In the environmental field, a carbon tax was introduced to protect the global ecosystem. Likewise, in the digital field, to mitigate the negative effects of the “attention economy,” a taxation system should be established to ensure the soundness of the digital space, including the imposition of an “attention economy tax” on DPF that trade user data with the knowledge of potential negative effects on politics, religion, gender, health, security, and related issues. A taxation system should fully acknowledge the potential benefits for the integrity of digital space.

Proposal 3-2: States should work and cooperate with other states to create a new international taxation framework.

Even if a state implements a taxation system for the DPF on its own, there is a possibility that the DPF will take countermeasures, such as suspending the provision of services in that state or fleeing to a tax

haven country. To prevent such outcomes, states should work together to create a new international taxation framework for DPF. In 2021, the Organization for Economic Cooperation and Development (OECD) agreed on a new framework for digital taxation, and Japan as one of the “Leviathans,” should participate in international digital taxation and develop its law accordingly.

(For details, see Chapter 3 “Focus”)

Proposal 4: DPF should be aware the services fee it collects from business users of its platform is in fact a “DPF tax” and establish a mechanism to ensure its appropriateness.

Proposal 4-1: DPF should be aware that the service fees are “DPF taxes” and establish a mechanism to ensure the fairness collection of such fees.

For companies wishing to enter the digital marketplace, expanding transactions on the digital platform has become a key to success. The DPF, which has thus become the gatekeeper for doing business in the digital market, often benefits from imposing a so-called “DPF tax,” a “transaction fee” required on its platform for business users. DPF shall be aware of its responsibility for promoting healthy market competition and digital innovation. They should make efforts to adjust the “DPF tax” system by taking into account the technological and social significance of applications and content, as well as the welfare and needs of users.

Proposal 4-2: The State should establish a legal discipline for the DPF in accordance with constitutional and competition law principles in order to ensure that the “DPF tax” is properly collected.

The European Union (EU) enacted the Digital Markets Act (DMA), a legal obligation to prevent market imbalances resulting from the DPF’s exercise of gatekeeper status. DMA mandates that gatekeepers allow the use of an external payment system in their application store and permit the distribution of applications outside the gatekeeper’s platform. This legislative action hampered the ability of DPFs to restrict application developers and generate fee-based revenue. States should implement appropriate regulatory frameworks for DPFs to encourage robust market competition, safeguard end-user rights, and stimulate innovation, while also considering the precedent set by legal mandates in the EU.

(For details, see Chapter 3 “Focus”)

3 Public Health - Health Protection Utilizing Digital Resources

Proposal 5: States and DPF should identify a common goal of protecting the health of their citizens and users, and should work together to ensure that data can be used appropriately in the event of a pandemic.

Proposal 5-1: The State should sign an “agreement” with DPF to effectively use digital technology in combatting infectious diseases. The content and the negotiation process should be made transparent

Public health is a critical responsibility of the state and serves both to protect citizens’ health and to justify restrictions of individual freedoms. Therefore, it should be planned in advance, and its methods should be necessary, efficient, and effective, so that minimize restrictions of freedoms. The DPF demonstrated their emergency initiatives and utility of the data and technology during the outbreak of COVID-19. For example, Apple and Google developed a contact confirmation application system for the states, and Yahoo Japan Corporation (now Line Yahoo Corporation) provided the Ministry of Health, Labor and Welfare of Japan with user information useful for cluster control. States should enter into an “agreement” with the DPF in advance to ensure timely access to their resources. Furthermore, the “agreement” itself and its negotiation process should be made transparent to facilitate monitoring and re-examination by the Parliament, the public and experts when necessary.

Proposal 5-2: States possessing DPF companies should take an active role in humanitarian multilateral agreements and fulfill their social responsibilities, as well as those of the DPF, to avoid disparities such as neglecting the health of people in the countries of the Digital Global South.

