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DIALOGUE AND DEBATE: SYMPOSIUM

People: What EU law does not understand about tech

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Abstract

This essay's core claim is that EU tech law does not fully understand technology, since it does not account for its diverse negative impacts in the everyday lives of people in European societies. Placing a central focus on EU's digital regulation, I argue that EU law mostly sees technologies as products that should circulate at an ever-greater rate and volume in the internal market, to the benefit of consumers. This market-driven vision justifies a light-touch risk-based approach that creates a compliance apparatus which does not force tech companies to change unjust or harmful aspects of their business models; instead securing and legitimising them. Using a critical social theory approach, I argue that much of technology's meaning and impact on the everyday lives of people is missed by EU law's current depoliticised and technocratic approach to tech regulation. Taking the tech stories of This is Europe as a starting point, I illustrate how EU law systematically neglects the harms caused by technology or through technology to many individuals and communities in their everyday lives. Those affected range far beyond consumers and tech users. They include, for example, delivery platform workers forced into extreme anxiety due to task volume and app surveillance; several minorities systematically targeted by online abuse; or the migrants exposed to tech-mediated degrading treatment in European border facilities. All in all, EU law does not fully see, and therefore, epistemically excludes these lived experiences of tech harm from the regulatory dialogue. This leads me to some concluding reflections centred around a fundamental questioning of EU tech law's legitimacy. Particularly, I argue that a legal regime that does not recognise and is not responsive to the lived realities of harm of those which it regulates ultimately fails at a deeper, politico-moral level.

Keywords: Law & Tech; EU digital regulation; Law of the everyday; critical theory; socio-legal studies

> All that we ask of people in this society must be rational. It is rational to consume more, to change immediately what is worn out, to acquire more information, to satisfy an increasing number of desires. Constant growth is rational for our economic system.
>
> Jacques Ellul, 'The Technological Bluff' (1990)

1. Methodological preface: How to inquire into the European law of the everyday?

Just like the editors of this special issue, I believe there is need for a new approach to the study of EU law – one that accounts for how different people experience it, for the social relations it constitutes, the ways of living that it makes (im)possible and the normativity it projects for how social life should be ordered. This is why I find it productive to engage with the everyday lives of

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Europeans[1] as a strategy to explain and unmask what EU law really is and does, joining the critical turn of resistance against the detachment of EU law's institutions, key concepts and scholarly practice from the social world.[2]

However, as exemplified by the different approaches taken in the essays of this symposium, it is not clear how such a move towards the everyday of EU law should be accomplished methodologically. Perhaps due to the infancy of this approach in EU legal scholarship, many doubts remain regarding its mechanics (how to practically go about it), limits (how far one can go in making validity claims) and underlying de-ontology (what we can and should – or should not – say about the everyday of anyone else other than ourselves).

In this sense, I would like to preface my contribution with two methodological reflections on the conditions for the possibility of the proposed analysis into the 'European law of the everyday' based on Ben Judah's *This is Europe*.

The first reflection relates to the mechanics of this enterprise: in order to understand the law of the everyday, one has to embark on a journey of constant mobility between the *everyday* and the *law*. This requires a permanent shift of the researcher between four levels of analysis.

First, one should start by looking at what the law says about its objects – that is, the social realities it purports to regulate. What account of social life does the law give and how does it portray that which it regulates?

Second, one has to look for and thickly describe the *everyday* – that is, the lived experiences of people in a given place and at a given time. Such descriptions should prioritise depth over breadth. This means defending the epistemological and methodological value of extensively describing the experiences of a few, as opposed to the preference for quantitative statistical aggregations as proxies for explaining social reality.[3] What such analyses may lack in generalisability, they compensate for in providing an in-depth understanding of the social lived contexts where law operates, including people's perceptions and understandings of that law.[4] Crucially, it is not possible to fully obtain such thick descriptions of the everyday without performing deep *qualitative* empirical studies of the lived experiences of European individuals and communities.[5]

Third, one must seek to explain not just the everyday, but the everyday of law, meaning the material conditions of life as experienced by individuals *because* of the law. This, in essence, means

[1]Who are Europeans and who is considered to live in Europe constitutes a lengthy discussion that is outside the scope of this article. However, I should like to adopt a broad conception of what it means to be European, one that goes beyond legal categories of nationality and European citizenship and instead includes all individuals who come to exist in the geographical space of Europe, even those 'rightless people' who live in this geographical space while not being fully fledged members of any polity or community and are thus devoted to the extremities of European society – that is, a site of complete deprivation and loss of 'all other qualities and specific relationships – except that they [are] still human'. See H Arendt, *The Origins of Totalitarianism* (Penguin 2017 [1951]) 384–9, 392. The conception of 'European' employed here therefore includes European citizens such as lorry worker Jelle (*Rotterdam* chapter) or retired Swedish national Maria (*Norrköping* chapter), but also Ivorian migrant and detention camp-detainee Brico (*Briançon* chapter) or the people whom rescuers found or saw flee in France–Italy border crossings of the Alps (*Le Col de l'Échelle* chapter) – all examples are taken from B Judah, *This is Europe: The Way We Live Now* (Picador 2023).

[2]PJ Neuvonen, 'A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?' 1 (2022) European Law Open 60, 60–6; L Azoulai, 'Living with EU Law' 1 (2022) European Law Open 140, 143; L Azoulai, 'Reconnecting EU Legal Studies to European Societies' [2024] Verfassungsblog <https://verfassungsblog.de/reconnecting-eu-legal-studies-to-european-societies> accessed 27 March 2024.

[3]A Sarat and TR Kearns, 'Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life' in A Sarat and TR Kearns (eds), *Law in Everyday Life* (University of Michigan Press 2009) 60.

[4]BC Rathbun, 'Interviewing and Qualitative Field Methods: Pragmatism and Practicalities' in JM Box-Steffensmeier, HE Brady and D Collier (eds), *The Oxford Handbook of Political Methodology* (Oxford University Press 2008) 685–690; A Argyrou, 'Making the Case for Case Studies in Empirical Legal Research' 13 (2017) Utrecht Law Review 95, 98–99.

[5]While such forms of scholarship do not abound in EU law, one may turn to other geographies and disciplines (sociology, anthropology, or ethnography) for inspiration. See, for example, P Ewick and SS Silbey, 'Conformity, Contestation, and Resistance: An Account of Legal Consciousness' 26 (1992) New England Law Review 731; J Gilliom, *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy* (University of Chicago Press 2001).

asking two questions: (1) how are the conditions and possibilities of individuals' and communities' lives structured, determined and/or made (im)possible by the law?;[6] and (2) how do those individuals make sense of the law that structures their lives (e.g. accepting, using, reconstructing, contesting, resisting or ignoring it)?[7]

Fourth, one must take this inquiry into the *everyday* and the *everyday of law* back to the law. This means reflecting on the knowledge gathered in the prior three stages of analysis and asking what in EU law's account of the social does not reflect the identified lived realities. This mental move allows us to judge the accuracy with which law and legal institutions describe the reality they set out to regulate. It helps us understand the extent to which law overstates – or fully misses – its depiction of the social reality that it sets out to regulate. The validity claims made in this context should be of a negative nature; they should mainly focus on scrutinising and pointing out the impossibility – or lack of conditions – for EU law to state or assume something about social reality.[8] In other words, we should focus on contesting, at an epistemic and ontological level, the reductionist or distorted narratives of the social that EU law provides and reproduces.

