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Chapter 1 - I

THOMAS HOBBES AND THE DIGITAL BEHEMOTH

: Chaos in information space and the “state of nature”

Tatsuhiko Yamamoto^{*}

Leviathan is enraged.

On August 30, 2024, a Leviathan called the Federal Republic of Brazil ordered X, owned by Elon Musk, to suspend all its services due to the failure to comply with an order to block accounts that are spreading disinformation.¹ The order was accompanied by a vehement condemnation by Judge Moraes of the country’s Supreme Court, who discribed X as a “lawless” place.² Simultaneously, another Leviathan, the French Republic, arrested Pavel Durov, CEO of Telegram, after the social media platform had failed to remove illegal posts and was a part of organized crime.

There are growing calls worldwide for the regulation of digital giants that have become a breeding ground for dis- and misinformation, leading to chaos in the information space. The European Union (EU), the union of Leviathans, has enforced the Digital Services Act (DSA) as a comprehensive platform regulation. However, even the DSA has shown some consideration toward the “freedom” of the platform as a private company. Therefore the radical approaches of the states, such as ordering a total shutdown or arresting the CEO, would be extreme events. Hence, the Leviathan, or the state, has finally begun to stand up to the digital giants.

While anger is the flip side of fear, it is also a sign of “fear” toward the platforms. Elon Musk has repeatedly criticized and provoked the Brazilian government through his X. Musk generated an image of Judge Moraes of the Brazilian Supreme Court, who ordered X to delete accounts, being held in prison, and posted a message, “One day this picture of you will be real. Mark my words.”³ Although such behavior is excessive,

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¹ For instance, “Brazilian Supreme Court orders suspension of X; Musk prepares for all-out fight,” Asahi Shimbun, September 1, 2024.

² However, in October 2024, the Brazilian Supreme Court ruled that X had agreed to pay a total of 28.6 million reais (approximately 5.2 million USD) in fines and to the conditions for resuming business, allowing the service to resume. Luciana Novaes Magalhaes, Brazil’s top court says X paid pending fines to wrong bank, Reuters (October 5, 2024).

³ Hannah Murphy and Bryan Harris, Brazil’s Top Court Orders Suspension of Elon Musk’s X amid Fight Over Accounts,

in the past, states would have remained calm in the face of such provocations (it is possible that no companies would have provoked or “threatened” the state to this extent). The enraged Leviathan is afraid of something.

This book series is based on the analogy of a “Behemoth,” the platform power feared by the Leviathan, the monster of the modern period, and attempts to thematize the antagonistic relationship between the two from a jurisprudential perspective.⁴ As is known, the Behemoth is depicted in the Old Testament Book of Job as a land beast paired with the sea beast Leviathan, the “mightiest of creatures, and was described as a ‘masterpiece of God, no one thrusts a sword against it except its Maker.’”⁵ Since the Middle Ages, it has been described as a demon of “greed” and “avarice” that represents gluttony. The Behemoth, as a symbol of “greed,” is an interesting symbol for the modern platforms that “devour” our personal data and disposable time in the attention economy.⁶ However, we first analyze the Behemoth from the perspective of political philosopher Thomas Hobbes to consider the (constitutional) jurisprudence of platform power.

In his later years, Hobbes portrayed the Behemoth as an entity or force that rebels against the Leviathan, the state, and threatens its absolute and sovereign power.⁷ This chapter examines the Behemoth from Hobbes’ perspective and analyzes the appropriateness of using the metaphor of a “Behemoth” to describe a platform. We would revisit Hobbes’s perspective on human nature and the theory of the state of nature to infer his perception of the power of platforms that have gained control of artificial intelligence (AI) if he had lived in this digital age. Through this analysis, we aim to reaffirm the nature and limits of the power of the Leviathan and extract new issues regarding the “digital Behemoth” that constitutional law must address.

To provide a clearer perspective, we have concluded the following. Hobbes attempted to contemplate the psychological weakness and fragility inherent in human beings. He considered issues with manipulative power that exploited such weakness and vulnerability or soft power that controlled even private conscience – the power that manipulated the “soul,” turning human beings into a “multitude”⁸ and “vulgar”⁹ and creating chaotic situations (the natural state). This is related to Hobbes’s aversion to the clergy and religious forces that controlled and manipulated people and instigated conflict. If today’s digital Behemoth uses personal data and AI to analyze human psychological tendencies and exert manipulative powers to exploit our vulnerabilities, for Hobbes, it would be a target to be defeated by the Leviathan’s sword, similar to the Behemoths of the past.