Similar to how unequal vaccine distribution can create global health imbalances, future health disparities are likely to emerge between states with access to digital resources for managing infectious diseases and those without. To address this, an international humanitarian multilateral cooperation framework should be established for sharing digital technologies based on humanitarian principles. In this framework, DPF should provide digital systems at low or no cost, as well as adapt these technologies to meet individual country’s social and health requirements. The multilateral collaboration must ensure that DPFs adhere to public health ethics, preventing the commercialization of essential infectious disease control services and the implementation of algorithms that could lead patient discrimination.

Proposal 5-3: DPF should proactively support users when a state underutilizes or monopolizes digital public health resources

If a state does not adequately address infectious diseases due to its inadequate, or self-serving use of digital resources when such use deviates from medical standards, or if it tries to monopolize digital resources exclusively for its own benefit, the DPF should voluntarily contribute to the advocacy of public health by, for example, providing users with self-digital prevention systems.

(For details, see Chapter 3 article II)

Proposal 6: DPF should monitor the state to prevent abuse of power during a pandemic.

Proposal 6-1: DPF should design digital systems in ways that prevent state violations of privacy and other human rights in digital infection disease control

In emergency situations such as pandemics, states tend to “suspend” constitutional human rights and democratic processes under the pretext of being a “state of exception.” When DPF provides digital infectious disease control tools, those systems should be designed to prevent misuse and improper customization by states. Furthermore, if there is a risk of authoritarian use of the digital system, such as when a state in the absence of democratic oversight, expert governance and judicial control over such situations, DPF should refrain from providing the system. In this sense, DPFs must act as ethical gatekeepers to prevent digital health tools from becoming tools of surveillance or repression.

Proposal 6-2: DPF should monitor the use of digital infectious disease control by the state and, if it finds human rights violations, require the state to remedy the individuals and correct its policies through petitions system based on the “Agreement.”

In the event of misuse of digital infection control systems by the state, DPF that has concluded the “Agreement” (See Proposal 5-1) with the state should file a petition due to the abuse of the system which constitute a violation of the “Agreement”. Moreover, when damage claims are filed by users, information on the damage should be saved by the system to enable individual remedy and support advocacy to prevent recurrence.

(For details, see Chapter 3 article II)

4 National Security - Digital Resources as “Weapons”

Proposal 7: States must build strategic partnerships with domestic and foreign DPFs in peacetime for the security of their citizens.

Proposal 7-1: States should negotiate for strategic partnerships with the DPF in peacetime.

DPF, such as social networking services, have become a primary space to select targets for international intelligence operations and to disseminate national interests through propaganda and disinformation. To counter intelligence and influence operations conducted by foreign states, it is crucial to establish “diplomatic” negotiations and “friendship agreements” (pacts) should be concluded with such DPF during peacetime. Analogous to treaties on the treatment of prisoners of war and restrictions on weapons, agreements should be negotiated with multilateral consensus including DPF. Coordinated sanctions by a coalition of states should be considered in the event that a DPF violates the rules set in the agreement.

Proposal 7-2: States should consider legal measures against domestic and foreign DPF to negotiate on digital security on an equal footing.

The EU, which lacks DPF as influential as foreign multinational tech companies, is using the legal regulatory power with punitive measures against the U.S.-based DPF to facilitate cooperation on EU security.

States should explore legal strategies to elicit cooperation from DPFs to prevent the risk of DPF exerting undue influence on national security.

(For details, see Chapter 3 article III)

Proposal 8: DPFs should engage in joint and firm action with states and other DPF against the violation of international humanitarian laws.

DPF should stop providing digital resources to the state that contravene international humanitarian law on war. In 2022, the actions of Meta and YouTube in restricting access to Russian propaganda media encouraged a global expression of solidarity with Ukraine. DPF has the capacity to immediately exclude states from the digital “battlefield”. If a state at war commits acts that violate international humanitarian law, such as aggression, looting, or mistreatment of prisoners of war, DPF, acting jointly with states and partner DPFs under the agreement (see “Proposal 7”), should take sanctions, including digital exclusion of the warring state.

(For details, see Chapter 3 article III)