Moving between these four levels of analysis enables a critical project aimed at inquiring the very justificatory premises for the concrete existence and form of (EU) law in a given area of social life.

Moving on, my second reflection relates to the conditions for the validity claims one may make as a consequence of this particular 'law of everyday' enterprise: I believe that the stories of Ben Judah's book are not a sufficient and appropriate basis for making claims about what life in Europe *is* and what EU law does not capture about it. On the contrary, these stories can only constitute a much-welcomed alert and starting point for a deeper inquiry into the social realities that are invisible to EU legal research and practice. If one engages in a meta-critique of this project, following Neuvonen's call for a methodological engagement with critical social theory in EU legal research,[9] I do not think that one can: (1) take the stories of Ben Judah; (2) accept that they are representative of lived reality in Europe; and then (3) based on them, make claims about how specifically EU law does not capture what lived reality is. At least one cannot, given only this "thin" basis, affirm points (2) and (3) in a definitive and totalising way.

To begin with, the stories that Ben Judah collected based on interviews he himself set up and conducted are filtered by him, a writer of a specific positionality – a white man – and intentionality – an artistic or literary one. Even if these stories refer to several realities, positionalities and modes of being and living in Europe, they nonetheless remain, in essence, *collected*. We do not know what Judah cut, left out or overlooked. We do not know the processes by which he gave meaning to what he saw. We do not know the process of selection of interviewees, nor do we know what Judah ignored on his travels. To be sure, this is not an indictment of Judah or his book; his merits as a writer are of no relevance to my argument. My point is that we cannot, as researchers, simply take a portrait of how Judah *perceived life in Europe to be* and turn it into the sole material basis to claim that this is how life in Europe *is* (or, to borrow the book's words, that 'this is Europe'). What is certainly a compelling artistic statement cannot be turned into an empirical or ontological claim – even if this is done in the name of the investment

[6]S Deakin et al. 'Legal Institutionalism: Capitalism and the Constitutive Role of Law' 45 (2017) Journal of Comparative Economics 188; I Bakker and S Gill, 'Rethinking Power, Production, and Social Reproduction: Toward Variegated Social Reproduction' 43 (2019) Capital & Class 503, 511; F de Witte, 'Here Be Dragons: Legal Geography and EU Law' 1 (2022) European Law Open 113, 114–15, 119, 121–2, 124.

[7]Sarat and Kearns (n 3) 21–23, 31, 38, 50–52; S Halliday, 'After Hegemony: The Varieties of Legal Consciousness Research' 28 (2019) Social & Legal Studies 859.

[8]A Allen, *The End of Progress: Decolonizing the Normative Foundations of Critical Theory* (Columbia University Press 2016) 175–6; Neuvonen (n 2) 75–7.

[9]Neuvonen (n 2) 72–76; see also M Horkheimer, *Critical Theory: Selected Essays* (MJ O'Connell tr, Continuum 2002) 190–242; P Bargués and others, 'Hope after "the End of the World": Rethinking Critique in the Anthropocene' 23 (2024) Contemporary Political Theory 187, 188–196.

into a laudable critical aim,[10] which I share. Such an ontological claim cannot, in turn, be the basis for claiming exactly how EU law does not capture reality.

All in all, Ben Judah's stories cannot be the ontological basis for making totalising claims about (1) lived realities in Europe and (2) the extent to which EU law does not consider them. Nonetheless, they contain the conditions for other types of (negative) claims. They, first and foremost, 'sound the alarm' regarding the methodological need for thick descriptions of lived social reality. It is in this sense that I have used Ben Judah's stories in this essay: as clues, hints of potentially existing lived experiences of social reality that constitute injustices that (EU) law either causes, structures or amplifies and that should, therefore, be made visible. I have taken those clues to elicit an analysis of more widely documented instances of tech-mediated injustices occurring in the everyday. Whenever I point to one such lived experience and/or injustice, I do not mean to state that they definitively exist as described, or that I am not missing anything about them. And this is because I cannot possibly fully grasp the incommensurable infinitude of how the individuals depicted in the case studies of *This is Europe* have existed, perceived and lived through those instances of harm.[11]

Therefore, whatever conclusions I reach in the next paragraphs are precarious and temporary; and I mean them like this. They are not a destination, but mainly the inception of a reflection that needs to venture way deeper into both the everyday of law and the law of the everyday.[12] In making them, I am motivated – like all contributors to this issue – by a profound worry regarding the disconnect between, on the one hand, EU (and all) law's production and reproduction and, on the other hand, social reality.

2. Introduction

The core claim of this article is that EU tech law does not fully understand technology, since it does not account for its diverse impacts in the everyday lives of all people in European societies. '*Understanding technology*' certainly requires understanding the capabilities, functionalities and other technical characteristics of technological artefacts. But it also means, as argued by Tranter, *seeing* technology's impact in its presentness and embeddedness within the everyday lives of all people.[13] As Ben Judah himself has claimed, technology is acutely present in the lives of Europeans.[14] But, as I argue throughout this article, placing my central focus on digital technologies,[15] EU law does not fully *see* such presence of technology in the everyday. And, ultimately, EU law cannot fully *understand* that which it does not fully *see*.

EU law certainly sees the benefits of tech. Technologies are mostly seen as products that benefit people conceived, first and foremost, as consumers. These market benefits of technology are used as a justification for an approach to regulation that, under the motto of securing innovation and

[10]As Neuvonen says, critical theory is "a strategy of reflection that aims to trouble all forms of untroubled cathexis [emotional investment] – even the cathexis with critical theory itself". See Neuvonen (n 2) 72.

[11]E Lévinas, *Totality and Infinity: An Essay on Exteriority* (Springer 1979); DA Kysar, *Regulating from Nowhere: Environmental Law and the Search for Objectivity* (Yale University Press 2010) 204.

[12]A first attempt to continue this inquiry with relation to EU law and tech is contained in M Correia de Carvalho and R Griffin, 'Who Speaks and Who is Heard? Civil Society Participation and Participatory Justice in DSA Systemic Risk Management' (*DSA Observatory*, 2026) <https://dsa-observatory.eu/2026/02/17/who-speaks-and-who-is-heard> accessed 25 February 2026.

[13]K Tranter, 'The Law and Technology Enterprise: Uncovering the Template to Legal Scholarship on Technology' 3 (2011) Law, Innovation and Technology 31, 73–4; K Tranter, 'From Law and Technology to Law as Technology', in Id., *Living in Technical Legality: Science Fiction and Law as Technology* (Edinburgh University Press 2018) 18, 28, 30, 35.

[14]*This is Europe Now by Ben Judah* (Waterstones, 2023), <https://www.youtube.com/watch?v=mE3LM7GLz3Q>, at minute 0:39.