This is the simplest interpretation of Hobbes’s argument. However, the Leviathan’s crusade against the digital Behemoth may prove extremely difficult in practice. This is because modern Behemoths are imple-

FINANCIAL TIMES (Augst 31, 2024).

4 See Tatsuhiko Yamamoto, “On the publication of this course” page ii-iii of this book

5 For the expression of Behemoth in the Old Testament, see Job 40: 15-24. For the term “Behemoth,” see Tetus Isobe, “Can DPF be the Defender of Health?”, Platform and Social Foundations, p. 137, note 23 (Keio University Press, 2024).

6 The problem is mentioned in Tatsuhiko Yamamoto “The Dilemma of the Attention Economy” (KADOKAWA, 2024)

7 Hobbes “The history of the civil wars of England: from the year 1640-1660.” (1679) However, “Behemoth” is never mentioned in the text of “Behemoth,” and its meaning is not necessarily clear. (Yamada Sonoko, “Commentary”, Hobbes (translated by Yamada Sonoko) “Behemoth” (Iwanami Shoten, 2017), p. 292.)

8 Hobbes, supra note (7), p. 51.

9 Hobbes’ “vulgar” refer to “a group of people who are ignorant and therefore easily incited by clergymen and demagogues to turn into mobs or rioters who break political order.” Kato, Setsu, “In lieu of an ‘explanation’ - Thoughts on three ‘Hobbesian problems’” Thomas Hobbes (translated by Kato Setsu), “Leviathan Vol. 2” (Chikuma Shobo, 2022), p. 559.

menting powerful “psychological warfare weapons”¹⁰ that their predecessors did not have, such as AI. In this case, how should the modern Leviathan confront the modern Behemoth, whose destructive power has increased due to AI? This paper does not provide a concrete answer to this question. However, it indicates that the power of the Behemoth – the power of deception – shall be controlled by the updated right to privacy¹¹ and freedom of thought and conscience.¹² Furthermore, it explores the ideal relationship between the Behemoth and Leviathan, and the construction of a new theory of separation of powers as a new subject in constitutional law studies.

1 Behemoth and Digital Platforms

(1) Behemoth and The Power of Deception

Hobbes (1588 – 1679) began writing “Behemoth” late in his life, in early 1666. This book, written after the English Civil War (1640s – 1650s), also known as the English Revolution or Puritan Revolution, was in the form of a dialogue, severely denouncing the clergy, religious authorities, and Parliament who had plotted rebellion against the king and led the people into civil war. Moreover, it justified the restoration of the monarchy and emphasized the political obligation of obedience to the sovereign. Until recently, it had been overshadowed by other works, such as *De Cive* (1642)¹³ and *Leviathan* (1651); however, it has been reevaluated as interpretations of the English Civil War have become more diverse.

The greatest feature of *Behemoth* is that it provides a negative evaluation of the English Civil War, which is generally regarded as an important milestone in the development of parliamentary democracy, portraying it instead as a rebellion against the Leviathan and the resulting division and disorder. For Hobbes, the clergy was the axis of evil that fueled this negative “revolution,” especially the Presbyterians and Ultramontanists. Hobbes, often labeled as an atheist and heretic, criticized religious authority in the form of anti-clericalism (anti-clerical rule), as discussed later. In *Behemoth*, this stance is particularly depicted concerning the English Civil War.

What exactly were Hobbes’s concerns about the Presbyterians and Ultramontanists in *Behemoth*? The background of the English Civil War is extremely complex. One of the reasons is that James I, who sought to strengthen royal power based on the divine right of kings, and Charles I, who succeeded him, oppressed the Puritans as the Church of England. The Puritans, who advocated religious freedom, and the gentry, who sought to protect their property rights from oppression, built a cooperative relationship, and the anti-absolute

10 Christopher Wylie (translated by Hiroshi Makino) *Mind Hacking: How Social Media Can Control Your Emotions and Behavior* (Shinchosha, 2020), p.13.

11 Tatsuhiko Yamamoto, “What Lies at the Base of the Debate on Information Privacy Rights: Digitalization and the Individual” Otonashi Ten and Tatsuhiko Yamamoto (ed.), “Lecture Series: Opening the Future of Information Law: Volume 3: Privacy” (Horitsu Bunkasha, forthcoming).

12 Masatoshi Kokubo, “Introduction to the Study of ‘Freedom of Cognitive Process’: Neuroscience and Constitutional Law,” *Law and Politics Review* Vol. 126 (2020) See p. 376 et seq.

13 Hobbes, and by Lamprecht, S. P. (ed.) “*De cive: or the citizen*” (Appleton-Century-Crofts, 1949).

monarchy power was organized. In that sense, this civil war could be called a religious conflict.