[15]By this I mean both electronic equipment, online platforms and related digital and physical infrastructure, and artificial intelligence (AI). As there is insufficient space here, in this article I have chosen to mostly focus my analysis on this specific type of technologies, given their predominance in Ben Judah's stories of tech.

efficiency, creates a compliance apparatus that does not force tech companies to change unjust or harmful aspects of their business models. Instead, EU digital regulation secures such business models; as is argued in Section 3, it mostly aims to ensure the integrity of technology production and circulation processes, striving to make these processes ever faster, greater and more efficient. This is due to a pervasive regulatory grammar of risk that allows for the continued integration of technology in the internal market while requiring tech operators to be forward-looking and predict the potential harms their technologies *may* cause (i.e. their risks).

Consequently, as illustrated in Section 4, EU law systematically neglects or altogether sidelines the harms caused by or through technology to many individuals and communities in their everyday lives. Those affected range far beyond consumers and tech users. They include, for example, delivery platform workers forced into extreme anxiety due to task volume and app surveillance; several minorities systematically targeted by online abuse; or the migrants exposed to tech-mediated degrading treatment at the borders of Europe.

There is, therefore, a breadth of complexity about technology that (EU) law[16] does not – or does not want to – fully see. This way of looking at and regulating tech comes at a cost: people and, more specifically, the 'have-nots' of technological progress.

3. Is this tech? An account of what EU law says about tech

I start my argument by looking at how EU law accounts for the tech that it sets out to regulate, its uses and effects. This requires answering three questions: (1) How does EU law see tech?; (2) Why does it regulate tech?; and (iii) How does it regulate tech? These three questions are successively interconnected. EU law's account of technology (*How does it see tech?*) determines, to a large extent, the reasons why EU law intervenes in this field (*Why does it regulate tech?*). In turn, those normative justifications for regulating tech shape the regulatory framework, governance structures and toolbox of EU tech law (*How does it regulate tech?*). So let me start with how EU law sees tech. To begin with, and as with any other segment of social reality, technology is part of (EU) law's object – something that the law purports to regulate.[17] Following the contemporary definition of 'technology' as 'any tool or technique, any product or process, any physical equipment or method of doing or making', which as a material manifestation of scientific knowledge extends human capability,[18] a great deal of what EU law regulates is indeed technology. But apart from treating tech as its regulatory object, and in line with its market nature, EU tech regulation conceives of technologies as products that circulate in the internal market,[19] striving to secure the constitution

[16]Whenever I write (EU) law, I wish to express that the observations I make regarding EU law's relation with and regulation of technology could equally be made regarding any other law regulating technology.

[17]Law claims for itself the role of ordering social life, from which it emerges and which it seeks to regulate by setting rules for social cohabitation, organization and behaviour. It is in this sense that I affirm that technologies, their uses and effects are part of EU law's object: law refers to them as an object of regulation but, at the same time, it emerges (and is therefore co-constituted and dependent on) from their coming into existence and practice. See, in this sense, P Tarchila, 'The Evolution of Law' 6 (2015) Journal of Humanistic and Social Studies 133, 138; S Pietropaoli and T Casadei, 'Nota editoriale. "Ricucire" prassi e teoria del diritto: spunti di riflessione a partire da Santi Romano' 15 (2018) Jura gentium 7, 7.

[18]L Bennett Moses, 'Why Have a Theory of Law and Technological Change? Symposium: Towards a General Theory of Law and Technology' 8 (2007) Minnesota Journal of Law, Science & Technology 589, 592; Tranter, 'The Law and Technology Enterprise' (n 13) 34.

[19]To give the most recent example of online platforms and AI systems, see 'European Commission, White Paper On Artificial Intelligence – A European Approach to Excellence and Trust, COM(2020) 65 Final' (2020) 1–4, 10, 12, 14–15, 23–25, which makes numerous references to AI as being part of 'the data economy' and as circulating in the 'single market'. AI is seen as being a source of well-being for citizens but such well-being is created through 'economic growth' and market processes. See also recitals 1, 4–7 and art. 1(1) of the E-Commerce Directive, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000; recitals 2, 5, 7 and 13 of the General Data Protection Regulation, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter GDPR); recitals 1, 2, 4, 7 and 9 of the Digital Services Act, the main EU regulation for digital platforms, titled Regulation (EU) 2022/2065 of the European Parliament and of the

and operation of technological sub-markets within the broader single market.[20] In other words, EU law accepts, assumes and ensures that technologies will be developed, made available and used by persons and companies across a unified market. Equally and consequently, EU law accepts that technologies will cause harm.[21] These observations require further elaboration.

First, according to EU law, technology benefits people considered, first and foremost, as consumers: they will enjoy the advantages that different technologies offer as available products in the market.[22] EU law aims to ensure that people are able to consume technology (think of the newest iPhone) or *through* technology (think of online shopping platforms) while, crucially, trusting that what they consume is safe. In this sense, it strives to achieve an optimal balance between, on the one hand, technology production, circulation and innovation, and, on the other hand, the protection of tech consumers.[23]

Second, technologies are not seen by EU law as creating harm *right now*; instead, they are seen as posing *risks* of harm – that is, they *may* cause harm. The grammar of risk – just as in most internal market law – is crucial here.[24] Risk has become the regulatory term-of-art used by EU law to achieve the above-mentioned optimal balance between tech innovation and any protective objectives that the EU claims for its secondary law, from rights to digital fairness, product safety, democracy or civic discourse, just to give a few examples.[25]

But the 'risk way' did not have to be 'the way'. In fact, framing technologies' harms as risks is not a neutral, apolitical choice.[26] Namely, a risk-based approach makes tech regulation adopt a forward-looking perspective, accepting that technologies will create harm in the future,[27] but requiring that such potential harms be managed[28] by the regulated private actors that are

Council of 19 October 2022 on a Single *Market* [emphasis added] for Digital Services (hereinafter DSA); or recitals 1–4, 8–9, 47, 111, 129 and 176, as well as art. 1, 3(65) and Annex XIII, f) of AI Act, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (hereinafter AIA).

[20]I read the references cited in the footnote above and similar statements in EU law regulating digital technology in light of M Bartl, 'Socio-Economic Imaginaries and European Private Law' in PF Kjaer (ed), *The Law of Political Economy* (Cambridge University Press 2020) 229; and I Kampourakis, 'Bound by the Economic Constitution: Notes for "Law and Political Economy" in Europe' 1 (2021) Journal of Law and Political Economy 301, 301–2, 306–9.

[21]See, for example, recitals 2–3, 40, 68, 76 DSA; recitals 1, 6, 14 and 27 of the Digital Markets Act, Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 (hereinafter DMA); and recitals 4 and 5 AIA.

[22]See, for example, recitals 1, 2, 4 DSA; and recital 1, 3, 4 AIA read in light of 'European Commission, White Paper on Artificial Intelligence' (n 19) 1–2; and M Almada and N Petit, 'The EU AI Act: A Medley of Product Safety and Fundamental Rights?' (2023) 7, 17 <https://papers.ssrn.com/abstract=4308072> accessed 1 November 2023. Both these references demonstrate that AI in the AI Act is, first and foremost, conceived as a product (made available in the internal market) whose safety must be ensured.