However, Hobbes discovered more universal psychological elements in it. The direct cause, which is considered the most problematic element, of the civil war was the Presbyterians, with their unique “preaching,”¹⁴ misleading the people and inciting them. Hobbes saw the history of “preaching” by the Ultramontanists as a long-term cause of the civil war.¹⁵

“The mischief proceeded wholly from the Presbyterian Preachers, who by a long practis’d Histriion-ick Faculty, preached up the Rebellion powerfully.”¹⁶

“...They so framed their Countenance and Gesture at the entrance into the Pulpit, and their Pronunciation, both in their Prayer and Sermon; and used the Scripture phrase, whether understood by the People or not, as that no Tragedian in the World could have Acted, the part of a right godly man better then these did, insomuch that a man unacquainted with such Art could never suspect any Ambitious Plot in them, to raise Sedition against the State, as they then had designed, or doubt that the Vehemence of their Voice (for the same words with the usual Pronunciation had been of little force) and forcedness of their Gesture and Looks could arise from any thing else but zeal to the service of God.”¹⁷

“And from this opinion, the People...made no doubt, but that they had all that was necessary, how fraudulently and spitefully soever they behaved themselves to their Neighbours, that were not reckoned amongst the Saints, and sometimes to those also.”¹⁸

“...and by this means they became Confessors to such as were thus troubled in Conscience, and were obeyed by them as their Spiritual Doctors in all Cases of Conscience.”¹⁹

In Behemoth, Hobbes attempted to portray this “power of deception”, which directly manipulated the minds of the masses, as a monstrous spiritual power that threatened the sovereign authority of the sea monster Leviathan and its political order realized by the “power of the sword.”

This understanding is related to Hobbes’s insight into the nature of the misguided masses. In Behemoth, the “democratization of the Bible” is considered an important trigger for the civil war.²⁰ While the Lutherans celebrate the translation of the Bible into English, which made it possible for “every Boy and Wench that could read English”²¹ to read it, it was examined negatively by Hobbes as it promoted the expansion of Behemoth’s power. As a result of everyone being able to read the Bible, people began to believe that they had spoken to the Almighty God and understood what He said. This self-conceit and self-deceptive pride of

14 How many times does the word “sermon” appear in “Behemoth” with a negative connotation! Yamada summarizes Hobbes’ idea of the “sermons” of Presbyterian preachers as “sermons that interpret the Bible ‘in their own way’ and devise lines and acting like an actor.” Hobbes (translated by Yamada Sonoko) “Behemoth” (Iwanami Shoten, 2017) p. 299.

15 Hobbes, supra note (7), p. 31.

16 Hobbes, supra note (7), p. 223.

17 Hobbes, supra note (7), pp. 31-32.

18 Hobbes, supra note (7), p. 33.

19 Hobbes, supra note (7), p. 34.

20 Hobbes, supra note (7), p. 28.

21 Hobbes, supra note (7), p. 28.

being the interpreters of the Bible²² was stimulated by the preaching and incitement of the clergy and created intense social conflict and division – a state of war. In “Elements of Law,” he indicated that “In the state of nature, where every man is his own judge, and differeth from other concerning the names and appellations of things, and from those differences arise quarrels, and breach of peace”²³

To Hobbes, the real threat was not the class struggle based on the (relatively simple) conflict of desires, but the battle of doctrines,²⁴ the battle of the heart, which included attacks on vanity, feelings of superiority, and self-esteem (such as contempt and ridicule for “stupidity”). It is well known that Hobbes, due to his devotion to natural science, attempted to understand human beings from a psychological or realistic perspective.²⁵ As a result, he emphasized the psychological fragility of human nature. In other words, human beings are inherently subject to vanity, jealousy, and a desire for honor, which can lead them astray and cause them to make mistakes.²⁶

For instance, in Chapter 13 Part 1 of *Leviathan* (“Of the Natural Condition of Mankind as Concerning their Felicity and Misery”), we find the following insight:

“That which may perhaps make such equality incredible, is but a vain conceit of ones owne wisdom, which almost all men think they have in a greater degree, than the Vulgar; that is, than all men but themselves, and a few others, whom by Fame, or for concurring with themselves, they approve. For such is the nature of men, that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned; Yet they will hardly believe there be many so wise as themselves.”²⁷

“For every man looketh that his companion should value him, at the same rate he sets upon himselfe: And upon all signes of contempt, or undervaluing, naturally endeavours, as far as he dares (which amongst them that have no common power to keep them in quiet, is far enough to make them destroy each other,) to extort a greater value from his contemnners, by domage; and from others, by the example.”²⁸

People who inherently had this psychological “weakness,” read the translated Bible and deepened their self-conceit. Such vanity was exacerbated by the deception and instigation of religious groups, including the Presbyterians, resulting in a civil war that some have called a “revolution.” This is the central storyline of *Behemoth*. In the book, the land monster, *Behemoth*, is fighting the sea monster, *Leviathan*, with the “power of deception” that exploits humans’ innate psychological vulnerability, or the power to manipulate fragile souls.