[23]See, for example, recitals 3, 9, 12, 40 recitals 1–3, 6 AIA as well as 'European Commission, White Paper On Artificial Intelligence' (n 19) 1–3. See also M Laurer and T Seidl, 'Regulating the European Data-Driven Economy: A Case Study on the General Data Protection Regulation' 13 (2021) Policy & Internet 257, 267.

[24]An example is the Digital Services Act: see recitals 2, 9, 76, 79–83 and art. 34(1) DSA; see, for a comprehensive analysis of risk regulation in the DSA, R Griffin, 'Governing Platforms through Corporate Risk Management: The Politics of Systemic Risk in the Digital Services Act' 4 (2025) European Law Open 223.

[25]G De Gregorio and P Dunn, 'The European Risk-Based Approaches: Connecting Constitutional Dots in the Digital Age' 59 (2022) Common Market Law Review 473, 473, 494–6, 499–500; Griffin, 'Governing Platforms Through Corporate Risk Management' (n 24) 10; Mª V Vargas and G De Gregorio, 'The Transformation of European Risk Regulation: Managing Uncertainty and Powers in the Digital Age' [2026] European Journal of Risk Regulation 1.

[26]J Adekola, *Power and Risk in Policymaking: Understanding Public Health Debates* (Springer 2020) 18–19, 109–10; Griffin, 'Governing Platforms through Corporate Risk Management' (n 24) 11, 14–17.

[27]F Haines, 'Regulation and Risk' in P Drahos (ed), *Regulatory Theory: Foundations and Applications* (ANU Press 2017) 188, 192; ME Kaminski, 'Regulating the Risks of AI' [2023] Boston University Law Review 1347, 1391–2, 1395, 1397; M Husovec, 'The Digital Service Act's Red Line: What the Commission Can and Cannot Do About Disinformation' (2024) 7 <https://papers.ssrn.com/abstract=4689926> accessed 16 January 2024. Only in very exceptional cases will the future perceived risk of a technology or technological use be considered so unacceptable that it warrants outright technological prohibition: see, for example, art. 9(1) GDPR and art. 5 AI Act.

[28]Management typically means, in this context, the foreseeing of particular risks and the development of strategies to either minimise the likelihood of such risk materialising into harm or, should it indeed materialise, to minimise the consequences.

developing or deploying such technologies. It is for these actors to continuously identify, assess and manage the risks emerging from their technologies as they are used in the internal market.[29] These risk management operations, as the literature amply demonstrates, typically show a limited predictive capacity for unquantifiable harms,[30] and are communicated as exclusively technical and de-politicised processes.[31] Such a regulatory approach leads, as argued by Kysar, to a fundamental distancing between the law and the lived negative experiences of its subjects: the technocratic nature of risk management implies a shirking of the responsibility of law towards the individuals and societal goods potentially harmed by a risk source.[32]

So the question must be asked: Why did EU institutions choose risk regulation – with all its abovementioned 'policy baggage'[33] – as the strategy to regulate tech in the internal market? The argument usually goes that risk regulation offers the necessary flexibility to adapt the law to the fast-paced evolution of the capabilities and uses of technology in modern life.[34] In this way, law can accompany the *speed* of tech and preserve a space where technological innovation can thrive.[35] EU law's intention to be fast is key here: it does not just want to accompany tech development and innovation; it wants to *secure* it. The option for a lighter-touch risk-based approach to digital regulation is predicated on an intention of the law to allow regulated companies to claim they are complying with the applicable legal regime while creating minimal disruption to their business models.[36] It is hard to interpret otherwise a regulatory strategy that, by default: (1) accepts tech's introduction in the internal market; (2) accepts that it will create harm, focusing on reducing its likelihood or mitigating its impact; (3) mostly foresees regulatory interventions that reduce

Risk-management obligations have typically been discharged by producing heavy sets of documentation where regulated private actors introduce their assessments of emerging risks and indicate written policies or the choices they make in the face of the identified risks (doing nothing and accepting the risk is possible choice). See SD Baum, 'Risk and Resilience for Unknown, Unquantifiable, Systemic, and Unlikely/Catastrophic Threats' 35 (2015) Environment Systems and Decisions 229; Kaminski (n 27) 1390–9; 'Towards Meaningful Fundamental Rights Impact Assessments under the DSA' (European Center for Not-for-Profit Law, Access Now Europe 2023) 7 <https://www.accessnow.org/wp-content/uploads/2023/09/DSA-FRIA-joint-policy-paper-September-2023.pdf> accessed 10 April 2024; Anna-Katharina Meßmer and Martin Degeling, 'Auditing Recommender Systems Putting the DSA into Practice with a Risk-Scenario-Based Approach' (Stiftung Neue Verantwortung (SNV) 2023) 2 <https://shorturl.at/viWyd> accessed 17 January 2024.

[29]See, for example, arts 5(2) GDPR, 34-35 DSA, or 6, 16 and 53, AIA. See also M Correia de Carvalho, 'It Will Be What We Want It to Be: Sociotechnical and Contested Systemic Risk at the Core of the EU's Regulation of Platforms' AI Systems' 16 (2025) Journal of Intellectual Property, Information Technology and e-Commerce Law 54–5; Griffin, 'Governing Platforms through Corporate Risk Management' (n 24) 9–10.

[30]M Veale and F Zuiderveen Borgesius, 'Demystifying the Draft EU Artificial Intelligence Act' 22 (2021) Computer Law Review International 97, 99; Kaminski (n 27) 1390–9; Griffin, 'Governing Platforms through Corporate Risk Management' (n 24) 12, 17.

[31]Kaminski (n 27) 1397; Griffin, 'Governing Platforms Through Corporate Risk Management' (n 24) 18–20. See, in practice, the example of art. 9(2)(5) AIA.

[32]Kysar (n 11) 224–5.

[33]Kaminski calls 'policy baggage' to the 'known tools, tactics, and accompanying troubles' that are transplanted into a regulatory field when a specific regulatory approach – such as risk-based approach – is adopted therein, see Kaminski (n 27) 1396–1403.

[34]GN Mandel, 'History Lessons for a General Theory of Law and Technology' 8 (2007) Minnesota Journal of Law, Science and Technology. 551, 563–8; S Larsson, J Hildén and K Söderlund, 'Between Regulatory Fixity and Flexibility in the EU AI Act' 2 <https://portal.research.lu.se/en/publications/between-regulatory-fixity-and-flexibility-in-the-eu-ai-act> accessed 15 March 2024.

[35]For example, recitals 4, 9 or 109 DSA, 107 DMA, or 1–3, 8, 20 AIA; see also 'European Commission, White Paper on Artificial Intelligence' (n 19) 2–7.