22 Hobbes, *supra* note (7), p. 28.

23 Hobbes, *Elements of Law, Natural and Politic* (Oxford University Press, 1928), pp. 149-150.

24 Hobbes, *supra* note (7), pp. 30-31.

25 Yoshie Kawade argues that Hobbes’ view of humanity is based on a “sharp analysis of human psychology,” in “A Fundamental Question for the Sovereign State,” Hobbes (translated by Michio Nagai and Kuniyoshi Ueda), *Leviathan I* (Chuokoron-Shinsha, 2009), p. 13.

26 For an emphasis on this point, see Ryuichi Nagao, *Leviathan* (Kodansha, 1994), p. 206.

27 Hobbes “*Leviathan; or, the Matter, Forme, & Power of a Common-Wealth, Ecclesiasticall & Civil*” (1651), p. 61.

28 Hobbes, *supra* note (27), p. 61.

(2) The Power of Deception and Platforms

The explanation above suggests the possibility that modern platforms could be compared to the Behemoth that Hobbes feared as a rebellious power against the Leviathan. Platforms, such as GAFAM, are likened to the Sirens in Homer's epic poem "The Odyssey," the terrifying sea witches who lured and bewitched sailors with their enchanting songs, even taking their lives. Similarly, these platforms attract users' attention,²⁹ "confuse" their minds and rob them of various things by effectively recommending stimulating and seductive content, including false information and conspiracy theories, based on AI and algorithms. The platforms' algorithms spread and amplify "disinformation," inciting the public to rise in physical rebellion against the Leviathan, just as the clergy did in the past.

The most notable example of this is the attack on the central government facility by the public misled by X, which is led by Elon Musk. They were encouraged to share and amplify the disinformation (the election was rigged!) spread by former President Bolsonaro, known as the "Brazilian Trump" (2023 Brazilian Congress attack).³⁰ For Hobbes, today's platforms, which use AI and algorithms to effectively implement the attention economy that appeals to the fragile human soul and deceptive self-esteem, are similar to the religious powers during the English Civil War. It is a deceptive force that spreads disinformation (demagoguery), takes advantage of the psychological vulnerability of the masses, and incites them to destroy the political order.

As discussed later, this could potentially increase the "conceit" of individuals, who believe that they alone know the hidden truth that most other public are unaware of. This could return society to a state of "war of all against all." For Hobbes, this entity is a demonic spiritual force that seeks to destroy the political order achieved by sovereign/legal power – the power of the sword – through a manipulative force that intervenes in the depths of the soul.

Incidentally, Carl Schmitt,³¹ who called Hobbes a "truly consistent political thinker"³² and respected him as his academic "brother" and "family," may have characterized the power of modern platforms as a Behemoth as well.³³ Schmitt, a Catholic who thoroughly viewed political science and state science in analogy with theology,³⁴ called the progress of modern civilization, that is, technological progress, the "Antichrist," and perceived it negatively:³⁵

"Modern man does not want a God of love or a God of grace 'We have accomplished such wonders by

29 Eric A. Posner and E. Glenn Weill (translated and supervised by Yasuda Yosuke) "The Radical Market: A Century of Private Property" (Toyo Keizai Shinposha, 2019), p. 314.

30 For example, "Brazilian Trump supporters attack Congress: What happened?" NHK, January 12, 2023 (https://www3.nhk.or.jp/news/special/international_news_navi/articles/qa/2023/01/12/28545.html).

31 Carl Schmitt (translated by Ryuichi Nagao et al.), "Political Theology" (Diamond Inc., 1973), [Concept of Politics], p. 230.

32 Schmitt, *supra* note (31), p. 327 [Ex Captivitate Salus].

33 Schmitt has used the metaphor of a "behemoth" in a different sense to Hobbes. Carl Schmitt (translated by Keizo Ikumatsu and Mitsuhiro Maeno) "Land and Sea" (Jigakusha Publishing, 2006). This paper examines the possibility that Schmitt saw the platform as a "behemoth" (a deluding force) in the Hobbesian sense.

34 "All important concepts in modern state studies are secularized theological concepts." "Political Theology", p. 26.

35 Carl Schmitt, Theodor Däubler's "Nordlicht" 63-67 (1916).

our own efforts. Why can't we build a Tower of Babel on earth and reach up to heaven?' Thus, the most important and the most ultimate have been secularized.... What a horrifying sight! To those who know the destructive power of this substitution, the earth seems to have become a grinding machine. Such images, which in other ages could only have arisen from an indescribable fear of the demonic power, now rise like infallible prophecies: the image of the Antichrist. Why is the Antichrist more frightening than tyrants like Timur or Napoleon? Because he pretends to be Christ and swindles everyone out of their souls."

"He [the technological one - the Antichrist] will change the world, alter the face of the earth, and subjugate nature.... The deluded are astonished at the fairy-tale effects: nature will be conquered, an age of stability will come, all things will be subject to the will, foresight and planning will rule instead of divine providence."

In the Christian apocalyptic view of history, the Antichrist is a devil who imitates God, disguised as Christ. It is believed that the Antichrist will appear just before the second coming of Christ and the Golden Age will be restored when the Antichrist is destroyed by an apocalyptic personality. Therefore, while "technology," as the Antichrist, is destined to emerge to bring the restoration of the Golden Age, it misleads the masses by making itself resemble Christ and, in Schmitt's view, must ultimately be defeated by a powerful sovereign. Certainly, Schmitt does not know about Google, X, or Meta (Facebook). However, considering that these platforms implement AI and algorithms as the ultimate "technology," "swindling the souls of everyone" as if they are God, and alienating them from the existing state system, appearing to be messiahs who will save souls, it is undeniable that Schmitt might evaluate them as demonic "deceptive power," similar to Hobbes.

In another essay, Schmidt described technology as follows:

"Given the overpowering suggestion of ever new and surprising inventions and achievements, there arose a religion of technical progress which promised all other problems would be solved by technological progress."³⁶

Hobbes and Schmitt have very different views of religion and technology. Nevertheless, both sovereign or statist scholars may have viewed the platform as a Behemoth with "deceptive power" to interfere with the human soul and a target to be conquered by the Leviathan.

36 Carl Schmitt, "The Age of Neutralizations and Depoliticizations (1929). (Telos: Critical Theory of the Contemporary, 1993) pp. 84-85.

2 The Return of the State of Nature

(1) The State of Nature and Inner Freedom

Hobbes's hostility toward the Behemoth is closely related to his attitude toward the relationship between the "state of nature" and the Leviathan. In *Leviathan*, Hobbes portrays humans in the state of nature (a state of war of all against all) as combative and violent beings (especially Chapter 13, "Of the Natural Condition of Mankind as concerning their Felicity and Misery"). In the dedication of *De Cive*, he likened such humans to a "wolf," which symbolizes "beastly greed."³⁷

"Man to Man is an arrant Wolf"

However, the ferocious wolf is transformed from a weak "sheep." Hobbes was trained in humanism. However, he doubted the Aristotelian moral and ethical view of humanity (inclined to skepticism) and scientifically explored the true nature of human beings (human nature). He intended to understand humans as emotional beings who inherently have psychological "weakness," as mentioned above. For example, we are said to be weak beings who cannot control our hostility, suspicion, and pride.³⁸ Hobbes's premise is that humans become wolves and act violently due to their weakness because they are sheep-like (the duality of sheep and wolves; violence due to suspicion).

It is important to note that in Hobbes' argument, there is a power at work during this transformation into a wolf – the "deceiving" power of the church³⁹ – to mislead the soul. This is already clarified in *Leviathan*. In Part 4, "Of the Kingdom of Darknesse," which is often omitted in Japanese translations, the "power" of the "ecclesiastics" is depicted in analogy with the allegorical and spiritual power of "fairies."

"The Ecclesiastiques take from young men, the use of Reason, by certain Charms compounded of Metaphysiques, and Miracles, and Traditions, and Abused Scripture, whereby they are good for nothing else, but to execute what they command them. The Fairies likewise are said to take young Children out of their Cradles, and to change them into Naturall Fools, which Common people do therefore call Elves, and are apt to mischief."⁴⁰

"When the Fairies are displeased with any body, they are said to send their Elves, to pinch them. The Ecclesiastiques, when they are displeased with any Civill State, make also their Elves, that is, Superstitious, Enchanted Subjects, to pinch their Princes, by preaching Sedition; or one Prince enchanted with promises, to pinch another."⁴¹

Hence, the state of nature by Hobbes, which is in contrast with the social state, indicates a state of disorder or war due to the inherent psychological fragility of humans and the powers that stimulate it. The English

³⁷ Hobbes, *supra* note (13), p. 1.

³⁸ Hobbes, *supra* note (27), p. 160.