[36]For similar arguments, see R Griffin, 'What Do We Talk about When We Talk About Risk? Risk Politics in the EU's Digital Services Act' (Digital Services Act Observatory, 31 July 2024) <https://dsa-observatory.eu/2024/07/31/what-do-we-talk-about-when-we-talk-about-risk-risk-politics-in-the-eus-digital-services-act> accessed 2 September 2024; Kaminski (n 27) 1354, 1408; R Griffin, 'Rethinking Rights in Social Media Governance: Human Rights, Ideology and Inequality' 2 (2023) European Law Open 30, 33, 50; P Terzis, M Veale and N Gaumann, 'Law and the Emerging Political Economy of Algorithmic Audits' (ACM 2024) 1464 <https://dl.acm.org/doi/10.1145/3630106.3658970> accessed 27 January 2025.

complex contextual assessments of tech's impact to quantitative variables and the production of compliance documentation;[37] and (4) makes regulated tech companies the primary decision-makers regarding the identification, assessment and management of technological risks.[38] This regulatory approach, even if coated with strong political claims that EU institutions are asserting the EU rulebook and values against foreign big tech companies, is in line with the policy and scholarly proposals of tech regulatory arrangements that do not excessively constrain private tech companies' ability to innovate.[39] Such regulatory arrangements, it is claimed, will ensure economic growth and, consequently, that European societies will enjoy an ever-greater quality of life.[40]

So what happens when digital harms occur? Then the solution is to develop and design better tech. The question of whether a given technology or certain uses of that technology should be allowed is sidestepped, and the regulatory discussion starts at a later stage: it asks how tech can be designed, used and finetuned to be more accurate, function better and cause fewer problems.[41] This 'techno-solutionist' or 'techno-correctionist'[42] mentality underpinning EU tech regulation mostly serves an aim of trust production both in technology and the law that regulates technology.[43] Since the presence of tech in the everyday, even if it may cause harm, is accepted as inevitable, then EU law is set up to make people *trust* tech's everyday presence in their lives.[44] EU legal discourse openly states that it seeks to make technology fair, safe and, crucially, *trustworthy*.[45] The fairness and safety of tech are, for these purposes, a perception: more important than making technology fair and safe is that people *trust* it to be so.

In conclusion, as Tranter argues for tech law in general,[46] technological futures are the present of (EU) law's mechanisms and, I would add, justificatory discourse for why and how it regulates tech. To recap, in order to secure the promise of tech products for consumers, EU law largely accepts their circulation in the internal market, empowering tech companies to predict and address the risks their tech *may* create. EU authorities merely oversee the regulatory actions taken by companies, often attaching to those actions a value of 'compliance' intended to manufacture people's trust in tech's safety. All the foregoing raises an interesting hypothesis: by looking at the future through this light-touch, risk-based approach, is EU tech law missing something about tech's impact *right now*?

[37]For clear evidence of this in a recent EU regulation, the Digital Services Act, see Terzis, Veale and Gaumann (n 36); J Albert, 'What are DSA Audits Doing for Systemic Risk Enforcement? The Case of X' (DSA Observatory, 19 December 2025) <https://dsa-observatory.eu/2025/12/19/dsa-audits-what-are-they-good-for> accessed 12 April 2026.

[38]Cf footnote 29; see also Vargas and De Gregorio (n 25) 10–11.

[39]A Zhelyazkova, 'Challenges in EU Law Enforcement and the Digital Age' in M Scholten (ed), *Research Handbook on the Enforcement of EU Law* (2023) 98; A Bradford, 'The False Choice Between Digital Regulation and Innovation' (2024) 17–18, 30 <https://papers.ssrn.com/abstract=4753107> accessed 16 March 2024.

[40]See, for example, 'European Commission, White Paper on Artificial Intelligence' (n 19) 2–3. See also recital 2 DSA and recitals 4, 25 AIA; as well as European Commission, Proposal of the DSA, COM(2020) 825 final 2020/0361 (COD), 1–2.

[41]P Terzis, 'Against Digital Constitutionalism' 3 (2024) European Law Open 336, 343–4.

[42]N Dow Schüll, 'The Folly of Technological Solutionism: An Interview with Evgeny Morozov' (*Public Books*, 9 September 2013) <https://www.publicbooks.org/the-folly-of-technological-solutionism-an-interview-with-evgeny-morozov> accessed 13 December 2023; Kaminski (n 27) 1354.

[43]M Hiltunen, 'Platforms, Digital Single Market, and the Hope of Trust: Online Platform Imaginaries of the European Commission' [2025] Transnational Legal Theory 1.

[44]A telling example is present in 'European Commission, White Paper On Artificial Intelligence' (n 19) 1, 3: 'As digital technology becomes an ever more central part of every aspect of people's lives, people should be able to trust it', and talking about creating a "unique ecosystem of trust" around AI as a "policy objective in itself". Other references to trust on pp. 8–10, 20–1, 23–5. See also recital 6 AIA.

[45]'Ethics Guidelines for Trustworthy AI' (Independent High-Level Expert Group on Artificial Intelligence – European Commission 2018); European Commission, 'AI Act: Have Your Say on Trustworthy General-Purpose AI' (30 July 2024) <https://digital-strategy.ec.europa.eu/en/consultations/ai-act-have-your-say-trustworthy-general-purpose-ai> accessed 19 November 2024. See also recitals 3, 12, 72–3 DSA; or recitals 1–3 AIA.

[46]Tranter, 'The Law and Technology Enterprise' (n 13) 34.

4. What does EU tech law not understand about technology? Almost everything

This is where Ben Judah's *This is Europe* comes in: it gives us some clues about where to start our inquiry about tech's presence in everyday life in Europe. As stated in the preface, this is only a starting point, and thicker inquiries of tech and tech law's presence in everyday life must follow. In any case, this section aims to provide a starting point into the second and third steps of the methodological strategy devised in the preface: to look for the lived experiences of people with technology and seek to explain how the material impacts of tech in their lives are, at least in part, made possible by tech law.

As Judah claims, tech is profoundly present in the lives of Europeans, altering and re-shaping everyday interactions from communication to love.[47] Indeed, there are countless examples in the book of tech's ability to connect people with their fellow community members and loved ones – for instance, the phone of Imam Mahjoub being flooded with messages from the faithful of his religious community in the wake of France's first COVID lockdown;[48] or Syrian refugee Laila's ability to momentarily escape depression and discontent about living in Germany by talking on WhatsApp with her sister who lived in Syria.[49] In addition, social media platforms are described as creating the possibility for romantic relationships between people who would otherwise never have met – such as the two lonely Romanian truck drivers, Camila and Ionut,[50] or elderly couple Maria and (also) truck driver Gustaf.[51] This 'connective' potential of digital technologies and social media is not something that escapes EU law, which often cites this as one of the main benefits of the introduction of such technologies in the internal market.[52]

Nevertheless, the pervasive presence and use of tech in ordinary life[53] also creates instances of violence, alienation and dehumanisation. It is the latter – structurally caused by digital technologies[54] – that, I argue, are hardly a concern of EU digital regulation. I have grouped these oft-invisible instances of tech violence into three main tropes: (1) everyday total surveillance of individuals; (2) tech-induced stress and addiction; and (3) tech-mediated gender-based violence.