³⁹ Richard Tuck, "Hobbes: a very short introduction" (Oxford university press, 2002), p. 105.

⁴⁰ Hobbes, *supra* note (27), p. 386.

⁴¹ Hobbes, *supra* note (27), p. 387.

Civil War depicted in Behemoth has an image of this state of nature. A detailed examination is out of the scope of this book; however, Hobbes and Michel Foucault share the same concerns if we interpret the state of nature as mentioned above.

Later Foucault saw the essence of power as pastoral.⁴² It is the power of the shepherd (*pouvoir pastoral*) to “guide” weaker sheep at the level of the soul and is distinguished from the rule by the sword, that is, sovereign, legal power. Foucault believed that this power of “guidance,” which originated in the Hebrew “sheep-shepherd” relationship, or the “people-God” relationship, was passed on to Christianity from the Middle Ages and was technically refined through the systematization and organization of “the guidance of conscience,” close to what Hobbes considered problematic.⁴³

There is an important difference between Hobbes’s misleading power that brings about chaos and violence, and Foucault’s guiding power (*pastoral/ pouvoir pastoral*)⁴⁴ that brings “governance.” However, both viewed this religious manipulation and control of the soul in contrast to the control of the body (control by the sword) and considered it to be an all-powerful power that one should be wary of as it could infringe on inner freedom. Both sought to overcome or control such powers.

For both Hobbes and Foucault, the power to be thematized and criticized intensively was not the “king” (sovereign) who only killed the body but did not demand the submission of the soul, instead a “virtual king” who intervened in the soul (mind) and controlled it. In this regard, Hobbes placed importance on “freedom of thought” or “inner freedom.”

“A private man has alwaies the liberty, (because thought is free,) to beleieve, or not beleieve in his heart, those acts that have been given out for Miracles, according as he shall see, what benefit can accrew by mens belief, to those that pretend, or countenance them, and thereby conjecture, whether they be Miracles, or Lies. But when it comes to confession of that faith, the Private Reason must submit to the Publique; that is to say, to Gods Lieutenant. But who is this Lieutenant of God, and Head of the Church, shall be considered in its proper place hereafter.”⁴⁵

“And so we are reduced to the Independency of the Primitive Christians to follow Paul, or Cephas, or Apollos, every man as he liketh best: Which, if it is without contention, and without measuring the Doctrine of Christ, by our affection to the Person of his Minister, (the fault which the Apostle reprehended in the Corinthians,) is perhaps the best: First, because there ought to be no Power over the Consciences of men, but of the Word it selfe, working Faith in every one, not always according to the purpose of them that Plant and Water, but of God himself, that giveth the Increase.”⁴⁶

42 Regarding pastoral power, see Michel Foucault (translated by Takakuwa Kazumi) in *Collège de France Lectures 1977-1978 (Security, Territory, Population)* (Chikuma Shobo, 2007). For a brief discussion from the perspective of constitutional law, see Yamamoto Tatsuhiko, “The Modern Transformation of the Separation of Powers and Higuchi’s Constitutional Law,” *Houritsu Jiho*, Vol. 96, No. 9 (2024), p. 113.

43 Pastoral power was eventually introduced into the state as a method of managing the population. Yamamoto, op. cit. (42), p. 116.

44 Michel Foucault and Moriaki Watanabe, *The Stage of Philosophy* (revised and expanded edition) (Asahi Press, 2007), p. 124.

45 Hobbes, *supra* note (27), p. 238.

46 Hobbes, *supra* note (27), p. 385.

For Hobbes, Leviathan (sovereign state and social state) was desirable because it was limited to governing the “body” and did not extend to the fundamental governance and control of the soul. The state was required to establish “standards” with transparency so that weak sheep did not go astray. Hence, Hobbes is sometimes described as a totalitarian. However, as the above quote clarified, Hobbes distinguished between “public conscience” and “private conscience.”⁴⁷ He argued that people may pretend to follow the official “ideology” in public, however, they should not be forced to follow it in their hearts; at the level of their private conscience.

To borrow the words of Yoshie Kawade, Hobbes’s “totalitarianism” greatly recognized the right to “facade obedience while secretly disobeying,” which is equivalent to freedom of thought.⁴⁸ To that extent, the above quote from Hobbes, which preaches freedom of thought or inner freedom, “if one had not read it in Leviathan, one would attribute to Locke or one of the other great theorists of toleration.”⁴⁹

Hence, according to Hobbes, Leviathan does not intrude into the private conscience, while Behemoth manipulates and controls it. Therefore, the sword is used to suppress Behemoth, the deceptive power, and is important to secure peace, order, and inner freedom. It would not be an exaggeration to say that Leviathan’s mighty and absolute power, or sovereignty, was conceived because it had to take on “God’s masterpiece” (the Book of Job), whose target was our fragile inner selves.