The two main instances of tech total surveillance described in *This is Europe* relate to work and migration. In the *Briançon* and *Budapest* chapters, Ivorian refugee Brico[55] and Syrian asylum seeker Ibrahim[56] are forced to give their fingerprints through a biometric scanner. Right after the despair, danger and, in the case of Brico, near-death experience associated with fleeing their origin countries to arrive in Europe, this fingerprint collection is their first contact with the state in Europe; this encounter is mediated by technology. Something that, in the EU, is a highly intrusive and, in principle, prohibited data collection operation of sensitive data (art. 9 GDPR) is forced upon these migrants with no information about related consequences ("I signed. I didn't know what I was signing. But I signed," says Brico.) Indeed, in line with the extremely broad national security exemptions from EU tech law obligations afforded to Member States,[57] highly intrusive technologies – from biometric scanners to AI-powered emotion recognition systems – are used every day to violently 'datify' migrants, facilitating in the name of efficiency their detention and sorting. The place of law here is reduced to mere compliance, to formalised performative actions

[47] *This is Europe Now by Ben Judah* (n 14), at 1:58–2:06.
[48] Judah (n 1) 378.
[49] ibid 315–16, 326.
[50] ibid 39.
[51] ibid 531–2.
[52] For example, recitals 1, 18 E-Commerce Directive; and recitals 28–9 DSA.
[53] This is by no means specific to life in Europe.
[54] R Griffin, 'Procedural Fetishism in the Digital Services Act' 16 (2025) European Journal of Legal Studies 11, 17; Correia de Carvalho (n 29) 49.
[55] Judah (n 1) 272.
[56] ibid., 117.
[57] For example, recital 16 and art. 23(1)(a) GDPR; art. 5(2)–(5) AIA.

such as Brico's uninformed signature of a form.[58] In other words, the law of tech creates 'technological states of exception' – that is, tech law is invoked to produce spaces where the *law*[59] does not exist, thereby enabling the unconstrained application of intrusive technologies with very little (if any) regard from the human targets of said application.[60]

Going beyond migration control, Judah also describes instances of total surveillance of delivery workers. In these cases, technology is deployed to control the location of truck and Amazon drivers at all times during their workday, setting a strict route for their deliveries and notifying them incessantly of their non-compliance with such routes if they are late or take alternative paths – which can be forced on them by external but very common circumstances such as traffic. The devices used to control their location and route compliance – the tacograph in the case of truck drivers like Ionut,[61] or an app in the case of Amazon driver Aboud[62] – are described as incredibly powerful and omnipresent sources of stress, used to constantly remind them to drive "more", "get there faster" and that they are "going to be late". This is consistent with the increased demands for ever-faster and more efficient circulation of products in the digitalised economy, which is done at the expense of these lived realities of precarious and incredibly stressful work experienced by delivery workers under digital surveillance.[63] This digitalised economic model, of ever-greater circulation of products, is ensured by EU internal market law, as explained in the previous section.

In the *Budapest* chapter, Judah also describes the social media addiction of pornographic content creator Ibrahim, who is obsessed with finding ever more dehumanising ways of producing porn to make his online reach profitable,[64] and is, in addition, addicted to consuming online porn.[65] His exposure to social media even led him to experience suicidal thoughts.[66] These experiences are not exclusive to Ibrahim. Predominantly but not exclusively among adolescents, social media use may generate addiction,[67] produce alienating feelings of anxiety and self-loathing,[68] increase the

[58]M Besters and FWA Brom, '"Greedy" Information Technology: The Digitalization of the European Migration Policy' 12 (2010) European Journal of Migration and Law 455; C Bouvier, 'A Dangerous Precedent: How the EU AI Act Fails Migrants and People on the Move' (*PICUM*, 4 April 2024) <https://picum.org/blog/a-dangerous-precedent-how-the-eu-ai-act-fails-migrants-and-people-on-the-move> accessed 15 November 2024.

[59]'Law' here is used differently from 'tech law', written just before in the sentence. The former refers to the law's normative aspirations and protective obligations, predicated on the dignity of the subjects to which it purports to apply and who it sets out to protect, in theory; the latter refers to law exclusively as a set of formal legal norms, emphasising the form of law in an exclusively positivist sense.

[60]D McQuillan, *Resisting AI: An Anti-Fascist Approach to Artificial Intelligence* (Bristol University Press 2022) 74–9.

[61]Judah (n 1) 30–1. See Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport.

[62]Judah (n 1) 307–12.

[63]K Lenaerts and W Waeyaert, 'The Platform Economy and Precarious Work' [2020] European Parliament, Policy Department for Economic, Scientific and Quality of Life Policies, Directorate-General for Internal Policies; H Johnston et al., *Working on Digital Labour Platforms: A Trade Union Guide for Trainers on Crowd-, App- and Platform-Based Work* (European Trade Union Institute 2021) 25–7 <https://shorturl.at/8pZGC> accessed 26 May 2025; A Cefaliello, 'An Occupational Health and Safety Perspective on EU Initiatives to Regulate Platform Work: Patching up Gaps or Structural Game Changers?' 1 (2023) Journal of Work Health and Safety Regulation 117, 132; B Mbare, M Perkiö and M Koivusalo, 'Algorithmic Management, Wellbeing and Platform Work: Understanding the Psychosocial Risks and Experiences of Food Couriers in Finland' 34 (2024) Labour and Industry 386, 395–402.

[64]Judah (n 1) 109–10, 129–32.

[65]ibid 123.

[66]ibid 130.

[67]A Dhir et al., 'Online Social Media Fatigue and Psychological Wellbeing: A Study of Compulsive Use, Fear of Missing Out, Fatigue, Anxiety and Depression' 40 (2018) International Journal of Information Management 141; S Zivnuska et al., 'Social Media Addiction and Social Media Reactions: The Implications for Job Performance' 159 (2019) The Journal of Social Psychology 746; A Pellegrino, A Stasi and V Bhatiasevi, 'Research Trends in Social Media Addiction and Problematic Social Media Use: A Bibliometric Analysis' 13 (2022) Frontiers in Psychiatry.

[68]E Tanner, 'Girls, Instagram, and the Glamorization of Self-Loathing' 4 (2015) Dissenting Voices; Dhir et al. (n 67); 'Anxious About Your Health? Facebook Won't Let You Forget' (Panoptykon Foundation, 6 December 2023) <https://en.panoptykon.org/algorithms-of-trauma-2-anxious-about-health> accessed 15 February 2024.

likelihood of self-harm and suicidality[69] and promote engagement in violent behaviour towards others.[70] Even though EU law now enables the identification and management of systemic risks of social media platforms and their AI systems through arts 34 and 35 of the DSA, it is unlikely that these obligations will make platforms structurally change their business models, which are meant to capture user attention and hook people into unhealthy amounts of social media use.[71] In fact, the first round of systemic risk-management reports and audits has shown how EU law enables platform performative and 'box-checking' regulatory compliance exercises, rather than requiring structural changes to harmful platform design practices and business models.[72]

Furthermore, and despite the current European Commission's action to tackle certain specific systemic risks such as electoral disinformation and online child safety,[73] these enforcement priorities obscure the fact that the problem with digital platforms is much larger and keeps on growing. EU law is missing the broader picture by concentrating the enforcement of the law on only some issues – arguably those that can more easily be made the object of a depoliticised consensus[74] – and framing them as problems that can be solved through either small technical tweaks that make platforms safe for consumption, use prohibitions or the removal of harmful content produced by 'bad actors'.[75] Indeed, these digital spaces are already creating or amplifying many other forms of structural social harm, which new research suggests emerge not from ill-intentioned actors but from platforms' design,[76] business

[69]AM Memon et al., 'The Role of Online Social Networking on Deliberate Self-Harm and Suicidality in Adolescents: A Systematized Review of Literature' 60 (2018) Indian Journal of Psychiatry 384; JA Fulcher et al., '#selfharn on Instagram: Understanding Online Communities Surrounding Non-Suicidal Self-Injury Through Conversations and Common Properties among Authors' 6 (2020) Digital Health 1.