If we understand Hobbes’s state of nature, as described above, it would not be unreasonable to think that Hobbes uses sovereign/legal power to subjugate the modern digital Behemoth. The digital Behemoth can be a deceptive power that exploits the psychological vulnerability of the masses through AI and algorithms, manipulates their souls, and sometimes drives them to rebel against Leviathan.

(2) The Counterattack by Leviathan?

From the political system theory by Hobbes, Behemoth, as a counterforce to Leviathan, would be seen as something to be restrained. Hobbes rejected the traditional British theory of mixed government in which sovereignty was divided between the monarch and parliament. In his theory, this division of sovereignty has been cited as one of the causes of the English Civil War. Hobbes had long denied the intrusion of the church into the secular political system and misleading people (clericalism) and had advocated the original separation of the church and state. This indicates that he was extremely critical of the pluralism or mixture of powers that obscures the location of sovereignty.

Modern digital Behemoths are beginning to infiltrate the political systems of sovereign states. They exert an influence on the sovereign power by controlling their communications infrastructure, overwhelming geopolitical influence by mediating “information” and “cognitive warfare,” and large-scale, organized lobbying in the political process backed by enormous financial power.⁵⁰ Hobbes supported Leviathan’s subjugation of

47 The expressions “public conscience” and “private conscience” are used in Nagao, *supra* note (26), p. 228.

48 Kawade, *supra* note (25), p. 25.

49 Tuck, *supra* note (39) p. 127.

50 Willi Lehdenvirta (translated by Hamaura Naoko) ‘Digital Emperors’ (Misuzu Shobo, 2024). A recent example of lobbying is “Google’s Burial of the Journalism Protection Bill,” Nikkei Digital Governance, September 24, 2024. For a detailed discussion,

Behemoth for the unity of sovereignty, with the perspective that the exercise of power shall be democratically legitimized by the “consent” of the people.

If we interpret Hobbes’s argument in the above manner, it can be predicted that Hobbes would praise the Brazilian Supreme Court’s order to completely suspend X and the French government’s arrest and prosecution of the Telegram CEO as actions taken by Leviathan. Moreover, he would likely support the EU’s stance of enacting a series of laws, such as the DSA and the Digital Markets Act (DMA), which primarily target the regulation of large global platforms, particularly digital Behemoths – a movement to restore sovereignty to nations, that is, “digital sovereignty,”⁵¹ which is being usurped by platforms in the digital realm (although the responses are not strong enough from his perspective).

Although not platform-specific legislation, the EU AI Act, enacted in May 2024, is interpreted as one of Leviathan’s counterattacks against the “power of deception.” This is because Article 5, paragraph 1(a) of the Act considers the use of AI systems, which use subliminal techniques beyond the individual’s consciousness, or intentionally manipulative or deceptive techniques that substantially distort the individual’s behavior by significantly impairing “the ability to make an informed decision,” as a representative example of the most stringent “prohibited AI practices.” This provision is considered a symbolic declaration of the Leviathan, who wields his sword only over our bodies and fears, against the digital Behemoth that uses AI to interfere with and manipulate our souls and minds. Hobbes, who was most concerned about the chaos in social order caused by the “power of deception,” would support such anti-AI regulations.

3 Conclusion

This article referred to Hobbes’s arguments to the extent necessary for the theme of this book, and concluded that if Hobbes had lived in this digital era, he would have thought that the Behemoths, the giant platforms, should be defeated by the Leviathan. However, this conclusion raises the following question: Is it possible for the Leviathan to defeat the Behemoth?

The Hobbesian approach has certain limitations. Through Foucault’s discussion of *pouvoir pastoral* and “governmentality,” we see that Hobbes’s idea sharply contrasted the hard but dry state power (Leviathan) with the soft but wet church power (Behemoth). According to Hobbes, Leviathan was a hard monster as it governed the body with the power of the sword, but was dry as it did not penetrate the depths of the soul. The Behemoth was a soft monster as it did not use a sword, but it was wet because it worked on the soul. Hence, this is a contrast between warrior-type rule (hard power) and magician-type rule (soft power), and Hobbes supported the former.

However, the question here is whether a truly dry governance that does not intrude on private con-

see Yamamoto Tatsuhiko, “Modern Sovereign State Systems and Digital Platforms,” in Yamamoto Hajime (ed.), *Constitutionalism* (Shinzansha, 2022), p. 147 ff.