[70]D Upton Patton, RD Eschmann and DA Butler, 'Internet Banging: New Trends in Social Media, Gang Violence, Masculinity and Hip Hop' 29 (2013) Computers in Human Behavior; D Upton Patton and others, 'Social Media as a Vector for Youth Violence: A Review of the Literature' 35 (2014) Computers in Human Behavior 548; M ElSherief, E Belding and D Nguyen, '#NotOkay: Understanding Gender-Based Violence in Social Media' *Proceedings of the International AAAI Conference on Web and Social Media* (2017) <https://ojs.aaai.org/index.php/ICWSM/article/view/14877> accessed 31 March 2025.

[71]P Pałka and E Ilczuk, 'Social Media and Mental Harms Under the Digital Services Act' 15 (2026) Internet Policy Review.

[72]S Broughton Micova, 'Evaluating Systemic Risk Management under the DSA' (*CERRE*, 6 December 2024) <https://cerre.eu/news/evaluating-systemic-risk-management-under-the-dsa/> accessed 6 December 2024; 'Evaluating the First Systemic Risk and Audit Reports under the Digital Services Act' (23 February 2025) <https://open.spotify.com/episode/1SluZGXL7uEqT2yvGCEp5h?si=bfd121e878304c20> accessed 3 March 2025, at minute 5:40, 7:15, and 11:05; Griffin, 'Procedural Fetishism in the Digital Services Act' (n 54) 26–33.

[73]European Commission, Directorate-General for Communications Networks, 'Digital Services Act : Application of the Risk Management Framework to Russian Disinformation Campaigns' (Publications Office of the European Union 2023) <https://data.europa.eu/doi/10.2759/764631> accessed 15 February 2024; 'Call for Evidence for an Initiative: Digital Services Act - Guidelines to Enforce the Protection of Minors Online' (*European Commission*, 25 September 2024) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14352-Protection-of-minors-guidelines_en> accessed 25 September 2024.

[74]Griffin, 'Governing Platforms through Corporate Risk Management' (n 24) 18–20; Correia de Carvalho and Griffin (n 12) 19, 49.

[75]'Civil Society Open Letter to Commissioner Breton' (*ARTICLE 19*, 17 October 2023) <https://www.article19.org/wp-content/uploads/2023/10/Civil-society-open-letter-to-Commissioner-Breton.pdf> accessed 9 October 2024; A Reid, L Neill and E Ringel, 'Nerd Harder: A Typology of Techno-Legal Solutionist Logics in Child Online Safety Laws' 17 (2025) Policy & Internet e70012; F Wapler and EM Bredler, '"Just the Illusion of Protection"' (*Verfassungsblog*, 20 February 2026) <https://verfassungsblog.de/just-the-illusion-of-protection/> accessed 20 February 2026. It is, however, true that EU institutions have been, as of late, starting to mention and investigate the addictive design of certain platforms, see, e.g., 'First Report of the European Board for Digital Services in Cooperation with the Commission Pursuant to Article 35(2) DSA on the Most Prominent and Recurrent Systemic Risks as Well as Mitigation Measures' (European Board of Digital Services 2025) 15–17 <https://digital-strategy.ec.europa.eu/en/news/digital-services-act-report-lays-out-landscape-systemic-risks-online> accessed 3 December 2025.

[76]For example, D Głowacka, K Szymielewicz and P Sapieżyński, 'Algorithms of Trauma #2 - Stuck in a "Doomscrolling Trap" on Facebook? The Platform will Not Let You Escape' (Panoptykon Foundation 2023) <https://panoptykon.org/sites/default/files/2023-12/panoptykon_algorithms-of-trauma-2_case-study-report_dec-2023.pdf> accessed 15 February 2024; F Esposito and TM Cathoud Ferreira, 'Addictive Design as an Unfair Commercial Practice: The Case of Hyper-Engaging Dark Patterns' 15 (2024) European Journal of Risk Regulation 999.

models[77] and ownership.[78] In the face of most of these structural harms, EU law's place in the lives of those affected is *not* – it is one of absence. EU law largely permits and legitimises that tech companies structure the creation or (unparalleled) amplification of such lived harms.[79] At the top of the list is gender-based violence, alluded to in the *Liepaja* chapter, where 16-year-old Nora is harassed, body-shamed and forced to strip in an online chat.[80] Add to this the countless episodes of women whose intimate images[81] or instances of abuse[82] are shared among thousands of men on platforms like Telegram, or those cases where false AI-generated and AI-disseminated pornographic content targets and debases women, sometimes as a part of broader online shaming campaigns.[83] There have been, to date, no enforcement actions seeking to force platforms and AI companies to structurally change their policies and design that allow for the massification and increased reach of these instances of gender-based violence. On the contrary, social media platforms and their algorithmic recommender systems[84] are used to engender and perpetuate long-existing patterns of gender-based violence: they promote – especially among young men – extremely violent content and ideologies of women hate;[85] and demote, or make totally invisible, content whereby LGBTQ+ activists and social media users attempt to express their identities and fight discrimination.[86]

[77]S Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs 2019); Terzis (n 41) 340–1; for an overview, see Griffin, 'Governing Platforms through Corporate Risk Management' (n 24) 16–17, and cited sources.

[78]For example, P Leerssen, 'From Murdoch to Musk: Platform Ownership and the Political Economy of Online Content Governance' 2 (2025) Platforms & Society.

[79]See further Section 3.

[80]Judah (n 1) 166–81. I have focused my analysis on examples of tech harm depicted in Ben Judah's book. However, many other structural harms stemming from social media could be mentioned, such as the growth of online abuse towards minorities; the systematic algorithmic censorship or invisibility of certain communities, such as trans people or social justice causes; the promotion of far-right extremist content and disinformation; or climate breakdown. See, for example, J Cobbe, 'Algorithmic Censorship by Social Platforms: Power and Resistance' 34 (2021) Philosophy & Technology 739; R Griffin, 'Climate Breakdown as a Systemic Risk in the Digital Services Act' (Hertie School Centre for Digital Governance, 7 September 2023) <https://www.hertie-school.org/en/digitalgovernance/news/detail/content/climate-breakdown-as-a-systemic-risk-in-the-digital-services-act> accessed 19 February 2024; P Darius et al., 'Radical Populist Parties Receive Greater Audience Support on Social Media: A Cross-Platform Analysis of Digital Campaigning for the 2024 European Parliament Election' (arXiv, 2025) <https://shorturl.at/qDnWs>; M Gehrke and ER Amit-Danhi, 'Gendered Disinformation as Violence: A New Analytical Agenda' [2025] Harvard Kennedy School Misinformation Review <https://shorturl.at/oLWfI>; 'Annual Report on Digital Violations Against Palestinian Content' (Sada Social 2025) <https://sada.social/post/almshr-alrkmy-2024-albad-balrkmn-altgss-mn-alrkak-ht-ktaa-alntrnt-2> accessed 19 February 2026.