51 Haluna Kawashima, “Digital Sovereignty,” *Law Journal*, Hogakukan Institute, No. 30 and No. 31 (2024), p. 187.

science is possible. Schmitt criticized the “empty Leviathan” that did not involve the inner mind and spirit of humans,⁵² as there may be limitations to governing a swollen “population” with only the sword. According to Foucault, from the 18th century onward, states that faced the problem of “population,” as the “new subject,”⁵³ were forced to incorporate *pouvoir pastoral*, a technique developed for “guiding” the “flock” of sheep. If this assessment is correct, then the Hobbesian Leviathan was a “temporary” monster that was unable to survive for the long term.

Thus, the current “false” Leviathan relies on the sword, the magic, and deception that it originally denied. However, the question arises whether the Leviathan can beat the digital Behemoth by putting these techniques into practice. The platforms, using vast amounts of personal data, AI, and algorithms, know the innermost recesses of lost sheep and directly influence their inner systems (cognitive processes). This can be seen in the contradictions in Hobbes’s understanding of human psychological vulnerability. Hobbes distanced himself from the Aristotelian moralistic and unrealistic view of human beings and attempted to understand the human condition from a psychological perspective. He emphasized the weakness of human passions and the heart.

However, as several scholars have criticized, Hobbes does not deny the function of “reason.” He believed that humans were guided by the power of reason (rational arithmetic ability), which was understood as the ability to calculate and enter a social contract to escape the fear of death. From this perspective, Hobbes does not consider humans to be completely emotional and folly beings.

This diversity and ambiguity is resolved to a certain extent by understanding this ability “as a minimum level” of reason derived from fear. However, the problem is that Hobbes may have been expecting a more powerful ability, that is, the ability to distinguish between “public conscience” and “private conscience.” As mentioned above, Hobbes considered humans as ambivalent beings who can pretend to publicly follow the standards established by the Leviathan while following their private conscience. This requires a strong mental capacity and the intellectual ability to view the state’s spiritual standards ironically. This highlights the fundamental contradiction of Hobbes’s (and of the modern liberal state) regarding human nature. Can a vulnerable human being, who is easily manipulated by the power of deception, adopt such a high-level mental attitude as “facade obedience while secretly disobeying”?

Considering this contradiction, the Leviathan has always been at the risk of private disobedience.⁵⁴ Hence, as Foucault points out, the sea monster will eventually need a *pouvoir pastoral* to influence the inner world (Foucault even considered that the “state” has only been able to survive thanks to the “doping” of *pouvoir pastoral*).⁵⁵ However, there are certain constitutional restrictions based on freedom of thought and conscience and the right to privacy. Nonetheless, private tech platforms are not directly subject to constitutional

52 Nagao, *supra* note (26), p. 198.

53 Michel Foucault (edited by Yasuo Kobayashi et al.), *Foucault Collection 6: Biopolitics and Government* (Chikuma Shobo, 2006), p. 268.

54 Sonoko Yamada points out that the fundamental problem for Hobbes was how “a king who only kills the body, that is, a sovereign whose duties should have absolutely no relation to the salvation of the soul or issues of conscience, can overcome the power of the Kingdom of Darkness.” Yamada, *op. cit.* note (7), 30 p. 9.

55 Foucault, *supra* note (53) p. 273

restrictions and have large amounts of data and AI/algorithms to effectively intervene in their inner world.

Given this overwhelming technological disparity, digital Behemoths can intervene in and manipulate people's private consciences more than nation-states. Humans, who inherently have psychological vulnerabilities, may not be able to distinguish between the private consciences formed (or forced to form) by digital Behemoths and the public conscience, such as a constitutionalist spirit.

Users who have a particular "personal conscience," as a result of disinformation and conspiracy theories spread and amplified on platforms, such as X (and their "faith" from "self-conceit" may have been exaggerated and radicalized by echo chambers), have attacked parliament and government facilities "in real life." This attack symbolizes the difficulty of maintaining a "facade obedience while secretly disobeying" and shows how difficult it is for a Leviathan to take up the sword and defeat a Behemoth that controls personal consciences through algorithms.

The question remains, what should we do? There is no concrete answer yet. However, the following points could be considered. Modern (constitutional) law scholars, living in an algorithmic world, should explore how to understand the relationship between state power and platform power, similar to how medieval pro-to-constitutional scholars, including Thomas Aquinas, described the relationship between secular power and church power.⁵⁶ We neither celebrate the power shift from the Leviathan to the digital Behemoth nor do we claim the restoration of power to the Leviathan.

56 Tatsuhiko Yamamoto, "Digitalization and the Constitution (Study)," *Jichi Kenkyu* 99 Vol. 4 (2012), p. 3 ff.