[81]For example, S Semenzin and L Bainotti, 'The Use of Telegram for Non-Consensual Dissemination of Intimate Images: Gendered Affordances and the Construction of Masculinities' 6 (2020) Social Media + Society 1.

[82]For example, 'Adolescente violada por grupo em Loures. Três jovens entre os 17 e os 19 anos detidos. Crimes foram filmados e divulgados nas redes sociais' [Author's translation: 'Teenager raped by group Loures. Three youngsters between 17 and 19 years old detained. Crimes were filmed and shared on social media' (CNN Portugal 27 March 2025) <https://cnnportugal.iol.pt/violacao/loures/jovem-de-16-anos-violada-por-grupo-em-loures-tres-rapazes-entre-os-17-e-os-19-anos-detidos/20250327/67e5102bd34e3f0bae9c2b70> accessed 31 March 2025.

[83]European Commission, Directorate-General for Communications Networks (n 73) 30; Dexter Ramirez Andrada Christian, '70 Deepfake Statistics You Need to Know (2024)' (*Spiralytics*, 26 September 2024) <https://www.spiralytics.com/blog/deepfake-statistics/> accessed 6 December 2024; Gretchen Peters, 'Time to Act on Harmful Deepfakes & Algorithms' (*Tech Policy Press*, 31 October 2024) <https://techpolicy.press/time-to-act-on-harmful-deepfakes-algorithms> accessed 20 15 November 2024.

[84]These are fully or partially algorithmically driven systems "used by an online platform to suggest" and/or prioritise specific information "in its online interface".

[85]Patton, Eschmann and Butler (n 70); AI Solea and L Sugiura, 'Mainstreaming the Blackpill: Understanding the Incel Community on TikTok' 29 (2023) European Journal on Criminal Policy and Research 311.

[86]Griffin, 'Procedural Fetishism in the Digital Services Act' (n 54) 16–17.

5. It's about people, not tech

What is common to all the lived experiences described above is their effect: tech-mediated dehumanisation and alienation of people from the societies in which they exist. It is not that all those harms are new: in some cases, technology amplifies the magnitude of problems that pre-existed it – think, for example, of violence against women. In any case, all of this is treated under EU law as inevitable collateral damage of the ever-greater and ever-faster introduction and circulation of tech within the internal market.

In this sense, and proceeding to the fourth step of the abovementioned methodological strategy for studying the law of the everyday, I conclude by reflecting on two questions: Does EU law's account of tech distort, or in any way make invisible, the social reality that it sets out to regulate? If so, in what ways? As stated in the preface, just basing ourselves on *This is Europe*, it is not possible to fully juxtapose EU law's discourse on tech with the everyday of tech in Europe. A cumulative and ever-growing ensemble of thick empirical descriptions of that everyday will be needed as a basis for such claims. However, I do think I am able to present, at this stage, four concluding reflections on both the misguided lens of EU tech law and the impossibility of EU law, institutions and practitioners to say or assume certain things about the social reality of tech.

First, as shown in Section 3, and contrary to what many claim, it is false that EU regulation is very constraining of tech development;[87] it is not. It creates a big compliance apparatus that legitimises, instead of questioning, the increasing introduction of technologies in our lives despite the harms they presently create. Second, EU tech law, like most or maybe even all tech law, is misguidedly structured by reference to the future, failing to fully engage with the everyday presence and very tangible negative effects that certain tech uses are already producing. Contrary to what flows from the regulatory logic of EU tech law, technologies do not merely pose risks of harm that *may* materialise in the future; they are already causing harms now. And it suffices to point to certain instances of lived harm, as I have in Section 4, to assert that EU law is not fully considering or capturing – be it in its rules or their enforcement – very distinct and structural forms of violence and dehumanisation mediated by digital technologies.

Third, EU tech law worries little about people beyond their existence as consumers: it is more worried about making European consumers trust tech than about holding their developers and deployers accountable for already existing forms of tech-mediated injustices suffered by several individuals and communities all over Europe. In this sense, EU law does not fully see, and therefore epistemically excludes, these lived experiences of tech harm from the regulatory dialogue.[88] And a legal regime that does not recognise and is not responsive to all lived realities of those it regulates ultimately fails at a deeper political and moral level.[89]

Finally, even if all of the above are deeply political choices about how EU tech regulation accounts for the social realities it regulates, such choices are communicated as if they were

[87]For a very recent example, see Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus) 2025 [COM/2025/837 final] 1–2, which also mentions the Draghi and Letta reports.

[88]For an example, see Correia de Carvalho and Griffin (n 12) 40, 43–4, 50.

[89]Similar arguments of a moral commitment of polities (and even law) to the full recognition of their subjects can be found in different strands of critical theory, such as N Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Polity Press 2008) 144–7; Kysar (n 11) 223, 237–45, arguing that moral responsibility to the lived and yet-to-be lived realities of 'the other' should be a normative orientation of liberal constitutionalism; R Forst, 'The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach' 120 (2010) Ethics 711, 717; E Christodoulidis, R Dukes and M Goldoni, *Research Handbook on Critical Legal Theory* (Edward Elgar 2019) 24–25.

merely technical and non-political, through a grammar of risk.[90] The harms EU law ignores and therefore accepts are the rational outcome of a balancing exercise. EU law thus chooses a language of balance and risk over others, such as one of permanent contestation of how tech is produced, regulated and introduced in Europeans' lives – one where all beings subjected to the EU's legal order may assert and claim equal consideration for their everyday experiences with tech.[91]

In this sense, there are deeper (constitutional) questions to be asked: Should tech law focus on the future or the everyday present of tech? And, speaking of the present, what type of reality do we want? One where technology serves ever faster free movement and ever greater growth in the name of rational progress and happiness? One of absolute technological efficiency of consumption processes – at the expense of workers – and of public administrations – at the expense of totalising people surveillance? Or do we want less tech? Can we have a reality where spaces for contestation are opened and people are given the space to resist and say no to tech and progress where that either does not serve or actively harms them?[92] Can there be ways of introducing and regulating tech while fully accounting for its presence in societies?

The problem of EU tech law is, I am afraid, a democratic one: we are not even asked or allowed to ask these questions. In other words, our problem is one of imagination: EU law moves forward, unencumbered by those who may want different presents for technology.

[90]Kaminski (n 27) 1397; Griffin, 'Governing Platforms Through Corporate Risk Management' (n 24) 14, 18–20, 27.
[91]J Rancière, *Dis-agreement: Politics and Philosophy* (University of Minnesota Press 1995) 11, 15–17, 30–3.
[92]For example, McQuillan (n 60).

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